



Special Representative of the Secretary-General  
for Human Rights in Cambodia

តំណាងពិសេសរបស់លោកអគ្គលេខាធិការទទួលបន្ទុកសិទ្ធិមនុស្សប្រចាំកម្ពុជា



# Land concessions for economic purposes in Cambodia A human rights perspective

November 2004



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## **Foreword**

During my missions to Cambodia in 2003, I visited a number of rural communities living on or near tracts of state land that have been contracted to private companies for commercial agricultural development. I wanted to understand at first hand the impact of land concession policies on local populations, from a broad human rights perspective. Cases of violations of human rights had also been brought to my attention.

The situation I met shocked me. The companies have been given rights over land that are very similar to ownership. Yet they have little or no regard for welfare; and they contribute little, if anything, to overall state revenue. I have concluded that the policies are wrong. They are not reducing poverty in Cambodia, and they are allowing the continued plundering of its natural resources. To use a Khmer phrase, they are "Eating the Kingdom".

The concerns are urgent. Cambodia's rural poor are the most vulnerable to arbitrary acts by public authorities and the powerful, and have almost no recourse to any legal remedy. I promised the communities that I would advocate on their behalf and draw attention to their situation.

I have discussed the issues raised in this report with His Majesty Norodom Sihanouk, Prime Minister Hun Sen, senior Government ministers and officials, non-governmental organizations and donor agencies. I have also shared my concerns and recommendations with the international community through my reports to the General Assembly of the United Nations and the Commission on Human Rights. I have underlined the need to make public complete information about concessions and concessionaires, not only about land concessions for economic purposes, but about all concessions, whatever their purpose, including those not covered by the 2001 Land Law, such as those for eco-tourism and mineral exploitation.

As I was finalising this report, I was most encouraged by the Prime Minister's opening speech on the occasion of a National Land Forum in Phnom Penh on 18 October 2004. The Prime Minister recognised the importance and urgency of dealing with many of the issues raised in this report. He announced the suspension of granting further contracts for economic land concessions until the necessary legislation is in place and effective, and he asked the authorities to review existing contracts. He lamented land grabbing and speculation in land, and stressed that land should be distributed to the poor who need it for their subsistence.

Cambodia's land must indeed be managed for the benefit of all Cambodians, not for the few who hide from public view who, at a minimum, must be bound by the same laws as others. Cambodia must implement its Land Law in full, in accordance with the international human rights treaties by which it is bound, and with encouragement from donors and development agencies which have their own responsibilities to promote human rights and justice under international law.

I hope that this report and its recommendations will contribute to a better understanding of the issues and will help to bring about the changes in policy and practice that are necessary for the sake of Cambodia, its rural poor, and for future generations.

Peter Leuprecht

Special Representative of the Secretary-General for human rights in Cambodia

## Introduction

Most of Cambodia's people live in rural areas and depend on Cambodia's land and natural resources for their livelihoods and subsistence.<sup>1</sup> Today, pressures of a growing population, the loss and degradation of natural resources, and increasingly restricted access to land and forests are among the factors that are putting the welfare of the rural poor at ever greater risk.<sup>2</sup> How land and natural resources are managed and administered, by whom, and for whose benefit, is crucial for continued political and economic stability in Cambodia.

In the aftermath of two decades of war and civil war, the opening of Cambodia that accompanied the Paris Peace agreements in 1991 brought new patterns of acquiring, using and managing land. The 1990s saw precarious, unsettled populations, with many returning from refugee camps; the opening to a market economy; insecurity of land tenure; land grabbing and numerous land conflicts without effective institutional means to resolve them. As land became more valuable, especially in locations close to market places, or with good soil, or with significant resources in the way of forests or minerals, demand for land by diverse groups of interests increased. These included private companies, many foreign, as well as individuals in positions of authority and power such as government officials and military officers.

Cambodia's total territory is 18.1 million hectares of which 6.5 million hectares is considered arable and up to 2.7 million hectares reasonably productive.<sup>3</sup> Between 1993 and 1999, the Government conceded over a third of the most productive territory to private companies for commercial development including for forestry, agriculture, mining, tourism and fishing. It also handed over land to the military to develop.<sup>4</sup> Today, about 2.7 million hectares of land are under concession management, down from a peak of around 8 million hectares during the 1990s. Reliable data on the location and size of military development zones, which were intended to provide jobs and land for demobilised soldiers, are unavailable.

Concessions of land for agricultural commercial exploitation are classified under the 2001 Land Law as "land concessions for economic purposes". In this report, the term "economic concessions" is often used as a short form. They include tree plantations mainly of rubber, oil palm, teak, eucalyptus, and coconut trees; and "agro-industry", the large-scale production of food such as cassava, rice, corn or soybeans. Under the Land Law, economic concessions provide investors with exclusive rights to manage and harvest land for up to 99 years. They are granted in exchange for certain investments and fees.

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<sup>1</sup> Around 85% of Cambodia's population resides in rural areas: Government of Cambodia, *Second Five Year Socio-Economic Development Plan 2001-2005*; Ministry of Planning, *Cambodia Socio-Economic Survey, 1999*. The 1998 General Population Census found that 76.5 % of the population is employed in agriculture, forestry and fishing.

<sup>2</sup> There is little agreement on the validity and comparability of various surveys. According to the Socio-Economic Survey of 1999, 15.8% of rural households were landless, whereas research conducted by Oxfam GB in 1999/2000 (LADIT 2000/183) found 12 % of households to be landless. Landlessness in the most recent LADIT 2004/120 survey is 11.9%.

<sup>3</sup> See National Institute of Statistics *General Population Census of Cambodia 1998 Provisional Population Totals* (1998, UNPF), p3. Cambodia Development Resource Institute, *Land tenure in Cambodia-a Data update*, working paper 19, October 2001, indicates that there are 3.9 million hectares of agricultural land.

<sup>4</sup> After the 1993 elections, state lands were put at disposal of the military for defence and security reasons. As armed conflict moved to more remote areas, large areas of land became available for people to settle and farm, with senior military officers continuing to hold large tracts of land, often located in forested areas. In some areas, the result has been a confused and conflict-prone situation between military officers, concessionaires, and the local population. The co-Prime Ministers were reported to have awarded land amounting to 5% of Cambodia's territory in July 1994 to the Royal Cambodian Armed Forces in seven provinces: Oddar Meanchey, Kompong Speu, Koh Kong, Mondulakiri, Pursat, Ratanakiri, and Kompong Cham. Some of this land was then reported to have been leased to companies in the form of land concessions. Matthew Grainger, "Army Land Deals Cut Across Budget", *Phnom Penh Post*, Issue 5/11, May 31- June 13, 1996.

Concerns about the impact of these concessions were raised by former Special Representatives of the Secretary-General for human rights in Cambodia as early as 1996.<sup>5</sup> Human rights organisations started receiving a series of complaints about human rights violations on concession lands in subsequent years. Increasingly concerned by these reports, and of sometimes violent disputes between concessionaires and local populations, the Cambodia office of the High Commissioner for Human Rights (OHCHR/Cambodia) began a study of land concessions for economic purposes in April 2003. The aim was to examine the impact of economic concessions on the human rights and livelihoods of affected populations; the extent to which concessionaires have complied with the Land Law of August 2001 and their contracts; and the extent to which the Cambodian people as a whole have benefited, specifically in terms of contributions to overall state revenue. The study was undertaken with reference to international human rights standards, and the Government's Land Policy Statement of May 2001 which aims to strengthen land tenure security and land markets and prevent or resolve land disputes; manage land and natural resources in an equitable, sustainable and efficient manner; and promote land distribution with equity. Underlying areas of concern were also examined, including a "general confusion about laws, rights, and procedures related to land among both ordinary citizens and the officials responsible for managing and adjudicating land issues".<sup>6</sup> The methodology of the field work undertaken is described in section 2. One shortcoming was a failure to include a concession granted over an area inhabited by Cambodia's indigenous peoples.

At the time, economic concessions had received little attention in contrast to forest concessions although they are closely interlinked since clearing is permitted in economic concessions, including in areas of forested land, thus opening the door to evasion of the more stringent forest management regime which began to be introduced in the late 1990s. The Forest Law came into effect on 31 August 2002 to regulate the management and administration of Cambodia's forests in a sustainable way, and moratoria on logging in forest concessions and the transport of logs have been in effect since January and May 2002 respectively. Forest concessions are covered elsewhere in much detail.<sup>7</sup> In this report, they are examined primarily in relation to the overall concession system, or where they provide a useful point of comparison for developing policy on economic concessions. Rubber plantations, classified today as public enterprises, have also provided a means to circumvent the forest management regime, and have given rise to similar problems as regards their impact on local populations.<sup>8</sup> One case study of a rubber plantation and its impact was therefore also included.

The fieldwork revealed that at local level the activities of the concessionaires often have serious social, economic, and cultural consequences, leading to the dispossession and impoverishment of local populations, and sometimes giving rise to considerable conflict. Many Cambodians directly affected by the concessions have suffered violations of their human rights, but Cambodia's legal

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<sup>5</sup> Report of the Special Representative of the Secretary-General on the human rights situation in Cambodia, UN Doc., E/CN.4/1996/93, 26 February 1996, para. 84.

<sup>6</sup> Oxfam GB, *Where has all the Land Gone? Land rights and access in Cambodia*, Volume 2, Case studies, May 1999, p2.

<sup>7</sup> Forest concessions have been covered in great detail. ARD inc & Department of Forestry and Wildlife, *Forest policy Transition Paper for Cambodia*, May 1998; Bottomley R, *Structural Analysis of deforestation in Cambodia*, (Japan: Mekong Watch and Institute for Global Environmental Strategies), March/April 2000; Fraser Thomas Associates/ADB (April 2000) *Cambodian Forest concession Review Report* (Phnom Penh); several publications by Global Witness, London: *Forests, Famine and War : the key to Cambodia's future* (1995); *Corruption, War and Forest policy : the unsustainable exploitation of Cambodia's forests* (February 1996); (June 1997) *Just deserts for Cambodia ? deforestation and the Co-prime Minister's Legacy to the country* (February 1999); *Crackdown or pause: a chance for forestry reform in Cambodia?* (February 1999); *The untouchables: forest crimes and the concessionaires - Can Cambodia afford to keep them?* (December 1999); *Chain saws speak louder than words; Deforestation without limits - How the Cambodian government failed to tackle the untouchables* (July 2002); Henderson, D. *The forest sector in Cambodia -report to JICA* (Phnom Penh, April 1999); Huq, A, *Bitter harvests : forestry concessions in Cambodia* (Phnom Penh, 1999); NGO forum on Cambodia *NGO Statement to the 1999 consultative group meeting on Cambodia* (February 1999, Phnom Penh); World Bank, UNDP, *FAO Forest policy Assessment, Cambodia* (Phnom Penh, 1996).

<sup>8</sup> Since 1979, rubber plantations have primarily been under the management of seven state-owned rubber companies which controlled some 62,000 hectares in 2001. The existing companies have been classified as "public enterprises" since 1999. There is also a growing smallholder sector that is supported by donor assistance, notably France.

system leaves them without any “effective remedy”. There is little evidence of sustainable development, and there are many concerns about biodiversity conservation.

Cambodia’s 1993 Constitution contains important human rights guarantees, and explicitly incorporates into domestic law the Universal Declaration of Human Rights and the international human rights treaties by which Cambodia is bound.<sup>9</sup> The two core treaties of general application are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together, they provide for a range of rights, including to an adequate standard of living, to take part in cultural life, equality before the law and equal protection of the law, protection from arbitrary deprivation of property, freedoms of expression and association, the right to life, liberty and security of person, and the right to “effective remedy”.

What clearly emerges from the study is that the Government must make more strenuous efforts to uphold the Constitution and other laws and comply with its international human rights treaty obligations. It must ensure better standards of living and respect the human rights of its citizens in any shift from subsistence to cash crop agriculture. Cambodia’s rural poor have had little benefit from the considerable economic growth of the Cambodian economy which, over the last ten years, has achieved an average growth rate of 5% per year. During this same period, the number of people living in poverty has not fallen in any substantial way.<sup>10</sup> The Government must also hold accountable the private companies to which it has given significant rights over public land. In undertaking research for this report, it proved very difficult to access the most basic information from public authorities, such as contracts, maps, and individual shareholders. This has affected the report’s comprehensiveness. It also underlines the need for more open policies and administrative practices as well as for freedom of information legislation.

Access to basic information about economic concessions, and the concession system in general, would help to promote accountability and informed debate about land management and administration. It would also help to counter corruption, a particular concern in Cambodia where as yet there is no legal requirement for senior civil servants and government office-holders to declare their assets, and no public and accessible register of company shareholdings. Finally, if efforts to reduce poverty in Cambodia are to be successful, it is important to have a complete picture of how much of Cambodia’s state lands and natural resources have been conceded to private companies and individuals to manage.

The first part of the report traces the development of the concession system and land regulation and law. It examines economic concession contracts and their compliance with the law. The second part looks at the impact of economic concessions on the human rights and livelihoods of local populations and describes the impact of one concession leased to Flour Manufacturing Company in Stung Treng province. The report concludes that economic concessions are not meeting the promise that formed their rationale, namely to stimulate private enterprise, contribute to state revenue, reduce rural poverty, and generate jobs for local people. Annex 1 presents a case study of Tum Ring Rubber Plantation in Kompong Thom province run by Chup State Rubber Plantation. Annex 2 presents background on CJ Cambodia Company in Kompong Speu province which is located in a military development zone. Annex 3 presents a comprehensive list of economic land concessions which has been compiled on the basis of information from a number of sources: tables provided by the Ministry of Agriculture and the Council for the Development of Cambodia, as well as by provincial departments and non-governmental organisations. The list includes those concessions where contracts have been executed, those where an initial allocation has been made by the Council of Ministers but a contract is yet to be executed, and recent requests for economic concessions.

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<sup>9</sup> Cambodia ratified the Convention on the Elimination of All Forms of Racial Discrimination in 1983. It acceded in 1992 to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, the Convention of the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

<sup>10</sup> It is estimated that 36% of the country’s population live below the poverty line of \$0.46-0.63, with 95 percent of the poor living in rural areas, where the incidence of poverty is four times that of Phnom Penh.

This report and its recommendations are intended to help put into effect, for the benefit of all Cambodians, land management policies and practices that accord with Cambodian law and that recognise human rights as an essential component of sound natural resource management. The chances of Cambodia's rural poor enjoying better standards of life in dignity will depend greatly on how land and natural resources are managed in the future.

## RECOMMENDATIONS

### *Overall policy direction*

- The concession system needs to be reconsidered, and alternatives for agricultural development for the benefit for Cambodia's rural populations should be pursued.
- The Government, donor agencies, and the agencies of the United Nations and international financial institutions should take into account the problems raised by economic concessions in implementing and revising the National Poverty Reduction Strategy.
- The United Nations system should address the problems of economic concessions in its forthcoming United Nations Development Assistance framework (UNDAF).
- The relevant benchmarks that were established at the Consultative Group of Donors meeting in June 2002 should be monitored and adhered to.

### *The legal and regulatory framework*

- The sub-decree relating to the classification of “state public property” and “state private property” must be adopted promptly and such classification undertaken. This is crucial, since economic concessions should be granted only on the private property of the state, not “state public property” which is inalienable.
- The Government should expedite the adoption of the sub-decree on procedures for granting economic concessions, and for the reduction and specific exemptions of concessions that exceed 10,000 hectares. Pending its adoption, no new concessions should be granted.
- The sub-decree should provide for an open and public tendering process for designated areas of land considered suitable for agricultural development, rather than responding to requests or applications for areas of land from private companies and individuals.
- Procedures for granting economic concessions should include public hearings to allow concerned communities and civil society organisations to respond to planned concessions and to propose alternative uses of public land.
- In accordance with Article 59 of the Land Law, any specific exemptions that exceed 10,000 hectares must be narrowly circumscribed.
- The Government must adopt a regulation that stipulates an annual rental fee for land concessions for economic purposes, so that concessions are not effectively rent-free, in contravention of Article 51 of the Land Law.
- The titling process for indigenous community property must be completed before any new concessions are granted. The sub-decree which will facilitate the titling process must be adopted promptly.
- The Government should cancel contracts where concessionaires have committed serious contractual breaches or breaches of the Land Law, in accordance with Article 55 of the Land Law, and ensure that all remaining contracts comply with the law.
- Article 62 of the Land Law should be enforced. This provision provides for the cancellation of all land concessions which are not exploited for a period of 12 months after the law came into effect (whether granted prior to or after its passage), and provides that “the

concessionaire is not entitled to claim any compensation for any damage” in the case of withdrawal of a concession.

- Donors should encourage and support the Government’s review of concession contracts and their implementation to ensure that they comply with the Land Law and related sub-decrees and the terms of the contracts.
- The results of the review should inform any discussions about compensation in the context of reallocating areas currently under economic concession for the purpose of social concessions. Compensation must not be paid where concessionaires have consistently been in breach of their contracts and the law.
- At a national level, the Government should ensure that the details of all approved concessions, including contracts and maps are publicly available. The boundaries of all concessions should be clearly marked on maps and on the ground before any clearing or exploitation begins.
- Information about the shareholders of concession companies should be available through a publicly accessible and regularly updated register, including details of parent companies.
- The Government should ban the granting of economic concessions and cancel concessions in areas of primary forest. All land concessions, whether for economic or social purposes, should only be granted in non-forested areas.

#### *Administration and enforcement of land policy*

- The Government must regularly disclose revenues gained from concessions, including disaggregated data.
- The Government should enforce regulations to ensure that concessionaires respect the terms of contracts.
- Concessionaires should provide sustainable management plans and comply with the mandatory environmental impact assessment process. Social impact assessments should be compulsory, and a specialized interdisciplinary institution should be equipped to monitor the adequacy of social impact reports and to ensure that the companies implement measures to mitigate any adverse social impact.
- Consideration should be given to introducing economic impact assessments and cost-benefit analyses before approving a concession.
- The Government should stop the illegal logging of resin trees by concessionaires and recognize the importance of Non Timber Forest Products to rural livelihoods and food security.
- As long as the concession system continues, the Government should adhere to the United Nations Guidelines on Internal Displacement in granting and administering land concessions. In particular, it should ensure that local populations are informed and consulted prior to the granting of such concessions, and due process and procedural protections are observed.

### *Related recommendations*

- **Freedom of information legislation should be enacted and implemented to facilitate access to state records and to create transparency and accountability in the administration of land, promote informed public debate and reduce corruption.**
- **Cambodia should accede to the United Nations Convention against Corruption, and bring the draft Law against Corruption into conformity with its provisions. At a bare minimum, there must be provision in law that requires politicians and senior government officials to declare all financial/familial assets and shareholdings, with severe penalties for non-disclosure.**
- **Donors should continue to fund programmes that help local communities to understand their legal rights, and assist them and their advocates to have the means and knowledge for their enforcement.**
- **Company security guards and militias on economic concessions and rubber plantations should be disarmed, in compliance with the Sub-decree on the Administration and Control of the Import, production, sale, purchase, distribution and the use of weapons and explosives of all types. Criminal offences committed by security guards must be investigated and prosecuted.**
- **The Government must take measures to ensure that local non-governmental organizations and groups working on land issues are able to fulfil their duties in a secure climate, free from intimidation and violence in accordance with the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.**

## Part 1: History, Law and current practice

### 1. The development of the concession system

Before the colonial period, land was acquired "by the plough" and symbolically belonged to the sovereign.<sup>11</sup> Historically, there were fluid patterns of land acquisition and management, and land was readily available. With a small population and near absence of a market for land, families could move easily from one area to another to clear and cultivate the land they needed.<sup>12</sup> There were no fixed boundaries. The value of land lay in its use, not in the land itself, and its cultivation was seen as a form of ownership. Taxes were imposed only on the harvest.

France established its protectorate in 1863, and introduced the concept of private land ownership.<sup>13</sup> Cambodia was described at this time as being mainly covered by forest, with a small population unequally distributed over the territory, and concentrated in the rice plain around the Tonle Sap Lake.<sup>14</sup> Under colonial rule, ownership rights to land could be acquired either by declaring the land under cultivation or through a system of concessions, a policy and practice that emerged in the late 19<sup>th</sup> century.<sup>15</sup> Resistance from Cambodia's farmers to titling and land registration, largely to avoid paying more taxes, as well as for cultural reasons, meant that attempts to register land and institute ownership rights in 1884, and again in 1902 and 1908, were unsuccessful. It was only in urban and more populated areas that land began to be registered.<sup>16</sup> Rural people continued to cultivate and acquire land "by the plough".

The purpose of the concession system was to define property rights and to regulate fluid patterns of land use. A concession was provisionally granted on request, with five years of proven use opening up rights to ownership, at which point taxes were payable. A provisional concession could be cancelled if it was not used. After changes to the law during the 1920s, prompted largely by competition from Chinese businessmen,<sup>17</sup> only French nationals or subjects of French protectorates in Indochina were allowed to acquire land through the concession system.<sup>18</sup> Concessions were provided for small grants of land and for plantations. French settlers established small plantations for the most part, and cleared

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<sup>11</sup> Meijers, Hanneke, *Land Tenure*; Paper prepared for Gender and Development Studies Centre, AIT, Bangkok, May 1996, p3.

<sup>12</sup> Some of the more densely populated river banks of the Mekong and islands were an exception to this pattern, and were leased by the King to wealthy families, mainly with Chinese origins. Jean Delvert, *Le Cambodge*, (Paris; PUF, 1983).

<sup>13</sup> The Convention of 17 June 1884 established French authority over Cambodia. Art. IX of the Convention stated that: "le sol du Royaume, jusqu'à ce jour propriété exclusive de la couronne, cessera d'être inaliénable. Il sera procédé par les autorités françaises et cambodgiennes, à la constitution de la propriété au Cambodge."

<sup>14</sup> The North, the North Eastern and South Western zones were covered with dense forest. Some hamlets were scattered in forest areas with small populations (Jean Delvert, *Le Cambodge*, (1983) 130; and Mouton (1861), Delatorre (1873), Bouillevaux (1874), Aymonier (1875), Branda (1884). (quoted in Jean Delvert - *Le Paysan Cambodgien*-L'harmattan, Réed; 1994, p 426.

<sup>15</sup> Article 1 of a Decree of 26 August 1899 stated that provisional concessions of free lands in the public domain could be freely granted to French subjects for agricultural use or cattle breeding. Delvert, op cit, p 50. The system for granting small plots of land has similarities with the social concession system being introduced today.

<sup>16</sup> See R. Kleinpeter, *Le problème foncier du Cambodge*, (ed Domat-Monchrestien), 1937.

<sup>17</sup> The Chinese were active in business in the 19<sup>th</sup> century. They controlled market areas and provided loans. They planted cotton and practiced poly-culture: indigo-plants, arec trees, corn, beans, tobacco and betel, and they operated concessions. They circumvented the new prohibition in law by using Cambodian figureheads for their companies. Jean Delvert, *Le Cambodge*.

<sup>18</sup> The royal ordinances No 97 and 98 of 1 December 1916 and the royal ordinance of 13 July 1929 fixed the regime for rural concessions. Appropriation was through bidding or concessions were granted for free in the case of small concessions through: (i) provisional concession (ii) definitive concession of a precise portion of land following exploitation after a fixed delay. See further R. Kleinpeter, *Le problème foncier du Cambodge*, (ed Domat-Monchrestien), 1937.

and cultivated land principally in forested areas.<sup>19</sup> By 1930, most of these concessions were less than five hectares.<sup>20</sup>

Concessions of over 500 hectares could only be granted to persons or entities that could prove the financial means to manage such a large area.<sup>21</sup> The French encouraged the development of the agricultural sector, with European banks and people of means showing great interest in the “immense tracts” of land that were “available and unoccupied” in order to “increase over and over again the wealth and prosperity of the country.”<sup>22</sup> The concept of the industrial rubber plantation was introduced in the 1920s, with concessions granted to large companies.<sup>23</sup> “Virgin lands” were conceded as rubber plantations, and large areas of forest were cleared in the highlands with local populations being displaced.<sup>24</sup> Cambodia's rubber plantations had the reputation of producing high quality rubber and generating high income.

In 1956, three years after independence, the prohibition on acquiring ownership of land through the concession system was extended to all foreigners. French companies, however, continued to operate rubber plantations on state land.<sup>25</sup> The impact of large scale concessions on the environment and on local populations began to be recorded: little consultation with local populations, frequent displacements of communities, poor living and working conditions, and disregard for the environment.<sup>26</sup> The 1960s saw the displacement of indigenous peoples in the north-east of Cambodia to make way for rubber plantations.<sup>27</sup>

### **From civil war to the 1991 Paris Peace agreements**

In the 1960s, 73 percent of Cambodia's territory was described as covered with forest.<sup>28</sup> In general, free land was available and access to land was not a problem. Smallholder production was prevalent. Following the coup d'état in 1970, during the Lon Nol period from 1970 to 1975, some wealthy Cambodians established small fruit plantations.<sup>29</sup> During these years of civil conflict and war, from 1972 large areas of Cambodia gradually came under Khmer Rouge control, and the land management system changed drastically in these areas. By early 1975, the Khmer Rouge controlled much of the country, save for provincial towns and their surrounding areas.

When the Khmer Rouge took complete power in April 1975, they collectivized the land, expropriated all property, destroyed most land records, and uprooted entire populations from their traditional lands.

From 1975 until 1989 there was no private property in law. The years of reconstruction that followed the Vietnamese invasion at the beginning of 1979 saw all land declared as state property. Private use of state land was permitted through the allocation of plots to each family. Rubber plantations came under direct state control through the Department General of Rubber Plantations. Large-scale logging

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<sup>19</sup>By clearing land and formalising ownership during national campaigns of land registration and titling, by seeking authorization to clear land, or through land distribution.

<sup>20</sup> H.S Greve, *Land Tenure and Property Rights in Cambodia*, (Phnom Penh), 1993

<sup>21</sup> Article 4, *Arrêté réglementant dans les formes et conditions la concession aux Français de terrains domaniaux au Cambodge*, 26 August 1899, (cited in *Journal Officiel de L'Indochine Française*, 1899, p1053).

<sup>22</sup> Circulaire of la Residence Supérieure, quoted in Thion Serge, *Watching Cambodia*, (Bangkok, White Lotus, 1993 p29).

<sup>23</sup> Jean Delvert, *Le Cambodge*, op. cit, p589.

<sup>24</sup> See Mathieu Guérin, *Des montagnards aux minorités ethniques*, (L'harmattan, IRASEC, 2003).

<sup>25</sup> For instance, rubber plantations were established in Kompong Cham by the *Compagnie du Cambodge*, the largest of which was the Chup rubber plantation.

<sup>26</sup> M Guérin, op. cit fn 22 p.33; Sara Colm, “Pol Pot: the secret 60s. Building the “people's war” among the tribal communities”, *Phnom Penh Post*, 24 April - 7 May 1998.

<sup>27</sup> Sara Colm, “The effects of oil palm plantation development on indigenous communities, Rattanakiri province, Cambodia, May 1996 op. cit, fn 25

<sup>28</sup> Les forêts de la république khmère, Service des eaux, forêts et chasse, 1972

<sup>29</sup> R. Blanadet, *Païlin, pays des pierres précieuses*, (Thèse de 3eme cycle, Paris IV, 1971), quoted in Delvert, 1983, p75.

took place between 1979 and 1989 to finance continuing war and to secure territory, exacting a heavy toll.<sup>30</sup>

Upon the departure of Vietnamese troops in 1989, the State of Cambodia invalidated ownership rights in force before 1975, but revived the concept of private rights, including land concession rights.<sup>31</sup> Constitutional amendments in 1989 marked the start of a private property system, with Article 15 providing that "Cambodian citizens shall enjoy fully the right to own, use, bequeath and inherit land granted by the state for the purpose of living on it and exploiting it". However, ownership of non-residential land was not permitted. Although the 1992 Land Law extended private property rights, the majority of people did not receive any formal allocation of land or certificates of title.<sup>32</sup>

Despite several attempts to regulate land between 1884 and 1989, land registration and titling were never successfully implemented. Fluidity in land use permitted traditional methods of land holding to continue and the majority of farmers had locally recognized land rights even if not holding title papers.

## The 1990s

The Constitution of the Kingdom of Cambodia, adopted in 1993, marked a shift to a market economy. It provided for "legal private ownership" and for state property, with article 58 providing for the "control, use and management" of state property to be protected by law.

During the 1990s, the Government announced a reform agenda to promote sustainable economic and social development and introduced a series of investment incentives. Agricultural development was to be a priority, aimed at guaranteeing food security and accelerating the growth of other sectors, especially by providing raw materials for the processing industry, increasing exports, and creating employment.<sup>33</sup> The rationale for granting forests and other state lands to private companies for exploitation was to stimulate private enterprise, contribute to State revenue and reduce poverty in rural areas. Attracted by promises of fast incomes, many companies approached Cambodian officials at local and national level to obtain forestry and land concessions, with demand quickly exceeding supply. This process took place outside the law throughout the decade.

The only relevant regulation was an instruction of the Council of Ministers from 1989 under which the Minister for Agriculture could grant concessions larger than five hectares for crop production to support the national economy.<sup>34</sup> The Land Law of 1992, described as "a 'get rich quick' manual for the

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<sup>30</sup> As with the K5 border fence project when thousands of Cambodians were sent to the Thai border to cut down trees and set up a "no man's land" of mined areas to prevent the return of the Khmer Rouge. See Esmeralda Luciolli, *Le Mur de bambou: le Cambodge après Pol Pot* (Régine Desforges Edition, Médecins sans frontières, 1988).

<sup>31</sup> It did so by executive regulation. Instruction No 3, Council of Ministers of the State of Cambodia, Enforcing Instruction on the Principles of Possession and Use of Land, 3 June 1989; Sub-Decree No 25 on Granting Ownership Rights over Houses to the People of the State of Cambodia. The legality of the sub-decree has been questioned since it was introduced a week prior to the adoption of the constitutional amendments which first re-introduced private property rights.

<sup>32</sup> During the 1990s, and prior to the 2001 Land Law, it was possible to register privately owned land through the district, provincial and national land offices. While the process for such registration was not conducive to widespread registration (for example, costs were high and the process cumbersome), it was possible for registration to occur. Many land holdings, particularly in the urban areas, were registered during that time.

<sup>33</sup> As stated in the political platform of the Royal Government of Cambodia, announced by Prime Minister Hun Sen on 30 November 1998 at the first session of the second legislative National Assembly.

<sup>34</sup> Instruction No 3, Enforcing Instruction of the Principles of Possession and Use of Lands, Council of Ministers, 3 June 1989, Article 1(c). In terms of rights of "possession" and "use" up to five hectares of agricultural land would be provided to families with a history of farming in the local area for at least one year prior to the issuance of the Instruction.

upwardly mobile”, failed to regulate the granting of land concessions.<sup>35</sup> In the six years after its passage, "more than a third of Cambodia (was) alienated outside the provisions of the Land Law (1992), in some cases illegally, by the granting of concessions,"<sup>36</sup> leading to a shortage of arable land. The lack of private land registration facilitated this process.

The Law on Investment was adopted in 1994.<sup>37</sup> Between 1 August 1994 and 30 June 2003, the Cambodian Investment Board approved 85 projects within the sectors of agriculture, agro-industry and cattle farms.<sup>38</sup> Article 16 of the Law stipulated that "use of land shall be permitted to investors, including long-term leases of up to a period of 70 years, renewable upon request". It provided no other guidance on the procedure for granting concessions, which remained within the preserve of the executive.<sup>39</sup> The 1997 Regulation on the Management of Public Properties sought to provide some regulatory framework, including through a public tendering process, and provided the Ministry of Economy and Finance with regulatory authority. The available literature indicates the regulation was ignored. As with much delegated legislation in Cambodia, the validity of this regulation is also in doubt due to the absence of a delegation by law from the National Assembly to the executive.

Although the largest areas granted during the 1990s were for forest concessions, 688,112 hectares of land were allocated for agricultural concessions between 1994 and 1997.<sup>40</sup> Concerns about their impact began soon to be raised, and human rights organizations started to receive complaints about human rights violations on concession land.<sup>41</sup> Former Special Representative, Michael Kirby, visited a plantation concession in January 1996 in Ratanakiri. In his subsequent report to the Commission on Human Rights, he recommended that "the complaints of villages concerning non-consultation, the use of armed guards, the presentation for signature of an unexplained contract, the shooting of cows which wander onto concession areas and the feared endangerment of village survival and the security of traditional sites of grave, pasture and farming land be resolved without delay, justly and according to the law."<sup>42</sup> The concerns went largely unheeded by policy-makers. The Deputy Director of the Ministry of Agriculture's Department for Planning and Co-operation was quoted in a 1998 news report as saying that the biggest problem relating to land concessions was finding the large amounts of land that investors were requesting.<sup>43</sup>

The Cambodian Development Resource Institute has documented procedures for granting land concessions that were followed prior to the passage of the 2001 Land Law.<sup>44</sup> One involved a company first contacting the local authorities and seeking their agreement, with the Ministry of Agriculture then undertaking a feasibility study and seeking agreement in principle from the Council of Ministers. Following approval of the Council of Ministers, a contract would be drawn up between the company and the Ministry. This procedure is cited as being "time consuming and expensive." The other two documented procedures involved approaching the Council of Ministers directly, or through first

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<sup>35</sup> Shaun Williams, Review of Current and Proposed Cambodian Land Legislation, (Oxfam GB, May 1999), p6, contained as an annex to Williams, *Where has all the Land Gone? Land Rights and Access in Cambodia*, Volume 1 (Oxfam GB, May 1999).

<sup>36</sup> Shaun Williams, Review of Current and Proposed Cambodian Land Legislation, (Oxfam GB, May 1999), p3.

<sup>37</sup> Article 12 provides that the Government shall make available incentives to encourage investments in such fields as agro-industry. Article 13 provides for the exemption, in whole or in part, of duties and taxes, with Article 14 providing for a 100 % exemption from import duties and export tax. The Law was followed by sub-decrees on the Organization and the Functioning of the Council (June, 26<sup>th</sup> 1995) and on the Implementation of Law on Investment in Cambodia (December 29<sup>th</sup>, 1997).

<sup>38</sup> List provided by the Council for the Development of Cambodia in September 2003.

<sup>39</sup> In February 2003, the National Assembly adopted the Amendment to the Law on Investment, which provides in relation to land concessions: "The Investor may use land via the land concession, or lease for an unlimited period of time or for a limited period of time which is renewable in accordance with the provision stipulated in the land law."

<sup>40</sup> CDRI, Working Paper 23.

<sup>41</sup> See Sara Colm, "The effects of oil palm plantation development on indigenous communities, Ratanakiri province, Cambodia", May 1996; Global Witness, *Going Places*, March 1998.

<sup>42</sup> UN Doc., E/CN.4/1996/93, 26 February 1996, para. 84.

<sup>43</sup> Peter Sainsbury and Chea Sotheacheath, "Swathes of land being readied for foreign leases", *Phnom Penh Post*. 10-23 April 1998.

<sup>44</sup> CDRI, Working Paper 19, p19.

seeking investment incentives from the Council for the Development of Cambodia, which would then contact the Ministry of Agriculture to consider the project and decide on its feasibility.<sup>45</sup> Specific criteria for determining feasibility were not apparent. Upon acceptance of the project, the Ministry of Agriculture would study its technical aspects and the availability of land. The Ministry would then communicate with the relevant provincial department and send a team to assess the selected land in terms of the nature and quality of soils, vegetation, population, cultivation, infrastructure, and make recommendations. The provincial Director would then approve and sign the report, send it to the Minister of Agriculture, who would then submit a report with recommendations to the Council of Ministers.

Available information suggests that recommendations and assessments were often inadequate, or ignored, or that misleading information was provided to support the recommended allocation.<sup>46</sup> In the case of the Pheapimex concession in Kompong Chhnang province, the provincial department recommended reduction of the concession to 140,000 hectares and the removal of “public grassland and slash and burn agriculture areas” from the concession area, but these recommendations were not followed, and the Ministry of Agriculture allocated the 176,065 hectares initially sought.<sup>47</sup>

## **2. The Land Law today and the regulation of land concessions for economic purposes**

The National Assembly enacted a new Land Law in August 2001. The Law aims to regulate a number of hitherto unregulated areas such as leases, land concessions, indigenous community property, co-ownership, cadastral surveys, land title registers and certificates and dispute resolution. It sets out a comprehensive system of land classification and land ownership rights, making a fundamental distinction between state public property, such as forests and protected areas, where the state seeks to conserve the resource, and state private property, where land is provided for economic and social development. The Law requires the passage of several sub-decrees, the preserve of the executive, for its provisions to come into full effect.<sup>48</sup>

Chapter 5 of the Land Law regulates land concessions for economic purposes. Article 48 defines a concession as a "legal right established by a legal document issued under the discretion of the competent authority ... to occupy land and to exercise thereon the rights set forth" by the Land Law, and can only be granted on lands that are part of the "private property of the state". Concessions are of three kinds: economic, for the commercial agricultural exploitation of land; social, for residential construction or cultivation for subsistence; and "others" such as mining, port or fishing concessions which fall outside the provisions of the Land Law.

An economic concession cannot lead to ownership, and in a legal sense simply forms a contractual right. However, the rights of a concessionaire are similar to the rights of an owner, apart from the right to alienate the land. The *maximum* duration of an economic concession is 99 years; with 10,000 hectares the maximum permitted size. Concessions over this size are to be reduced to 10,000 hectares, although exemptions are possible. Upon the death of a concessionaire, his/her successors may continue to exercise the concessionaire's rights during the remaining time of the concession.

Under existing forestry regulations, former forest concessions cannot be converted into economic concessions.<sup>49</sup>

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<sup>45</sup> At a discussion held on 4 December 2003, the Secretary General of the Council for the Development of Cambodia, Sok Chenda Sophea, clarified that CDC's involvement is about the awarding of incentives, not about the granting of concessions.

<sup>46</sup> For instance, take the Department of Environment, Stung Treng, letter of complaint dated 3 August 2001, concerning the demarcation of the Green Sea land concession area.

<sup>47</sup> Survey and Assessment of Agricultural Land Use, Chief of Pursat Department of Agriculture, 23 September 1997.

<sup>48</sup> This is also true of the Forest Law of 31 August 2002.

<sup>49</sup> Article 5.4 of the sub-decree on the Management of Forestry Concessions states that forest concessions that are cancelled or revoked shall “revert to natural forest protected areas” and cannot be awarded to other companies.

At the time of writing, the Ministry for Agriculture, Forestry and Fisheries operated as the principal ministry responsible for agricultural development, with responsibility for overseeing economic concessions. The Ministry of Land Management, Urban Planning and Construction was responsible for land management and cadastre. Its responsibilities included the development of land policy and a legal framework for property rights, land registration, improving the management of state land, grants of social concessions, reforming land taxation, introducing land use planning procedures, identifying main economic zones for development, and for housing and resettlement policy. The Ministry of the Environment was responsible for protecting and managing environmentally sensitive areas, and assessing and mitigating potential environmental impact.<sup>50</sup> According to the report of an independent review of forest sector management published in May 2004:

*“There is currently no active mechanism to coordinate among these ministries and governors, no detailed land use plans to guide State land management decisions, and little capacity for monitoring uses and revenues.”*<sup>51</sup>

Several areas still require regulation to fully implement the Land Law.<sup>52</sup> Sub-decrees and ministerial proclamations adopted thus far concern land registration; the organization, composition and functioning of the Cadastral Commission; and the Sub-decree on Land Concessions for Social Purposes, adopted in March 2003, which defines the criteria, procedures and mechanisms to grant land concessions for residential use and subsistence cultivation.<sup>53</sup> Much of the state private land suitable for social concessions is currently granted under economic concessions. The aim is to convert areas excised from these concessions to concessions for social purposes.

One sub-decree, provided for in articles 17 and 59 of the Land Law, is pressing. This is to establish the procedures for granting economic concessions and to reduce existing concessions to the 10,000 hectares required by law, with permissible exemptions. Other important sub-decrees concern the management of state-owned land, and the classification of “state public property” and “state private property”. The Ministry of Land Management is currently working on sub-decrees relating to economic concessions, management of state land, and the land rights of indigenous peoples.

It is also important that appropriate demarcation under the Land and Forest Laws is undertaken in appropriate sequence:

*“Without this clarity and agreement around the broad process and criteria for allocation of lands, insecurity will continue and permit the alienation of land by those who have the most power and political connections.”*<sup>54</sup>

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<sup>50</sup> At the time of writing, the roles of various ministries responsible for state land management were being reviewed.

<sup>51</sup> Independent Forest Sector Review, *Forest Sector in Cambodia*, final report, Chapter 10, p3.

<sup>52</sup> These include the following (references are to articles and paragraph numbers of the Land Law): Regulations and Procedures for Administration of State Immovable Properties (Article 3.3); Transferring of State Public Properties to State Private Properties (Article 16.5); Conditions and Procedures related to the Sale and Management of Private Properties of the State or Public Legal Entities (Article 17.2); Granting of Land Concessions for Economic Purposes (Article 17.4); Procedures for Reduction and Specific Exemptions of Land Concessions that exceed 10,000 hectares (Article 59.1); Formalities of Leases of Immovable Property for Residential, Commercial, Industrial, and Agricultural Purposes (Article 113); Construction Formalities and Conditions imposed on Owners (Article 115); Resettlement or Eminent Domain (Article 147); Mortgage Contracts and Registration Formalities (Article 201).

<sup>53</sup> The Ministry of Land Management has established a pilot project in some provinces in order to start implementing the sub-decree.

<sup>54</sup> See chapter 10 of the Independent Forest Sector Review, which suggests the following sequencing: Definition, identification and agreement of a. what constitutes state public property; b. lands of indigenous communities, c. core areas of forests that should be retained under a protected area system and areas of high environmental service function (e.g. watersheds); d. areas of forest that could be managed under some form of production (e.g. through communities, communes, small-scale ‘industrial’ forests, concessions, direct management by the public sector); e. areas that are available for agriculture e.g. family farms, small scale ‘industrial’ farms, large-scale concession agriculture.

### 3. Concessions and concessionaires

According to a list that the Ministry of Agriculture provided to OHCHR/Cambodia in February 2003, the Council of Ministers had approved 40 economic concessions covering 809,296 hectares or over four percent of Cambodia's territory.<sup>55</sup> As with forest concessions, this figure is down from a peak in 1999, when 56 economic concessions were listed, covering 934,926 hectares.<sup>56</sup> The concessions are mainly for cultivating acacia, palm oil, cassava, rubber and cashews. Only 26 companies on the list have entered into agreements or contracts with the Ministry, with 22 contracts executed in the three years immediately preceding the 2001 Land Law. The remaining concessionaires have obtained "approval in principle". It appears that 16 such "approvals" were revoked in 2000, covering a total of 123,680 hectares, but no contracts had been executed in these cases and thus the companies were not operating. Five approvals for concessions have been revoked since beginning this study, involving 36,600 hectares.<sup>57</sup> According to the information available to OHCHR/Cambodia, no signed contracts have been revoked.

When the Land Law was adopted, 14 of the documented concessions exceeded 10,000 hectares. The largest were granted in 2000 to the logging concessionaire Pheapimex Company: two contiguous concessions for eucalyptus plantations in support of a pulp mill covering an area of 315,028 hectares spanning the provinces of Pursat and Kompong Chhnang. Three months after the Land Law's adoption, on 23 November 2001, the Government signed a contract with Green Sea Industrial Co Ltd for a teak plantation covering an area of 100,852 hectares in the province of Stung Treng, in clear breach of the 10,000 hectare limit.<sup>58</sup> Some concessions, such as those granted to Flour Manufacturing Company in Stung Treng and Green Rich Company in Koh Kong province, were granted in areas covered with primary forest. Green Rich was initially granted 60,200 hectares in three protected areas in Koh Kong Province which the Government appears to have reduced to 18,300 hectares in 2003. However, the concession area remains within the boundaries of Botum Sakor National Park in violation of the 1993 Royal Decree on the Designation and Creation of Protected Areas, as well as the ministerial declaration on Protected Areas and the Land Law. According to NGO sources, it is to be cleared for an acacia plantation. In April 2004, the company applied for an additional 300,000 hectares, which at the time of writing is under government consideration.

According to a list obtained from the Council for the Development of Cambodia in September 2003, the contracting companies include wholly Cambodian owned companies, joint ventures, with mainly Chinese, Taiwanese, Malaysian, and South Korean capital, and wholly foreign owned companies from the Republic of China and the United States of America. Despite considerable efforts made by OHCHR/Cambodia staff and others, little is known about these companies, including the identities of parent companies, company representatives, and major shareholders. According to the incomplete information obtained, Green Rich Company initially presented itself as the Chinfon Group<sup>59</sup>, then as the Green Elite Group<sup>60</sup>, while the Heng Brothers Co. Ltd. has also claimed to represent Green Rich, and former Green Rich staff have said that the company has taken over the Haining concession. The company also appears to have connections to the Flour Manufacturing Company in Stung Treng province as the director of Flour Manufacturing is Lieutenant Colonel Keo Vuthy who also represents

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<sup>55</sup> Although the narrative from the Ministry indicates that 40 concessions have been approved, 41 concessions were listed. The same figures were provided by the Ministry to CDRI as being current as of 31 December 2001.

<sup>56</sup> Letter from the Ministry of Agriculture to OHCHR/Cambodia, February 2003. Interviews conducted by the Cambodia Development Resource Institute in 2001 indicate that the number of land concessions for economic purposes fell due to either cancellation or withdrawal of concessions: CDRI, 2001, op cit, p 19.

<sup>57</sup> The Minister for Agriculture informed the Special Representative in a meeting on 5 December 2003 that eleven more cancellations of approval in principle were anticipated.

<sup>58</sup> The Minister of Agriculture explained that it was "because the request was made to the Government five months prior to the passage of the [land] law by the National Assembly." Letter No 2743/680 Kor Sor Kor Phor Phor Kor, dates 12 June 2002.

<sup>59</sup> Letter #674 Bor. Sthor, dated 20 May 1998, signed by Dr. Mok Mareth.

<sup>60</sup> Letter from Green Rich representative Vincent Chan to Koh Kong Governor dated May 10, 2004, requesting security personnel for the concession.

Green Rich. According to recent reports, Green Rich is affiliated to the Indonesian company PT Arara Adabi, which is owned by Asia Pulp and Paper, one of the largest pulp and paper companies in the world. The Director of the Department of Planning, Statistics and International Cooperation of the Ministry of Agriculture reported in August 2003 that it was not possible to call eight concessionaires to a meeting because the Ministry had no address for the company.<sup>61</sup> In such a weak regulatory environment, holding the companies accountable for their actions is difficult at best.

The lists provided by the Ministry of Agriculture and the Council for the Development of Cambodia are not a comprehensive record of all economic concessions granted in Cambodia. There is no official record of land concessions granted before the passage of the 1992 Land Law. The fieldwork undertaken for this report also confirmed the existence of a parallel structure at provincial level, where local officials have granted smaller concessions in military development zones.

Such is the case in part of Phnom Srouch district in Kompong Speu province, as shown by a 1994 map drawn up by Commander-in-Chief of the Royal Cambodian Armed Forces, General Ke Kim Yan. The 2002 maps drawn up by Brigadier General Chhum Thong Heng, Commander of the military development zone for the land concession Golden Land Co Ltd show that the military continued to control these areas.<sup>62</sup> Golden Land, a joint venture between a Taiwanese company and the Government of Cambodia, was registered with the Ministry of Commerce in 1994 and again in 1997. It does not appear on the list obtained from the Council for the Development of Cambodia, but it does appear as having a 2,100 hectare land concession in Phnom Srouch district in Kompong Speu's Department of Agriculture's list of companies operating in the province in 2000. Another 16 companies on this list are not on the lists provided by the Ministry of Agriculture or the Council for the Development of Cambodia. The Ministry of Agriculture appears not to have known about Golden Land until September 2003 when the Prime Minister gave it power of attorney to sign a contract with Golden Land. The contract was signed on 4 March 2004 for a 4,900 hectare economic concession in Kompong Speu for unspecified agro-industrial crops.

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<sup>61</sup> Letter #1008 Phor Phor K dated 25 August 2003 signed Chay Sakun.

<sup>62</sup> Map dated 4 June 2002 signed Kompong Speu Provincial Governor and Brigadier General Chum Thong Heng.

#### 4. Compliance

##### *The contracts*

OHCHR/Cambodia managed to obtain 15 contracts from various sources of concession contracts on the list provided by the Ministry of Agriculture. The following table provides a summary of the contracts obtained.

Concessionaire	Area in hectares	Location	Date of execution of contract	Expiry date	Purpose
Cambodia Haining Company	21,250	Kompong Speu	23 July 1998	23 July 2068	Cassava, palm oil, animal raising and cross breeding
Flour Manufacturing Co. Ltd.	7,400	Stung Treng	13 September 1999	13 September 2069	Teak tree
Pheapimex Co. Ltd.	138,963	Pursat	8 January 2000	2070	Eucalyptus
Pheapimex Co. Ltd.	176,065	Kompong Chhnang	8 January 2000	2070	Eucalyptus
Cambo Victor Investing and Developing Co. Ltd. <sup>63</sup>	5,000	Kompong Speu	13 August 2001	13 August 2071	Rice, corn, cassava, peanut and soybean
Green Sea Industry Co. Ltd. (Mong Reththy Group)	100,852	Stung Treng	23 November 2001	23 November 2071	Teak tree
CJ Cambodia Co. Ltd. <sup>64</sup>	5,000	Kompong Speu	20 April 2001	20 April 2071	Cassava
Development Industrial Ouk Khun Co.Ltd (ADUOK)	12,506	Kompong Speu	25 May 2001 (first contract: April 1992)	25 May 2071	Cashew
Henan Economic and Trade Development Zone	4,100	Kompong Speu	29 July 1999	29 July 2068	Cassava, palm oil, animal raising and cross breeding
Green Rich Co. Ltd.	60,200 reduced to 18,300	Koh Kong	25 November 1998	25 November 2068	Palm oil and acacia
Kimsville	3,200	Kompong Speu	24 October 2000	24 October 2070	Cassava
Golden Land Development Co. Ltd	2,100 increased to 4,900	Kompong Speu	5 March 2004	5 March 2074	Acacia and eucalyptus
Agro Star Investment	2,400	Kompong Cham	January 1995	January 2065	Cashew and cattle breeding
Camchi International Agriculture Development	26,500	Kompong Thom	3 March 2000	3 March 2070	Cassava, corn, fruit crops and animal raising
Leang Hour Hong Import-Export and Agro-industrial Development and Refinery	8,000	Battambang	7 June 2000	7 June 2070	Sugar cane and cassava

<sup>63</sup> Page one is missing from the contract.

<sup>64</sup> CJ Cambodia has another land concession of 3,000 hectares, but it was not possible to obtain the contract.

As only 15 contracts were obtained, the analysis undertaken on compliance cannot be comprehensive. However, since the contracts vary little in terms of their key characteristics, contain a cross-section of large and small plantations, and relate to a range of crops for cultivation, they can be expected to be typical of all contracts executed. Generally, the terms of the contracts favour the concessionaire, and have certainly been implemented in such a manner.<sup>65</sup> All but two, Green Sea and Golden Land, were issued prior to the passage of the 2001 Land Law, and all reflect the previous limit of duration of 70 years under the 1994 Law on Investment.

### *Granting of Contracts*

All land concessions for economic purposes in Cambodia today have been granted without any clearly established procedure. They have also been granted in response to requests from private companies rather than the authorities' first identifying land appropriate for commercial agricultural exploitation, and then seeking corporate investors. A recent example concerned a request to the Prime Minister in February 2004 in his capacity as head of the Cambodian Development Council, from the (Cambodia) Malaysia Palm Oil Investment and Development Co Ltd, a Mong Reththy Group company. The company sought the Prime Minister's assistance in facilitating the grant of an economic concession of some 8,235 hectares, located in Kompong Seila district, Koh Kong province for a palm oil plantation investment and a refinery mill. OHCHR/Cambodia drew its concerns to the Prime Minister's attention in a letter of 16 April 2004, including the failure to adequately consult with local populations, to undertake the required environmental impact survey, and a concern that the requested concession appeared to be an extension of two economic concessions previously granted to the Mong Reththy Group for palm oil and tapioca, covering a land area of 12,800 hectares. The requested concession would therefore bring the total concession area in excess of 20,000 hectares, double the limit stipulated in law. The local authorities are reported to be hesitant about the plans, and one commune chief is asking for only 2,000 hectares to be taken from his commune before any contract is approved.

### *Compliance with the Land Law and contracts*

An economic land concession must comply with both the Land Law and the terms of the concession contract, and can be revoked. Article 18 of the Land Law provides that a concession which fails to comply with the provisions of Chapter 5 is null and void.

The contracts do not require payment of an annual rental fee to the Government until a law governing rent fees is established.<sup>66</sup> This means that concessions have been effectively granted rent-free in breach of article 51 of the Land Law which requires that the grant of a concession is not gratuitous. Some contracts provide for fines for late payment of rental fees, for confiscation of the deposit

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<sup>65</sup> See CDRI, Working Paper 23, p 82 for comment on economic concession contracts. The contracts are probably not quite as favourable as some of the forest concession contracts, said to be so strongly in favour of the concessionaire "that it is questionable whether they can be considered commercially reasonable". White and Case, 1998.

<sup>66</sup> For instance: Green Sea Industry Co Ltd, Clause 4.5: "shall pay annual renting fee according to the renting rate on concession land that is determined in the notification No 803 dated 31 May 2000 and fee determining (sic) by the Royal Government. The payment is to be done in January of each year and no later than 31 January"; Kimsville clause 4.2 contains a similar provision to the Green Sea provision; Henan, clause 4.2: "The party B shall pay annual concession fees in US dollars/hectare ... The rate shall be determined by the Royal Government. The lease fee shall be paid in January, and the latest date for payment is on 31 January of every year", Cambodia Haining Group Co Ltd, "Rental rate and time for payment was determined and approved by the Government. The payment should be no later than 31 January every year"; Pheapimex: "The agreement has not determined the annual charge fee rate, because the fee rate shall be passed by the royal government. Therefore, at present royal government has not reserved the rights to collect the annual rental fee from this land concession. If the laws are made in the future, this agreement shall be comforted to the passed laws and other decisions of the royal government; and the agreement shall be re-signed for the charge fee".

amount, and cancellation of the agreement without any reimbursement to the company concerned, but these provisions are meaningless in the absence of any law.<sup>67</sup>

The required deposit in most of the contracts is \$1 per hectare, to be paid within three months of the date of signature. The contracts provide for reimbursement when the concessionaire has fully cultivated the land in accordance with the land use plan specified in the contracts. Some contracts stipulate a lump sum deposit. For instance, the contract for Pheapimex in Pursat states that the company must pay \$20,000 for 138,963 hectares, a payment of \$0.14 per hectare, seven times less than the other contracts. The required deposits are so insignificant that the commercial viability on the Government's side is in doubt. Sixteen companies that have executed contracts have also yet to pay a deposit, a matter of particular concern where planting has begun, as in the case of Agrostar concession and both Mong Reththy plantations in Sihanoukville Municipality.

Article 62 of the Land Law provides that any economic concession must be exploited within 12 months or it "will be considered as cancelled".<sup>68</sup> Article 62 also states that concessionaires are not entitled to claim any compensation for damage in these circumstances. Only 10 companies on the list provided by the Ministry of Agriculture had initiated any planting activity, involving less than 3% of the total concession area.<sup>69</sup> The office's fieldwork indicated that in some cases companies have cultivated crops other than those stipulated in their contracts. For instance, the Haining Company signed a contract in 1998 for a concession of 21,250 hectares in Kompong Speu to grow cassava, acacia, palm oil and to breed animals. In 2002, it began to clear three hectares of land to plant castor beans and vegetables. In the Flour Manufacturing Company's teak plantation in Stung Treng, planting teak trees began, but many have not survived subsequent neglect.

Every contract requires the concessionaire to pay tax in accordance with the law, but figures were not publicly available to ascertain whether companies have paid taxes on the concession or the income earned from it. In the case of the Haining Group, inspectors from the Ministry of Environment, Department of Forestry, and the independent forest monitor, Global Witness, visited the concession in 2002, and found that the company was selectively felling and collecting logs in the nearby forests. Five thousand freshly cut logs did not bear marks, thus indicating that royalties had not been paid to the Government. The Haining Group was accused of timber theft and royalty evasion, ordered to stop all activities immediately and to pay outstanding royalties to the Government in the order of \$US 470,000.<sup>70</sup> In September 2002 the Council of Ministers failed to cancel the contract and agreed with the Ministry's recommendation that Haining should be given a warning. Reports indicate that the company has yet to comply with several requirements.<sup>71</sup> The contract has not been cancelled.

Although article 62 of the Land Law provides that an economic concession is revocable through government decision when its legal requirements are not complied with, according to the available information none of the provisions of the Land Law have been invoked, and no signed contract has been cancelled despite the significant breaches that have been committed. It will be essential to cancel contracts where breaches have been committed before reducing the size of concessions to the 10,000 hectare limit, and compliance by concessionaires with the Land Law and their contracts will need to inform any discussions about compensation when reallocating land for social purposes.

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<sup>67</sup> For instance: clause 4.4 Henan and clause 4.4 Kimsville.

<sup>68</sup> The provision does not appear to require a positive act by the authorities for any concession granted after the passage of the Land Law. All concessions granted before the Land Law came into force "that are not exploited within 12 months shall be grounds for cancellation", as is any failure to exploit for a period of longer than 12 months "without justification".

<sup>69</sup> Ministry of Agriculture Forestry and Fisheries, Ref:849/232, 25 February 2003.

<sup>70</sup> Lutheran World Federation, *Annual Monitoring report, 2002*, section entitled "Advocacy – the case for land rights", <http://www.lwfcam.org.kh>.

<sup>71</sup> No 1409 Sor Chhor Nor Sor Rour, 11 September 2002 warn the Cambodia Haining Group that it must make a request for the establishment of the saw-mill and wood processing factory; comply with procedures requiring the company to pay for royalties for the timber and for replanting fees for the quantity of 6,976 logs in the order of 3,843.911 m<sup>3</sup>; requires the company to demarcate the boundaries of the concession and submit a detailed report on the castor oil development. If the company does not comply with the above requirements or commits mistakes a second time, the agreement will be cancelled as a lesson for the other concession companies.

## ***Environmental Protection and social impact***

The 1996 Law on Environmental Protection and Natural Resource Management requires environmental impact assessments for every project or activity, private or public. Both initial and subsequent environmental impact assessments are required, including for projects and activities that have not been assessed. The assessments are reviewed and evaluated by the Ministry of the Environment and its Impact Assessment Department before submission to the Government for approval. The 1999 sub-decree on environmental impact assessment spells out the steps to be taken in assessing proposed and existing projects.

Environmental impact assessments were not undertaken in any of the concessions studied. The one assessment process that was subject to public scrutiny took place in 2002 in relation to environmental impact assessments of forest concessions, when concessionaires submitted their assessments for approval. The process revealed serious shortcomings, including the failure to carry out on the ground verification.

The Ministry did decide in May 2004 to suspend the activities of Green Rich Company in Koh Kong province pending the completion of an environmental impact assessment report.<sup>72</sup> Green Rich had been found felling forests, building roads and erecting buildings without the mandatory permits. Ministry of the Environment officials, accompanied by Cheam Him, deputy governor of Koh Kong province, visited the site on 18 August 2004, and met with representative of Green Rich Group. During the meeting, the director of the Ministry's Department of Nature Conservation and Protection said that the company had to finish the environmental impact assessment by the end of October 2004; otherwise everything would be terminated.<sup>73</sup>

Social impact assessments are not required for economic concessions. Requirements for forest concessions to conduct social impact assessments were introduced through sub-decree and legislation in 2000 and 2002 respectively. Access to assessment reports has proved difficult, however, and no forest concession appears to have been cancelled as a result of a negative assessment. If social impact assessments are to be required for economic concessions, as they should be, a specialized interdisciplinary institution will be needed to assess their adequacy, and to ensure that companies implement measures to mitigate any adverse social impact. This is, of course, a concern not only for economic concessions, but for all development projects which affect large numbers of people.

### **Concessions: for what purposes?**

Until a sub-decree is adopted, economic concessions are not subject to the same management requirements as forest concessions. Article 49 of the Land Law gives concessionaires the right to clear concession land, including any forested areas within the concession. Presumably, this would be subject to the requirement that the value of the timber is paid for, in accordance with Article 52 of the Forest Law. In light of the very high cost of cultivating land for most crops, and the small area of concession land that is under actual cultivation, the size of the concessions has raised questions about whether they in fact provide a means of avoiding the more stringent regulations for forest management.<sup>74</sup>

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<sup>72</sup> Letter #119 Sor Chhor Nor Bor Sthor, dated May 13, 2004 signed Dr. Mok Mareth.

<sup>73</sup> Letter no.50/04 BSNP, dated 21 August 2004, of Botum Sakor National Park Station to the Country Director of Wild Aid.

<sup>74</sup> A report published in 2000 described the forest concession structure as a "total system failure", citing illegal logging, unsustainable yields and practices, and little or no concern for the welfare and user rights of local people. The authors predicted that if no changes occurred, Cambodia's commercial forests would be logged out by 2005. The Government responded to the report and the concern of donors by adopting a forestry policy reform agenda which included restructuring the concession system, introducing requirements for sustainable forest management, and social and environmental impact assessments. Cambodian forest concession review report, conducted in 1998-1999 by Fraser Thomas, GFA-AGRAR and ANZDEC.

The Independent Forest Sector Review describes the conversion of forest through economic concessions as follows:

*“The stories underlying conversion are complicated and often focused on gaining access to the valuable timber crop on the land to be converted. Commercial plantation agriculture has played a significant role in forest conversion via economic concessions. These concessions have been allocated through a secretive process. Local people with prior claims (legal or otherwise) to these lands have had their entitlements removed and are therefore aggrieved. In practice, as a result, a relatively small percentage of the total area allocated to concessionaires has been certified or planted. The main benefit so far to the concessionaire has been the revenue from removal of trees on the land”.*<sup>75</sup>

The research undertaken for this report bears out this description. Fieldwork also confirmed that significant parts of economic concessions have been allocated on good forested land and that the forests have been cleared. This has happened in the case of Tum Ring, Pheapimex in Pursat province, Flour Manufacturing, Green Rich, and Haining. The fieldwork also confirmed illegal logging outside concession areas, for example in the case of Haining Company.

The establishment of the rubber plantation in Tum Ring commune is a case of blatant forest conversion. An area of 6,200 hectares of forest was excised from three forest concessions in August 2001 and re-classified by sub-decree as part of a "state public establishment rubber plantation" operated by the Chup Rubber Plantation Company.<sup>76</sup> The three concessionaires -- Colexim Enterprises, Mieng Ly Heng and Grand Atlantic Timber International -- were subcontracted by Chup Rubber Plantation to clear the trees inside the rubber plantation area before the land was bulldozed. As the land is no longer declared to be a forest concession, the moratorium on logging in forest concessions, in effect since January 2002, has not been applied.<sup>77</sup>

The failure of the Forest Law to differentiate between tree plantations and forests has also created a confusion that can be misused. Article 2 of the Law defines "forest" to include both natural and artificial forest ecosystems, and allows companies to claim to be 'reforesting' when in fact they are clearing forests.<sup>78</sup> The reforestation argument was used to justify the Green Sea concession in Stung Treng province in November 2001.<sup>79</sup>

Questions have also been raised as to whether the speculative value of the land also explains why such large areas of land have been granted, and why such a small percentage of concession land is in productive use. Over the course of the up to 99-year term of economic concessions, land can be expected to become more scarce in Cambodia, thus raising the value of the concessions and increasing the benefits for concessionaires, through such possibilities as sub-leasing to other companies or to small-holders for subsistence cultivation. The Green Sea contract states that the company may sub-lease or sell the contract to a third party after gaining Government approval.<sup>80</sup> Eight concessions on the list provided by the Ministry of Agriculture are located entirely or partially in Phnom Srouch district in Kompong Speu province, covering an area of 94,300 hectares.<sup>81</sup> Phnom Srouch district expands on both sides of the main road, National Road 4, between Phnom Penh and

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<sup>75</sup> Independent Forest Sector Review, *Forest Sector in Cambodia*, main report, Chapter 3.6.4.

<sup>76</sup> Sub-decree on the withdrawal of red land from the forest concessions for a rubber plantation, 17 August 2001.

<sup>77</sup> Ministry of Agriculture, Forestry and Fisheries, Praka on Suspension of Forest Concession Logging Activities, No 5721 MAFF, on 13 December 2001. A moratorium on the transportation of logs followed in May 2002. At the time of writing, both moratoria are still in place.

<sup>78</sup> Lang, op cit, p5, quoting from Carrere, 1999: 7-9.

<sup>79</sup> Letter No 2743/680 Kor Sor Kor Phor Phor Kor, dated 12 June 2002 states that "the granting of the land concession is awarded only to the company to improve the degraded forest with low economic value to the forest generating high economic value; replant the degraded forest area."

<sup>80</sup> Green Sea Co. Ltd. Contract, clause 5.3.

<sup>81</sup> CJ Cambodia (3000ha), CJ Cambodia (5000 ha), Kimsville (3,200 ha.), Cambodia Haining group co (32,000ha), ADUOK (12,506 ha), Henan (Cambodia) (4100 ha), Cambo Victor Investing & Development Co (26,550ha), China National Corporation for Overseas Economic Co-operation (8,000ha).

Sihanoukville, making it a very attractive speculative area. The Kompong Speu Department of Agriculture lists 225,155 hectares of Kompong Speu under concession agreement, with 156,455 hectares in Phnom Srouch district.<sup>82</sup>

## 5. Cambodia's indigenous peoples

Cambodia's indigenous peoples have historically inhabited sparsely populated areas of the north and north-east of Cambodia, in regions that have until recently been covered by dense forests.<sup>83</sup> Their traditional habitat borders Laos, Thailand and Vietnam. Several ethnic groups are to be found on both sides of the borders.<sup>84</sup> Given the importance of swidden agriculture to their culture and livelihoods and the centrality of land to their social organization, the impact of economic concessions can have an especially negative effect in their case. Access to communal forests and their produce also remains a significant concern.

International law provides special protections to indigenous peoples, and in 1998 and 1999 two international human rights treaty bodies made specific recommendations to Cambodia regarding their treatment.<sup>85</sup> These recommendations remain to be fully implemented. Complaints relating to human rights violations on land and forest concessions affecting Cambodia's indigenous peoples, as noted above, were among the first to come to the attention of Special Representative Michael Kirby, and were first documented as an issue of concern in 1996.<sup>86</sup> Three years later, former Special Representative Thomas Hammarberg in his 1999 report to the Commission on Human Rights wrote:

*“the rights of indigenous communities to land and the natural resources on which their livelihoods depend is under threat not only because of logging and plantations, but also from land grabbing, which takes several forms: bribes to the weakest members of a community, false promises, enticement, or simply intimidation and violence”.*<sup>87</sup>

Articles 23-28 of the Land Law introduce the concept of indigenous community property as a form of property ownership with the community, rather than its individual members, recognised as the legal entity owning the land. In recognizing indigenous collective title, the Land Law establishes the legal rights of indigenous communities to practice swidden agriculture, and provides for collective titling of indigenous lands.

*“The indigenous title constitutes a prior claim to land resources that are both forest-based and agricultural and must, therefore, be established prior to any other claims being imposed on the land.”*<sup>88</sup>

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<sup>82</sup> See Chart of Companies in Kompong Speu Province not yet in operation, 26 January 2000.

<sup>83</sup> The four north-eastern provinces of Kratie, Mondulkiri, Ratanakiri, and Stung Treng have the bulk of the population. The last population census indicates that indigenous highland peoples, with characteristics similar to those found in the north-eastern provinces, are also located in other provinces including Preah Vihear, Kompong Thom, and in the mountainous massifs of Koh Kong, Pursat, Kompong Speu, and Sihanoukville: Asia Development Bank, *Indigenous Peoples/ Ethnic Minorities and Poverty Reduction – Cambodia*, June 2002.

<sup>84</sup> The border demarcations first imposed under the French colonial government in the early 20th century divided these groups artificially, placing restrictions on their freedom of movement.

<sup>85</sup> In 1998, the Committee on the Elimination of Racial Discrimination recommended that Cambodia recognize ‘their use of lands, forests and other natural resources, and their distinct and unique identity, culture and way of life’. It also recommended that Cambodia take ‘steps to fully implement its General Recommendation XXIII which addresses the rights of indigenous peoples under the Convention. Concluding observations, 31/03/98, CERD/C/304/Add.54, para 19. In 1999, the Human Rights Committee expressed concern that the rights of Cambodia’s indigenous people to enjoy their cultural traditions, including their agricultural activities, be respected under article 27 of the Covenant on Civil and Political Rights. Concluding Observations of the Human Rights Committee, Cambodia, UN Doc., CCPR/C/79/Add.108 (1999).

<sup>86</sup> Report of the Special Representative of the Secretary-General for human rights in Cambodia to the Commission on Human Rights, (UN Doc., E/CN.4/1996/93, 26 February 1996).

<sup>87</sup> SRSG report to the Commission on Human Rights on the situation of human rights in Cambodia, UN Doc., E/CN.4/1999/101, 26 February 1998, para. 132.

<sup>88</sup> Independent Forest Sector Review, Part I Policy choices, issues and options, p5.

The problem is that the process of identifying indigenous peoples and demarcating their lands has been very slow at a time when Cambodia's indigenous peoples are becoming more and more vulnerable to land confiscation and the legal alienation of their land.<sup>89</sup> The Ministry of Land Management is currently undertaking pilot studies in order to support the drafting of the sub-decree and the collective titling process. However, there is mounting concern that there will be little land left to title by the time that the sub-decree is drafted and the titling process begins.

In August 2004, the Government approved in principle the grant of an economic concession of 199,999 hectares to Wuzhishan L.S.Group, for a pine tree plantation in two separate locations in Mondulkiri province. Pending discussions with donors, the Government approved 10,000 hectares for experimental exploitation in O'Reang district, home to the indigenous Phnong people.<sup>90</sup> Other concessions are reported to be in the pipeline.

In 1997, the Inter-Ministerial Committee for Ethnic Minorities Development produced a farsighted Draft Policy for Highland Peoples Development. If adopted and implemented, it would provide a coherent national policy for Cambodia's indigenous peoples. Cambodia should also accede to ILO Convention 169 the most comprehensive instrument of international law that protects the right of indigenous and tribal peoples to preserve their own laws and customs within the national societies in which they live.

## **6. Corruption, access to information and public participation**

The difficulties in accessing information for this report are typical of the problems met more generally in Cambodia in obtaining information held by public authorities. The “duty of confidentiality” towards concessionaires was given as one reason why information was withheld, reflecting an institutional bias towards private corporate interests.<sup>91</sup> The experience was also typical in so far as information was often obtained through personal contacts.

As in other areas of government decision-making, measures are needed to overcome the secrecy surrounding economic concessions and the concession system in general. A culture of public service and an understanding among government officials that information held by public authorities is for the benefit of the public would undoubtedly help to correct some of the problems encountered. However, Cambodia lacks laws regulating access to information held by public authorities, in contrast to some other countries in the region, such as Thailand. Freedom of information legislation, if enacted, would provide a legally enforceable right to access information on matters of public concern, and would help to promote open and accountable government. Access to information would also help to safeguard against abuses and bad decision-making, promote informed debate and better policy and decision making, and would help coordination among ministries. It would also allow donors and development agencies to more effectively target their assistance. Most important, it would allow Cambodia's citizens to participate in decisions regarding state land, which belongs to them, and in the development of which they have a significant interest.

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<sup>89</sup> CLEC, Report on loss of community land in Ratanakiri Province, 22 December 2003

<sup>90</sup> Sor.Cho.Nor. 849, 9 August 2004

<sup>91</sup> Private companies have not welcomed disclosure of information either. The Chairman of the Cambodian Timber Industry CTIA in October 2002, stated in the context of the public release of the forestry management plans for the coming 25 years and of environmental and social impact assessments: “Edited documents of the ESIA and the Forest Management Plan (...) will draw unsolicited comments, criticism, suggestions and demands, and many of these would likely be from NGOs and the general public without sufficient knowledge of natural resource management. Too many negative and poorly informed contributions would likely be used for political reasons and do more harm than good to the review process, the chief of which are unnecessary delays and complications.” Letter reference CTIA/NGO/02/02 dated October 21, 2002, signed Henry Kong.

The lack of public access to shareholders of the concession companies, and to details about parent companies<sup>92</sup> also increases the scope for corruption in Cambodia where controlling or auditing institutions are not well developed and institutional controls are weak or non-existent.<sup>93</sup> Corruption results in the unequal allocation of public resources and undermines the realisation of a range of human rights. What has been said about public institutions and actors in the forestry sector applies equally to those regulating land:

*“a major discrepancy (exists) between the private agendas of the principal public actors and their formal public agendas ... (with) an elite operating at both national and local levels that is taking tight control over resources and the economic opportunities and benefits distributed by the state.”<sup>94</sup>*

The absence of financial disclosure requirements for politicians and senior public servants, in particular a public declaration of business interests, is also detrimental to the discharge of their duties, and leads to speculation about the nature of any interests they may hold in concession companies.<sup>95</sup> This is compounded by the fact that Cambodia has yet to implement adequate financial institution regulation, accounting standards, or a system of tendering for public contracts. The draft Law against Corruption provides for a declaration of interests, but fails to provide specific sanctions for officials who refuse to declare, or who misleadingly declare, their assets and liabilities. Cambodia would be well advised to accede to the United Nations Convention against Corruption, now signed by over 100 countries, including Brunei, the Philippines, Vietnam, Indonesia, Malaysia, Laos and Thailand.

Cambodia's draft Anti-Corruption Law should be brought into compliance with the Convention's provisions. The present draft falls short in a number of ways. It lacks provisions facilitating asset recovery outside national jurisdiction, illicit enrichment, and the abnormal increase of assets of a public official that cannot be reasonably explained. There are no provisions prohibiting the laundering or concealment of the proceeds of crime, or acts preparatory to corruption or attempted corruption. The draft does not provide for measures to protect witnesses and informants, sanctions for failure to declare assets, or for financial institutions to verify the identity of customers and to scrutinize accounts maintained by those with prominent public functions.<sup>96</sup> The draft does not regulate the activities of financial institutions, or acknowledge the trans-border nature of corruption and the importance of international co-operation.

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<sup>92</sup> A new loan from the Asian Development Bank, expected to be approved in 2004, will attempt to address this concern. The Small and Medium Enterprise Development Program will require, as part of the conditionalities, that a publicly accessible database be developed by the Ministry of Commerce which will contain this type of information.

<sup>93</sup> Tanzi, Vito, Davoodi, Hamid Reza, International Monetary Fund Working Papers, 1997.

<sup>94</sup> Ibid, p3.

<sup>95</sup> Global Witness, *The Credibility Gap – and the need to bridge it, May 2001*: “The financial, and in some cases familial, links between some senior politicians, civil servants, the concession companies and the people who run them are widely known or suspected but extremely difficult to prove.”

<sup>96</sup> See Articles 20, 23, 24, 27, 32, 33, 52.

## **Part 2 : The impact on the human rights and livelihoods of local populations**

Research and field work were conducted in ten economic concessions and one rubber plantation in order to understand the impact on the human rights and livelihoods of local populations.<sup>97</sup> Detailed fieldwork was undertaken in concessions operated by Haining company in Kompong Speu province for 21,250 hectares; two CJ Cambodia Company concessions in Kompong Speu province for 5,000 and 3,000 hectares; the Flour Manufacturing Company in Stung Treng province for 7,400 hectares; and Tum Ring Rubber plantation operated by Chup State Rubber Plantation Company in Kompong Thom province.<sup>98</sup>

Recurring problems that emerged during the fieldwork include lack of consultation with local populations; failure to undertake environmental impact assessments; denial of traditional land use rights and access to non-timber forest products; displacement of people from their homes and farm land; the loss of traditional livelihoods in favour of the generation of a few, low paid jobs; conflict between companies and local people; and intimidation by armed security guards, sometimes members of Royal Cambodian Armed Forces. Neither the Cadastral Commission structure, established in July 2002, nor the courts in Cambodia were found to function effectively to resolve disputes, and the courts failed to provide remedy for related human rights violations. In many concessions, dispossession has translated into a collapse of faith in public institutions, fear, concern about future generations, and the loss of freedom, dignity and hope.

### **Land ownership and awareness of legal rights among rural populations**

In rural Cambodia, people rely on informal recognition of local rights and on transaction papers signed by village chiefs. They cannot afford to pay for titling and they usually do not see the need. The absence of a private land registration tradition has opened the way for land confiscation and has facilitated the legal alienation of land through concessions. Absence of redress due to the poor state of Cambodia's legal system, which does not provide equal protection of the law to the poor, has compounded this problem. The judiciary is subject to executive interference and open to corruption from interested parties, especially from those with political and economic influence. There is no state funded legal aid scheme, and those with economic and political influence can act outside the law with impunity.

Article 30 of the Land Law states that a person has the right to register ownership where there is legally valid and uncontested possession five years prior to the Law's passage. Even if not registered, this right is recognized by the law. Under Article 31, those currently in legal possession who have not completed five years are allowed to remain in possession until they have done so. Thereafter, they can register as the owner. Anyone who has been in actual possession for five years will therefore be able to register as the owner of land when the registration system is established.

The problem is that few rural people are aware of these rights, and Government officials have indicated that the registration process may take up to 20 years. Most have not asserted ownership rights in the face of legal alienation through economic concessions. They are also in a very weak

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<sup>97</sup> These plantations are operated by the Flour Manufacturing Company (Stung Treng province), Cambodia Haining Group Company (Kompong Speu province), Pheapimex Company (Pursat and Kompong Chhnang provinces), Mong Reththy Investment Cambodia Palm Oil Company and Mong Reththy Investment Cambodia Cassava Company (Sihanoukville); Agro Star Investment Company (Kompong Cham); CJ Cambodia Company (two separate concessions in Kompong Speu); ADUOK Company (Kompong Speu); Chup State Rubber Plantation Company (Kompong Thom province).

<sup>98</sup> The interview guidelines focused on: a. historical background in order to compare with the present living conditions, population and economic activities; b. present situation: the agricultural plantation and its effects, chronology of events, company activities, social impact, economic impact, environmental impact, actions of villagers, ideas for the future, recommendations. The duration of each interview ranged from half an hour to 3 hours. In each case, a few villages were selected with the help of non-governmental organisations, with a sample of men/women/rich/poor people being selected.

position to assert what may be legally superior rights in a situation where a concessionaire attempts to take possession of a piece of land, with the consent of the authorities.

Private property is protected by Article 44 of the Constitution, which stipulates that confiscation can only be exercised in the public interest as provided for by law and requires fair and just compensation in advance. No instance of just compensation was found to have been provided to communities in these circumstances.

Although most violations of the law are left without effective remedy, some communities have successfully argued their cases, although not before the courts.<sup>99</sup> Those that have managed to resist or minimise the harmful impact of concessions have generally been well-organized and acting with strong support from legal aid and advocacy organisations. This underlines the need for legal literacy programmes to help local communities to understand their rights under the law<sup>100</sup> and to assist them and their representatives to have the means and knowledge to advocate for their rights and to document and report on violations when they occur.

### **Land as the foundation for social and cultural organization and livelihood**

Land is the foundation for social organization in rural Cambodia. Much of the countryside is governed by informal boundaries corresponding to areas in regular use by local communities. These boundaries can have religious significance, with land being controlled by land spirits. These supernatural beings, called *neakta*, have a very important place in Cambodian tradition. Recurrent sickness or bad luck is believed to stem from their actions: they retaliate when someone has disrupted the social order, contravened codes of morality, or has ventured into areas without asking their permission.

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 organization and traditions.

Each family generally has a plot of land for housing and one or several small parcels of land used mainly for rice farming. In forested areas, swidden agriculture is often practised.<sup>101</sup> Access to the surrounding land and forests has helped sustain livelihoods. Depending on the nature of soil and vegetation, whether bush or degraded or dense forest, local people generate secondary incomes by collecting non-timber forest products. In addition to gathering hundreds of plants for medicinal purposes, and fodder for cattle, local people living in and around forest areas collect food to supplement their diet, or to offset a poor or failed harvest. Wild cassava, fruit, mushrooms, edible plants, and fish - a main source of protein for forest dwellers - are routinely cited as supplements to an

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<sup>99</sup> When the Pheapimex concession in Pursat province received authorisation to clear an initial area of 6800 hectares in Ansar Chambak commune, Krakor district, an area inhabited by 1031 families, 703 families complained to the non-governmental organization, Legal Aid Cambodia. The families were eventually allowed to stay on the land, and clearing plans have either been dropped or delayed. In 2001, villagers from Toek Phos and Boribo districts of Kompong Chhnang province wrote to governmental institutions and to Asia Development Bank representatives to protest against the Pheapimex investment plan. Legal Aid Cambodia and other non-governmental organizations submitted documents on Pheapimex to embassies in Phnom Penh seeking their intervention. However, the company has proceeded with clearing and planting in its Kompong Chhnang concession.

<sup>100</sup> The Asian Development Bank has funded public information campaigns and media awareness programs: TA 4181, and its Phase 1 (CAM TA 3577). This has included production of videos on both knowing one's rights under the Land Law and resolving land disputes. These videos are regularly broadcast on television and copies of them have been provided to every district and provincial land office in Cambodia. Approximately 10,000 cartoon books have been produced and distributed. Several workshops have been conducted to train NGOs on how to use the public awareness materials in their outreach programs.

<sup>101</sup> Swidden agriculture allows the forest to regenerate after a period of use, and requires large tracts of forests. With industrial and illegal logging, the forest blocks have been considerably reduced. Those practicing swidden agriculture are blamed for deforestation although, of course, forest dwellers have practiced swidden agriculture sustainably for hundreds of years.

almost exclusive rice diet. The tapping of resin trees provides significant income, as do hunting wild animals and grazing cattle. In Tum Ring commune, local people have heavily relied on resin tapping, with some families owning more than 100 trees each. A family can earn up to \$100 a month from collecting resin.

### **Absence of dialogue, denial of access to traditional livelihoods, and fear**

In the absence of adequate consultation or dialogue with local communities to ascertain their will or ability to shift from traditional work to intensive agriculture or paid labour, the first activities of the concessionaires were often seen as intrusion, aggression, or as land grabbing. In some cases, village chiefs were pressured to sign documents acceding to a company's request for a concession.

Some communities were able to organise themselves to protect their interests through protests, complaints and demonstrations. Elsewhere people have been more vulnerable, and have found it difficult to raise their concerns.

In situations of conflict, public officials at all levels generally showed a bias towards the companies. When a conflict arose, for example, between the Flour Manufacturing Company and the local population in O Svay commune in March 2000, a group of officials -- including the provincial Governor, the gendarmerie commander, the police commissioner, and the district chief -- came to the commune to tell the people to stop their complaints against the company, and that such complaints were tantamount to criticism of the Government. Similarly, in January 2004 a very senior government official was reported to have visited Treng Troyeung commune in Kompong Speu province where CJ Company operates its concessions. He told the villagers that they should be very careful about their complaints, and blamed local human rights organisations for inciting complaints. This occurred after the Special Representative personally delivered a petition from 222 families from Treng Troyeung to the Prime Minister in December 2003, outlining a number of concerns.

Companies have cleared and bulldozed forests upon which local people depend. They have also denied access to forests and livelihoods. The activities of the Flour Manufacturing Company in Stung Treng have destroyed dense and primary forest, water sources and wildlife close to communities, creating a bleak wasteland in parts of the concession. The felling of forests and resin trees in Tum Ring has severely damaged the livelihoods of local people, and logging continues in disregard of the prohibition on the cutting of resin trees and the Government's moratorium on logging.<sup>102</sup> The CJ Company built a canal in 2002 around its concession to stop local people entering the concession area, thereby denying them access to firewood and land for grazing cattle. Restricted access to forests within the Haining concession has created difficulties for the local population to make charcoal and collect firewood, their main source of income after three years of drought and failed rice harvests.<sup>103</sup>

The companies have brought fear to the communities by employing armed security guards - often former or detached or "inactive" military officers, many of whom remain on the RCAF payroll.<sup>104</sup> For remote populations, armed guards represent an especially powerful and intimidating presence. Local people reported that they also undertake logging, extort money from them, and grab land for their families. Often, the concessionaires and the security guards operate outside law in violation of the 1999 Sub-decree on the Administration and Control of the Import, Production, Sale, Purchase, Distribution and Use of Weapons and Explosives of all Types. The very presence of guards and weapons on concessions can also lead to uncontrolled violence. On 18 July 2003, for example, a

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<sup>102</sup> Article 29 of the 2002 Forest Law states that it is prohibited to harvest "tree species that local communities have tapped to extract resin following tradition". Prior to the enactment of the Forest Law, Article 17 of the Forest Practice Rules, June 25 1998, stated that it "shall be forbidden to fell resin trees that people tap for resin". Art 15 of the log books for coupe operations state: "*Do not cut resin trees that are currently being tapped for resin. The resin trees that are more than 1.20 meters in diameter, or that are not being tapped for resin, or that have been abandoned by their owners can be felled.*" Article 29 of the 2002 Forest Law states that it is prohibited to harvest "tree species that local communities have tapped to extract resin following tradition".

<sup>103</sup> One family earns between \$20 to \$45 a month from charcoal.

<sup>104</sup> "Inactive" is the term employed in the law on the general status of the military personnel of the RCAF.

worker at the Flour Manufacturing Company in Stung Treng province killed his brother in law, using an AK 47 belonging to a company guard, and in May 2003 a security guard was reported to have been killed by villagers from whom he had extorted money. International non-governmental organizations working with local communities have also been affected. The Lutheran World Federation has been supporting development projects in Kompong Speu to help local people resettle since 1997, well before the CJ Company was granted its concessions. A community house it built in O Kontrum village,<sup>105</sup> close to CJ's first concession, was burnt down in June 2003 by unknown persons, shortly after a meeting with local people. Nobody has been arrested, and no investigation has been undertaken.

Districts in Kompong Speu province, such as Phnom Srouch, are an illustration of the violent conflicts that can arise where concessions have been granted in military development zones. These areas were previously under Khmer Rouge control during the first part of the 1990s, later coming under government military control. In October 1996, Khmer Rouge Division 305 defected to the Government. During a defection ceremony in April 1997, 300 of its men were promised land for housing and farming in the form of a "re-integration zone" of approximately 1,000 hectares. Most of this land now falls under the control of Golden Land Co Ltd, which was granted a concession in March 2004, as noted in the first section of this report. Local people claim that they know little about the company, neither its name, ownership, nor the type of crops it intends to plant. An inspection team survey of the proposed concession site was undertaken in January 2003, following which over 400 hectares, reported to belong to local people, were excised from the proposed concession area. In August 2003, the commune chief who had participated in the survey sold over 200 hectares of the land earmarked for Golden Land to families from Phnom Penh. The families claimed they were unaware of the existence of the company until security guards started forbidding planting, clearing or developing the land. Two groups of armed soldiers were dispatched from the RCAF Development Directorate to protect company operations.<sup>106</sup> In July 2004, a complaint bearing 518 names of affected people was forwarded to the Prime Minister's cabinet.

### **Employment and labour conditions**

Among rural populations accustomed to relatively autonomous family-scale farming, the shift to paid work is perceived as forced labour:

*"I am used to going to the forest whenever I want or I need. I am free to decide which day I go. The company will force me to work when it wants. I am a free man. If I need to buy or exchange something, I go to the forest and collect resin. If one morning, I do want to stay at home, I stay. I can do it. I am free. I do not want to become a slave of the company."*<sup>107</sup>

Similar sentiments have been expressed in other studies.<sup>108</sup>

The list provided by the Council for the Development of Cambodia indicates that Haining planned to employ 4,669 workers, while the Flour Manufacturing Company planned to hire 774 workers. Yet few local people have been employed, and workers are generally paid less than a dollar a day. At the Haining concession, the local population indicated that the company had hired only around 20 local people, and that these reportedly acted mainly as forest guides to help identify the best timber

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<sup>105</sup> In May 2001, the company bulldozed the land farmed by 47 families from O Kontrum.

<sup>106</sup> Mission letter signed by Lt. Col. Hang Chom Rong, dated June 24, 2004.

<sup>107</sup> A villager living in Runteah village, Tum Ring rubber plantation.

<sup>108</sup> For instance, a report about a rubber plantation in Kompong Cham captures villagers' perception of life and work within the plantation: "When asked to compare their living conditions with those of poor rice farmers, most said that they would prefer to be rice farmer, despite the fact that housing, water and electricity were provided for free in the rubber plantation. The most common complaint was the hard work, the lack of time off, and the lack of freedom in the plantation. Many times a comparison with slavery and conditions during the Pol Pot period were made, with the difference that they receive a salary and that there is enough food nowadays." CAS study, 2001, paragraph 6.6 Perception of work and life at present and in the future.

resources. At the Flour Manufacturing Company, 30 to 80 local people are employed as occasional labour to plant teak trees.

A concessionaire often finds it easier to employ labour from outside the local community because workers are considered to be more skilled, less demanding, or less likely to create conflict. In Tum Ring rubber plantation, for example, the company is employing qualified workers coming from Kompong Cham province to the detriment of local workers who are considered as too slow. In O Svay commune, the company hires the poorest people from neighbouring communes both because of conflict with local people, and because payment of 5,000 riel (\$1.25) a day has failed to attract villagers accustomed to slightly better incomes. CJ Company avoids hiring workers from Traeng Troyeung commune, and instead organizes free transport for workers in neighbouring Moha Song commune, also to avoid workers from settling in the concession area. Workers are paid either 3,000 riels (\$0.75) on a daily basis or for piecework, either planting or clearing grass.

Where local workers are hired, recruitment can be a vehicle for patronage and bribery. Usually, the company deals with the local authorities, such as commune and village chiefs, and those connected to the authorities, either by kinship, friendship or by political affiliation, have easier access to the most lucrative jobs.

At the Mong Reththy Palm Oil Plantation in Sihanoukville, work is organized in groups of 20 to 30 people headed by a chief. Depending on the task accomplished, the chief receives between 10,000 to 20,000 riels and the workers from 2,000 to 5,000 riels a day, just enough for their daily survival.

In September 2002, 85 workers from the Republic of China, recruited by Henan Cambodia Economic Trade Development Zone land concession camped outside the Chinese Embassy in Phnom Penh, claiming the company had confiscated their passports, had never paid them and had stopped providing food. Workers said they had incurred debts in order to pay recruiters in their home villages, and requested help for their repatriation.<sup>109</sup>

In several cases, the company takes on sub-contractors to recruit workers, but exerts little control over recruitment, working conditions and remuneration. The workers complain of pay lower than promised or not being paid at all.

Disturbing reports recently came to light about conditions on the Green Rich concession in Koh Kong. The company recruited workers through sub-contractors. The first group of workers arrived in the area in mid March 2004, recruited from several provinces including Kompot, Takeo, Kompong Cham and Kratie. Workers were offered loans to pay for jobs, transportation and for money to leave behind with their families. When recruited, they were told that they would be paid 10,000 riel per day, but when they arrived they found they were to be paid according to the amount of timber brought into the "log rest area", at a rate of 4,000 riel per ton. On 9 May 2004, 20 workers fled the concession, and requested police assistance and protection. No workers had been paid by 10 May. The sub-contractors control the supply and price of food since no food is available in the area. The workers have to take loans from them to buy food, and they must repay before they leave the area. Armed soldiers, military police and police have been hired by the company to provide protection.<sup>110</sup> The sub-contractors and the company accuse one another of being responsible for the workers' conditions, although clearly the concessionaire is ultimately responsible.<sup>111</sup>

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<sup>109</sup> The Embassy eventually provided the necessary assistance enabling them to return home. Saing Soenthrith, "Angry Chinese Workers Enlist Embassy's Help", Cambodia Daily, 25 September 2002

<sup>110</sup> Letter from Green Rich representative Vincent Chan to the Governor of Koh Kong province, May 10, 2004, requesting security personnel for the concession.

<sup>111</sup> See Cambodia Daily, 19 May 2004 and 20 May 2004.

## Displacement

Displacement of local populations has occurred in some concessions. Such is the case in the CJ Cambodia Company concessions. During 1997, 56 families settled in **Krol Tunsorng village**, Traeng Troyeung commune. They received papers indicating that they had been provided with housing and farming land. They cleared the land and planted rice. In May 2001, the villagers were invited to a meeting with the district chief, the commune chief, military officers and CJ Cambodia company representatives. The meeting was surrounded by armed soldiers. The people were told that the land now belonged to the company and that all those living inside the concession had to move. Fearing violence from armed guards, 34 families agreed to move to a new village, **Krol Tunsorng Thmey**. They were collectively offered 50 kilograms of rice, 3 kilograms of nails, 100 pieces of straw roofing materials, a bulldozed piece of land measuring 30 by 400 metres, and transportation to the new village. When they arrived, the families say that they were given only a 30 by 50 metre piece of land with a lower soil quality than in their former village. The 22 families that refused to leave were intimidated by security guards.<sup>112</sup> When they asked to meet with CJ Cambodia representatives to discuss recognition of their ownership rights, the guards told them: “You do not have the right to meet with the representatives of the company as you are just ordinary people.”

The Haining concession in the districts of Phnom Aural and Phnom Srouch in Kompong Speu, is located in an area where more than 8500 people live. The population is spread over 26 villages, many having moved back there in 1997 and 1998 when hostilities ended. The current population is composed of formerly internally displaced people, former Khmer Rouge families, and landless families that have recently moved from other parts of Cambodia. The company and the local authorities have demanded that they stop using agricultural land and forest within the concession, and some families have been told to leave their homes. In O Pdaov, a village next to Haining's headquarters, when cutting and clearing operations began in 2002, the company told local people that they must no longer use any land inside the concession and that they must leave the area. The company appears to have targeted those who built houses after the concession agreement was signed in 1998. The villagers claim that officials at village, commune and district level authorized them to occupy the land before they started building their houses. Some have been offered alternative plots, but many say that the land is unsuitable, possibly mined, that there is no water source nearby, nor any school or health facilities. The company has made no offer to establish basic infrastructure or to transfer houses.

There is concern that displaced families will have no choice but to drift towards Phnom Penh to join the increasing number of urban poor and landless farmers or to seek out other land to encroach upon.

## Encroachment

According to the Ministry of Agriculture, 16 concessionaires have complained about new settlers encroaching on concession land, and about conflicts with and complaints from local people. Frequently, the announcement of a prospective concession attracts particularly poor populations to concession areas through the prospect of employment, or in the belief that if they clear the land the company will have to buy it from them. The new settlers create problems and conflicts. The attitude of local authorities was found to depend on their relations with concessionaires: they either continue to authorise people to settle on the company's land or they block newcomers.

To some extent, the lack of transparency surrounding concession operations, uncontrolled road construction, lack of public participation and consultation with local populations are to blame for the problems reported by concessionaires.

*“I am 57 years old. My husband is 68 years old and is crippled. We left Samrong Tong district one year ago because the conditions of living were too difficult. We came here because some relatives*

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<sup>112</sup> For example, the cow of the village chief was killed and its head and intestines were smeared over house fences.

*were living here and told us that it was possible to earn a daily living by making charcoal as there is still forest to cut. I just came here and asked the village chief for land. The village chief gave us housing land. The company has told us to go as the land belongs to them but we will stay as the village chief gave us land. We do not have any other place to go. I have to feed four of my grandchildren as my daughter cannot do it.” -woman in O Pdaov village, Reaksmey Samaki commune*

Henan Cambodia Economic Trade Development Zone located in one of the Kompong Speu Military Development Zones provides an example of problems that can arise from encroachment and unclear management regimes. Henan was awarded a land concession in Phnom Srouch district in November 1998 for 4,100 hectares and started planting in 2002. As noted above, most of its Chinese workers left in September 2002, claiming harsh treatment. Today, little remains of Henan's endeavours, save for one hectare of watermelon crops, a handful of Chinese workers and technical advisors, and dirt tracks and ditches along the tracks. At the time of writing, at least four groups were claiming land in the concession area. Villagers who had settled on the land in 1993 and 1994, currently living along National Road 4, say that they were forced to sell their land to Ms You Oy, Secretary of State for Women's Affairs, for between \$30 and \$80 a hectare. According to Ms You Oy, the transactions were honest and fair. Since 2002, more recent settlers from throughout Cambodia have cleared plots along the dirt tracks, and created a new village, Phum Samaki Apivoat Thmey (New Solidarity Development Village), comprised of 306 families. A contract was signed between Ms You Oy and representatives of Tong Nam A Co., Ltd on 9 August 2002 to establish a commercial centre and hospital on an area of 304 hectares. Despite regular threats<sup>113</sup>, armed attacks<sup>114</sup> and threats of prosecution,<sup>115</sup> villagers say they have no alternative but to stay, as they have nowhere to go. In July 2004, You Oy's assistant and the commune chief sought to register plots of land for the older settlers, and to give the land cleared by the more recent settlers to them. In August, solidarity between old and new settlers broke down and conflict ensued. Villagers demonstrated at the Kompong Speu Governor's office after some villagers, suspected of being the ringleaders, were detained briefly by Kompong Speu police, before continuing in 10 trucks to the National Assembly. There, the villagers received a verbal assurance from Ms You Oy that they would be given 100 hectares for community development. At the time of writing the conflicts remain unresolved.

### **Adverse environmental effects**

Economic concessions have potentially many adverse environmental effects. Forests cleared for tree plantations in a number of concessions have destroyed ecosystems, reducing plant and animal species. Studies in Malaysia and Indonesia indicate that between 80 and 100 per cent of fauna in tropical rainforests cannot survive in palm oil monocultures.<sup>116</sup> Toxic environmental waste and the use of pesticides and fertilizers is also a concern. This is a concern in the case of Haining company which has started planting castor beans, which are known to produce waste that is highly poisonous. Eucalyptus trees are planted in the Pheapimex concession in Kompong Chhnang to supply a future pulp and paper mill factory.<sup>117</sup> Planting eucalyptus trees on a large scale has been shown to cause serious ecological damage such as the drying up of streams, lowering of underground water tables, soil acidification, reduction in local biological diversity and degradation of soil fertility.<sup>118</sup> Concerns

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<sup>113</sup> According to villagers, the latest threats were issued on 25 July 2004 when seven soldiers from the nearby military development zone, dressed in battle gear, three of them armed with AK-47's, went to the village and demanded to see land titles. When villagers admitted to having none, soldiers demanded that they leave the area immediately.

<sup>114</sup> According to villagers, on May 7, 2004, 10 armed men attacked the villages, shooting AK47 rounds into the air and burning down 52 huts.

<sup>115</sup> Kampong Speu court, issued an order, dated 7 July 2004, summoning villagers for questioning. Criminal case no. 21.

<sup>116</sup> Wakker, 2000, quoted in Carrere, op cit, p3.

<sup>117</sup> Within the Pheapimex concession, in Samaki Manchey district, Kompong Chhnang province, there is a eucalyptus plantation managed by the Department of Forestry in Phnom Penh. According to the Provincial Department of Agriculture in Kompong Chhnang, it covers 20, 000 hectares. Some 2000 hectares of eucalyptus have been reported as having been planted since 2000.

<sup>118</sup> Watershed, Vol 8, No. 1, July-October 2002 by TERRA.

have been raised about the potential damage to the ecological integrity of the Tonle Sap lake, a fishing and freshwater resource of immense social and economic importance for Cambodia. A pulp mill releases toxins and chemicals that could potentially pollute the lake and seasonally flooded forests, rivers, smaller lakes and tributaries and enter the food chain of humans. Despite these concerns, Pheapimex has not produced any environmental impact studies for its eucalyptus and pulp mill plans.

In the case of the Green Rich concession in Koh Kong, local people have reported that the forest area flooded during the rainy season provides important spawning grounds for fish. The introduction of a monoculture of exotic species has led to concern among the local population, whose economy and livelihoods rely heavily on fish, that fish catches will decline as a result of the destruction of the breeding grounds. Monocultures, or cultures of a few dominant species, could also put at risk access to balanced diets with potential long lasting impacts on growth and immune systems. As already noted, Green Rich was granted a concession in the protected area of Botum Sakor National Park in contravention of the law. Its decision to plant acacia has caused further concern since multi-storied natural forests absorb torrential monsoon rains and prevent erosion, in contrast to acacia, which has only one thin canopy. Acacia has also become an invasive species in the US (Hawaii) and some Pacific islands, dominating and endangering native species.

### **Flour Manufacturing Company land concession in Stung Treng province:**

*"I am very old. I cleared a piece of land here 40 years ago. Life was good. There was plenty of forest, plenty of good lands available, plenty of fish. We had good houses. Since then, I have seen the destruction of our village and then the destruction of the forest and the wildlife. All the good lands around the village are now under cultivation. You only find flooded or rocky lands. There are some good lands in O three and O five. But, it is inside the land concession. My grand children cleared a piece of land there but they were told by the company to stop. We do not understand why we have been struggling so much to stay on this land and now we are told that it belongs to people coming from outside having good relations with high-ranking people. We are small and whatever we will do, we will lose."*  
*A grandmother from O Run village, 81 years old.*

On 13 September 1999, the Ministry of Agriculture signed a 70-year contract with the Flour Manufacturing Company Ltd for 7400 hectares of land in a forested area in Stung Treng province. Under the contract, the company was to grow teak trees, cashew nuts, other unspecified crops, and breed animals. The contract allows the company to clear the land. In accordance with the Forest Law, the company was to pay royalties for any cutting and transportation of logs. The company paid a deposit and demarcated its boundaries.

The registered capital of the Flour Manufacturing Company is \$1,200,000. According to the Council for the Development of Cambodia, this is a 50%-50% Cambodian-Chinese venture.

#### *Location and population*

O Svay commune is in Thalaborivat district, Stung Treng province, 60 kilometres north of Stung Treng provincial town and five kilometres from the Lao border. The commune is remote.

Flour Manufacturing Company's concession is in an area of mixed degraded and dense forest, and covers land used by nine villages attached to three communes: five villages in O Svay commune, three in Preah Rumkel commune, and one in Koh Sneng commune. O Svay commune is especially affected because of its location on a ribbon of land between the Mekong River and the concession. The five villages that make up O Svay commune are: Koh Phnov, O Svay, O Run, Voeun Sean, Koh Heb with a total population of 445 families or some 2340 people.

#### *History*

In the 1960s, Prince Norodom Sihanouk initiated a project known as "the colonization of new lands" which aimed to develop rural areas and reduce poverty in Cambodia's remoter provinces, such as Monduliri, Ratanakiri and Stung Treng. The town of Borey O Svay was established in the early

1960s close to the border with Laos as part of this project, reflecting a concern about Lao traders and fishermen encroaching on Cambodian territory. The military was sent to clear the jungle and build an access road, 50 concrete houses, a school, a hospital, a market, a pagoda, a military camp and a sugar cane factory. In 1964, retired military officers and soldiers and poor families mainly from Takeo, Prey Veng, Svay Rieng and Kandal provinces, as well as refugees from Kampuchea Krom, were offered housing, land, cattle, seed, and trees to settle there. Prince Sihanouk personally inaugurated Borey O Svay in 1967. At that time, dense forest was very close to the rice fields and homes. People did not venture into the forest unless they were armed for fear of tigers, elephants and other wild animals. Malaria was also a concern as there was no effective medicine.

The people of O Svay have traditionally relied on rice farming and vegetable planting on dry lands *chamkar*, and on fishing. Save for the poorest amongst the population, collecting forest products has been mostly a secondary activity. The people collect vines, mushrooms, fruits *pône* and medicinal plants such as *slaeng* which is used to cure malaria; and they hunt wild animals, including deer, buffaloes, pigs, lizards, turtles and porcupines. The people sell or exchange forest products mostly at Vooun Kam market on the Lao border. In the 1960s the commune was considered wealthy, but subsequent war and civil conflict took a heavy toll.

In 1970, soon after the coup which brought General Lon Nol to power, Vietcong and Khmer Rouge troops took over O Svay. In 1973, bombing raids by the United States destroyed much of O Svay. In 1975, after the Khmer Rouge took complete control of Cambodia, families from Phnom Penh were sent to O Svay to live with the local population. Most are said to have died within a year from malaria, malnutrition or disease. Others were killed, accused of belonging to the Central Intelligence Agency of the United States. Among the local population, soldiers and teachers were targeted and killed, accused of association with the Lon Nol regime. In 1976, people were forced to leave the village to clear new rice fields some 40 kilometres away. In 1979, when the Vietnamese troops entered Cambodia to oust the Khmer Rouge regime, the villagers returned and found their homes in ruins. In the 1980s they rebuilt their lives. A few newcomers, mainly relatives of villagers from O Svay, came from other provinces.

As recently as the late 1980s, the forest was dense and wildlife was rich. It was easy to clear new land for farming on the fringe of the forest, close to the village. However, with no controls on the use and management of natural resources, and with local people having used illegal fishing methods for years, fish and forest resources diminished rapidly in the 1990s. This was also a time of population growth. In the early 1990s "high-ranking" individuals, mainly belonging to the military, began to undertake commercial logging on a vast scale. The logging of luxury and first category wood (*beng, neang nuon, kakar, koki*) was intense. The timber was mainly exported to Laos. The logging is said to have subsided after 1995. The forest resources and wildlife were severely depleted, but it was still possible for the local population to obtain substantial secondary income from them. This was the situation when the Flour Manufacturing Company arrived. Its activities exacerbated an already difficult situation.

### ***Flour Manufacturing Company and its impact***

At the end of 1999, Flour Manufacturing Company set up tents in the forest, some 10 kilometres east of O Svay, and began to fell valuable trees. It also built a few buildings, two saw-mills, created a teak tree nursery, and cut down and bulldozed a 100 hectare area of primary forest for a teak plantation. However, the teak trees were not cared for and many died, confirming local people's suspicions that the teak plantation was a pretext for logging. The company employed former or detached soldiers as armed security guards.

With the felling of the trees, and a growing population placing increasing pressure on farming land close to home, younger families had to seek new land further away. Fifty seven families cleared land in O three and O five areas, both located within concession boundaries. The company barred access to the farming plots and the oxcart roads leading to them. In March 2000, 437 families signed and sent a complaint to human rights organizations and relevant ministries. The provincial Governor and his

deputy, the gendarmerie commander, the police commissioner, the head of District office of the Provincial Department of Agriculture, Forestry and Fisheries and the district chief visited in mid-2000 to tell the people to stop their complaints against the company. They said that such complaints were "political" and against the Government. In 2001, the company bulldozed land belonging to eight families in the O three area.

On 10 June 2002, 210 families demonstrated in front of the company's saw-mills and office, demanding a stop to the logging and bulldozing. Two days later, the Provincial Department of Agriculture set up a working group, which identified and demarcated 38 plots of land in an area of 102 hectares for the 57 families, and restored access to the land. However, the company forbade any further extension of farmland and it continued to bulldoze. Some villagers received threats from the company's security guards to deter them from further protest. Provincial advocacy groups trying to help the people of O Svay were threatened by the authorities, and one local development organisation was told to stop conducting activities in the commune, and accused of being supported by an opposition political party.

Under Secretary of State of the Ministry of Agriculture, Mr. Ith Nody, visited O Svay in January 2003 together with representatives of the Provincial Governor's office. He told the villagers not to protest for the return of the land. He informed them that the Government had granted it to the company and that only the Government, not the people, had authority to solve the problem.

### ***Jobs and other promises***

According to a representative of the company, between 30 and 80 people -- in contrast to the 774 estimated by the Cambodian Development Council -- are employed as seasonal workers to plant teak trees as well as to log. The Flour Manufacturing Company hires workers at 5,000 riels per day. Conflict with local residents has led the Company to prefer hiring workers from outside, and few people from O Svay commune work on the land concession. The company subcontracts a logging company to fell trees, and uses sub-contractors to recruit workers. It is able to exert little control over conditions of recruitment, work and remuneration. In July 2003, workers complained to provincial non-governmental organisations that their pay was lower than promised or that they were not paid at all. Many left. The company's promises to build schools and a health centre were not kept, although it did help to renovate a small foot bridge between O Run and O Svay villages.

*“In the ‘60s the forest was dense. There were tigers and elephants. I was among the first ones to come here and clear the forest, build roads and houses. We were sent here to protect the Laos border and to prepare a new town for the coming of new people. I was working for the well-being of people and for the development and protection of our country. What I see now is not for the people, it is for the well-being of a few high ranking people who do not care about us. It is very hard. I do not know what will be the future of my grandchildren. When I built this town, I had great hope in the future. I do not have anymore now. We feel abandoned like chicks without a mother”* - a villager of O Svay, 75 years old.

### ***Recent developments***

The Special Representative visited O Svay at the beginning of March 2003. He saw at first hand the impact of the activities of the company: the destruction of forests, the bulldozed land, the disappearance of wildlife, the dying teak trees, the saw-mills, and the worsening conditions of life for many of the local people. He raised his concerns with the provincial and local authorities, and with national authorities on his return to Phnom Penh. He tried, but was unable to meet with representatives of the company, although staff of OHCHR/Cambodia were able to do so prior to, and following, his visit.

The company claimed not to itself have benefited, and to be on the verge of bankruptcy because of the large sums of money it had been obliged to give in informal payments at all levels of the

administration. Unconfirmed reports suggest that the company's shareholdings may have recently changed, and that it is now wholly Cambodian run with the major shareholder a senior military officer.

In April 2004, a dirt road connecting O Svay to the national road was opened with both the Provincial Governor's office and the Seila programme having contributed.<sup>119</sup> During the same month, company representatives visited O Svay to inform villagers about new job opportunities, that the company was recruiting for a plywood factory, a new project it intends to undertake in the near future. Bulldozing to enlarge the sawmill area is reported to be ongoing.

With the felling of the forest and bulldozing of land close to the villages, the villagers have now to go far to the forest, creating the greatest hardship for the poorest, who depend the most on forest products, and who also fear meeting the company guards who, they say, will demand money or confiscate their products.

*“In the sixties, the King came here. He said that this land belongs to him, our father, and we, his grand-children were brought here to protect it. When the company grabbed the land, I demonstrated because I am here to protect the land and keep it for our King. Now the high ranking people are eating the kingdom. Why? I am loyal to the King and I will continue to protect our Kingdom.”* A villager from Run village, 74 years old.

## **Overall Conclusion**

After the mistakes of the past decade in the management of Cambodia's land and natural resources, there is no panacea. However, the Government, donors and international financial institutions are now questioning the concession development model and exploring alternative models for agricultural reform. The Ministry of Land Management and the Land Management and Administration Project are attempting to address many of the issues raised in this report. Land titles are now being issued at a rate of 20,000 titles per month with the expectation that this will rise to 30,000 per month next year. A task force to review economic concessions has been established under the chairmanship of the Minister of Land Management, and aims to send the draft sub-decree on economic concessions to the Council on Land Policy by the end of this year. Draft instructions concerning the recovery of state assets are under preparation as provided for in Article 18 of the Land Law. Once these and other elements are in place, a complementary project "Land allocation for social and economic development", now under preparation, will be initiated. Efforts are underway to ensure local government involvement, social and environmental impact assessments, open bidding, performance reporting, external monitoring, and state revenue generation. The project has also begun to develop procedures for state land mapping in two districts to be followed by a large-scale initiative in 2005. The goal is to map all concessions from economic concessions to fisheries concessions, mining and protected areas in one database. The project is also co-financing an aerial photography project covering the entire country which will result in a digital database with easy access to land cover information.

These plans are hopeful, provided they are implemented and directly benefit Cambodia's rural poor. Many areas of concern that extend beyond the specific context of land concession policy and agricultural development, will also need to be addressed, such as those relating to the legal system and corruption, if Cambodia's land and natural resources are to be managed for the benefit of its people.

Economic concessions form only one part of a much broader picture pertaining to the management of land in Cambodia. The overall findings of this report support the findings of the Independent Forest Sector Review:

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<sup>119</sup> An aid mobilization and coordination programme to support decentralization and “deconcentration” reforms.

*From a crude analysis over the last decade, it would appear that government has de facto allowed land to be used as a fiscal instrument. However, within a poorly functioning governance environment the state only captured limited benefit from the use of land in this way; mostly the benefit was captured by a few private individuals.<sup>120</sup>*

The fieldwork undertaken also reflected the experiences of other countries that have adopted the plantation model:

*One of the principal impacts is the appropriation of large areas of land which have hitherto been in the hands of indigenous or peasant populations and have provided their livelihoods. This dispossession commonly generates resistance from local people, which is in turn confronted by repression by state forces as well as that of the ... companies themselves. The violation of land rights is typically followed by other human rights violations, including even the right to life.<sup>121</sup>*

Economic concessions have often been granted on land that is already being used by local people, over which they often have rights of ownership under the Land Law of 2001. In the cases that formed part of the fieldwork, concessionaires frequently acted as if they were above the law and often appeared to receive official support for their actions. They showed little commitment to working in an ecologically sustainable manner, and had little regard for the interests, rights and welfare of affected local populations. Their management of concessions has led to the dispossession and impoverishment of local populations, and given rise to conflicts as well as concerns about biodiversity. Local populations have been denied traditional rights of land use and land ownership rights, as well as access to farming land essential to sustain their livelihoods and those of future generations. Forests upon which they depend have been felled, and primary forests have been cut down in contravention of the law. Illegal logging has occurred and continues outside concession boundaries. Environmental impact assessments and adequate consultations with affected local populations were not undertaken in any of the concessions studied; few jobs have been created and those that have been, are low paid. It is hard to see what benefit the concessions have brought to the local populations.

It is also hard to see how Cambodia's people as a whole have benefited insofar as the concessions are not generating any significant government revenue by way of rental fees, deposits or taxes. Only a very small percentage of the total land area allocated to concessionaires has been planted, and the fieldwork found that planted areas are often neglected. The main profits for concessionaires appear to come from clearing trees. It is considered unlikely, however, that logging trees has brought significant revenues to the State in light of many reports about illegal logging, and the confirmed instance of significant royalty evasion by the Haining Group.

Relevant government departments have also yet to show they are ready to enforce the law by ensuring that concessionaires uphold the law and respect the terms of their contracts, or by cancelling contracts in case of serious breaches.

The concerns and issues outlined in this report apply also to other types of concessions, often involving large tracts of land, such as hydroelectricity dams, gems and mineral mines, and tourism infrastructure development. There are no laws regulating the grant of such concessions as they are specifically excluded from the terms of the Land Law by Article 50. Environmental impact assessments are, however, required for most of these projects. According to the information available, in most cases these have not been undertaken. Research to date suggests that the same patterns are being reproduced in the granting of contracts, with little regard for local populations, little or no public consultation, and a lack of transparency.

One recent example is a concession that appears to have been approved, awarded to New Cosmos, a Chinese company registered in Cambodia 2003, in the Phnom Aural Wildlife Sanctuary in Kompong Speu province for eco-tourism and agro-tourism purposes. This concession has generated widespread

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<sup>120</sup> Independent Forest Sector Review, Chapter 10, p14

<sup>121</sup> R. Carrere, "The bitter fruit of oil palm", (World Rainforest Movement, 2002).

public concern. The concession threatens to desecrate the Suy minority's most sacred religious site by building a resort, a shopping mall, a casino, a spa, a theme park and several folk villages. The company also plans to divert and dam the river Tasoa to supply water to an artificial lake and to water a 200 hectare golf course. The Suy depend on the fish in the river during the dry season for their protein.<sup>122</sup>

In March 2004, the Minister of Environment signed a Memorandum of Understanding with the Cambodian Wildlife Sanctuary company for a zoo and safari-style park covering 402,000 hectares in the Kulen Prom Tep Wildlife Sanctuary in Oddar Meanchey, Preah Vihear and Siem Reap Provinces. The most recent estimates suggest that approximately 20,000 people live in and around the sanctuary, many of whom are users of the forest. Reports indicate that company representatives have proposed building an electric fence around the park to prevent loggers and poachers accessing the area.

The hydroelectricity department in the Ministry of Industry, Mines and Energy has identified 63 potential dam projects throughout Cambodia, including 15 large-scale dams.<sup>123</sup> Dam plans are not publicly available, but there is concern that resettlement plans, if they exist, will not be adequate, and that the Government should be required to follow the best practices recommended by the World Commission on Dams.

Nineteen gold deposits have been identified in Cambodia. At least six licenses for exploration were re-issued between March and July 2004.<sup>124</sup> The information available shows that operators have misused mine exploration licences to avoid the higher licensing fees for actual mining as well as royalty payments, but that legal action has yet to be taken against those found violating the terms of these licences. Environmental pollution and denial of access to forest products has been reported in mining areas. Of particular concern is the widespread use of dangerous chemicals used in mineral extraction and purification, such as mercury and sodium cyanide, which contaminate water sources, destroy wildlife and the fish populations that local people rely on, and put public health at risk.<sup>125</sup>

The Ministry of Industry, Mines and Energy also issues licenses for gems, sand and construction materials. The areas involved are generally smaller than mineral mines, with the exception of the TKS sand concession of 80 square kilometres in Koh Kong's Botum Sakor National Park. Reports indicate that local people's livelihoods and the environment have been adversely affected, and that little account has been taken of the environmental impact assessment process.

Cambodia today faces the prospect of more and more of its rural people losing their lands and their access to natural resources. The process of reducing the size of economic concessions to 10,000 hectares must be completed as a matter of urgency, excised land must be converted to concessions for social purposes for the landless, and the Government must place the national interest above private corporate interests. The military development zone system requires particular attention.

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<sup>122</sup> At the time of writing, it is not clear whether the concession has been granted or not.

<sup>123</sup> World Commission on Dams Report, *Dams and Development: a New Framework for Decision-Making*, November 16, 2000, classifies large dams as: "a large dam is 15 meter or more high (from the foundation). If dams are between 5-15 meters and have a reservoir of more than 3 million cubic meters they are also classified as large dams." Dams which have been accorded priority include Kirirom III (Koh Kong Province); Kamchay (Bokor National Park); Battambang II (headwaters of Stung Sangke); Battambang I (Stung Sangke); Stung Atay (Central Cardamom Mountains); Middle Stung Russey Chrum (Central Cardamom Mountains); Lower Stung Russey Chrum (Central Cardamom Mountains); Upper Stung Russey Chrum (Central Cardamom Mountains); Stung Cheay Areng (Central Cardamom Mountains); Stung Tatai (Central Cardamom Mountains); Sambour (Mekong River, Kratie Province); Lower Sre Pok II (Stung Treng); Lower Se San II (Stung Treng)

<sup>124</sup> Companies re-issued with exploration licences are: Neoneer/Vannvymex, 78 km<sup>2</sup>, Phnom Chi, Sandan District, Kompong Thom; Neoneer, 87.5 km<sup>2</sup>, Andong Bar, Oddar Meanchey; Angkor Watt Cement, affiliated to Neoneer, 31.5 km<sup>2</sup>, Andong Bar, Oddar Meanchey; Jinqu Minerals, 28 km<sup>2</sup>, Mondulkiri; Jinqu Minerals, 28 km<sup>2</sup>, Kratie; Sun Trading, 112 km<sup>2</sup>, Kompong Cham.

<sup>125</sup> For further information on gold mining, see: "Small-scale gold mining in Cambodia: a Situation Assessment", Oxfam America, July 2004.

Cambodia will hopefully have enacted in the near future a comprehensive set of laws and regulations for the management of its land and natural resources. However, radical changes in administrative practices are and will be needed if the previous legal void is not to be replaced by use of law to justify arbitrary government decision-making.

The Government has the responsibility to ensure that it respects national and international law, including the human rights provisions in the Constitution and the international treaties to which Cambodia is a party. In any shift from subsistence to cash crop agriculture, the Government must also hold accountable the private companies to which it has granted significant rights over state land, which is a public asset of the Cambodian people. Private companies must respect the law and refrain from activities that violate or impede the realization of human rights. Donor governments and agencies, the UN system and international financial institutions have their own important responsibilities. The duty of international cooperation in furthering social and economic progress and upholding human rights is enshrined in the United Nations Charter, the Universal Declaration of Human Rights and in the international human rights treaties. These require multilateral and bilateral development agencies to ensure the coherent and consistent implementation of human rights in their development projects and in the assistance they provide. Respect for human rights should be recognized as an essential and central component of sound natural resource management.

This report has focused on one area of the management of Cambodia's natural resources, that of economic concessions. A complete understanding of the concession system as a whole is urgently needed. This requires the public disclosure and accountability mechanisms that donors have asked for over the years, and that the Government has promised, to be implemented. What and how much of Cambodia's land and forests have been conceded to whom, and for what purposes? The Council of Ministers appears to possess the most complete information, and should be asked to make it available as a matter of compelling public interest. A map of concessions in Cambodia, including in military development zones, would be particularly helpful. This information would allow donors and development agencies to devise more effective and targeted development cooperation programmes to reduce poverty in Cambodia, to meet the Millennium Development Goals, and to implement the Natural Poverty Reduction and Rectangular Strategies.

The recommendations that appear at the beginning of this report are aimed at addressing the problems that the report has raised, and are also put forward with the intent of sustaining the peace and security that has been Cambodia's greatest gain over the last decade.

## Annex 1

### Tum Ring Rubber Plantation Company: a case study

#### Introduction

Tum Ring commune lies deep in the forest, in Sandan district, Kompong Thom province, 100 kilometres north of Kompong Thmar on National Road 6. Tum Ring commune consists of eight villages with a total population of some 2600 inhabitants who have traditionally relied on rice farming, resin tree tapping and gathering of forest products for their livelihoods. Three forest concession companies have been active in the area since the early 1990s: Grand Atlantic Timber International (GAT), Mieng Ly Heng, and Colexim (Cambodia Okada Lumber Export Import Enterprise).

In February 2001, representatives from the Ministry of Agriculture, Forestry, and Fisheries, the General Directorate of Rubber Plantations, and Chup Rubber Plantation examined an area of red soil in Tum Ring as potentially suitable for a rubber plantation. The Prime Minister signed a sub-decree on 17 August 2001, two weeks before the promulgation of the 2001 Land Law and three months before announcing a moratorium on logging effective from 1 January 2002. The sub-decree provided that up to 6,200 hectares of red soil would be excised from the three forest concessions and given to Chup State Rubber Plantation<sup>1</sup> for industrial use and for family-scale rubber plantations.<sup>2</sup> No social or environment impact assessment was undertaken. As the land was no longer part of a forest concession, the moratorium on logging has not been applied. The same three concessionaires who held the areas excised from the concessions were subcontracted by Chup Rubber Plantation to clear the trees inside the rubber plantation area before the land was bulldozed. Large numbers of valuable trees were cut down as well as resin trees in contravention of the prohibition on the felling of resin trees in the Forest Law.<sup>3</sup>

In October 2003, the director of the rubber plantation indicated that 1600 hectares of land had already been cleared, of which 215.5 hectares had been cleared but not planted, 787 hectares had been distributed to villagers, and 257 hectares were already planted with rubber trees. He estimated that clearing and planting should be finished by 2007.

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<sup>1</sup> Chup is one of seven state owned rubber companies that have managed rubber plantations since 1979. It was the first rubber plantation established during the French protectorate.

<sup>2</sup> In August 2000, the Government announced the establishment of family scale rubber plantations as a priority for rural development. The first phase of the Smallholder Rubber Development Project, costing US\$3mn, and financed by *Agence Française de Développement*, began in 1999. In 2000, the Government announced that it would assist those who participated in the project voluntarily by granting rights of land ownership, rights to freely sell rubber products, and through facilitating bank loans. All relevant Government institutions were asked to participate in implementing this policy which also gained support from the donor community. The project aims to work closely with local populations and to provide them with land title papers, loans and technical assistance.

<sup>3</sup> Article 29 of the 2002 Forest Law states that it is prohibited to harvest “tree species that local communities have tapped to extract resin following tradition”. Prior to the enactment of the Forest Law, Article 17 of the Forest Practice Rules, June 25 1998, stated that it “shall be forbidden to fell resin trees that people tap for resin”.

## Tum Ring commune <sup>4</sup>

The population of Tum Ring commune is ethnic Khmer, with a few having ethnic Kouy roots.

<b>Village</b>	<b>Population</b>	<b>Families</b>
Roniem	163	40
Kabal Domrey	206	52
Samrong	267	67
Sralao Srong	342	79
Khos	366	80
Runteah	327	83
Leng	386	88
Tum Ar	551	124
<b>Total</b>	<b>2608</b>	<b>613</b>

Since GAT opened up the area in 1996 by building a road, newcomers have settled mainly in Tum Ar in 1998, Khos in 1999, and Sralao Srong in 2000. Many came from Kompong Cham province, either sent by the rubber plantation or voluntarily. They cleared plots of land of one or two hectares to plant rice and to grow cashew nuts, bananas, jackfruit and papaya.

According to the 2001 records of the Tum Ring commune chief, the total land area of the commune was 46,150 hectares, of which 44,931 hectares were forest, 50 hectares were ponds, 200 hectares were plain or degraded forest, 689 hectares were *chamkar* (dry fields) and 151 hectares were rice fields.

The local population traditionally has subsisted on a few flooded rice fields and swidden agriculture for rice, corn, sesame, and beans. The swidden plots were used for five to seven years before new lands needed to be cleared. The people supplemented their income by tapping resin. The first to tap a resin tree acquires locally recognised ownership rights, and is free to sell or rent the tree, or leave it to his or her children. Liquid resin from Cheuteal trees (Dipterocarp species) is used to make torches and for caulking boats. According to local people, some families owned 100, 200 or even more resin trees, and could earn up to \$100 a month by tapping the trees. Tapping resin is seen as a flexible occupation, as people can do it whenever they need income. People also gathered vines from the forest, rattan, mushrooms, medicinal plants, wild fruits and tubers. They hunted wild pigs, deer, mouse deer, turtles, lizards as well as pigeons and peacocks, and a variety of insects. This traditional economic system provided people with a basic income and livelihood.

### Traditional life in the forest

Khos, Kabal Damrey, Leng, Roniem and Runteah villages are old settlements.<sup>5</sup> Some villagers say that their ancestors came a long time ago from Laos, and that their descendants stayed in the area as the living conditions were good.

In the 1950s the villages were made up of a few houses whose inhabitants had close family links. Some old villages marked on maps have gone, but the villagers have usually moved just a few kilometers away. The old Tum Ring village, that gave the commune its name, was located next to a spirit forest and a pond which attracted wild animals. Three days were needed to reach Kompong Thmar by oxcart. The forest was dense. The old people recall that when night was falling, they did not

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<sup>4</sup> 35 semi-structured qualitative interviews were conducted with local people, NGOs, commune council members and village chiefs, company representatives and other interested parties.

<sup>5</sup> The villages were already reported by Auguste Pavie in 1881 during his travels through Cambodia, Pavie Auguste, *Mission Pavie, Indochine, 1879- 1895, géographie des voyages*, Paris, Ernest Leroux, tomes I, II et VII., 1901-1902.

dare to go from one village to another for fear of malaria, attacks from wild animals, and the actions of supernatural beings.

Life was reported to be quiet, with good and bad sides. Food was easy to find. In case of illness, traditional healers *kru* provided medicinal plants. They also organized ceremonies to chase away the bad influences of supernatural forces. Some children were able to receive a basic education at the pagoda.

*“The forest was dense. There were many wild animals. Each family had resin trees. When we could see a gash on a tree, it meant that the tree had an owner. Nobody else could collect the resin. The owner of the tree could rent it to other people. Life was like this, neither good nor bad. We were not thinking of anything. We believed that all the future would be like the present day so there was not need to worry about tomorrow. When there was little food left, we would just go to the forest looking for products to exchange or sell. We were not rich but life was good. We were free.” A villager from Runteah.*

### **1970s to early 1990s: collectivization**

Beginning in the early 1970s, the commune fell quickly under the control of the Khmer Rouge. By 1974, the villages were already organized into cooperatives. Land and labour were collectivized. In 1975, the Khmer Rouge brought in outsiders coming mainly from the neighbouring district of Kompong Svay. The Khmer Rouge accused some of the local population of being former Lon Nol soldiers, and executed them and their families. A few hundred hectares of land were cleared to plant cotton trees and rice. Collective work in cotton plantations and in tapioca and rice cultivation was reported to be hard. People were not used to work collectively. Rice was scarce, but people could subsist on forest products.

In 1979, the Vietnamese army pushed back the Khmer Rouge but did not stay permanently in the area. Life in Tum Ring was insecure, with either Vietnamese or Khmer Rouge troops occupying the commune. People had to show “two faces” -- one for the Khmer Rouge at night and another for the Vietnamese troops during the day. The Khmer Rouge planted land mines and burnt down the homes of those alleged to be connected with the People's Republic of Kampuchea, such as village chiefs.

Insecurity continued during the 1980s. Under continued attack by both Khmer Rouge and Government troops, the people left Tum Ring commune. Little by little, as the situation began to improve, they returned to their homes. At that time, the policy of the People's Republic of Kampuchea was to organize people to work in solidarity groups (*krom samaki*), but the people preferred to ignore this system and chose to live as they had before.

### **The 1990s: Forest concessions**

Colexim Enterprise Company was granted a 147,187 hectare forest concession to the north of Tum Ring commune in 1992. It began to log valuable trees, including resin trees, at that time allowed by law inside the boundaries of the concession. People protested, but to no avail. The company agreed to pay 6,000 to 7,000 riels (\$1.50 to \$1.75) for each resin tree. Villagers say that many did not receive even this amount. Some tried to resist, such as those in Runteah village.

In 1994, GAT and Mieng Ly Heng companies were each granted a concession of 149,780 hectares to the south and 195,500 hectares to the west of Tum Ring commune respectively. All the lands of the Tum Ring commune, as well as the surrounding forest, fell under the control of these companies. Logs were routed to Sandan district and floated down Stung Sen River to the Tonle Sap.

In 1996, GAT cleared a road in the forest to transport logs to its factories. The new road cut travel to Kompong Thmar on National Road 6 to two hours by car, facilitating access to the market and to medical services, but also creating new financial needs and bringing new problems.

## **2001 to present: Activities of Chup State Rubber Plantation and the forest concessionaires**

The sub-decree signed by the Prime Minister on August 17 2001 authorized the removal of 6 200 hectares of red land from the three forest concessions: 2,181 hectares from GAT; 3,577 from Colexim; and 442 hectares from Mieng Ly Heng. Chup State Rubber Plantation was given 4,359 hectares for an industrial scale rubber plantation. 1,841 hectares was to be reserved for the villagers: the 912 they already had, plus 929 more hectares. The Ministry of Land Management, under Article 4 of the sub-decree, was to measure the land and prepare land titles. Villagers who agreed to plant rubber trees on their land would receive assistance to take care of the trees until they produced latex.

After the three subcontracted forest concession companies cleared the forest, the stumps, the small and medium trees, as well as the villagers' orchards of cashew nut, banana, and papaya trees were bulldozed. In October 2001, local people filed complaints with non-governmental organizations in Kompong Thom. They said that they did not want to participate in the rubber tree plantation and asked to return to their traditional way of living. The authorities did not respond.

In February 2002, Global Witness found that GAT was logging inside and outside the rubber plantation. It also discovered a stockpile of unstamped and unregistered logs belonging to Colexim taken from the rubber plantation area. It was concerned that the two companies were taking advantage of the situation and that royalties would not be paid to the Government. The Department of Agriculture in Kompong Thom conducted a joint investigation and confirmed the findings of Global Witness. The Department also reported the wishes of the Tum Ring commune chief to develop community forestry.<sup>6</sup>

### **Impact on livelihoods and employment**

The situation of local people changed dramatically with the coming of the rubber plantation. Many were worried that they did not have the skills to earn their living by planting rubber trees, as it was not their customary practice. They were also concerned that they would not be able to earn their living during the seven year period that they would have to wait for the trees to produce latex. When people protested, the rubber plantation staff told them that the project would go on regardless. Village chiefs were invited to visit the Chup Rubber Plantation factory in Kompong Cham, but this was not enough to gain the villagers' trust.

Tum Ring Rubber Plantation paid 200,000 to 300,000 riels (\$50 to \$75) to each farmer to compensate for the loss of their orchards within the boundaries of the plantation. Compensation appears to have been provided on a case by case basis, rather than through any comprehensive policy. The company also said it would provide three hectares of cleared land.<sup>7</sup> Distribution began in early 2002, with many villagers protesting the distribution as they wanted their former plots. By March 2004, many had accepted the land; they were worried that otherwise they could end up with no land at all.

According to the director, people are free to plant whatever they want on the three hectares allocated to each family. According to local people, they were told to plant rubber trees or face the risk that the company would take back land. In November 2003, following queries and interventions by OHCHR/Cambodia and others, the director announced publicly that villagers could grow any crop they wished to on the distributed land.<sup>8</sup>

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<sup>6</sup> In May 2002 Global Witness reported continued logging outside the boundaries of the rubber plantation, as well as an illegal saw mill operation. Global Witness Crime Report dated May 16, 2002.

<sup>7</sup> Technically the smallholder plots were not part of the 4,359 hectares over which Chup had control. Chup only has a role in small holder production under article 3 of the sub-decree, namely the duty to provide technical assistance in growing trees.

<sup>8</sup> Announcement no. 384, dated 14 November 2003, signed by Mr. Him Oun, director of Tum Ring Rubber Plantation.

Villages with few rice fields which depend most on forest products, such as Runteah Ronieng and Khos, were the most affected. Khos village was the first to experiment with rubber tree planting. In 2002, families in Khos received plots of land from the company, and rubber trees to plant at no cost. Rubber planting is timed to take place over a three year period: one hectare is planted the first year, two hectares the second year and three the third year. In the first year of the planting cycle, communities are allowed to grow vegetables such as beans and corn between the rubber trees, but not rice. The plantation offered to help by advancing one 60 kilogram bag of bean seeds to each family to be given back the following year. Beans are a fragile crop susceptible to damage by insects, and they need constant care. After one year, their economic situation varied. Families with sufficient financial means and enough family members could generate incomes by cultivating beans. The poorest and smallest families could earn very little. Realizing that they would not be able to manage to earn a living from the land, some rented their plots to outsiders for some 100,000 to 150,000 riels (\$25-\$37.50) per hectare a year. This has generated concern that the most vulnerable families, lacking the capacity to earn their living through family scale rubber plantations, will rent or sell their plots of land to outsiders and become even poorer.

The director said that all the families of Khos village have been provided with three hectares of land, and that the company and the commune chief have recorded the names of the families and the allocation of the lands. However, the people are waiting for the Ministry of Land management to prepare land titles, in accordance with the sub-decree establishing the plantation.

According to the director, more than 150 people currently work on the plantation, some 100 from Chup Rubber Plantation in Kompong Cham, and 50 to 60 people from Tum Ring commune. The local people have lower paid jobs as they lack the skills of the Kompong Cham workers. The company employs young local people for the most part, and contracts them either on a monthly basis at 100,000 to 120,000 riels a month (\$25 to \$30) or as day labour at under \$1 a day to plant rubber trees or clear grass. Work is occasional and depends on the good will of the designated chief of a group of workers. Chup Rubber Plantation has a poor record in human rights and labour rights compliance,<sup>9</sup> and low wages and long hours remain matters of concern.

The plantation does not want to consider the case of the newcomers who cleared lands within the boundaries of the plantation from 1998 until 2002. After bulldozing their lands, it considers it has no responsibility to provide them with other land.

### **Impact on culture and social environment**

Local people say that they used to live in harmony with their environment, collecting forest products only when needed, and choosing freely their hours of work. They are not accustomed to the constraints of rubber tree plantation work and are hesitant to pursue it.

Religious practices and cultural traditions have suffered. According to local beliefs, the forest is populated with supernatural beings who rule the destiny of the people. Close to each village, there is a forest devoted to the spirits who forbid tree felling and other activities. Misfortune and disease are often considered to result from a negative relationship with a spirit. Ceremonies with offerings are organized to ask for compassion or to thank the spirits. People have been particularly opposed to the cutting down of those forests that they consider are populated with spirits. In several villages, people said that since the company began cutting down the trees, many of them have become sick. They attribute this to the punishment of the spirits, who are said to live in the large trees, who have lost their homes.

The spirit forest of Sralao Srong was the first to be cut down. Before felling the trees, the authorities of the rubber plantation organized a religious ceremony with expansive offerings, including a pig. The *rup* medium, the person who communicates with the spirits, was promised money and jobs for her

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<sup>9</sup> See, for example, Centre for Advanced Study, *Child Work and Child Labour at the Chup Rubber Plantation in Cambodia* (September 2001).

children. During the ceremony, she said that the spirits had agreed to go away, giving permission to cut down the trees. Only one tree was left and a spirit house was built under it.

In December 2003, the spirit forest of the villagers of Runteah, as well as ancient burial grounds, believed to be those of Runteah's ancestors, was bulldozed by the company. Within a six week period, six children died of disease. Villagers attributed the deaths of the children to the angry spirits of the forests and their ancestors.

The local people also practice Buddhist cults. The rubber plantation sponsored a new pagoda in Sralao Srong.

The activities of the companies have also given rise to conflict within the communities. While many people want to continue their traditional life and resist the change, others are attracted by the promise of economic benefit. These are often the more powerful people who are close to the local authorities, and rely upon their patronage. They argue that the building of the road, schools, and the pagoda and the work offered to young people will bring development to the commune. Economic differences have widened, with some receiving substantial incomes from logging and other activities, while others have become poorer with the loss of resin trees and other sources of income.

The company has also built a compound of concrete houses close to Khos village for its staff, mainly from the plantation in Kompong Cham, as well as for experts from Malaysia. People coming from Kompong Tmar have opened four or five restaurants. A small number of sex workers have begun to work there. There is no information about sexually transmissible diseases including AIDS, and condoms are not for sale in the shops.

### **Violence and insecurity**

Since the arrival of the companies, the local population has had frequent confrontations with company security guards, and several incidents of violence and intimidation have been reported.

In April 1997, villager Chan Oeurn tried to stop Colexim loggers from cutting down resin trees. He was shot dead by a security guard who fled with the help of other guards. He was not charged with murder. Colexim gave some financial compensation to the family of the victim.

A man who goes by the name of "Kae Pram" (his radio call sign is 95), heads the security guards of Mieng Ly Heng company, and has a particularly brutal reputation. He is the brother of Seng Keang, the director of Seng Keang Company, the main subcontractor of Mieng Ly Heng. In Roniem village, people reported that they have been frequently threatened with death for their attempts to block illegal logging and illegal transport.

In December 2001, the villagers of Runteah village tried to oppose the bulldozing of their forest but were confronted by the armed guards shooting guns over their heads, and did not dare continue.

A group of bandits has also been operating in the area. The commune chief's son-in-law was kidnapped in 2001 after killing one of the group. His family is reported to have paid \$2000 for his release. In early April 2003, two Malaysians and two Cambodians working for the plantation were kidnapped. The company is said to have paid \$15,000 for their release.

Another concern is the uncontrolled logging taking place in the forest. Since the forest companies have begun logging, the temptation for local people to cut down trees is high. Those close to local authorities, or with enough money to pay the company guards the "entry fee" to obtain access to the forest to collect wood, transact with both local traders and those from outside the region to organise the transport of wood from the commune. Those who cannot afford to pay the entry fee take hidden tracks into the forest and remove small trees to sell as firewood. If caught by company guards or the district police, their oxcarts are seized and they must pay to get them back. Meanwhile many of the small and medium trees that are cut down are put aside to rot or are burnt.

*“Everyday I see trucks loaded with logs going outside Tum ring. I am too poor to pay the village chief and the people of the company to go and cut down a tree to have wood for a good house. I see the forest reducing and my life as well.”* A villager from Roniem village.

### **The companies and their subcontractors**

Grand Atlantic Timber International was found logging illegally in its concessions in 2000, 2001 and 2002, and its contract was cancelled in June 2002 following intense international donor pressure. This was the first time a commercially viable timber concession had been cancelled. GAT also had a concession in Koh Kong, and was convicted by the courts for illegal logging in Koh Kong, the only concessionaire ever convicted by a court for illegal logging. The penalty was to pay royalties on the 777 logs illegally felled in a neighboring concession. In October 2003, Global Witness documented illegal logging activities supervised by members of the military inside the former GAT concession.<sup>10</sup> GAT is said to be backed by senior military officers.

Colexim is a joint venture between the Government of Cambodia and Mr. Okada, representative in Cambodia of the Japanese timber company Marubeni. Despite having one of the best stocked concessions and having continuously logged from 1996 to 2001, Colexim claimed in 2001 to have incurred debts of approximately \$2 million. In May 2003, Colexim requested authorization from the Government and donors to transport logs from Tum Ring, amounting to \$1million in value, despite the moratorium on the transport of logs. This generated considerable and continuing protest. Colexim's forest management plan for the next 25 years is now before the Government for its approval.

Mieng Ly Heng's contract was cancelled in 2003 after a review of the concession's inventory determined that there were insufficient timber resources remaining in the concession to make it economically viable.

The three concessionaires have subcontracted companies to undertake the logging, some of which, such as Seng Keang company, are reported to have family or other close connections with senior Government figures.

### **Firewood for giants: Visit of Special Representative in July 2003**

The Special Representative visited Tum Ring commune in July 2003 during his ninth mission to Cambodia. He met with local populations and commune chiefs, and listened to their concerns. When meeting with local forestry officials, he personally witnessed the transport of five truckloads of large tree trunks, including those of resin trees. When he queried this, he was shown permits for firewood. A meeting arranged in advance with company representatives did not take place because company representatives failed to turn up. On his return to Phnom Penh, the Special Representative wrote to the Prime Minister conveying his concerns and asking for his intervention, but has received no response.

### **Plans for future rubber plantations**

In line with the Government's policy to promote new rubber plantations, areas of red soil have been identified which are either under cultivation by local people, or are located in forested areas, mostly in the north and northeast of Cambodia where ethnic Kouy, and other indigenous peoples live. Red

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<sup>10</sup> It also found illegal logging and land clearing outside the rubber plantation boundaries east of Khos Village and in the Tum Ar spirit forest. “Illegal log transportation from the Tum Ring forest continues. Freshly cut logs are sawn up in the forest and 1-2 meter log sections are loaded into trucks and earth moving vehicles, covered with tarpaulins and transported at night time to the Kingwood plywood factory along route 6 in Kandal Province north of Phnom Penh. ...The transports are apparently disguised and authorized as ‘firewood’. The cutting of resin trees continues inside and outside the designated boundaries.” see Global Witness letter dated 28 October 2003.

soils suitable for rubber are reportedly also being sought out particularly in Ratanakiri and Mondulhiri provinces. Companies that have made requests to the Government for red soil land areas are reported to include Sunweeve and Oriental Grass rubber plantation in Pailin Municipality for 5,000 hectares; Seng Keang Co. Rubber plantation in Sandan District, Kompong Thom province for 10,000 hectares; Heng Brothers Co.Ltd. rubber plantation in Nhang Commune, Andong Meas District, Ratanakiri for 10,000 to 15,000 hectares; and Marubeni in O Reang and Sen Monorom, Mondulhiri Province for 10,000 hectares.

## **Conclusion**

The impact of the concession companies and the rubber plantation company's activities on the villages and people of Tum Ring has been severe. The local people have been wrenched from a traditional life with little regard for their welfare or culture. Their environment has been destroyed.

The fieldwork undertaken found that a large part of the Tum Ring forest has been logged, including primary forest, in disregard of the law classifying primary forests as public State land and as such protected from logging or from being granted as forest concessions. Illegal logging and the chopping down of resin trees continue. No environmental or social impact assessments have been undertaken. There is concern that a planned rubber processing factory could further contribute to environmental degradation. More forest areas are to be cleared. The future of the people of Tum Ring commune appears to be sealed as most of the resin trees and forest resources upon which they have depended have been destroyed. They badly need help.

## **Recommendations**

The Government should:

- Review the contract with Colexim, and ensure that Chup Rubber Plantation complies fully with its obligations under the sub-decree and respects national and international law.
- Monitor and stop illegal logging outside the boundaries of Chup Rubber Plantation.
- Refuse Colexim's request to transport logs to an outside sawmill. Approval of such a practice would encourage further logging activities in land concessions located in forested areas.<sup>11</sup>
- Assist the people of Tum Ring with loans

Local level:

- Families whose farming lands have been bulldozed should be allocated a three hectare piece of land, whether they are old or new settlers.
- Families allocated land should be free to plant what they want.
- Certificates of title should be granted to all those allocated plots of land.
- Participation in family scale rubber plantations should be voluntary.
- Chup should provide training to those who wish to plant rubber trees.

Non-governmental organizations should:

- Closely monitor the situation of the local people, and document and report any violations of their rights.
- Help the local people to develop solutions, for example to obtain land titles, training, credits, and access to proper health care and education.

November 2004

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<sup>11</sup> For example, Haining in Kompong Speu province, and Flour Manufacturing Company and Green Sea Industrial Company land concessions in Stung Treng province.

## **Annex 2**

### **CJ Cambodia Company: a background note**

On 15 November 1999, CJ Cambodia Company (shareholding: South Korean 95 per cent; Cambodian 5 per cent) signed a contract with the Ministry of Agriculture for a 3,000 hectare economic land concession in Trang Troyeung commune, Phnom Srouch district, Kompong Speu province to plant cassava for flour processing. On 20 May 2001, the company signed a contract for a second concession of 5,000 hectares, adjacent to the first, again for cassava. The company has bulldozed most of the first concession, planted, and built a canal round the concession. It has been bulldozing in the second concession, but reports indicate that it has suspended its activities for the moment.

The two concessions cover a large part of Trang Troyeung commune, and affect the local population of several villages. Phnom Srouch district is part of a large military development zone established in 1996 to resettle demobilized soldiers, among them former Khmer Rouge soldiers. The concessions are therefore under the direct "protection" of armed military officers and demobilized soldiers. The recent history of the area -- fighting, land distribution and land management by the military, and more recently speculation in land -- has given rise to a confused situation replete with conflict, evictions, intimidation, and threat. Phnom Srouch district covers 156,455 hectares of which 118,396 hectares have been contracted out as economic concessions, with little land left for local people.

In the 1960s, the area of Trang Troyeung was covered by forest. A few families in six villages made a living from rice farming and gathering forest products. A good road connected the villages to National Road 4. In the early 1970s, the Khmer Rouge controlled the area. From 1975 to 1979, they set up co-operatives, cleared land, and built irrigation dams and canals for intensive rice cultivation. During the 1980s and until the mid-1990s, fighting between Khmer Rouge and government troops was intense in the area. People abandoned the area and settled along National Road 4.

In 1996, Khmer Rouge troops, under the command of Pailin, defected and were integrated into the Royal Cambodian Armed Forces. The area was declared a military development zone. Military commander of Battalion 44 told former Khmer Rouge families to settle there and to clear land.<sup>1</sup> Prompted by calls from the Government to resettle the land following the end of conflict, internally displaced families subsequently came from Takeo, Battambang and other provinces asking for land.

In 1998, 16 villages were created under the supervision of a former Khmer Rouge officer, acting as a commune chief. An "unofficial" commune was established, and each family was provided with land for housing and farming. The villagers were mobilised to build roads and bridges, and families built houses, cleared land and planted rice. Each family paid 10,000 riels (\$2.5) as an "administrative fee" to obtain land titles issued by the "unofficial" local authorities. At this time, some dense forest remained, but most of the valuable trees have since been cut down by the military, and mostly degraded forest is left. The "unofficial" commune was never recognised by the Government; and the villages are now part of eight villages that are.

In November 1999, CJ Cambodia signed its first contract. In 2000, the district chief, the commune chief, company representatives, and members of the RCAF invited the local people for a meeting. They told them that the land now belonged to the company and that everyone

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<sup>1</sup> Battalion 44 later became Division 44, and is now known as 31<sup>st</sup> Infantry Brigade with Brigadier General Srun Saroeun as its commander.

living inside the concession had to move away. Shortly after, the company began to cut trees, bulldoze the land, and destroy the rice fields. The “unofficial” commune authorities attempted to collect back the “land titles” promising to return the 10,000 riels. Armed soldiers intimidated people into handing over their “land titles” and into leaving their land.

In 2001, the local people filed complaints to the district chief, provincial governor and court, but with little result. The provincial governor asked for an environmental and social impact assessment, but without success. The Lutheran World Federation and the non-governmental organisation, ADHOC, collected 187 complaints from the eight villages to submit to the court. Legal Aid of Cambodia took up the case. The local people asked for their rights to the land to be recognized and for their housing and farmland to be delimited.

The Lutheran World Federation has been working with the local population of Trang Troyeung commune since 1997 when the Government announced that the area could be resettled. Since the company started its activities, LWF has encountered increasing difficulties. The enthusiasm of villagers to participate in long-term development projects has also diminished because of their insecure situation. As part of its advocacy programme, LWF has been helping to them to secure their land. On June 2003, a community house it built in O Kontrom village was burnt down. No one has been arrested, and no investigation has been undertaken.

The Special Representative for human rights in Cambodia visited Trang Troyeung commune in November 2003, and met with the local people. He delivered a petition to the Prime Minister on their behalf, signed by 222 villagers, at a meeting in early December 2003. The Prime Minister said he would help.

Subsequent reports from non-governmental organisations indicate that acts of harassment and intimidation by the military have been reduced, but that the situation overall remains largely the same. LWF organized a meeting in June 2004 with commune councillors and Lt. Col. Svay Sothy, CJ Cambodia’s local representative in order to resolve the situation of 22 of 56 families which insisted on remaining in their village of Krol Tunsorng, located in the second concession, when the other families were forced to leave. At the meeting, Lt. Col. Svay Sothy proposed that the company would give two and a half hectares of farmland to each family, but when informed, the families refused. They are seeking three hectares instead. There have been no further discussions since then.

The dispute has been brought to the attention of the district Cadastral Commission, but thus far there has been no response.

November 2004

## LIST OF LAND CONCESSIONS FOR ECONOMIC PURPOSES

(Sources: Ministry of Agriculture, Forestry and Fisheries and provincial departments, Council for the Development of Cambodia and Non-Governmental Organizations)

### Annex III

No.	Location by Province and District	Concessionaires	Share Holders (CDC List)	Area in Hectares	Purpose	Date of Execution of Contract	Expiry Date	Source	Additional Information
<b>KOMPONG SPEU</b>									
1	Phnom Srouch	* <b>Cambo Victor Investing &amp; Development Co.</b>	Taiwan 95 % Cambodia 5%	26,550	Rice, corn, cassava, peanut, soybean	13 August 2001	13 August 2071	Contracted with MAFF	
2	Phnom Srouch	* <b>Cambodia Haining Group Co.</b>	China 100%	21,250	Cassava, palm oil, animal raising	23 July 1998	23 July 2068	Contracted with MAFF	
3	Phnom Srouch	<b>China National Corporation for Overseas Economic Cooperation Laostar</b>	Cambodia 51% China 49%	14,700 reduced to 8,000	Corn, vegetable, rice	26 September 2000	N/A	MAFF letter	Located in MR3 development zone. Letter from General Kun Kim
4	Phnom Srouch	* <b>Henan (Cambodia) Economic &amp; Trade Development Zone</b>	China 100%	4,100	Cassava, palm oil, and animal raising	29 July 1999	29 July 2068	Contracted with MAFF	
5	Phnom Srouch	* <b>Development Industrial Ouk Khun Co., LTD (ADUOK)</b>	N/A	12,506	Cashew nut	25 May 2001 first contract: April 1992	25 May 2071	Company	
6	Phnom Srouch	<b>CJ Cambodia Co., LTD</b>	Korea 95% Cambodia 5%	3,000	Cassava	15 November 1999	N/A	MAFF letter	
7	Phnom Srouch	* <b>CJ Cambodia Co., LTD</b>	Korea 95% Cambodia 5%	5,000	Cassava	20 April 2001	20 April 2071	Contracted with MAFF	
8	Phnom Srouch	* <b>Kimsville Corp Co.</b>	United States 100%	3,200	Cassava	24 October 2000	24 October 2070	Contracted with MAFF	
9	Phnom Srouch	* <b>Golden Land Development Co. Ltd.</b>	N/A	2,100 increased to 4,900	Acacia and eucalyptus	05 March 2004	5 March 2074	Contracted with MAFF	MR3 development zone contract, maps
10	Phnom Srouch	<b>Hour Hong Co. LTD</b>	Cambodia 100%	2,040	Fruit trees, animal raising	Not yet contracted		MAFF letter	MR3 development Zone, map
11	Phnom Srouch	<b>Un Borin Trade &amp; Agriculture Development</b>	Cambodia 100%	16,600	Tapioca and sugar cane plantation	Not yet contracted		MAFF letter	

\* Contract obtained by the OHCHR/Cambodia

		<b>Co.</b>							
12	<b>Thpong</b>	<b>M. Consolidated Plantation Co.</b>	Malaysia 100%	12,700	N/A	Not yet contracted		MAFF letter	
13	<b>Phnom Srouch</b>	<b>Direct International Co. LTD</b>	N/A	3,100	N/A	N/A	N/A	Kompong Speu DAFF	
14	<b>Phnom Srouch</b>	<b>Bun Samnang</b>	N/A	10,000	N/A	N/A	N/A	Kompong Speu DAFF	MR3 Development Zone
15	<b>Phnom Srouch</b>	<b>Osman Hassan Co.</b>	N/A	30,000	N/A	N/A	N/A	Kompong Speu DAFF	N/A
16	<b>Phnom Srouch</b>	<b>Pacific Plantation Co.Ltd</b>	N/A	2,780	N/A	N/A	N/A	Kompong Speu DAFF	N/A
17	<b>Phnom Srouch</b>	<b>Srae Khlong Estate Co.</b>	N/A	3,400	N/A	N/A	N/A	Kompong Speu DAFF	N/A
18	<b>Phnom Srouch</b>	<b>United Plantation Corporation</b>	N/A	2,760	N/A	N/A	N/A	Kompong Speu DAFF	N/A
19	<b>Phnom Srouch</b>	<b>Agroproduce International</b>	N/A	2,460	N/A	N/A	N/A	Kompong Speu DAFF	MR3 development Zone
20	<b>Phnom Srouch</b>	<b>CT Co. Ltd.</b>	N/A	1,350	N/A	N/A	N/A	Kompong Speu DAFF	N/A
21	<b>Phnom Srouch</b>	<b>Tony International Land Development Co.Ltd.</b>	N/A	1,900	N/A	N/A	N/A	Kompong Speu DAFF	MR3 development Zone
22	<b>Phnom Srouch</b>	<b>Yuanda Wolf (Cambodia) Silk Co.Ltd.</b>	N/A	1,400	N/A	N/A	N/A	Kompong Speu DAFF	Map, overlap with Kirirom National Park
23	<b>Phnom Srouch</b>	<b>Sino Agriculture Resources</b>	N/A	2,200	N/A	N/A	N/A	Kompong Speu DAFF	N/A
24	<b>Phnom Srouch</b>	<b>Capital Hill Plantation Co. Ltd</b>	N/A	3,350	N/A	N/A	N/A	Kompong Speu DAFF	N/A
25	<b>Phnom Srouch</b>	<b>Tong Nam A Co. Ltd.</b>	N/A	304	Sugar cane, hospital, hotel, business center	N/A	N/A	Field Visit	Map
26	<b>Thpong</b>	<b>Pheng Fa</b>	(Not sure with the name)	3,000	N/A	N/A	N/A	Kompong Speu DAFF	N/A
27	<b>Thpong</b>	<b>Khmer Rubber Plantation Development</b>	Sugar cane	13,000	N/A	N/A	N/A	Kompong Speu DAFF	N/A
28	<b>Aural</b>	<b>Khmer Rubber Plantation Development</b>	Sugar cane	40,000	N/A	N/A	N/A	Kompong Speu DAFF	N/A

<b>KOMPONG CHAM</b>									
29	Choeung Prey	*Agro Star Invest.	Cambodia 100%	2,400	animal breeding and cashew nut	January 1995	January 2065	Contracted with MAFF	
30		Sokhimex Rubber Plantation.	Cambodia 100%	9,900	Rubber tree	27 May 1998	N/A	MAFF letter	
31		T.T.Y agricultural Plan Development Co.	Cambodia 100%	1,070	Rubber tree	2 May 2000	N/A	MAFF letter	
32		Family Community Heng Sarath.	N/A	500	Rubber tree	23 January 1992	N/A	MAFF letter	
33		Bopha Angkorimech Trong Kong	N/A	5,000	N/A	Not yet contracted		MAFF letter	
34		Mieng Li Heng Investment	N/A	3,000	N/A	Not yet contracted		MAFF letter	
<b>KOMPOT</b>									
35		Khemlen Import & Export	N/A	16,400	Palm oil	26 October 2000	N/A	MAFF letter	
36		Cambodian Tapioca Pty Enterprise	Malaysia 51% Cambodia 49 %	5,100	Cassava	Not yet contracted		MAFF letter	
37		Shing Yue Commercial PTY Ltd	Malaysia 100%	10,000	Rubber	Not yet contracted		MAFF letter	
38		China Evergret Cambodia Agriculture Development	China 93,90% Cambodia 6,10%	4,000	Silk worms, corn, vegetable and rice	Not yet contracted		MAFF letter	
39		Sin Thai Kampot	Cambodia 60% Taiwan 40 %	5,700	Cashew nut, durian, corn, bean	Not yet contracted		MAFF letter	
<b>KOH KONG</b>									
40		Talam Plantation Holding Co.	N/A	36,700	Palm oil, rubber	5 October 1998	N/A	MAFF	
41		*The Green Rich Co.,Ltd	Taiwan 100%	60,200 reduced to 18,300	Palm oil, acacia	25 November 1998	25 November 2068	Contract with MAFF	
42		China Cambodia State Farm International	China 100%	7,500	Agro-agriculture, animal raising	6 October 1998	N/A	MAFF	
43		Chung Shin Cambodia Palm Oil.	Taiwan 87% Cambodia 13%	16,000	Soya bean plantation and manufacturing	Not yet contracted		MAFF letter	

44	<b>Kompong Seila</b>	<b>(Cambodia) Malaysia Palm Oil Investment and Development Co.,LTD.</b>	N/A	8,235	Palm oil	N/A	N/A	Request letter to the Prime Minister	Map
<b>RATTANAKIRI</b>									
45		<b>Mithapheap Men Sarun and Rama Khmer</b>	N/A	20,000	Palm oil	21 December 1999	N/A	MAFF letter	
46		<b>Tai Seng Import &amp; Export Co.</b>	N/A	2,000	N/A	Not yet contracted		MAFF letter	
47	<b>Andoung Meas</b>	<b>Heng Brothers Co. Ltd.</b>	N/A	10,000	Rubber	N/A	N/A	NGOs	
<b>MONDULKIRI</b>									
48		<b>Ford Thai Co.</b>		200	N/A	Not yet contracted		MAFF letter	
49	O' Reang	<b>Marubeni</b>	N/A	11,231	Rubber	N/A	N/A	Company present action	Map
50	O' Reang	<b>Wuzhishan L.S. Group</b>	N/A	Requested for 199,999 but approved only 10,000 by Council of Ministers	Pine tree	N/A	N/A	Letter of Council of Ministers	
<b>STUNG TRENG</b>									
51	Thalaborivat district	<b>*Flour Manufacturing Co., Ltd</b>	Cambodia 50% China 50%	7,400	Teak tree	13 September 1999	13 September 2069	Contracted with MAFF	
52	Seam Pang and Stoeng Treng	<b>*Green Sea Industry Co.,Ltd (Mong Rethy Group)</b>	N/A	100,852	Teak tree	23 November 2001	23 November 2071	Contracted with MAFF	
<b>TAKEO</b>									
53		<b>Lim Kry Agriculture Development Co., Ltd</b>	Cambodia 100%	1,050	Rice	Not yet contracted		MAFF letter	
<b>SIHANOUKVILLE</b>									
54	Khan Prey Noup	<b>Mong Reththy Investment Cambodia Palm Oil Co., LTD</b>	Cambodia 100%	11,000	Palm oil tree	09 January 1995		MAFF letter	
55	Khan Prey Noup	<b>Mong Reththy Investment Cambodia Cassava Co.,LTD</b>	Cambodia 60% Thailand 40%	1,800	Cassava	18 March 2000		MAFF letter	

<b>KOMPONG CHHNANG</b>									
56	Toek Phos, Samaki Meanchey and Boribo	<b>*Pheapimex Co., Ltd</b>	N/A	176,065	Eucalyptus tree	8 January 2000	2070	Contracted with MAFF	
<b>PURSAT</b>									
57	Krovav, Krakor, Sampov Meas	<b>*Pheapimex Co., Ltd</b>	N/A	138,963	Eucalyptus tree	8 January 2000	2070	Contracted with MAFF	
58	Krakov	<b>Ratana Visal Development Co., Ltd</b>	China 29% Cambodia 71%	3,000	Cashew nut	15 October 99	N/A	MAFF letter	
59		<b>Sour Kear</b>	Cambodia 100%	300	Cashew nut	Not yet contracted		MAFF letter	
<b>KOMPONG THOM</b>									
60		<b>Cambodia Eversky</b>	Cambodia 100%	10,000	Cotton	3 January 1998	N/A	MAFF letter	
61	Santuk and Prasat Sambo	<b>*Cam Chi international Agriculture Development</b>	China 50% Cambodia 50%	26,500	Cassava, corn, fruit crops and animal raising	3 March 2000	3 March 2070	Contracted with MAFF	
<b>BATTAMBANG</b>									
62	Kamrieng	<b>*Leang Hour Hong Import &amp; Export &amp; Agro-Industrial Development and Refinery</b>	Cambodia 100%	8,000	Sugar cane, cassava	7 June 2000	7 June 2070	Contracted with MAFF	
63	Pailin, Battambang	<b>Pacific Delta Trading and Shipping Co.Ltd.</b>	N/A	27,000	Sugar cane	N/A	N/A	Company	Map
64		<b>Naco Rice</b>	N/A	2,000	N/A	Not yet contracted	N/A	MAFF letter	

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