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Cambodian Center for Human Rights

CCHR Briefing Note – July 2014

The Failure of Land Dispute Resolution Mechanisms

Executive summary

This Briefing Note considers the current state and practice of dispute resolution mechanisms in the Kingdom of Cambodia (“Cambodia”), which have been formed to address land disputes and conflicts arising from economic land concessions (“ELCs”) and land grabs by powerful individuals and companies. The first section of this Briefing Note gives an introduction to land rights abuses in the context of ELCs and land grabs, and discusses the relevance for studying land dispute resolution mechanisms in Cambodia. The second section provides an overview of the five main dispute resolution mechanisms and the jurisdiction of each mechanism depending on the type of land dispute involved. The third section discusses the gap between the theory and practice of Cambodia’s dispute resolution mechanisms, along with two case studies to illustrate the ineffectiveness of existing mechanisms. The last section concludes by offering a series of recommendations by the Cambodian Center for Human Rights (“CCHR”) to improve access to and implementation of dispute resolution mechanisms, with the broader aim of strengthening access to justice for Cambodia’s most vulnerable communities, among which are:

1. Raise public awareness of dispute resolution mechanisms and the duties and responsibilities of all levels of the Cadastral Commission throughout the country;
2. Establish transparent recruitment procedures for the selection of dispute resolution decision makers; and
3. Draft conflict of interest policies should be drafted and adhered to prior to the appointment of new members to any dispute resolution body.

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

Introduction

Violations and abuses over land rights are among the most prevalent human rights violations in Cambodia today. Despite the legal protections governing land rights provided in Cambodia’s Constitution, national laws and international law, vulnerable communities continue to have their land illegally and unfairly taken away from them. This land is typically transferred to powerful individuals or companies for business or commercial development, often in clear violation of Cambodia’s legal framework and Cambodia’s international human rights obligations. For example, agribusiness companies are often behind land grabs and forced evictions of rural communities to make way to rubber or sugar plantations. Land has also been appropriated for the construction of

hydroelectric dams, which in addition to displacing communities, has devastating long-term environmental and economic impacts on the affected areas.

An ELC is a legal right established by an official document granted by the Royal Government of Cambodia (“RGC”) to an individual, group of individuals, or legal entity to occupy and develop State private land.¹ The right to an ELC is subject to a number of restrictions imposed by the Land Law 2001 (“Land Law”), relevant sub-decrees, and the terms of the specific concession contract.

As of December 2012, the RGC had granted or reserved over 2,600,000 hectares of land to private companies under the ELC scheme, representing a 16.7% increase from 2011.² An estimated 700,000 Cambodians have been adversely affected by ELCs, facing forced evictions and/or involuntary relocation.³ In most of these cases, the authorities have failed to comply with the Land Law and the 2005 Sub-Decree on Economic Land Concessions, including the requirement to publicly consult and compensate affected communities, and to conduct environmental and social impact assessments. National and international requirements regarding evictions and resettlement have also not been followed.⁴ Limits governing the size and ownership of ELCs have not been properly enforced.⁵ ELCs have been granted over protected forestry areas,⁶ contrary to the Forestry Law. Despite these violations, no systematic review of land concessions has been conducted. Furthermore, dispute resolution mechanisms are failing to uphold the rights of affected communities and respect for the law, while not holding powerful individuals or companies accountable for their actions.

Cambodia’s position as an emerging market has been dominated by a government which has sought to increase exports and exploit its natural resources for the purposes of national development. Consequently, the large-scale granting of ELCs has led to environmental destruction, displacement of communities and loss in traditional livelihoods, mainly for small-scale farmers and indigenous communities who depend upon land and forests for their survival. Land grabs have also disrupted the lives of urban dwellers, with negative effects on livelihoods, income-generating activities, education, and access to basic services such as clean water, sanitation and health care. For example in Phnom Penh alone, as of May 2011, at least 30,009 families had been evicted from their settlements.⁷ The large scale of land disputes has led to an increasing number of demonstrations and has drawn criticism from both national and international communities and organizations.⁸

As this Briefing Note discusses, few Cambodians are aware of, or have the means to access the mechanisms and institutions, which in theory have been established to protect their land rights. The asymmetry in power between parties involved in land disputes, combined with the absence of an

¹ Land Law, Article 48

² ADHOC, ‘A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012,’ (February 2012), <http://bit.ly/1uh9EMS> (“ADHOC: A Turning Point”)

³ Human Rights Watch, ‘Cambodia: Land Titling Campaign Open to Abuse,’ (12 June 2013), <http://bit.ly/17FLZsD>.

⁴ ADHOC: A Turning Point

⁵ Special Representative of the Secretary General for human rights in Cambodia, ‘Economic Land Concessions in Cambodia: A human rights perspective,’ (June 2007), <http://bit.ly/1jXfNpz>.

⁶ 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>. (the “SR Report, 2012”) page 38

⁷ ADHOC, ‘A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012,’ (February 2012).

⁸ CCHR Mini-Report, Monitoring of Land Concessions in 2012, Phnom Penh (February 14, 2013), <http://bit.ly/1ngSZJH>.

independent judicial system, continues to deprive scores of Cambodians to effective legal remedies in cases involving ELCs, land-grabbing, forced evictions and displacement.⁹

Overview of dispute resolution mechanisms

Depending on whether the land in question is registered or unregistered, there are five dispute resolution mechanisms to address land-related conflicts stemming from land-grabs and ELCs: 1) the Commune Councils; 2) the Administrative Committees; 3) the Cadastral Commission; 4) the National Authority for Land Dispute Resolution (the “NALDR”); and 5) the court system.

The Commune Councils “reconcile differences of opinion” among citizens of communes, but do not have power to make decisions.¹⁰ While not a prerequisite, in practice most cases are heard before Commune Councils before going on to higher levels.¹¹ The Administrative Committees operate in all areas and as first instance for cases arising during the state sponsored land registration campaign.¹² Although the Administrative Committees lack power to issue binding decisions, they may assist the conflicting parties in resolving their disputes.¹³

The Cadastral Commission

The Land Management and Administration Program (“LMAP”), which started in 2002, was the first phase of the RGC’s Land Administration, Management and Distribution Program (“LAMDP”). The LAMDP, was originally projected for implementation over a period of 15 years and set out a number of key objectives, including preventing and resolving land disputes. However, the World Bank, a key development partner to LMAP, issued a statement in 2009 that the LMAP was not achieving its intended outcomes, particularly with respect to the application of social and environmental safeguards in disputed urban areas.¹⁴ As a consequence, the RGC decided to terminate the LMAP partnership with the World Bank, bringing an end to the Bank’s financing of the project.

Significantly, Component 4 of the LMAP focused on increasing the capacity of government institutions to resolve land disputes, namely through the establishment of a three-tier dispute resolution mechanism of the Cadastral Commission. The Land Law instructs that conflicts over unregistered land be submitted to the Cadastral Commission for investigation and resolution.¹⁵ The Cadastral Commission was envisioned to provide a timely, inexpensive and less adversarial means of resolving cases.

Three sub-levels have been established under the Cadastral Commission for hearing disputes related to unregistered land and disputes which are unresolved before the Administrative Committee: 1) the

⁹ Land and Housing Rights in Cambodia Parallel Report 2009, Land and Housing Working Group, Cambodia (April 2009), <http://bit.ly/1jwnkA3>.

¹⁰ Sub-decree No. 22 ANK/BK on the Decentralization of Power, Roles and Duties to the Commune/Sangkat Councils, 25 March 2002, article 61

¹¹ The SR Report, 2012

¹² The RGC established two land programs: 1) the Systematic Land Registration (“SLR”) and 2) the sporadic land registration program. SLR is initiated by the RGC which determines an area where land will be adjudicated and titled, and is aimed at formalizing and legalizing all informally held land.

¹³ The make-up and role of the ACs are set out in Sub-decree No. 46 ANK/BK on Procedures to Establish Cadastral Index Map and Land Register, 31 May 2002.

¹⁴ World Bank, ‘Statement from the World Bank on Termination by Royal Government of Cambodia of the Land Management and Administration Project’ (6 September 2009), <http://bit.ly/1bm0pQk>.

¹⁵ Land Law, Sub-decree No. 47 on Organization and Functioning of the Cadastral Commission 2002

district/khan level; 2) the provincial/municipal level; and 3) the national level. Land disputes before the Cadastral Commission must first be heard at the district/khan level, which only has the authority to provide support for reconciliation.¹⁶ If an agreement cannot be reached at this level, the case should be referred to the provincial/municipal level for further attempts at conciliation.¹⁷ Since 2009, Provincial Cadastral Commissions have been delegated with the power to issue decisions in cases where a resolution is not possible.¹⁸ At the district and provincial levels, the Cadastral Commission is headed by the district/provincial governor.¹⁹ If the case cannot be resolved at the district and provincial levels, it should be forwarded to the national level of the Cadastral Commission for adjudication.²⁰

According to a report from September 2013 by GIZ Cambodia, the Cadastral Commission had processed nearly 5,000 cases and solved more than 2,500. Of these, almost 400 cases involved parties embroiled in a conflict, often involving a group of villagers against a powerful person.²¹ With land conflicts on the rise and a reported case resolution of around 50 percent, the Cadastral Commission's record demonstrates room for improvement.

Courts

The courts in Cambodia have jurisdiction involving disputes over registered, or titled land.²² If the parties are not satisfied, the case can be filed with the Court of Appeal. Parties who are not satisfied with the decision of the National Cadastral Commission may also file an appeal with the Court of Appeal.²³ Courts also have jurisdiction over cases relating to forced evictions as well as contract and inheritance disputes, irrespective of the registered or non-registered status of the land.²⁴ If the dispute is related to unregistered land, the parties must first go through the Cadastral Commission.

National Authority on Land Dispute Resolution

In March 2006, a Royal Decree²⁵ established the National Authority on Land Dispute Resolution ("NALDR"). The NALDR's creation by Royal Decree, rather than under the Land Law by the Parliament, has made its role difficult to reconcile with other land dispute resolution bodies. Moreover, the absence in the Land Law for the Authority's existence has raised serious doubts over its constitutionality.²⁶ The NALDR is currently chaired by Deputy Prime Minister²⁷ and includes

¹⁶ Ibid., Article 6

¹⁷ Ibid., Article 15

¹⁸ MLMUPC Prakas No. 32 on Delegation of Power to Governors of Provincial-Municipal Boards, Chairmen of PMCC to Decide Land Disputes in the CC Mechanism, 21 January 2010; MLMUPC Circular No. 1 on Implementation of Procedures for Deciding Land Disputes at Provincial/Municipal Cadastral Commissions, 21 January 2011

¹⁹ World Bank, Centre for Advanced Study and GTZ, 'Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution,' p. xii, (October 2006),

<http://bit.ly/1n30yAW>.

²⁰ Land Law, Article 16

²¹ Dr. Franz-Volker Muller, 'Land Rights Programme – Land tenure and access to land – essential steps in realizing the human rights to food and shelter,' GIZ Cambodia (September 2013), <http://bit.ly/Uy9p3n>.

²² Sub-decree 47, August 21, 2002, and Prakas on the Guidelines and Procedures of the Cadastral Commission, #112 DNS/BrK, Article 3

²³ Land Law, Article 23

²⁴ Ministry of Justice and MLMUPC, Joint Prakas No. 3 on Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes, 26 November 2003, articles 1 and 4

²⁵ Royal Decree on the Establishment of National Authority for Solving Land Disputes NS/KT/0206/097, (26 February 2006)

²⁶ Daniel Adler, 'Cambodia's National Authority for Land Dispute Resolution: An Exploratory Study,' Center for Advanced Study and World Bank Justice for the Poor (January 2008), <http://bit.ly/T2yNwO>.

members of Parliament, government advisors and lawyers. NGOs were given the opportunity to nominate a representative but declined to participate, citing they did not want to be associated with an organization they could not influence.²⁸

Vice chairs have included the Minister for Land Management, the Minister of National Assembly and Senate Relations and Inspectorate Affairs, and the Senior Minister for Special Missions.²⁹ The NALDR also has a General Secretariat headed by the Under Secretary of State at the Council of Ministers.³⁰ One study found that the NALDR chairman refers all matters to the Prime Minister for final decision. The composition of the NALDR shows that it is fully dominated by RGC's officials or affiliates, seriously threatening the independence and fairness of the commission. The same study also found that staff within the NALDR has been reluctant to provide even the most basic information to the public.³¹

The NALDR influences the resolution of land disputes by determining which ones to accept, which ones to refer to other bodies (including the courts), and the manner in which it investigates complaints.³² NALDR's decisions can be appealed to the Court, however as far as it can be determined, this right has not been exercised.³³

The NALDR serves a complementary function to the Cadastral Commission, and is mandated to hear cases which are "beyond the jurisdiction" of the Cadastral Commissions.³⁴ Since cases involving high profile or influential people are forwarded to the NALDR, the Authority has been criticized of effectively stripping the Cadastral Commission and the Courts of their proper jurisdiction. Further, the NALDR's broad mandate has been criticized as being both vague and exceeding the scope of the Land Law.

There are a number of shortcomings associated in lodging a complaint with the NALDR. First, complainants must file a written complaint in person at the NALDR office in Phnom Penh. Such a requirement has made access to this dispute resolution mechanism difficult in comparison to local authorities, Cadastral Commissions and the Courts. While the complaint is not required to be in any specific form, it must be submitted along with supporting documents, such as ID cards and family books. In the case of a collective complaint, the complainants must also submit a document demonstrating they have transferred their rights to a representative.³⁵ An additional flaw of the NALDR includes the absence of formal or established procedures. Therefore, the process for determining which cases are heard by the NALDR and which cases get referred is currently unknown.

²⁷ May Titthara, 'Most land disputes in Cambodia unsettled,' Phnom Penh Post (21 February 21, 2013), <http://bit.ly/1nzKxPZ>.

²⁸ SR Report, 2012

²⁹ Sub-Decree No. 1227 on the adjustment of the composition of the NALDR, November 2011

³⁰ Ibid.

³¹ Daniel Adler, 'Cambodia's National Authority for Land Dispute Resolution: An Exploratory Study,' Center for Advanced Study and World Bank Justice for the Poor (January 2008), <http://bit.ly/T2yNwO>.

³² Ibid.

³³ Ibid.

³⁴ Royal Decree NS/RTK/0206/697, Article 3

³⁵ Daniel Adler, 'Cambodia's National Authority for Land Dispute Resolution: An Exploratory Study,' Center for Advanced Study and World Bank Justice for the Poor (January 2008), <http://bit.ly/T2yNwO>.

Furthermore, there is no publicly available information regarding the decision making process of cases or their enforcement.

According to an article in *the Phnom Penh Post* referencing the NALDR 2012 Annual Report,³⁶ less than 30 percent of complaints filed in 2012 were resolved. The NALDR dealt with 103 complaints and resolved 30 from residents and institutions from across 19 provinces.³⁷ The current number of complaints before the NALDR could not be determined. However figures from an earlier study have indicated that 1,956 complaints were submitted between March and October 2006.³⁸ Of the 1,956 cases, 527 were accepted. Among these, 153 were referred to the Ministry of Justice (for referral to the courts); 130 were referred to the National Cadastral Commission; 28 were determined to be duplicates, and only four were resolved. It is not clear why the NALDR did not accept a large majority of cases, 1429 out of 1956. Nor is it clear what happened to the remaining 212 of the 527 cases which were accepted, indicating the NALDR's low rate of resolution.³⁹

Since the NALDR operates beyond the scope of the Land Law, the Special Rapporteur has observed that it *"does not have a clear place within the existing institutional framework for land dispute resolution."*⁴⁰ Furthermore, there is a high likelihood of undue political influence and conflict of interest to arise in cases where high-ranking or influential members of the government are appointed to hear land conflict cases involving other persons of influence.^{41 42} At the present time, the NALDR's powers, jurisdiction and track record on resolving disputes remain unclear, and little information about its proceedings are available to the public.⁴³

Given the NALDR's high potential for abuse of power and conflict of interest, and lack of clarity over its jurisdiction, this authority remains largely a political tool, allowing for greater central government control over other institutions involved in land management and dispute resolution. In effect, the NALDR is failing to provide a transparent, equitable and accessible dispute resolution mechanism to resolve land disputes, particularly those involving the poor.

The gap between the theory and practice of dispute resolution mechanisms

In practice, the use and implementation of the mechanisms described above remain limited due to a number of factors. First, the wide range of dispute resolution bodies and the lack of clarity over the jurisdiction of each mechanism have been cited as sources of confusion for potential complainants.⁴⁴ Other deterring factors include poor access to dispute resolution mechanisms by impacted individuals and communities, time-consuming administrative and procedural burdens, and financial costs associated with submitting a complaint. While there are no official fees such as those

³⁶ *The Phnom Penh Post*, 'Most land disputes in Cambodia unsettled,' (21 February 21, 2013), <http://bit.ly/1nzKxPZ>.

³⁷ Ibid.

³⁸ Daniel Adler, 'Cambodia's National Authority for Land Dispute Resolution: An Exploratory Study,' Center for Advanced Study and World Bank Justice for the Poor (January 2008), <http://bit.ly/T2yNwO>.

³⁹ Ibid.

⁴⁰ SR Report, 2012

⁴¹ Land and Housing Rights in Cambodia Parallel Report 2009, Land and Housing Working Group, Cambodia, (April 2009), <http://bit.ly/1jwnkA3>.

⁴² Lavinia Schwedersky, 'Mechanisms of Land Conflict Resolution in Rural Cambodia,' (7 April 2010), <http://bit.ly/UgHGnX>.

⁴³ Ibid.

⁴⁴ Mark Grimsditch and Nicolas Henderson, 'Untitled: Tenure Security and Inequality in the Cambodian Land Sector,' Bridges Across Borders Cambodia, Centre for Housing Rights and Evictions (COHRE), Jesuit Refugee Service (2009), <http://bit.ly/1jFVjaJ>.

associated with court filings, the costs associated with transportation, lost wages and legal assistance often prohibit individuals from seeking remedies before dispute resolution bodies. In addition, complainants have reported that decisions issued by existing dispute resolution bodies are inconsistent and subject to political pressures.⁴⁵ Moreover, the absence of independence in the judiciary has contributed to the overall lack of trust in the dispute resolution system among those impacted by land conflicts.

As discussed previously, Cambodia's Land Law directs that disputes concerning unregistered land be heard before the Cadastral Commission. However in practice, the Cadastral Commissions are failing the most vulnerable communities. Cadastral Commissions have been known for their failure to provide fair and timely resolutions, particularly for communities with little or no access to the land titling system.⁴⁶ Further, one study commissioned by the World Bank Centre for Advance Study and GTZ found that Cadastral Commissions have a better record of resolving conflicts over small parcels of land, but struggle to resolve complex cases, particularly those involving multiple parties and parties with connections to the government or the military.⁴⁷ The same report implies that while cases may fall under the jurisdiction of the Cadastral Commissions, weaker parties may not file cases due to lack of faith in the process and outcome. This study also reports that *"27% of all parties surveyed reported that informal fees or gifts changed hands in relation to their case before the [Cadastral Commission]."*⁴⁸ Another World Bank study further found that people involved in land disputes avoid filing complaints because *"formal institutions of justice such as the Cadastral Commissions or the courts were perceived as costly, time consuming and biased toward the rich."*⁴⁹

The following two case studies, from Phnom Penh and Kampong Cham Province, are offered to demonstrate the issue of power imbalance prevalent in land disputes. Both cases highlight the failure of existing dispute resolution mechanisms in providing remedies to communities whose lands have been appropriated through land grabs or ELCs by powerful individuals. The first case involves a land dispute between a community of farmers and a businessman, illustrating the asymmetry of power between the parties and the ineffectiveness of the Commune Council, Cadastral Commission and District Governors in resolving the conflict.

Case Study 1: Steong Toch village farming community⁵⁰

Location: Steong Toch Village, Kak Commune, Ponhea Kraek District, Kampong Cham Province

Parties to the conflict: Farming community in Steong Toch Village and powerful businessman, My. Ly Suth.

⁴⁵ SR Report, 2012

⁴⁶ Mark Grimsditch and Nicolas Henderson, 'Untitled: Tenure Security and Inequality in the Cambodian Land Sector,' Bridges Across Borders Cambodia, Centre for Housing Rights and Evictions (COHRE), Jesuit Refugee Service (2009), <http://bit.ly/1jFVjaJ>.

⁴⁷ World Bank, Centre for Advanced Study and GTZ, 'Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution,' p. xii (October 2006), <http://bit.ly/1n30yAW>.

⁴⁸ Ibid.

⁴⁹ World Bank and Centre for Advanced Study, "Justice for the Poor? An Exploratory Study of Collective Grievances over Land Local Governance in Cambodia," p. 37, (October 2006), <http://bit.ly/1jXlbZH>.

⁵⁰ This case study is based on discussions between CCHR and the community representative of Steong Toch Village, Kak Commune, Ponhea Kraek District, Kampong Cham Province.

Background to the land conflict: The land under dispute has been in possession and used by a community of farmers since the time of their ancestors. They have also enjoyed the use of a road to gain access to their agricultural land (right of way) without disruption, up until 2009. However the community of farmers does not possess a land title and the use of this road is now under dispute by the parties in this case.

In March 2009, Mr. Suth a businessman from Phnom Penh purchased the plot of land which had been used by the community of farmers and blocked the road, thereby preventing the farmers from accessing the road. When the farmers raised their concerns before the businessman, he claimed to possess a title to the land, and was therefore entitled to do whatever he wanted, including blocking the road. The businessman never produced any evidence of ownership to the community. He even tried to intimidate the farmers by asserting that he had powerful friends and was therefore not afraid of any legal action.

Community seeks assistance from Commune Chief: In April 2009 the community approached the Commune Chief for assistance, who sent his first and second village deputies to investigate the case. After the investigation, they concluded that the blocked road in question was in fact the same road used by the affected community to access their land. During a meeting with the affected community held the following month, the Commune Council suggested to the farmers that they take an alternate route to access their farmland, which would require them to cut across adjoining parcels of land already occupied and in use by other community members.

The Commune Council took no action to assist the community on how to implement the proposal for the alternate road. Moreover, questions on the feasibility, practicality and legality of the proposed access road remained unanswered. The community chose not to proceed with the alternate road plan after being told they would have to incur the financial costs associated with the construction of the new road.

Community seeks assistance before the Cadastral Commission (Office of the District Governor)

In June 2012, the community of farmers took their complaint before the Cadastral Commission. The complaint was heard before the District Governor, who formed a committee to investigate the conflict. In August 2012, a meeting was called at the District Cadastral Office where the District Governor produced a map confirming the exact location of the blocked road under dispute. Soon after the District Governor's announcement, the businessman reopened the road.

However on 16 March 2013, the businessman re-occupied and closed the road again, this time digging a ditch around the road, and effectively preventing the people from crossing without a bridge. That same day, the community sought assistance again from the District Governor. The District Governor told the community he had already resolved the problem and if the conflict still persisted, they should take the matter to court.

On 30 August 2013, the community sought legal assistance from the Cambodian Human Rights and Development Organization ("ADHOC"), which recommended that the affected people file a

complaint with the Office of the District Governor. Based on this advice, the people filed the complaint with the Office of the District Governor on 11 September 2013.

On 17 September 2013, during a meeting held at the District office, the Village Deputy proposed re-opening the road without any charges against the businessman. Although the villagers agreed with this proposal, the alleged landowner did not attend the meeting and a concrete plan was not reached.

Current case status: The resolutions offered at both the Commune Council and Cadastral Commission levels have led to confusion in the communities regarding the proper jurisdiction for hearing their complaint and have failed to make any meaningful impact on the businessman's activities or improve the lives of the farmers. In fact, since 2009, the businessman has bought more land in the area, thereby increasing the number of people affected by his activities. The community has had no choice but to find alternate travel routes requiring them to travel greater distances to access their farmland.

In May 2014, the case was re-sent to the District Governor level for resolution and currently is pending there. Five years after the land conflict began, the community still waits for a resolution by the relevant dispute resolution body.

The second case, involving a land dispute between community members from the Boeng Kak I community in Phnom Penh and the *Khun Sear Import Export Company* ("*Khun Sear Company*"), is illustrative of the ineffectiveness of the Cambodian court system.

Case Study 2: Boeng Kak I Case

Location: Boeng Kak I ("BK1), Toul Kork, Phnom Penh

Parties to the conflict: Initially seven families, five accepted compensation, leaving two remaining affected families who are parties to the conflict.

Background to the land conflict: Mr. Ly Sreang Kheng, his daughter Ms. Ly Sievminh, his son, and his wife live at BK1, along with one other family. The families have occupied the land since 1979 and despite having the proper documentation have unsuccessfully attempted to register their land under the Land Law on several occasions.

The families had been sharing the land with the commune council and CPP when in 2013 the Phnom Penh Municipality issued a land certificate stating that the disputed land belongs to the State. The State intends to exchange the land with the *Khun Sear Company*, which has intentions to develop it. The families have since been locked in a long-standing land dispute. Khun Sear, a real estate tycoon, owns *Khun Sear Company*. His business partner is Yim Leang, chief of Senate President's Bodyguard Unit.

Security concerns of affected community members: The Company has hired security guards to intimidate and harass the remaining families. The security guards live on site occupying the now empty CPP building.

Since May 2013, Ms. Ly Sievminh and her family have suffered an ongoing series of threats and attacks, including arson, physical assault destruction to their property and have had three extremely venomous cobras thrown into their home. In addition, members of the remaining families were charged on 26 June 2013 with *“theft with aggravating circumstances”* and have been summoned on several occasions by the court for questioning relating to civil complaints filed by Khun Sear.

Complaint filed in Court:

On 21 June 2013, Ms. Ly Sievminh filed a complaint at the Phnom Penh Municipal Court against the ten unidentified suspects for damaging her house. According to the lawsuit, they were sued for *“Intentional Violence under Aggravating Circumstances and Intentional Destruction and Damage of Property.”* She has not received any notifications from the court yet.

On 31 October 2013, Mr. Ly Sreang Kheng, filed a complaint with the Prosecutor of the Phnom Penh Municipal Court, against Mr. Khun Sear, and ten ex-security guards of the company. He reported being harassed by those men along with his family, being the victim of an attempted murder and continuous violations of his land rights. On 6 November 2013, the prosecutor found enough incriminating evidence to continue the case, and sent a request to the investigating judge to start the judicial procedure.

On 10 November 2013, Ms. Ly Sievminh filed an objection to the land claim of *Khun Sear Company* to the Phnom Penh Municipal Court.

Charges against community members:

On 26 June 2013, the High Criminal Office of the Ministry of Interior summoned four members of the three families in relation to *Khun Sear Company’s* complaint against them over *“seizing company’s property.”* After being interrogated they were handcuffed and forced into a truck to Phnom Penh Municipal Court. On the same day, they were released and charged with *“theft with aggravating circumstances”* (Article 357 of the penal code).

In a writ dated **8 May 2014,** Mr. Ly Bunheang and Ms. Ly Seavminh (brother and sister) were summoned to appear in court on 22 May 2014 by on charges of *“destroying and violently grabbing the other party’s property.”* In a similar complaint, Ms. Sok Huch was also called to appear in court on 23 May 2014.⁵¹

On 26 April 2014, Khun Sear filed a civil lawsuit against Ly Sreang Kheng, Uk Sokhouerng and his wife Nu Vanny, and Ms. Sok Huch in order to remove them from what he claims is his land.⁵² The court then summoned the four for questioning on 6 June 2014, however Ly Sreang Kheng’s lawyers have requested this to be delayed. There has been no new date set as of yet.

This case study evidences the fact that the Court is not only failing to solve the land dispute and protect the families from harassment, but also that it is being used by powerful elite to judicially harass individuals who attempt to defend their land from being grabbed.

As evidenced by these case studies, dispute resolution mechanisms are failing to provide adequate remedies in land dispute cases, and consequently exacerbating poverty and deepening the social and economic marginalization of the most vulnerable. The current climate surrounding the dispute resolution process is characterized by intimidation, abuse of power and corruption. In the absence of fair and adequate access to dispute resolution mechanisms, individuals and communities are voicing their opposition to land concessions by calling on the RGC to safeguard their land and sources of livelihoods. In particular, communities involved in land disputes are turning to protest and direct action to challenge unfettered land concessions, land grabbing and ensuing displacement. State authorities have responded by charging community leaders and activists with criminal offences including incitement, defamation, criminal damage and assault. In most cases, little or no evidence is produced against them.⁵³ CCHR's Briefing Note, released on 3 January 2014, further explains this occurrence: "*CCHR findings show that while demonstrations in Cambodia can relate to a wide range of interests, those related to labor rights, and land rights are the most frequently met with violence.*"⁵⁴

Conclusion and recommendations:

Cambodians who have been displaced or are at risk of being displaced due to ELCs and land grabs are not availing remedies and benefitting from dispute resolution mechanisms. This failure to protect and provide access to legal remedies, particularly for the poor and disadvantaged communities, is in clear violation of Cambodia's Constitution which guarantees that "*Khmer citizens are equal before the law, enjoying the same rights, liberties and duties regardless of race, color, sex, language, beliefs, religions, political tendencies, birth origin, social status, wealth or other situations.*"⁵⁵ In the absence of accessible, efficient and independent mechanisms for land dispute resolution, the poorest and most vulnerable communities will remain at risk of having their lands appropriated and being displaced with impunity.

Given the high incidence of land disputes and lack of tenure security, the effective functioning land dispute resolution mechanisms is fundamental to the realization of land and housing rights in Cambodia and improving access to justice for communities. As such, CCHR offers the following recommendations to the RGC:

- Guarantee the independence of the judiciary and the dispute resolution mechanisms;
- Guarantee equal access to dispute resolution mechanisms to all parties in a land dispute;
- Raise public awareness of dispute resolution mechanisms and the duties and responsibilities of all levels of the Cadastral Commission throughout the country;

⁵³ Mark Grimsditch and Nicolas Henderson, 'Untitled: Tenure Security and Inequality in the Cambodian Land Sector,' Bridges Across Borders Cambodia, Centre for Housing Rights and Evictions (COHRE), Jesuit Refugee Service (2009), <http://bit.ly/1jFVjaJ>.

⁵⁴ See CCHR Briefing Note, 'Excessive Use of Force Against Demonstrators in 2013 in Cambodia,' (3 January 2014), <http://bit.ly/1qXl8a8>.

⁵⁵ Constitution, Article 31, <http://bit.ly/Smzd1q>.

- Establish transparent recruitment procedures for the selection of dispute resolution decision makers, including setting and providing oversight of appropriate requirements relating to education level and qualifications;
- Draft conflict of interest policies should be drafted and adhered to prior to the appointment of new members to any dispute resolution body;
- Establish a meaningful grievance mechanism for those who believe the rejection of their complaint by a dispute resolution body was biased or unjust; and
- Dispute resolution mechanisms such as NALDR and Cadastral Commissions should publish annual reports about their activities.

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