



សមាគមអាជីវកម្ម  
ADHOC

ឧត្តរមានជ័យ  
Oddor Meanchey  
27,736 Ha

7,900 Ha

បាត់ដំបង  
Battambang

ប៉ៃលិន  
Pailin

73,453 Ha

បន្ទាយមានជ័យ  
Banteay Meanchey

13,200 Ha

សៀមរាប  
Siem Reap

ស្ទឹងត្រែង  
Stoeng Treng

187,073 Ha

បន្ទាយ  
Banteay

14,700 Ha

# A TURNING POINT?

## LAND, HOUSING AND NATURAL RESOURCES RIGHTS IN CAMBODIA IN 2012



Printed by ADHOC  
February 2013








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## EXECUTIVE SUMMARY

Whereas 2011 had seen a sharp increase in the number of Economic Land Concessions (ELCs) granted by the Royal Government of Cambodia to private companies, in 2012 conflicts became more acute and protests multiplied. The government showed that it had understood the seriousness of the situation by taking initiatives aimed at resolving land disputes, addressing some of the issues related to ELCs and granting thousands of land titles to rural families. However, some of the most pressing concerns about the overall pressure on land, landlessness, land tenure insecurity, lack of law enforcement, power abuses, and encroachment on livelihoods and natural resources remained unaddressed.

### The Reality: ELCs, SLCs, Land Disputes, Forced Evictions and Natural Resources

As of late December 2012, the Royal Government of Cambodia had granted or reserved at least 2,657,470 hectares of land to private companies under the Economic Land Concession scheme. This represents a 16.7 % increase from 2011. In 2012 alone, the government issued 66 sub-decrees reserving 381,121 hectares of land (including 108,524 hectares transferred from state public property to state private property) for ELCs, despite the announcement of a moratorium on the granting of Economic Land Concessions. The newly granted concessions and land re-classifications mostly affected protected areas.

Many ELCs have been approved despite substantial breaches of legal requirements. People living in concession zones are generally ignorant of basic information about the concessions, which points to a systematic failure by relevant institutions to inform the public about projects. Furthermore, private companies covet land which should have been protected in the first place, such as protected areas and indigenous land. Overall, oversight of concessions has been weak.

In 2012, the government granted 38 Social Land Concessions (SLCs) covering 100,790 hectares—more than twice the area granted under the SLC scheme in 2011 and one fourth of the area granted under the ELC scheme in 2012. This may indicate a change in policy, for SLC figures were negligible prior to 2012. However, out of 38 newly granted SLCs, 13 gave rise to conflicts. Corruption, mismanagement and serious abuses have been reported in relation to SLCs, which state authorities have failed to properly investigate. Today there is concern that measures taken to implement

the SLC policy could actually worsen the situation of vulnerable families, aggravating landlessness and fueling land conflicts. People evicted or abused because of SLCs lose on all counts, as they are excluded from the very programs which should address their grievances.

In 2012, ADHOC handled 70 cases of land disputes affecting a total of 101,408 hectares and 10,689 families. In addition, ADHOC followed up on 62 unsolved cases of land conflicts left over from previous years. The most affected provinces, in terms of number and intensity of land disputes, were Battambang, Kampong Cham, Kampong Thom, Koh Kong, Kratie, Mondulkiri, Rattanakiri and Siem Reap.

Hundreds of communities across Cambodia have expressed their concern over the fact that they have been denied the right to register the land they legally occupy. As a consequence, they are facing eviction. Authorities at all levels have favored business interests over the recognition of people's legitimate rights by referring to the latter as "squatters" or "new-comers" and using the development narrative to illegally evict them.

In most cases, the authorities have failed to comply with legal requirements concerning evictions and resettlement. The adoption of an Evictions Act and a National Housing Policy would be crucial to enhancing due process and security of tenure. They could allow the authorities to devise a strategy to address the issues of landlessness and informal settlements and to set out human rights safeguards in accordance with international standards. As of today, evictions in Cambodia continue to illegally occur as a first, not last, resort.



Despite environmental regulations and the official moratorium on logging, Cambodia's natural resources are fast disappearing. Large tracts of forests have been affected by land concessions and smaller scale exploitation and logging. Indigenous peoples are particularly threatened.

The land situation is becoming critical. Citizens and communities are more and more aware of their rights and increasingly demand justice and accountability. Yet land is scarce and the authorities fail to uphold citizens' rights. If the current problems are not addressed as a matter of priority, social stability may be at stake.

### Adverse Effects and Consequences

An ever-increasing percentage of the Cambodian population is landless. Successive land titling programs have failed to address the needs of the Cambodian citizens who are most in need of land tenure security, i.e., those who live in informal settlements and disputed areas, as well as indigenous people. The question now is, where will Cambodia find enough land for the next generation, given that almost half the arable land is in the hands of private concessionaires, leased for up to 99 years?

Agro-industrial development and gradual increases in agricultural productivity are possible, notably through well-managed and well-monitored land concessions. However, smallholder agriculture with enhanced security of tenure would reduce poverty faster. The change of status currently experienced by many Cambodians (from farmers to wage-laborers) bears close resemblance to nineteenth-century European economic processes involving rural exodus and the transformation of a large part of the peasantry into landless wage-laborers. The government has been using migration as a pressure valve, exporting Cambodia's cheap, unskilled labor force to neighboring countries.

The livelihoods and cultural rights of non-indigenous and indigenous people alike have paid a high price to development policies. In general, communities have not been consulted prior to the implementation of projects and have been left without any recourse in front of the *fait accompli*. Illegal logging, land concessions and large infrastructure projects continue to adversely impact natural resources. Primary forests such as Prey Lang are endangered, which could have tremendously negative effects on wildlife and biodiversity. Fisheries and water are also threatened, due to increased pollution and exploitation.

The current policies and practices are unsustainable. Today there is concern that protected areas (including primary forests and wildlife reserves) are fast disappearing and that there is not much arable land left for agricultural or agro-pastoral purposes.

### Conflict Resolution

On paper there exist many means of settling disputes related to land and housing rights, including mediation, administrative bodies, and the court system. In practice, formal conflict resolution processes and institutions are often put aside or do not play their role. Conflicts often come to an end because the weaker party is threatened, harassed or forced to accept sub-standard compensation. The chief factors influencing land dispute settlement are the ability of the stronger party to the conflict to intimidate the weaker; to monopolize support from various public authorities; to act with impunity; and to manipulate the judicial system. Many people lack access to effective remedies and do not trust the courts, which favor rich, well-connected individuals and companies over poor people.

In 2012, rights workers witnessed a crackdown on peaceful protests and increased harassment of land and housing rights activists. On several occasions community empowerment meetings organized by civil



society organizations were disrupted. What is even more concerning, violence and threats of violence are increasingly being used against community representatives as well as land and housing rights workers and activists.

An “infernal trio” of criminal charges (incitement, defamation and disinformation) has served to intimidate and harass Human Rights Defenders. Against the letter and spirit of criminal law, the courts have used pre-trial detention as a rule (not the exception) and detained people in order to break their will. In 2012, 232 people were arrested in relation to land and housing issues—a 144% increase from 2011. As of 31 December 2012, 38 were still in prison and 50 were at large. Several high profile cases, such as the trials of Mam Sonando and Boeung Kak and Borei Keila representatives and the killing of Chut Wutty, have taken their toll on human rights work. Fear is now pervasive, as the judicial system has consistently supported the government’s views and leveled trumped-up charges against activists. As a consequence, it is increasingly dangerous to represent communities and to defend the land, housing and natural resources rights of Cambodian citizens.

Cambodian courts are strong with the weak and weak with the strong. The impunity related to power abuses, the lack of law enforcement and lack of independence of the judiciary damage the reputation of Cambodia. The authorities cannot expect to resolve the land crisis this way.

### Government Initiatives in 2012

On 7 May 2012, Prime Minister Hun Sen announced the issuance of a directive instituting a moratorium on the granting of new ELCs and enforcing the so-called “leopard-skin” policy. Directive 001 also called for a review of all existing concessions in order to check their

compliance with relevant laws and regulations.

ADHOC welcomes this initiative, which was much needed. Nevertheless, an important loophole exists within the moratorium. ELCs that were under consideration when the freeze was announced are excluded from its application. In fact, ADHOC found that 33 ELCs had been granted since 7 May 2012, including as many as 13 in June and 10 in August. (From September to December 2012, only 4 new ELCs were granted.) If the government does not disclose information on exactly how many ELCs were in the pipeline on 7 May 2012, independent observers may question its political will to mitigate the effects of the ELC policy. The granting of additional concessions despite the moratorium would mean that promises made to private companies are more important than promises made to the Cambodian people.

On 14 June, the Prime Minister announced his intention to launch a new, accelerated land titling program to be implemented by youth volunteers in charge of demarcating people’s land. As of 22 December 2012, 71,220 land titles had been delivered and the volunteers had demarcated 333,275 plots covering 433,987 hectares.

ADHOC welcomes this development. However, since disputed areas have been left outside the scheme, people who are most in need of land titles will not receive them. Yet, recognition of possession rights (in accordance of the Land Law) could have been included in the program, in addition to land demarcation. This would have truly enhanced land tenure security by addressing the needs of people living in informal settlements or in areas potentially affected by development projects. The scheme does not address the situation of indigenous communities either. Reports ADHOC received from several of its provincial offices indicate that members of indigenous communities are being pressured into

accepting private land titles instead of collective ones.

Initiatives of the executive branch that are aimed at providing land titles to rural families and protecting their land against encroachment are welcome but insufficient. They do not address the needs of those people and communities who are most in need of land titles. With significant international technical and financial assistance, the government will have no excuse if it does not address the grievances of those who are most in need of land tenure security.

2012 could be a turning point for land and housing rights in Cambodia. Recent government initiatives amounted to recognition that something had gone wrong and that the land crisis had begun to threaten the country's stability. In the next few years, an increasing percentage of land conflicts should be linked to land grabbing in urban and rural areas alike. Economic Land Concessions now cover a large percentage of Cambodia's arable land, and the government will not be able to continue granting as many concessions as in the last few years. New ELCs may however be taken from protected areas, islands, or cancelled concessions, but fewer conflicts are likely to be related to these. Conversely, conflicts related to land grabbing are likely to go on, fueled by

greed and impunity.

What is most needed now, in addition to strengthening the rule of law and reviewing development policies, is the recognition that Cambodia's development has been unregulated. Powerful interests have benefited disproportionately from land arrangements and policies, whereas marginalized people and communities as well as the country's natural resources have borne the burden of change.

The government does not have a monopoly over the definition of development. Critical voices must be allowed to raise concerns about development projects and their adverse effects on the already poor, marginalized sections of the population. A range of alternative choices are possible, such as assisting smallholder farmers. In the absence of a comprehensive strategy aimed at addressing structural issues—exclusion, injustice and power abuse in relation to land and housing—temporary government initiatives will only patch up the problems for a short period of time. The first step must be complemented by a second (and much more difficult) one: enforcing existing laws and enhancing security of tenure for all—not just for those who live in non-disputed areas. The government now has a clear choice to make.

*Land cleared for agro-industrial exploitation near Ban Lung, Rattanakiri*



## OVERVIEW

The year 2012 has confirmed that issues and disputes pertaining to land and housing rights as well as encroachment on natural resources are of major concern. Whereas 2011 had seen a sharp increase in the number of Economic Land Concessions (ELCs) granted by the Royal Government of Cambodia to private companies, in 2012 conflicts became more acute and protests multiplied. The government showed that it had understood the seriousness of the situation by taking initiatives aimed at resolving land disputes, addressing some of the issues related to ELCs and granting land titles to thousands of rural families. However, some of the most pressing concerns about the overall pressure on land, landlessness, land tenure insecurity, lack of law enforcement, power abuses, and encroachment on livelihoods and natural resources remained unaddressed. Furthermore, 2012 has seen an unprecedented crackdown on land and housing rights activists, which now threatens to damage Cambodia's reputation by undermining any progress it has made in terms of civil and political rights.

The government continued to promote agro-industrial exploitation in the form of large-scale land leases as its prime development strategy. There is certainly a case for ELCs and other types of concessions, whose supposed advantages include additional revenues for the state and employment for the people, foreign direct investment, increased export capacities, and enhanced productivity in the agricultural sector. However, the

assumption underlying the ELC policy (that there is abundant land available for exploitation) does not hold true anymore. Pressures on land and livelihoods have become too strong to be ignored. Similarly, violations of housing rights in urban areas and indigenous people's land rights have become critical.

This report is intended to be comprehensive. It deals with land concessions, land disputes, forced evictions and encroachment on natural resources from a human rights and development perspective. However, extractive industries are beyond its scope.

Findings and analyses are based on available official data and ADHOC's investigating activities. The report first sheds light on the gap between the Cambodian legal framework and the reality with regard to land, housing and natural resources rights. It stresses that this gap is extremely significant, due to Cambodian authorities' failure to implement the law. Second, the report analyzes the consequences of rights violations in terms of land tenure security, landlessness, poverty, livelihoods and related issues. Third, it examines conflict resolution processes and institutions, and the practice. It puts emphasis on the mounting crackdown on rights activists. Last, the report provides a preliminary analysis of the initiatives taken by the Royal Government of Cambodia in 2012. The report features detailed recommendations to the government, business enterprises and Cambodia's development partners.

*Demonstrators blocking National Road 7 in Snuol district, Kratie province*



## 1. THE LEGAL FRAMEWORK AND THE REALITY

### a. THE CAMBODIAN FRAMEWORK FOR LAND, HOUSING AND NATURAL RESOURCES RIGHTS

#### CAMBODIAN LAW

Chapter III of the Constitution of the Kingdom of Cambodia provides for a full range of fundamental rights and freedoms, including the right to private ownership and to ownership of land. Article 31 further incorporates international human rights norms into the domestic legal order. Their direct applicability in Cambodian courts was confirmed by the Constitutional Council in a landmark decision (no. 092/003/2007 of 10 July 2007). Pursuant to article 44 of the Constitution, “[t]he right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation [paid] in advance.”

Regarding land, at the time of its adoption the 2001 Land Law was widely regarded as a promising piece of legislation. It identifies several regimes and forms of ownership as well as two categories of state land—state public land and state private land—and a procedure for re-classification.<sup>1</sup> It also establishes a framework for land titling (which is the prerogative of the Cadastral Commission overseen by the Ministry of Land Management, Urban Planning and Construction (MLMUPC)), land use and land management. The law authorizes the granting of Economic (ELCs) and Social Land Concessions (SLCs), setting out conditions and procedures that have been developed in specific sub-decrees, namely the 2005 Sub-Decree on Economic Land Concessions and the 2003 Sub-Decree on Social Land Concessions. ELCs are to be used for agro-industrial exploitation; they are limited to a maximum of 10,000 hectares per person (however there are

exceptions); their maximum duration is 99 years; and they may be revoked or cancelled by the government if the concessionaires do not comply with legal and contractual requirements. Specific bodies are in charge of the approval procedure and management of ELCs. Legally, the Ministry of Agriculture, Forestry and Fisheries (MAFF) is the only institution entitled to grant ELCs, but other ministries and state agencies play various roles. The granting procedure involves the classification of land as state private property, the adoption of a land use plan, the completion of a Social and Environmental Impact Assessment (SEIA) study, public consultations with citizens and communities affected by the project(s), the provision of resettlement solutions, and the provision of adequate compensation to those affected. SLCs are officially granted to poor, landless families or to army veterans and their families in accordance with a specific procedure, which includes consultations with the relevant communities.

As of yet, Cambodia has adopted neither a National Housing Policy nor an Evictions Act. A draft of the former was submitted to the Council of Ministers in November 2012. Regarding evictions, on paper domestic laws and regulations provide for due process and legal safeguards. Furthermore, Cambodia’s status as a party to international human rights instruments (see below) makes it bound to comply with international standards and provisions regarding evictions and resettlement.

Cambodia’s natural resources are protected by several laws. The 2008 Protected Areas Law defines several categories of protected areas—national parks, wildlife sanctuaries, protected landscapes, Ramsar (wetlands) sites, biosphere reserves, marine parks, natural heritage sites and “multiple use” areas—as well as a zoning system. Protected areas are divided into four zones:

<sup>1</sup> The procedure for re-classification was to be clearly set out through a specific law, which has not been adopted yet. It is currently done in accordance with sub-legal instruments, namely a Royal decree and a sub-decree, which provide for criteria and conditions for transferring state public land to state private property.

“core” zones, “conservation” zones, “sustainable use” zones, and “community” zones. The former two are wholly protected from encroachment, whereas the latter two may see some development or infrastructure building, subject to government approval. Modifications of protected areas, their zones or boundaries must follow legal and sub-decree procedures. The 2002 Forestry Law defines the framework for the management, harvesting, use, development and conservation of the forests.<sup>2</sup> Various laws and regulations also protect fisheries, livelihoods and natural resources, notably through requirements to carry out environmental impact assessment studies before large development projects or activities are implemented. In essence, these aim at conservation and/or sustainability.

## INTERNATIONAL LAW

International human rights law protects the right to adequate housing and prohibits forced evictions as well as encroachments on livelihoods without guarantees of due process and legal safeguards. The right to adequate housing is a component of the right of everyone to an adequate standard of living, which includes “adequate food, clothing and housing, and [...] the continuous improvement of living conditions” (International Covenant on Economic, Social and Cultural Rights (ICESCR), article 11(1)). As a party to

the ICESCR, Cambodia is under obligation to uphold this right.<sup>3</sup> Cambodia therefore has a legal obligation to “confer legal security of tenure upon those persons and households currently lacking such protection”<sup>4</sup> and to adopt a national housing strategy that defines objectives, identifies available resources and sets out responsibilities and time-frames for its implementation.<sup>5</sup> Adequacy of housing is defined in reference to seven criteria, including security of tenure; availability of services, materials and infrastructure; habitability; location and cultural adequacy.<sup>6</sup> In addition, Cambodia must take anti-discrimination measures to eliminate discrimination in the sphere of housing. It is noteworthy that whereas some aspects of the right are to be progressively fulfilled (as they depend on the availability of financial resources<sup>7</sup>), obligations related to non-discrimination are of immediate effect. Under-development does not justify discrimination as regards housing.

A corollary of the right to adequate housing is the prohibition of forced evictions. The expression—which we take up in this report—refers to the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal and other

- 2 Its objective is to ensure the “sustainable management” of these forests “for their social, economic and environmental benefits” (article 1). The law authorizes the establishment of forest concessions, and these may be revoked or cancelled by the government. Communities may be allocated part of a forest as “community forest” in order to manage and use forest resources in a sustainable way.
- 3 The right to an adequate standard of living was first recognized in the 1948 Universal Declaration of Human Rights (article 25(1)). The right to adequate housing is also implicit in other international instruments that guarantee the right to privacy and family life or the right to peaceful enjoyment of possessions. It is now part of customary international law.
- 4 United Nations Committee on Economic, Social and Cultural Rights, *General Comment no. 4: The Right to Adequate Housing (Art. 11(1))*, 13 December 1991, para. 8(a).
- 5 *Ibid.*, para. 12.
- 6 *Ibid.*, para. 8.
- 7 Article 2(1) of the ICESCR refers to state parties’ obligation to “take steps, individually and through international assistance and co-operation [...] to the maximum of [their] available resources, with a view to achieving progressively the full realization of the rights recognized in the [Covenant].”



protection.”<sup>8</sup> Thus, not all evictions qualify as “forced” (i.e. illegal) even if they are carried out by physical force. Only evictions carried out without due process are illegal. Those who are evicted must therefore, at a minimum, be consulted about the project prior to its implementation, be consulted about resettlement solutions, and have a right to challenge judicial and administrative decisions pertaining to their eviction. Feasible alternatives must be explored and, if evictions are ordered in accordance with the law, adequate notice must be given and general principles of reasonableness and proportionality must be observed.<sup>9</sup> In this regard, fair trial rights are of vital importance.

To some extent, livelihoods and natural resources are protected by international human rights law (let alone international environmental law), inasmuch as they are crucial to realizing rights such as the right to adequate food and the right to water, which themselves are part of the right to an adequate standard of living.<sup>10</sup> Enhancing access to, and sustainable use of, natural resources is crucial to the availability of adequate food.<sup>11</sup> States must therefore refrain from acts that prevent access to adequate food, as well as protect such access and take positive steps to strengthen food security. For instance, states must refrain from destroying crops or natural resources when such destruction has the effect

of depriving citizens of their right to adequate food or water.<sup>12</sup>

Cambodia has an obligation to respect, protect and fulfill all of the abovementioned rights. Not only is it a party to international human rights covenants and treaties; it also enshrined international human rights norms into its domestic order.

#### RIGHTS AFFECTED BY VIOLATIONS OF LAND, HOUSING AND NATURAL RESOURCES RIGHTS

When land, housing and natural resources rights are denied to people or communities, a range of other rights and freedoms may be negatively impacted. This is the case if those who are affected are left homeless, receive sub-standard compensation, or if resettlement sites are inadequate, remote or lack basic public services or facilities.<sup>13</sup>

Conversely, the enjoyment of several rights may affect land and housing rights. The rights to free expression, assembly and association, if denied, may prevent people and communities from realizing their right to adequate housing. Indeed, the improvement of housing conditions, policies and practices (including discriminatory provisions and practices) is intimately related to collective action and public advocacy.

8 UN Committee on Economic, Social and Cultural Rights, *General Comment no. 7: The Right to Adequate Housing (Art. 11(1)): Forced Evictions*, 20 May 1997, para. 3.

9 *Ibid.*, paras. 13-15.

10 As the United Nations Special Rapporteur on the Right to Food put it, “rural poor suffer from hunger because they lack access to resources such as land, do not hold secure tenure, are bound by unjust sharecropping contracts [...]” (*Third Report of the UN Special Rapporteur on the Right to Food, Jean Ziegler*, UN Doc. E/CN.4/2003/54, 10 January 2003, para. 16).

11 Adequate food must be “free from adverse substances, i.e., safe” (UN Committee on Economic, Social and Cultural Rights, *General Comment no. 12: The Right to Adequate Food (Art. 11)*, 12 May 1999, para. 8).

12 States must also make sure that activities of business enterprises do not prevent citizens from having access to adequate food or water. See *ibid.*, para. 27, and UN Committee on Economic, Social and Cultural Rights, *General Comment no. 15: The Right to Water (Arts. 11 and 12)*, 20 January 2003.

13 For instance, children’s right to education may be violated if there are no schools near the resettlement areas. If relocation sites are squalid, there may be a decrease in life expectancy and an increase in diseases, affecting the right to health. Similarly, the right to work may be denied because of homelessness or relocation that is far from places where employment is available. The rights to privacy and personal security may also be affected. Last, cultural rights may be violated if housing is a significant part of people’s identities and traditions (this holds true, in particular, for indigenous people).

Similarly, freedom of movement is crucial to housing decisions and possibilities.

Rights are thus intertwined and interdependent. Cambodia's policies and practices are legally constrained by a comprehensive legal framework. In particular, as stated above, Cambodia has an obligation to develop a National Housing Policy and to adopt a proper legal framework which includes guarantees of due process, fair trial and effective remedies. It should also adopt, as requested by several United Nations bodies, an Evictions Act in accordance with international human rights law.

## **b. THE REALITY: AN OVERALL FAILURE TO UPHOLD LAND, HOUSING AND NATURAL RESOURCES RIGHTS**

### **LAND GRABBING**

Taking account of international, cross-country studies<sup>14</sup> and the Cambodian context, we define “land grabbing” as dispossession of land as a result of grabbing by powerful actors—Cambodian or foreign. Grabbing land means grabbing the power to control and to use land with a view to deriving benefits from it. It involves significant imbalances of power (economic, political, legal) and results in land concentration, landlessness, food insecurity, sub-standard resettlement and compensation for the victims. It is generally carried out without due process, in violation of domestic and international law. More often than not, victims are smallholder farmers.

In Cambodia, land grabbing takes up several forms. It

is linked both to large-scale land leases (ELCs) and to actions of local authorities, army units, businesspeople and private land owners. For the sake of convenience and project implementation, in its daily work ADHOC uses the expression “land grabbing” restrictively, to refer to private land conflicts involving the grabbing of land by one party that is more powerful than the other, in peri-urban and rural areas. ADHOC investigates and reports on cases related to ELCs, SLCs and forced evictions separately. This report follows this categorization; however, “land grabbing” as a phenomenon may be involved in all four categories, as the problems of land tenure insecurity, lack of law enforcement and lack of effective remedies are central to all.

### **ECONOMIC LAND CONCESSIONS**

As of late December 2012, the government had reserved or granted at least 2,657,470 hectares of land to private companies under the Economic Land Concession scheme. This represents a 16.7 % increase from 2011.<sup>15</sup> The total number of land concessions may actually be higher since other ministries are authorized to grant various types of concessions (mining concessions, Special Economic Zones...) and to jointly sign ELC contracts. The government has not disclosed information on all existing ELCs, making it difficult to document some cases and to take legal action. ADHOC has therefore focused on the concessions about which it has been able to gather basic information, notably sub-decrees. In 2012 alone, the government issued 66 sub-decrees reserving 381,121 hectares of land for ELCs, including 33 after the announcement of a moratorium on the granting of Economic Land Concessions (7 May 2012). At least 40 companies received ELCs, but 26

14 See for instance Borras, Franco, Gomez, Kay and Spoor (2012), “Land Grabbing in Latin America and the Caribbean,” *Journal of Peasant Studies*, 39 (3-4): (845-872); Borras and Franco (2010), “Towards a Broader View of the Politics of Global Land Grab: Rethinking Land Issues, Reframing Resistance,” The Hague: International Institute of Social Studies (ISS), ICAS Working Paper Series No. 1; Zoomers (2010), “Globalisation and the Foreignisation of Space: Seven Processes Driving the Current Land Grab,” *The Journal of Peasant Studies*, 37 (2): 429-447; International Land Coalition (<http://www.landcoalition.org>).

15 As of late 2011, the government had granted 2,276,349 ha of land to 225 companies through ELCs. See ADHOC, *The Report of Land and Housing Rights 2011* (March 2012), p. 9.

sub-decrees mentioned no company name or simply re-classified land as state private land, making the granting of ELCs possible. In the meantime, an unidentified number of ELCs were cancelled or reduced in size.<sup>16</sup>

The newly granted concessions and re-classifications mostly affected protected areas. Indeed, out of 381,121 newly affected hectares, at least 272,597 hectares (or 71.5%) were granted or re-classified in protected areas, including Kirirom National Park, Lumphat Wildlife Sanctuary, Kulen Prom Tep Wildlife Sanctuary and Phnom Prech Wildlife Sanctuary (see annex). This was done through Royal Decree excising land from protected areas or through sub-decrees granting concessions within existing protected areas. Furthermore, from 2008-2010 the government reclassified 18,951 hectares of land as state private property on 28 islands off the coast of Cambodia (including Koh Kong, Koh Rong, Koh Rong Samloem, Koh Ta Kiev, Koh Tang, Koh Thmey and Koh Tunsay) and granted them to concessionaires for up to 99 years. Projects include tourism resorts and casinos. The relevant sub-decrees were only disclosed in 2012.

As of early January 2013, the “ELC” section of the website of the Ministry of Agriculture, Forestry and Fisheries (<http://www.elc.maff.gov.kh/en/>) was unavailable. On 15 January 2013, it was hacked. Official data published in March 2012 indicated that at the time only 90 companies had received ELCs covering 1,096,036 hectares. As already observed last year, ADHOC encountered difficulties gathering and double-checking

information about ELCs, because there is no institution in charge of consolidating such data in a cohesive, trans-ministry manner. However, ADHOC’s findings are based on information obtained through official information and publications (sub-decrees), which are verifiable. As the UN Special Rapporteur on the Situation of Human Rights in Cambodia emphasized, official data presented through the MAFF website are clearly below the reality.<sup>17</sup> Other civil society organizations<sup>18</sup> even report higher numbers of concessions. At any rate, this demonstrates the lack of transparency around the implementation of the ELC scheme. Since the ELC policy is a key strategy of the government, there should be total transparency about its implementation. There should also be an assessment of its effectiveness with regard to growth promotion and poverty reduction, as well as an assessment of its human and social impacts. Furthermore, several issues continue to cause concern both from a human rights and development perspective.

Firstly, at this time there is no publicly available land classification registry, i.e., information about demarcation between state public land and state private land, and actual zones. This has been the case despite repeated requests from development partners providing financial and technical assistance to Cambodia’s land sector. As a result, the government may very well grant an ELC to a private company on state public land and re-classify it as state private land *at the same time*, in violation of re-classification criteria and procedures.<sup>19</sup> ADHOC found out that in 2012, the government adopted 19 sub-decrees transferring 108,524 hectares of land

16 It is possible that some of them had not yet been established (i.e., ELC contracts had not been signed) and that some ELCs were cancelled and re-granted to new concessionaires.

17 *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, Surya P. Subedi, Addendum: A Human Rights Analysis of Economic and Other Land Concessions in Cambodia* (UN Doc. A/HRC/21/63/Add.1/Rev.1, paras. 82 and 83: “the information provided [on the MAFF website], including company profile, has not been regularly updated, and data regarding ELCs is incomplete. [...] [t]he list does not include a considerable number of agricultural concessions that are known to exist, in some cases for several years”).

18 Open Development Cambodia and LICADHO deal with mining concessions, in addition to ELCs.

19 Most importantly, to be transferred to state private property a plot of state public land must have lost its public interest value.



from state public property to state private property. The authorities have failed to explain why this has been the case and what the intended use of the land is. However, re-classification of land is the last step before granting ELCs to private companies. This land is likely reserved for ELCs.

Secondly, regulations pertaining to ELCs have not been implemented. Many concessions have been approved despite substantial breaches of legal and sub-decree requirements. In terms of size and ownership, several ELCs are known to exceed the 10,000-hectare per person limit. Powerful businessmen and officials have been able to benefit from multiple concessions through companies in which they (or their relatives) have shares or hold management positions, in breach of article 59 of the Land Law. In addition, it is hard to believe that the exception regarding size limit set out in the law <sup>20</sup> justifies the existence of concessions as large as hundreds of thousands of hectares.<sup>21</sup> If the government routinely grants exemptions, exceptions become the rule and the spirit of the law is lost.



The PPSC concession (right)  
The KSSC concession was thought to be on the left; however, the boundary is now unclear

### Case Study: Sugarcane Concessions, Kampong Speu Province

Residents of three villages (Ploach, O’Prolen and Chrok Russei) in Omlaing commune, Thpong district, Kampong Speu province have been embroiled in a conflict with Cambodian People’s Party (CPP) Senator Ly Yong Phat’s Phnom Penh Sugar Co. Ltd. (PPSC). The company was granted a 10,000-hectare concession which encroached on people’s land.

Between 2010 and 2012, 28 people have been charged in relation to this dispute, mostly for encroachment on private property. As of early 2013, 27 still faced charges. One of the community representatives has been questioned as many as eight times by the Kampong Speu Provincial Court. On 9 February, 40 RCAF troops from an unidentified unit were deployed to quash a protest outside the court. Villagers intended to submit a petition demanding the release of a community activist, and for the authorities to stop harassing villagers. As community representatives tried to enter the court premises to submit their petition, the RCAF commander threatened to open fire. As a consequence, the villagers could not submit their petition.

20 Article 59 of the Land Law stipulates that “Existing concessions which exceed [the] limit shall be reduced. However, if such reduction would result in compromising the exploitation in progress, a concessionaire may obtain a specific exemption.”

21 The Pheapimex concession in Pursat and Kampong Chhnang provinces covers more than 300,000 hectares.

In Ploach village, 90 families are still threatened with eviction. They live on a 200-meter wide strip along the road. They have been unable to cultivate their fields, which are occupied by PPSC. As a result many adults have left the village to look for work. Others work on the concession. The PPSC concession is adjacent to another sugarcane concession granted to the Kampong Speu Sugar Co. Ltd. (KSSC), which is owned by Ly Yong Phat's wife. In actual fact, the two ELCs make up one and the same concession, covering over 20,000 hectares.

Whereas article 4 of the ELC Sub-Decree mentions five cumulative criteria—regarding land classification, land use planning, impact assessment, resettlement, and compensation—which must all be fulfilled before an ELC is granted, in practice these criteria are disregarded. Few land use plans have been adopted by the land management committees; very few Social and Environmental Impact Assessment studies have been completed prior to the granting of the concessions<sup>22</sup>; and meaningful consultations have seldom taken place with the affected people and communities. In some instances, people learned that a concession had been granted on the day the company bulldozed their fields.

People living in concession zones are generally ignorant of even basic information about the concessions—their exact boundaries, area, duration, the companies involved, the intended use of the land. Investigations ADHOC staff have conducted across the country point to a systematic failure by relevant institutions to inform the public about projects. In the absence of clear information, it is impossible to complete social and environmental impact assessments. Companies often start clearing the land even before sub-decrees have been issued and contracts have been signed (they do so as soon as they have unofficially been notified by the government that they will be granted a concession).

22 Some SEIAs have been conducted after ELCs have been granted and have been marked by their lack of inclusiveness and short length. A draft law on environmental impact assessments is currently under examination.



TTY security guards about to shoot at unarmed villagers (picture provided by villagers)

### Case Study: Violence Committed by TTY Company, Kratie Province

TTY Company, which is owned by Okhna Na Marady, was awarded a 9,780-hectare ELC to grow cassava in Snuol district, Kratie province. There were no consultations with the affected people prior to the granting of the concession. On 18 January 2012, the company proceeded to clear farm land in Veal Bei village, Pir Thnu commune. TTY deployed armed guards to prevent villagers from approaching their fields while the company's bulldozers were destroying cassava plantations.

As the villagers protested, TTY security guards standing atop a tractor deliberately opened fire with AK-47 rifles. Four people were injured, including two seriously. On 4 February 2012, Kae Sovanna and Pin Kimleng were arrested and sent to Kratie Provincial Court. On 21 February, Un Piseth, a former Director-General of TTY, was also arrested. Their trial took place in November and December 2012, with only one victim being present. (NGOs and journalists did not receive any information about the trial.) On 13 December, the accused were convicted to sentences ranging from two to three years in prison, all partially suspended. Kae Sovanna declared that no one had given him any order to shoot

and that the rifles did not belong to TTY. Contrary to video evidence, he declared having shot “to the ground” and “into the air” in order to defend himself.

It appears that the authorities did not meaningfully investigate the circumstances of the shooting, in particular the chain of command—who provided the guards with AK-47s and who gave the order to open fire at unarmed protesters. Disturbingly, the February arrests took place only after Prime Minister Hun Sen gave “orders” to TTY officials to identify and turn in the suspects. Oknha Na Marady was never questioned in relation to this case or the activities of TTY.



Snuol residents affected by TTY activities

Whereas the law states that “the prioritized method for granting [ELCs] is through competitive solicited proposals,”<sup>23</sup> in practice a substantial number of ELCs are granted through unsolicited proposals. Most of the latter do not fulfill the criterion set out in the Sub-Decree for granting ELCs through unsolicited proposals, that is, where the proposer “promises to provide exceptional advantages to achieving the purposes of ELCs in situations such as [...] the introduction of new technology, exceptional linkages between social land concessions and economic land concessions, [or] exceptional access to processing or export markets.”<sup>24</sup>

<sup>23</sup> Sub-Decree on Economic Land Concessions, article 18.

<sup>24</sup> Ibid.

Here again, exceptions become the rule and eviscerate the law.

This is concerning inasmuch as private companies covet land which should have been protected in the first place. On the one hand, indigenous peoples face tremendous challenges to register their lands as indigenous lands. Under the Land Law, they as legal entities have a right to collective ownership of land; in practice, more than a decade after the adoption of the Law only three such communities have received collective land titles. The authorities disregard the right to land of indigenous peoples by refusing to recognize them as legal entities (on the basis of self-identification) and to implement measures to protect the land they claim from encroachment before a determination has been made.



Damaged Jarai potteries at a burial ground

### Case Study: Threats to Indigenous Community Land, Rattanakiri Province

In December 2012, ADHOC received information that two Vietnamese companies (Dai Dong Yoeun and Seventy Two) that received ELCs in Paknhai commune, O’Yadaw district, Rattanakiri province had been engaging in illegal logging on traditional indigenous land. Members of the Jarai indigenous community in Lom village also reported being threatened that if they

did not change their claim from collective to private land ownership, they would have to pay \$700-\$800 to the authorities as a “fine.”

In April 2012 local officials, together with representatives of Dai Dong Yoeun Company, had surveyed the land using GPS and acknowledged that land clearance would affect the communities. However, as of December areas up to 200 X 3,000 meters had been cleared by the companies. High-value timber has been exported to Vietnam through a neighboring border checkpoint. Local authorities have been intimidating members of the indigenous community. The latter have been told that they would be charged \$700-\$800 per hectare to obtain titles for their land if they did not change their claim from collective to individual ownership (up to 5-hectare plots). They have also been told that their land would be worthless as they would not be able to sell it to anybody, nor use it to obtain bank loans.

Following ADHOC’s intervention, thousands more logs were found on the concessions and seven men were arrested for illegal logging. They were linked to Company Seventy-Two. Several more men have since been arrested for illegally logging in the area. Furthermore, on 3 January 2013 members of the Jarai community discovered that an ancestral graveyard had been razed inside Dai Dong Yoeun’s concession. Approximately 1,500 graves have been destroyed and some have been exhumed by bulldozers. Following negotiations, the company agreed to pay \$4,000 as compensation to the community.

On the other hand, protected areas continue to be encroached upon on a daily basis. As there is no clear demarcation between the internal zones of protected areas, in practice the government may very well grant an ELC to a private company in a protected area’s

“core” or “conservation” zones (or in zones which should have been classified as such) and re-classify them as “sustainable use” zones at the same time. Most of the new ELCs affect protected areas, whose size is fast shrinking (see annex). This pattern is similar to the lack of transparency around the status of public land, that is, the absence of clear demarcation between state public land and state private land. One strategy that is frequently used by private companies is to clear forested land inside a protected area and then to get deforestation noted by the government, who re-classifies the land or cuts it off from the relevant protected area. Thus, instead of taking action to prevent further deterioration, the government endorses the acts of grabbers and rewards them.

Oversight of concessions has been weak. Several ELCs were cancelled in 2012; however, others remained idle for years after they were granted, in violation of the law.<sup>25</sup> They, as well as those that have been under-used or used in breach of legal or contractual provisions, must be cancelled by the government so that the land returns to efficient use by the people. It is hoped that Directive 001 will address this problem (see section 4 below).

Thirdly, as previously mentioned, there is a lack of data and documentation about ELCs across ministries. The UN Special Rapporteur Surya Subedi stressed that “it is of considerable concern that [concessions] are not cohesively documented.”<sup>26</sup> Indeed, if the government is serious about the alleged benefits of agro-industrial exploitation, then it must disclose all information related to all ELCs. In addition, it is essential that the government disclose information about the status of land in all provinces (state public/private land; pending indigenous peoples’ claims; protected areas).

## SOCIAL LAND CONCESSIONS

The Social Land Concession policy officially aims at

25 Article 62 of the Land Law.

26 *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia*, op. cit., para. 83.



alleviating poverty by providing land to poor, landless families (including those displaced by ELCs) and army veterans. The land may be used for residential or farming purposes. In 2012 the government granted 38 SLCs covering 100,790 hectares of land in 16 provinces, including seven in Kampong Cham, seven in Kampot and five in Siem Reap. In its 2011 report on land and housing rights, ADHOC noted that SLC figures were negligible compared to the amount of land allocated to private companies under other concession schemes. This did not seem to be the case in 2012, as the total land area granted as SLCs represented more than twice the area granted under the SLC scheme in 2011<sup>27</sup> and 26% of the area granted under the ELC scheme in 2012. This may represent a change in land allocation policies; however, conclusions could not be drawn at the time of writing this report. More investigation will be needed.

Corruption, mismanagement and nepotism have been reported in relation to SLCs. Procedures set out in the Sub-Decree on SLCs have not been complied with. In particular, community consultations have rarely taken place. In addition, abuses have been committed in SLC areas, which state authorities have failed to properly investigate. In some cases, land granted to fake NGOs has been sold, confiscated from legitimate residents, or awarded to members of associations of former soldiers. Former residents have been evicted from SLC areas or pressured into becoming members of former soldiers' associations. Last, extremely serious criminal acts have been reported in SLC areas, including rape and torture (see case study). So far, the authorities have failed to address these problems.



Kantuot villagers take their protest to Phnom Penh (26 June 2012)

### Case Study: Abuses Committed in Relation to the DARPO SLC, Preah Vihear Province

In 2007 in Kantuot commune, Choam Ksan district, Preah Vihear province, the government granted a 556-hectare Social Land Concession to the Drugs and Aids Research and Prevention Organization (DARPO), a now-defunct NGO headed by one-star General Pen Lim, though people lived on the plot. The land, which was intended to be distributed to poor people suffering from drug dependency and/or HIV/Aids, was instead sold for a profit.

Villagers were left without adequate access to sanitation, clean water or health facilities. DARPO-affiliated people routinely demanded money, intimidated and assaulted the villagers. Some people abandoned their land in order to escape these conditions, in which case the plots were re-sold to other buyers. One villager, Ms. Khim Khann, was beaten by Pen Lim's henchmen, leaving her disabled. She also claims that they raped her then 13 year-old daughter and stole around \$1,700 from her, before burning down her house and re-selling the plot.

<sup>27</sup> In 2011 the government approved the granting of 44,897 hectares of land under the SLC scheme.

In 2010 a group of 319 families filed a complaint against Pen Lim. They asked the local authorities to take action against the DARPO and demanded to be legally registered so that they would be able to organize ceremonies, look for work and vote. They were told that they needed DARPO's authorization for all of the above, and were denied registration. Following these developments, Pen Lim organized a meeting in his organization's premises. He threatened the villagers, forcing them to declare that they had been abused by community representatives who had illegally used their fingerprints. 48 villagers were eventually forced to file a complaint against Ms. Sath Savouan (44), Mr. Kim Sophal (44) and Mr. Srei Sophan (74). The three were arrested and placed in pre-trial detention. A picture of them being handcuffed was posted at the entrance of the DARPO building in order to scaremonger other villagers. In March 2012, the Preah Vihear Provincial Court released them on bail. However they still face charges of forgery, incitement and disinformation.

On 9 October 2012, Kantuot villagers submitted a petition to the Prime Minister's cabinet. The following day, Prime Minister Hun Sen publicly called for Pen Lim's arrest at a land titling ceremony. However, defying this call, as of early January 2013 Pen Lim remained at large.

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If measures taken to implement the SLC policy do not comply with legal requirements, they could actually worsen the situation of vulnerable families, aggravating landlessness and fueling land conflicts. Indeed, out of 38 SLCs granted in 2012, as many as 13 gave rise to conflicts. (ADHOC also followed up on 13 SLC-related conflicts left over from previous years.) This is a lot considering that the SLC scheme is supposed to solve landlessness-related problems. People evicted or abused because of SLCs lose on all counts, as they are excluded from the very programs which should address their grievances.

## LAND DISPUTES

The majority of cases which ADHOC handles through investigation, mediation or victims assistance are cases of land disputes between private parties or between private citizens and various public authorities, which are not related to land concessions. In recent years, ADHOC has been more successful in solving these land disputes or facilitating satisfactory outcomes than in solving ELC or SLC cases. In 2012, ADHOC handled 70 cases of land disputes affecting a total of 101,408 hectares and 10,689 families. In addition, ADHOC followed up on 62 unsolved cases of land conflicts left over from previous years. The most affected provinces, in terms of number and intensity of land disputes, were Battambang, Kampong Cham, Kampong Thom, Koh Kong, Kratie, Mondulhiri, Rattanakiri and Siem Reap. Unlike ELC or SLC cases, these are not exhaustive data. ADHOC maintains field offices in all provinces (except Kep) and handles land dispute cases on a daily basis, but cannot claim to gather information about all existing land disputes in Cambodia. Our findings are based on the cases we handle, observable trends, and our expertise.

ADHOC has noted a high level of cooperation from victims, and community members have been increasingly motivated to participate in workshops, trainings and partnership-building activities. Empowering communities is an effective way to tackle problems related to encroachment on land and natural resources, and ADHOC encourages communities to peacefully protest against abuses and collectively act to protect their rights. This is absolutely essential, as the authorities seem to be afraid of enhanced solidarity through collective action and network building. Progress reported by ADHOC's provincial and central office staff indicate enhanced willingness on the part of victims of land conflicts to file complaint and to stand up for their rights. However, reaching solutions is time consuming. Land grabbers are often rich, well-connected individuals or companies who are able to intimidate the victims, to put pressure on public authorities, and to influence the courts.

### Case Study: Ongoing Land Dispute in Ovoir Preng, Battambang Province

Villagers at Ovoir Preng village, Knach Romeas commune, Borvel district, Battambang province have been embroiled in a land dispute for almost 15 years. In 1998, Mr. Eang Oeun, a businessman, filed a complaint against villagers for illegal occupation of 19 hectares of land over which he claimed ownership. In 1999, the Provincial Court decided in his favor and awarded him as many as 110 hectares (22 plots). In 2002, he filed a complaint against seven additional families for land encroachment and the court used the first verdict to uphold his claim.

In 2005, Eang Oeun filed another complaint against four people. They were put in pre-trial detention but released following ADHOC's and the Cambodian Human Rights Action Committee's (CHRAC) intervention. In 2007, the villagers brought their complaint to Phnom Penh. The Ministry of Justice ordered the case to be thoroughly investigated. Its Inspector concluded that the villagers had possession rights over the land, that Eang Oeun could not legally have acquired land in 1994 (since the area was controlled by Khmer Rouge troops) and that there was no basis for putting villagers in pre-trial detention. Despite these findings, local authorities of Anlong Run commune, Thmar Kaul district sought to evict 38 families living next to Eang Oeun's 110-ha plot. (They claimed that the families live on Anlong Run territory, not on Knach Romeas territory.)

In November 2012, the court ordered the arrest of nine people in relation to this case. Seven additional people received summons to appear before the Appeals Court. ADHOC requested the Cambodia Human Rights Committee (CHRC) to intervene by carrying out a joint investigation into the case (see section 4.c. below). In January 2013, CHRC, ADHOC, and Samreth Law Group staff travelled together to Ovoir Preng to meet with local authorities. Dialogue is ongoing and the land will be demarcated. However, contrary to the Prosecutor's commitment, one of the accused was arrested on 15 January 2013.

In June 2012, the government tried to address land issues by establishing a new land titling scheme through accelerated land demarcation by youth volunteers. A preliminary assessment of this new scheme is featured in section 4 below.

### FORCED EVICTIONS

Hundreds of non-indigenous and indigenous communities across Cambodia have expressed their concern over the fact that they have been denied the right to register the land they legally occupy. As a consequence, they are facing eviction.

Under the Land Law, possession of land may lead to ownership. Indeed, article 30 stipulates that "Any person who, for no less than five years prior to the promulgation of [the law], enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership."<sup>28</sup> According to article

28 The second paragraph reads as follows: "In case the granting of a definitive title to ownership is subject to an opposition, the claimant has to prove that he himself fulfills the conditions of peaceful, uncontested possession for no less than five years over the contested immovable property or to prove that he purchased the immovable property from the original possessor or his legal beneficiary or from the person to whom the ownership was transferred, or from their successors."

38, the possession must be unambiguous, non-violent, known to the public, continuous and in good faith to transform into ownership.

Many communities who settled at their current place of residence after the demise of the Khmer Rouge regime fulfill these criteria. Many of them do have certificates and documents delivered by local authorities and can provide evidence of long-term residency. However, the authorities systematically fail to recognize such evidence and thus to uphold the possession rights of those people and communities who live on high-value urban land or on land coveted by investors. The authorities at all levels systematically favor business interests over recognition of the people's legitimate rights by referring to the latter as "squatters" and manipulating regulations such as the Circular on Resolution of Temporary Settlements in Illegally Occupied Land. Similarly, in the countryside farmers who have occupied their land for years are sometimes referred to as "new comers" or "illegal squatters" by the local authorities. The development narrative<sup>29</sup> is then used to evict the people without compensation.

As of May 2011, 81 communities had been evicted from their settlements in Phnom Penh, affecting at least 30,009 families.<sup>30</sup> There have been more evictions since that date, including Borei Keila. In most cases, the authorities have failed to comply with national and international legal requirements concerning evictions and resettlement. This makes most evictions carried out in Cambodia illegal. Besides, the authorities never resort to article 36 of the Land Law, which states that if the eviction is likely to give rise to instability or to have serious social repercussions, they may request a suspension. This is in stark contrast to the judicial authorities' tendency to deny bail to persons accused of criminal offenses on the ground that their release could threaten public order.

Several issues are of particular concern. Firstly, public authorities have used excessive force and authorized private parties (security guards) to carry out evictions (see case study). On a number of occasions, members of the armed forces, police or private security guards have used violence against evictees and stolen or destroyed their belongings. Serious abuses have been reported to ADHOC by evictees and their families.



### Case Study: Broma Village and the Killing of Heng Chentha

On 16 May 2012, armed forces equipped with AK-47 assault rifles stormed into Broma village, Kampong Domrey commune, Chhlong district, Kratie province to evict about 1,000 residents. The government claimed that they were illegally living on state land; however, this case may be linked to the neighboring 15,000-hectare rubber concession granted to Casotim Company. During the eviction, a 14-year old girl, Heng Chentha, was killed by a soldier who allegedly fired shots into the air. The authorities claimed that the villagers attempted to secede from Cambodia by creating their own self-governing area. However, the latter had no military or administrative structures to control the area. Light weapons (bows and arrows, sticks and knives) were found in the village; however these are used for hunting.

29 See Cambodian League for the Promotion and Defense of Human Rights (LICADHO), *Land Grabbing and Poverty in Cambodia: The Myth of Development* (2009).

30 Sahnakum Teang Tnaut (STT), *Displaced Families: Phnom Penh 1990-2011*, "Facts and Figures" 19 (May 2011).



Independent national and international observers have dismissed the allegations that a secessionist movement existed in Chhlong district as absurd and as an attempt to divert attention from the authorities' responsibility and from the broader land situation.

Land activists had arrived in the village several months earlier and set out to help people defend their land rights. In April 2012, Bun Ratha was arrested, briefly detained and released following protests and road blockades by the villagers. On 15 July, Mam Sonando, owner of Beehive radio station (FM 105) and President of the Association of Democrats (an NGO aiming to raise awareness and to encourage citizens to use their legally protected rights), was arrested at his home in Phnom Penh. His arrest followed a speech in which Prime Minister Hun Sen alleged that Sonando was responsible for masterminding Broma village's so-called "secessionist" plot. Mam Sonando had returned from abroad just three days earlier, knowing he was threatened with legal action.

On 1<sup>st</sup> October, Mam Sonando was sentenced to 20 years imprisonment—a verdict that sparked national and international outrage. On 14 December, the Court of Appeals rejected his request for bail. He is now awaiting his appeals trial. No investigation was launched into Heng Chentha's killing, since the authorities declared this was not necessary because the killing was an "accident." Hence no one will be held responsible for her death.

Secondly, evictees have usually been given short notice to leave their settlements. In some instances evictees received no notice at all and did not have time to salvage their belongings. Some evictions have even been carried out at night. Thirdly, resettlement sites are usually sub-standard. They lack basic public services and infrastructure. In the last place, compensation is generally unfair. In some cases compensation is simply non-existent; otherwise, compensation packages tend to be sub-standard. Evictees are pressured into accepting unfair deals through various tactics. Authorities and land grabbers sometimes deliberately



*The Borei Keila eviction  
(3 January 2012)*

delay negotiation in order to drive the victims to despair (as the latter usually cannot afford to devote much time to protest, they end up accepting conditions dictated by the grabbers). Community representatives and activists have been arrested, threatened and convicted in an attempt to break collective action and solidarity (see section 3 below).

About 150 communities are currently threatened to be evicted from their settlements in Phnom Penh alone. This figure includes those who have received one or more written eviction notices and are under severe threat of eviction (about 50 communities) and those who have heard rumors of eviction (about 100 settlements). Both groups are considered to be at risk.<sup>31</sup>

Despite reiterated requests from United Nations bodies such as the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the Right to Adequate Housing, Cambodia has adopted neither an Evictions Act nor a National Housing Policy. Yet, such instruments would be crucial to enhancing due process and security of tenure. They could allow the authorities to devise a strategy to address, *inter alia*, the issues of landlessness and informal settlements, and to set out clear human rights safeguards in accordance with international standards. As of today, in violation of national and international law, evictions in Cambodia continue to occur as a first, not last, resort.

### NATURAL RESOURCES

In 2012, ADHOC handled dozens of cases of encroachment on natural resources, including illegal logging, illegal fishing and illegal sales of fishery lots. These included at least six isolated cases of illegal logging of community forests and numerous cases related to other instances of small- and large-scale land grabbing. The former involved illegal logging and encroachment on forests, water and fisheries by private companies, state institutions (such as the armed

forces) or local authorities. The latter were linked to large development projects, such as land and mining concessions.

Environmental regulations such as the Forestry Law—which ADHOC includes in its curriculum for community empowerment programs—are not properly implemented. They do not guarantee protection of Cambodian citizens' rights to food, water, and to an adequate standard of living. Despite the official moratorium on logging, Cambodia's forests are fast disappearing. Large tracts of forests have been affected by land concessions and smaller scale exploitation and logging.



Deforestation in the CRCK concession in Prey Lang

### Case Study: Ongoing Destruction of the Prey Lang Forest

CRCK Company was granted a 6,044-hectare concession inside Prey Lang forest, which extends over four provinces (Kampong Thom, Kratie, Preah Vihear and Stung Treng). CRCK officially grows rubber; however, no environmental impact assessment has been completed and the company has engaged in logging and destroyed large tracts of primary, evergreen forest. Communities have been increasingly concerned about the destruction of Prey Lang and mobilized to defend its sustainable use.

31 STT, unpublished research.

On 23 March 2012, 241 community representatives from four provinces gathered to investigate illegal business activities inside Prey Lang. They discovered thousands of logs, bridges and logging equipment at O'Chnau Leu and O'Chnau Krom. On 25 March, the authorities sent armed forces and arrested rights activists (including Chut Wutty) and community representatives who had burned logs. On 27 March, 132 community representatives met at Boeung village, Mean Rith commune, Sandan district, Kampong Thom province. They intended to protest and block the road the following day.

On 28 March, they divided into several groups to investigate the activities of CRCK and Seng Saravuth, another company which received an ELC in the Prey Lang area. Chut Wutty was threatened to be shot. People were also intimidated by provincial authorities, who alleged that their movement was “against the government.”

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Likewise, fisheries have been affected by pollution and operations of business enterprises and by illegal sales of fishery lots by public authorities. ADHOC has included regulations pertaining to fisheries in its training curriculum, so that people are more aware of the legal framework and able to react in case violations are committed. Yet in practice they face tremendous challenges in protecting their livelihoods.

Indigenous peoples are particularly threatened by the projected construction of large dams, such as mega hydro-electric dam projects in Cambodia's northeastern provinces. These risk severely affecting the livelihoods and lifestyles of river communities, displace them from ancestral lands, and flood thousands of hectares of forests and farmland. Fish stocks risk being further threatened by large infrastructure projects, such as the Xayaburi Dam in Laos.

## CONCLUSION

*The contradiction ADHOC has noticed (people have been more and more willing to take action to defend their rights, but few have received their land back or fair compensation) indicates that the land situation is becoming critical. Citizens and communities are increasingly aware of their rights and legal avenues to defend them. They increasingly demand justice and accountability. However, land is scarce and the authorities fail to uphold citizens' rights when they are embroiled in disputes involving significant imbalances of power between the parties.*

*Laws need to be better enforced and guarantees of due process must be upheld at all levels of government and administration. Current problems cause serious adverse effects on land tenure security, living standards, livelihoods, natural resources and cultural rights. If they are not addressed as a matter of priority, social stability may be at stake.*

## 2. ADVERSE EFFECTS AND CONSEQUENCES

### a. LAND TENURE INSECURITY

Security of tenure is crucial to realizing land and housing rights. Under international law, enhancing land tenure security is a key obligation of states. Therefore, national legislations should include measures which “provide the greatest possible security of tenure to occupiers of houses and land [and] control strictly the circumstances under which evictions may be carried out.”<sup>32</sup> It has been recognized by standard-setting bodies that tenure takes a variety of forms, including ownership, rental, lease, or even emergency housing and informal settlements. “Notwithstanding the type of tenure, [however] all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”<sup>33</sup> And, regardless of a country’s state of development, certain measures (such as non-discrimination) must be taken immediately.<sup>34</sup>

Generally speaking, Cambodia has failed to uphold citizens’ right to security of tenure. Hundreds of thousands of land titles have been delivered in the last few years<sup>35</sup>; however, successive land titling programs have failed to address the needs of the people who are most in need of land tenure security, i.e., people who live in informal settlements and disputed areas, as well as indigenous people. The fuzziness around the status of land, failure to enforce laws and regulations, lack of guarantees against forced evictions, lack of recognition of indigenous peoples’ rights and lack of effective remedies culminate in an overall climate of insecurity around land tenure.

Cambodia has a troubled history. The Khmer Rouge regime is not only responsible for mass crimes and atrocities; it also disrupted the fabric of the Cambodian society. By 1979, informal land arrangements were totally destroyed. It must be recognized that the current land situation is a consequence of this tragedy. However, land tenure insecurity is also a consequence of recent land policies, which have sidelined the rights of marginalized people.

### b. LANDLESSNESS, POVERTY AND RELATED ISSUES

An ever-increasing percentage of the Cambodian population is landless.<sup>36</sup> Causes include population growth and a slow transition from an agrarian to an industry- and services-oriented economy, but also economic and land policies. ELCs and land grabbing have displaced people from their farmlands, without enough opportunities being available to them elsewhere. This aggravates unemployment, which is worrying with regard to the anticipated demographic increase. The question now is, where will Cambodia find enough land for the next generation, given that almost half the arable land is in the hands of private concessionaires, leased for up to 99 years?

Agro-industrial development and gradual increases in agricultural productivity are possible, notably through well-managed and well-monitored land concessions. However, it is essential to preserve plots for smallholder farmers. From a development perspective,

32 UN Committee on Economic, Social and Cultural Rights, *General Comment no. 7*, op. cit., para. 9.

33 UN Committee on Economic, Social and Cultural Rights, *General Comment no. 4*, op. cit., para. 8(a).

34 *Ibid.*, para. 10.

35 As of November 2011, the systematic land registration process had delivered 1,740,839 titles (LSSAP, *Land Is Life: Land Administration Sub-Sector Program Newsletter*, Issue 2 (November 2011)). See *NGO Position Papers on Cambodia’s Development in 2010-2012: Monitoring the Implementation of the National Strategic Development Plan and the 2010 CDCF Joint Monitoring Indicators* (25 September 2012), p. 73.

36 According to the World Bank, the percentage of landless people increased from 13% in 1997 to 25% in 2007.



the coexistence of small plots and private companies providing seeds and trainings, and/or processing products for export, would make more sense than the current strategy. This alternative model would allow job creation, productivity gains and a more equally shared growth. According to the World Bank, “it appears that rural households in Cambodia are small but efficient agricultural producers. According to analyses [...], small farms are more efficient than large farms, whether measured by crop income, crop yields, profit or output value per hectare.” Consequently, “there should be a general presumption in favor of secure smallholdings, rather than very large commercial holdings, as the foundation of the Cambodian agrarian structure.”<sup>37</sup> In other words, smallholder agriculture with enhanced security of tenure would reduce poverty faster.

For the time being, several problems pose a particularly acute threat. Firstly, indigenous communities face tremendous obstacles in being recognized as legal entities and registering their land for collective ownership. As of late 2012 only three such communities (in Rattanakiri and Monduliri provinces) had been granted collective land titles. Others are losing their traditional lands. If urgent actions are not taken to protect their rights, more indigenous communities risk losing their land to ELCs, land grabbers and loggers. Secondly, evictees face a series of problems in addition to dispossession. They often have no access to clean water, sanitation and electricity. In some cases, several years after their relocation, authorities have not yet provided basic services. People are forced to buy water from private ponds and electricity from local suppliers. Thirdly, people evicted from urban settlements who live in relocation sites often lack access to jobs, education and income-generation activities. For instance, Andong

village (the relocation site for former residents of the Bassac community) is located 20 kilometers from downtown Phnom Penh. Phnom Bat (the relocation site for former Dey Krahorm and Borei Keila residents) is located more than 40 kilometers from Phnom Penh. According to a Phnom Penh-based survey by the Housing Rights Task Force (HRTF),<sup>38</sup> the average amount of household debt after eviction is \$869 (only \$455 before eviction). Similarly, few schools are located in or near the resettlement areas. Many children drop out; and those who are able to continue studying are more likely to experience repetition.<sup>39</sup> Fourthly, health is severely affected by forced eviction. The majority of evicted households suffered from illness or injuries in the three months preceding HRTF’s survey, and a majority felt that the household members’ health was not good.<sup>40</sup>



The settlement of undocumented former Borei Keila residents (January 2012)

### Case Study: Phnom Bat Relocation Site

Phnom Bat, the relocation site for former residents of the Dey Krahorm and Borei Keila communities, is located near Udong, at the border between Kandal and Kampong Speu provinces. About 305 families live there (125 from Dey Krahorm (originally there were 467), 150

37 World Bank, *Cambodia: Halving Poverty by 2015? Poverty Assessment 2006*, p. 87.

38 *Socio Economic Impact of Force Eviction at the Household Level in Phnom Penh* (2011), p. 14 (available at [http://www.hrtfcambodia.org/files/SEI\\_of\\_Force\\_Eviction\\_Report\\_ENG.pdf](http://www.hrtfcambodia.org/files/SEI_of_Force_Eviction_Report_ENG.pdf)).

39 *Ibid.*, p. 15

40 *Ibid.*, p. 16.

from Borei Keila, and 30 undocumented families from Borei Keila).

Former Dey Krahorm residents settled in Phnom Bat commune, Kandal province three years ago. They now refer to themselves as “Sahmakum Tang Khiev.” They funded toilets and water filtration systems from their own resources. NGOs have built sanitation and sewage systems as well as 58 houses so far. The village has a small medical center, which is funded by an NGO. A primary school is located 3-4 kilometers away and a secondary school is 6 km away. People pay 1,200 riels per kWh to a private electricity supplier (in comparison, Électricité du Cambodge charges 820 riels/kWh in Phnom Penh). Most of the adults have left the site to look for work in Phnom Penh and other cities.

One year ago, former Borei Keila residents settled a few kilometers away, in Kampong Speu province. As there is no electricity and no running water in the village, people have to rely on batteries and wells. Many men and women work in the Phnom Penh area, 46 kilometers away, and have left their parents and children behind. They work as garment factory workers, cleaners or street vendors. Some are only able to come back once a month to visit their relatives, since the round-trip ticket costs 20,000 riels. To make ends meet, some women sew pillows or clothes, but they have to work by hand because their sewing machines were destroyed during the Borei Keila eviction on 3 January 2012. Children can attend the same schools as children from Sahmakum Tang Khiev; however, they are overcrowded and underfunded. For six months people were obliged to buy clean water at 500 riels per 15-liter bucket (in comparison the Phnom Penh Water Supply Authority charges between 550 and 1,010 riels per cubic meter—30 to 60 times less); now they can get water from three public wells for free.

In addition to people who were officially relocated, 30 undocumented families from Borei Keila (ten of which are affected by HIV/Aids) settled in Phnom Bat, having lost everything (including clothes and household equipment) during the eviction. They did not receive any assistance from the authorities. Several NGOs provided them with food and medicine. Some adults work in Phnom Penh as refuse collectors or cleaners. Those who stay at Phnom Bat live in squalid, refugee-like conditions.

Besides, regardless of their living standards, in 2012 residents of downtown Phnom Penh have experienced frequent flooding, which may be due to the filling of Boeung Kak Lake in relation to a residential and commercial project. Indeed, the lake is not able to play its role as a natural reservoir anymore. Flooding and stagnant muddy water may cause diseases such as dengue fever, diarrhea or cholera. Despite these problems, the filling of other urban lakes (such as Boeung Tumpun) is planned.

In the countryside, evictees and people whose activities have been disrupted because of ELCs or land grabbing often have no choice but to work for concessionaire companies, as day-laborers or as full-time employees. In some concessions, the salaries offered are reportedly higher than average<sup>41</sup>; however, people cannot work 12 months a year and the change of status from farmer to wage-laborer is undoubtedly associated with greater job insecurity. In addition, labor conditions are not adequately monitored. Nineteenth-century European economic processes—involving rural exodus and the transformation of a large part of the peasantry into landless wage-laborers—seem to bear close resemblance to what is currently happening in Cambodia. The government has been using migration as a pressure valve, exporting Cambodia’s cheap, unskilled

41 See FIDH, *Cambodia: Land Cleared for Rubber, Rights Bulldozed; The Impact of Rubber Plantations by Socfin-KCD on Indigenous Communities in Bousra, Mondulhiri* (2011), p. 45.

labor force to neighboring countries. This brings in remittances which are essential to poor households; however, migrant workers have been exposed to abuses and most of them would not have migrated had they had access to job opportunities in Cambodia.

### c. NEGATIVE EFFECTS ON LIVELIHOODS, FOOD SECURITY AND CULTURAL RIGHTS

The livelihoods of non-indigenous and indigenous people alike have paid a high price to development policies. Farmlands and indigenous lands have been (and will likely continue to be) affected by agro-industrial and mining operations and large infrastructure projects, such as dams and railways. Companies which have been awarded ELCs (in many cases, despite their failure to complete impact assessment studies) clear fields, grazing lands and forests that the people need for their daily subsistence. Some set up checkpoints and prevented people from using public roads. Communities who collect non-timber products (such as resin) in the forests were sometimes prevented from doing so.

Food security has been threatened as a result of evictions and dispossessions. In urban areas, more than 50% of evictees have experienced hunger, but did not eat because there was not enough food in the three months preceding a survey by HRTF.<sup>42</sup> HRTF reported an overall high level of food insecurity in relocation sites. In rural areas, the destruction of farmlands and rice fields and the killing of cows (which have been reported to ADHOC) increasingly threaten food security at the local level. Farmers who do obtain compensation in the form of new fields often report that the new plots are far away from the villages, smaller and less fertile. As a result, their outputs decrease and their living standards deteriorate.

Land and other conflicts related to insecurity of tenure and lack of law enforcement in the land and environment sectors have greatly affected the cultural rights of indigenous and non-indigenous people. Indigenous communities have paid a particularly high price. As Special Rapporteur Surya Subedi put it, “[...] indigenous peoples across 15 provinces [...] are in need of support for the protection of their traditionally occupied lands in the face of unregulated development.”<sup>43</sup> Violations of their land and natural resources rights are intertwined with violations of their cultural rights. In 2012 areas of cultural and spiritual significance continued to be affected by various projects. Concessions have encroached on burial sites and sacred forests, such as the Socfin-KCD concessions in Bousra, Mondulkiri. In general, the communities have not been consulted prior to the implementation of projects and have been left without any recourse in front of the *fait accompli*.

#### Case Study: The Lower Sesan 2 Dam Project

On 28 February 2012, communities living along two rivers affected by a mega hydro-electric dam project in Stung Treng province gathered to perform a religious ritual and peacefully protest against the project. The Lower Sesan 2 Dam, which is planned to be built on the Sesan River, will severely affect the livelihoods and lifestyles of communities living along the Sesan and Sre Pork Rivers, displacing them from ancestral lands and threatening their food security.

The dam project poses a significant threat to the fish stock and ecological balance of the two rivers, which are tributaries to the Mekong River. On 29 February, community representatives travelled to Phnom Penh to meet with members of the Parliament. The latter

42 HRTF, op. cit., p. 17.

43 Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, op. cit., para. 120.

rejected their request to halt the construction project. No meaningful consultations have taken place with the affected communities. It is unclear whether an in-depth social and environmental impact assessment study has been completed yet and whether an inter-ministerial committee has been set up to deal with resettlement and compensation issues.

The only information that was clearly made public is that on 26 November 2012 two companies (Cambodia's Royal Group and China's Hydrolancang International Energy Co. Ltd.) signed an agreement with the government to build the dam.

#### **d. EFFECTS ON NATURAL RESOURCES**

Illegal logging, concessions and dams continue to adversely impact natural resources and biodiversity. The lack of transparency around protected areas' internal zones and their boundaries makes it possible for the authorities to grant concessions in areas which should have been classified as "core" or "conservation" zones in the first place, and left untouched. Primary forests such as the Prey Lang forest are endangered,

which could have tremendously negative effects on wildlife and biological diversity. Countrywide, deforestation is extremely high. Cambodia has one of the worst deforestation rates in the world and its forest cover is shrinking.<sup>44</sup> Military bases have been built in forested areas, further threatening sustainable use of the forests. International conservation programs, such as REDD, seem to have had little effect so far.

Evidence from investigations suggests that fisheries are similarly threatened, due to increased pollution and exploitation. Fish is an important part of the people's diet, covering a large part of daily protein needs. Threats to the country's global fish stock are thus likely to cause increased food insecurity. To prevent further harm, laws must be better enforced, people and companies who are responsible for breaches must be punished, and the authorities and stakeholders must systematically conduct in-depth environmental impact assessment studies prior to the implementation of projects. Issues related to large infrastructure projects are increasingly trans-border, as the Xayaburi Dam project demonstrates. Hence there is a need for enhanced international cooperation.



*Illegal logging in Rattanakiri*

44 FAO, *Global Forest Resources Assessments* (2005 and 2010) (see <http://www.fao.org/forestry/fra/fra2005/en/> and <http://www.fao.org/forestry/fra/fra2010/en/>).



## CONCLUSION

*Current policies and practices are unsustainable. Today there is concern that protected areas (including primary forests and wildlife reserves) are fast disappearing and that there is not much arable land left for agricultural or agro-pastoral purposes.*

*Land, housing and natural rights of people and communities have been violated as a result of encroachment and pressures on land and livelihoods. The authorities must reconsider development policies and regulate all activities conducted in the name of development, with reference to their human and social impacts. Furthermore, means of dispute settlement must be strengthened and systematically overseen.*

## 3. CONFLICT RESOLUTION

### a. EXISTING MEANS OF DISPUTE SETTLEMENT

On paper there exist many means of settling disputes related to land and housing rights, including mediation, administrative/quasi-judicial bodies, and the court system.<sup>45</sup> In the first instance, parties to land disputes (in practice, victims of land grabbing) may seek intervention from various political or administrative officials and bodies. Village Chiefs and Commune Chiefs (and their Councils), as well as District Governors and Provincial Governors, may act as facilitators. Indeed, in order to prevent conflicts from arising within their jurisdictions, local-level officials may have an interest in applying some extent of pressure on land grabbers. ADHOC routinely works with victims of land grabbing to help them prepare their complaints, gather legal documents and carry out advocacy with various authorities. When mediation at the local level does not work, people and communities may seek intervention from state officials or institutions, such as the Council of Ministers, the National Assembly, the Senate and the Prime Minister's cabinet.

Pursuant to article 47 of the Land Law, the results of investigations into disputes over unregistered land are submitted to the Cadastral Commission,<sup>46</sup> which issues binding decisions. However, in case of dissatisfaction with the outcome, the disputants may complain to the courts. In 2013, ADHOC will start implementing an ambitious project (funded by the European Union) aiming to jointly investigate land disputes with the Cadastral Commission. The latter has a high potential for improving the land situation and enhancing security of tenure by granting land titles to residents. Yet it cannot solve all land conflicts.

Indeed, disputes over registered land must be submitted to the courts. Municipal/Provincial Courts make a first

instance determination on the basis of the Land Law and other relevant laws and regulations, and an appeal can be lodged with the Appeals Court. Disputes related to forced evictions may also be heard by the courts (whose order is required to carry out evictions in the first place). Theoretically, citizens threatened with eviction have a right to challenge their eviction, as part of their right to have access to effective remedies.

Established in 2006, the National Authority for Land Dispute Resolution (NALDR) does not have a clear institutional mandate. In practice, it deals with cases that have not been (or could not be) resolved by the Cadastral Commission.

### b. THE REALITY: UNFAIR PROCESSES, LACK OF EFFECTIVE REMEDIES AND HARASSMENT OF ACTIVISTS

When it comes to land dispute settlement, ADHOC has noticed a stark difference in success rates according to the type of dispute. Whereas low- or medium-intensity conflicts usually offer chances of satisfactory settlement, conflicts that are related to ELCs, land grabbing by powerful interests, as well as forced evictions in relation to city beautification or development projects, are much more difficult to resolve. It seems that the chief factors influencing land dispute settlement are the ability of one of the parties to the conflict to intimidate the other(s); to monopolize support from various state authorities; to act with impunity; and to manipulate the judicial system. In practice, formal conflict resolution processes and institutions may be put aside or may not play their role in upholding citizens' and communities' land and housing rights. As a result, conflicts often come to an end because the weaker party is threatened, harassed or forced to accept sub-standard compensation. In some ELC cases, land has

45 Conflicts relating to natural resources may be settled through the court system (enforcing environmental laws), through informal means, or through means of settling land disputes.

46 The Cadastral Commission consists of bodies established at three levels: District, Provincial and National.

been given back to the people following mediation; however, the people have generally received only a few hectares. This is negligible compared to what private companies have received under the ELC scheme.

Firstly, victims of land grabbing may simply lack the resources to initiate proceedings. Official and non-official fees (bribes) are required to get their land registered or to file complaints with the courts. The processes associated with land registration or civil/criminal complaints are time-consuming and their outcomes are unpredictable. The government has recently strengthened the mandate of the Cadastral Commission and taken new initiatives in an attempt to reduce the caseload. These actions are welcome, since those who receive land titles now feel more secure and can devote their time to income-generation activities instead of wasting it trying to obtain land titles. However, the mandate of the Cadastral Commission does not include conflicts over registered land. In addition, victims of land grabbing often lack access to information about the grabbers (including the names of ELC concessionaires). Filing complaints is therefore problematic.

Secondly, in cases involving significant imbalances of

power between the land grabbers and their victims, the latter do not have access to effective remedies. They are routinely intimidated and pressured into accepting unfair solutions. For instance, in some cases land grabbers use armed guards to protect their companies' premises or to clear the people's land. Some are able to put pressure on local authorities so that the latter do not support villagers' claims. As a result, in many instances people are forced to sell their land at a very low price (below market value). In general, processes in civil disputes are unfair. The courts tend to favor rich, well-connected individuals and companies over villagers. Various tactics are used to break the will of the victims, including deliberately delaying investigation, refusing to accept testimonies and documents presented by the villagers, or summoning their representatives many times (thus forcing them to incur the cost of transportation from their villages to provincial capitals). As a result, the people do not trust the courts. To ensure independence of the judiciary, Cambodia should adopt, as a matter of priority, a law on the status of judges and prosecutors as well as a law on the organization and functioning of the courts. This has been requested by the United Nations for almost 20 years. As was put by the UN Special Rapporteur, "[t]hese laws should be designed to ensure the independence both of institutions and of



*Protest organized by Boeung Kak residents in Phnom Penh  
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individuals in the judiciary as well as to take disciplinary action against judicial malpractices, and corrupt and incompetent judges. [...] These laws will contribute to safeguarding the tenure of judges and protecting the terms and conditions of their service, based on a code of conduct for judges and prosecutors.”<sup>47</sup>

Thirdly, in 2012 ADHOC witnessed a crackdown on peaceful protests and increased harassment of land and housing rights activists. In Phnom Penh, peaceful demonstrations for land and housing rights organized by the Boeung Kak, Borei Keila and other communities were systematically suppressed. Across the country, community members protesting against violations of land rights or encroachment on natural resources have been intimidated, arrested, or physically abused.

### Case Study: Judicial Harassment of Human Rights Workers and Journalists

On 1<sup>st</sup> October 2012, Pen Bonnar and Chhay Thy, ADHOC’s Provincial Coordinator and Investigator in Rattanakiri, Radio Free Asia reporter Sok Ratha, and CCHR President Ou Virak were summoned by the Rattanakiri Provincial Court to appear for questioning on charges of incitement to commit a crime.

The charges relate to allegations that the four men incited members of an ethnic community to violently protest against powerful agro-business company, D.M. Group, in 2009. The complaint filed against the four men is related to the ongoing land dispute between D.M. Group and 136 Tumpoun families, concerning 260 hectares of land. The conflict has involved the intimidation of villagers through threats and lawsuits against ten representatives of the affected communities.

The charges against Pen Bonnar, Chhay Thy, Sok Ratha and Ou Virak were eventually dropped in late December 2012.

In 2009, a similar complaint had been brought against Pen Bonnar, Chhay Thy and Sok Ratha, in relation to legal education work ADHOC carried out to assist villagers affected by a land dispute, and reporting work, respectively. In October 2011, they were questioned at the Provincial Court. The charges were eventually dropped at the end of 2012.

Fourthly, on several occasions training sessions and community empowerment meetings organized by civil society organizations were disrupted. On 25 July 2012, local authorities attempted to disrupt a training session on land rights organized by ADHOC in Phnom Kok commune, Veun Sai district, Rattanakiri province. Police officers knocked on the door and demanded that the meeting be stopped, arguing that ADHOC had requested no authorization to hold the meeting from the District Governor. The meeting eventually proceeded, although police officers stayed around the house until its end. On 27 July 2012, police and local authorities disrupted a training session jointly organized by ADHOC and the Cambodian Center for Human Rights (CCHR) in Batang commune, Lumphat district, Rattanakiri. Local officials knocked on the door and demanded that the meeting be discontinued, arguing that they had received orders from provincial authorities and that the meeting organizers had failed to satisfy notification requirements. Fifteen minutes later, two additional police officers were sent by the district authorities. One of them carried an M-16 assault rifle. Considering this threat, ADHOC and CCHR decided to stop the meeting. Upon their departure, Batang Commune Chief accused ADHOC of engaging

<sup>47</sup> *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia*, UN Doc. A/HRC/15/46, 16 September 2010, para. 66.

in incitement. CCHR employees were also told by the police that if they did not leave the area, their security would not be guaranteed.

Under article 3 of the 2009 Law on Peaceful Demonstration, meeting organizers are exempted from notification requirements for all “educational dissemination activities for social interests.” Therefore disruptions of legal training sessions by the authorities are completely illegal. What is even more concerning, violence and threats of violence are increasingly being used against land rights workers, activists and journalists. Some powerful land grabbers use armed personnel to guard their concessions and premises, intimidate villagers and prevent them from accessing their fields or public roads. In September 2012, Virakchun Khmer newspaper reporter Hang Serei Oudom was assassinated after he wrote articles on illegal logging pointing at military police officials. Two people were arrested for his murder but other, higher-ranking people may be involved.

Even though Royal Cambodian Armed Forces officials have denied such allegations, throughout the year some army units continued to guard private concessions. Instances of threats, intimidation and abuses have been reported. ADHOC is extremely concerned about the use of the military for private purposes. The sponsorship system whereby powerful individuals fund RCAF units both raises human rights concerns and is inconsistent with the goals and ethics of the military. In practice, it amounts to a mere privatization of the state’s military. Furthermore, abuses committed by the armed forces have not been meaningfully investigated.



The place where Chut Wutty was killed

### Case Study: The Killing of Chut Wutty

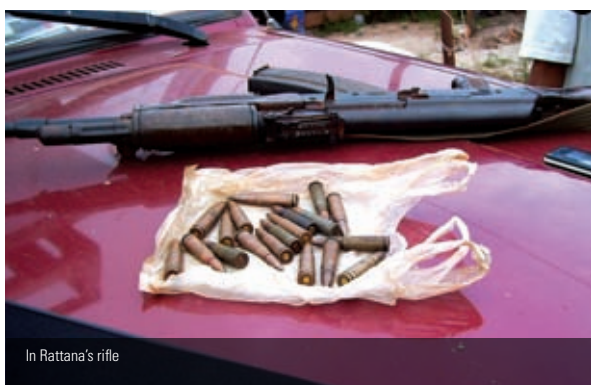
On 26 April 2012, Mr. Chut Wutty, one of Cambodia’s most prominent environmental activists, was killed by the armed forces in Mondul Seima district, Koh Kong province. He was investigating a suspected illegal logging case with two reporters from *The Cambodia Daily* and refused to hand over photographs he had taken to the military. Wutty was well-known for his investigative and advocacy work, linking well-connected businesspeople, high-ranking officials and the armed forces to the plundering of Cambodia’s natural resources.

The authorities gave several, conflicting versions of his death, but after a few days the official investigation concluded that Wutty had been fatally shot by In Rattana, a soldier who was then accidentally killed by a security guard trying to disarm him. This version has been rejected by national and international human rights groups, who noted the contradictory physical evidence in the case and doubted the impartiality of the investigating committee.

Security guard Ran Boreath was indicted for “unintentional homicide” but released a month after he was found guilty—the time he had already served. To many observers, this confirmed that Boreath was merely a scapegoat, meaning that Chut Wutty’s killers



remain unpunished. Wutty's murder case was officially closed in October 2012.



Lastly, in 2012, community representatives, as well as land and housing rights workers, have been subjected to judicial harassment in the form of unfair lawsuits and unfair trials. An “infernal trio” of criminal charges (incitement, defamation and disinformation) has served to intimidate and punish activists in an attempt to silence opponents of opaque land deals and unequal relationships between villagers, informal dwellers and powerful business interests. The courts often accuse people of criminal offenses, such as destruction of private property, to frighten communities.

Against the letter and spirit of criminal law, the courts have used pre-trial detention as a rule (not the exception) and detained activists in order to break their will. This is extremely unjust, especially in criminal cases that are related to civil cases in which the courts still have to determine who the rightful land owners are. In cases of land grabbing, while community representatives are detained, grabbers can continue clearing the land. ADHOC reported that 95 people had been arrested and 48 detained in relation to land and housing disputes in 2011. In 2012, 232 people were arrested, which represents a 144% increase. As of 31 December 2012, 38 were still in prison and 50 had run away. Several high profile cases, such as the trials of Mam Sonando and Boeung Kak and Borei Keila representatives, have taken their toll on land and housing rights work. Fear is now pervasive, as the judicial system has consistently supported the government's views and failed to uphold the rights to free expression, association and assembly. Trumped-up charges have been used to silence activists. And Chut Wutty paid the ultimate price—his life. In a nutshell, it is increasingly dangerous to represent communities and to defend the land, housing and natural resources rights of Cambodian citizens.

*Thmar Kaul residents arrested prior to US President Barack Obama's visit  
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### Case Study: Unfair Trials of Boeung Kak and Borei Keila Representatives

On 22 May 2012, 13 female residents of the Boeung Kak community in Phnom Penh were arrested as they were peacefully protesting against the destruction of their homes. Police arrested community leaders for allegedly insulting law enforcement officials and inciting other protesters. Some of them were part of a group that has been left out of deals with evicted families. On 24 May, after a two-hour trial, all 13 women (including a 72-year old grandmother) were sentenced to two and a half years in prison (some of them had their sentences partially suspended) for “illegal occupation of land” and “obstruction of public officials” with aggravating circumstances.

Their basic fair trial rights were violated.<sup>48</sup> Their lawyers were refused access to the case file before the trial; they were not given adequate time to prepare their defense; and defense witnesses were prevented from entering the court. Meanwhile, outside the court, two more Boeung Kak residents who had come to testify as witnesses were arrested. Following an extensive advocacy campaign, the 13 women were released on 27 June 2012 after the Appeals Court reduced their sentence to one month and three days—the time they had already served. However, they still have a criminal record.

In September, two prominent activists from Boeung Kak and Borei Keila were charged with criminal offenses and placed in pre-trial detention. Ms. Yorm Bopha (29) was accused of assaulting a suspected thief—allegations she denied. Ms. Tim Sakmony (65), one of the most vocal Borei Keila community representatives, was charged with making false declarations. The accusation seemingly refers to Sakmony’s request for

Phan Imex Company to compensate her disabled son for the company’s failure to provide him with relocation after his eviction from Borei Keila in January 2012.

On 26 December 2012, Sakmony was convicted to a six-month prison sentence, which was partially suspended. She was released on the same day, but still has a criminal record. On 27 December, Bopha was sentenced to three years in prison, despite insufficient evidence. In violation of basic principles of criminal law, the accused did not enjoy the benefit of the doubt. She has been targeted solely for her housing rights activities.

### CONCLUSION

*Because of the impunity related to power abuses, lack of law enforcement and lack of independence of the judiciary, existing means of settling disputes related to land and housing are not effective. The courts are strong with the weak and weak with the strong—a situation which damages Cambodia’s reputation.*

*The authorities should strengthen the capacity of the Cadastral Commission at all levels and exercise strict oversight of the courts. Judges and prosecutors who unduly favor powerful interests over poor and vulnerable Cambodians must be punished. To ensure independence of the judiciary, a law on the status of judges and prosecutors, as well as a law on the organization and functioning of the courts, should be adopted as a matter of priority.*

*Legal persecution of, and violence against, community representatives, rights workers and activists are not only illegal and unfair; they are ineffective. The authorities cannot expect to resolve the land crisis this way.*

48 Cambodian Center for Human Rights, *Legal Analysis of the Charging and Sentencing of 13 Boeung Kak Community Representatives on 24 May 2012* (Criminal Case Number 1576/24-05-2012).

## 4. RECENT GOVERNMENT INITIATIVES

### a. THE MORATORIUM ON THE GRANTING OF NEW ECONOMIC LAND CONCESSIONS

On 7 May 2012, Prime Minister Hun Sen announced that he had signed a directive instituting a moratorium on the granting of new Economic Land Concessions and enforcing the so-called “leopard-skin” policy as regards existing ELCs, in order to exclude inhabited areas from the concessions and mitigate the latter’s encroachment on farmers’ and communities’ land. Directive 001 also called for a review of all existing concessions in order to check their compliance with relevant laws and regulations. It reaffirmed that concessions found to breach legal and contractual provisions would be cancelled.

ADHOC welcomes Directive 001. It and other civil society organizations had been asking the government for some time to stop granting new land concessions, to review existing ones, and to enforce relevant laws and regulations. In this regard, Directive 001 was much needed. It is also essential to punish companies found to be in violation of their obligations. Their concessions must be revoked and they must be forced to give the land back to its previous occupiers. If the concessionaires caused damages to the land or forest, they must be forced to provide compensation to the state and the affected people.

Nevertheless, an important loophole exists within the moratorium. Indeed, ELCs that were under consideration when the moratorium was announced are excluded from its application. In practice, it means that new ELCs may—and have been—granted despite the freeze. LICADHO called the loophole “so big it swallows the ban itself”<sup>49</sup> and ADHOC found out that 33 ELCs had been granted since 7 May 2012, including as many as 13 in June and 10 in August. (However, from September to December 2012, only 4 new ELCs have been granted.)

These cover at least 208,805 hectares. Without any information on how many ELCs were in the pipeline when the moratorium was announced, observers are left in the dark. The government should end the secrecy surrounding ELC negotiations and detail its policy of follow-up on cancelled ELCs. Revoked concessions should be given back to the farmers and residents who previously occupied the land, and affected people must be involved in consultations on other related issues such as land rehabilitation or compensation.

Despite assurances that the moratorium will be extended, if the government does not disclose information on exactly how many ELCs were in the pipeline on 7 May 2012, independent observers may question its political will to mitigate the effects of the ELC policy. Indeed, the granting of new concessions despite the moratorium would mean that promises made to private companies are more important than promises made to the Cambodian people.

### b. THE NEW LAND TITLING SCHEME INVOLVING LAND DEMARCATION BY YOUTH VOLUNTEERS

On 14 June, the Prime Minister announced his intention to launch a new, accelerated land titling program to be implemented by youth volunteers. Hundreds of thousands of land titles were expected to be issued to families living in rural areas countrywide, following measurement and demarcation of their land by the volunteers. This program was to further implement the “leopard-skin” policy by freezing farmers’ land claims.

According to official data, as of 22 December 2012, 71,220 land titles had been delivered and the volunteers had demarcated 333,275 plots covering 433,987 hectares.<sup>50</sup> ADHOC welcomes this development, since hundreds of thousands of families now feel more secure in their tenure.

49 “PM Defends Economic Land Concession Signings,” in *The Phnom Penh Post*, 27 June 2012.

50 MLMUPC website (consulted on 9 January 2013).



However, several concerns remain regarding implementation of the new land titling program. These reflect preliminary reports and findings. In-depth research and consolidated data will be necessary to fully assess the new scheme and make recommendations.

Firstly, it seems that local authorities and state institutions in charge of land titling, use and management have not been consulted prior to the 14 June announcement. Secondly, disputed areas have been left outside the scheme. People who are most in need of land titles (to protect themselves against eviction threats) will therefore not receive them through this scheme. Yet, recognition of possession rights (in accordance of the Land Law) could have been included in the program in addition to land demarcation. This would have truly enhanced land tenure security by addressing the needs of people living in informal settlements or in areas potentially affected by development projects. An additional concern is that the local authorities currently spend most of their time assisting the youth volunteers, and do not have much time left for the resolution of land disputes. Thirdly, the scheme does not address the situation of indigenous communities. Reports ADHOC received from several of its provincial offices indicate that members of indigenous communities are being pressured into accepting private land titles instead of collective ones. Since they fear losing their land, some end up accepting private titles for lack of a better option. The fact that indigenous lands have been affected by the operations of private companies reinforces this dynamic. The implementation of legal provisions protecting indigenous land is of paramount importance and should not be delayed. Fourthly, ADHOC has received local-level reports of people opportunistically clearing forested or farm lands in an attempt to appear as legitimate residents and secure land titles.

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### Case Study: Land Measurement on a Case-by-Case Basis in Koh Kong Province

In Koh Kong province, youth volunteers have refused to measure the land of people embroiled in land disputes. In Botum Sakor and Kiri Sakor districts, 300 families (out of 1,143) who have been in conflict with Union Development Group (UDG) have been left with no solution. The youth volunteers refused to measure individual plots, alleging that they are located in a disputed area. Similarly, youth volunteers have refused to measure land for 202 families embroiled in a dispute with the Koh Kong Plantation Company in Trapaing Kandol village, Chi Khor Leu commune, Sre Ambel district. In Sre Ambel and Botum Sakor districts, volunteers refused to measure plots for people affected by land grabbing by Okhna Heng Huy.

Conversely, the youth volunteers helped reach a solution and measured individual plots for 84 families who had been in conflict with NGO Wild Aid in Koh Por village, Baklong commune, Mondul Seima district.

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Lastly, authorities have been trying to deter independent NGOs and observers from monitoring implementation of the new scheme. For instance, after criticizing the government's strategy in an interview, HRTF Secretariat Director Sia Phearum received threats from a government-affiliated student group. The group warned that if Phearum or other civil society members continued to criticize the scheme, they would not be able to guarantee peaceful reaction from the volunteers. However no instances of violence have been reported.

On 6 January 2013, the Prime Minister announced that Phase II of the program would end in June 2013—one month before the general election.

### **c. COOPERATION WITH CIVIL SOCIETY AND PARTNER ORGANIZATIONS**

In 2012 the Cambodia Human Rights Committee (CHRC) agreed to increase its level of cooperation with ADHOC and other partners through a capacity building program and joint investigation into cases of human rights abuses, including land-related cases. In June, ADHOC staff together with the UN Office of the High Commissioner for Human Rights (OHCHR) and Samreth Law Group provided a training session on “Human Rights Case Analysis, Monitoring, Evaluation and Reporting toward Resolution” to staff members of the CHRC, Senate, National Assembly, Anti-Corruption Unit and Anti-Terrorism Unit. From August 2012-January 2013, three land cases (including Ovoir Preng, see above) were jointly investigated through field visits. ADHOC welcomes such cooperation as well as its extension through 2013.

### **CONCLUSION**

*Initiatives of the executive branch that are aimed at providing land titles to rural families and protecting their land against encroachment are welcome but insufficient. They do not address the needs of those people and communities who are most in need of land titles. With significant international technical and financial assistance, the government will have no excuse if it does not address the grievances of those who are most in need of land tenure security, including farmers living in disputed areas, informal dwellers and indigenous communities.*

## CONCLUSION AND RECOMMENDATIONS

2012 could be a turning point for land and housing rights in Cambodia. Recent government initiatives amounted to recognition that something had gone wrong and that the land crisis had begun to threaten the country's stability. However, although the authorities understood the seriousness of the situation, encroachment on natural resources and livelihoods has continued unabated and the policies which are the very causes of the unrest have continued. Projects intended to give effect to the Land Law and other regulations, such as the Land Management and Administration Project (LMAP) and its successor, the Land Administration Sub-Sector Program (LASSP), have failed provide security of tenure to the most vulnerable households and to address "unjust power dynamics [...], resulting in exclusions of marginalized groups, entrenchment of a system of power abuse, and contributing to an increasingly inequitable distribution of development benefits and burdens."<sup>51</sup> Large parts of the Cambodian population—including landless farmers, informal urban dwellers, and indigenous people—are now left with virtually nothing.

In the next few years, an increasing percentage of land conflicts will likely be linked to land grabbing in urban and rural areas alike. Economic Land Concessions now cover a large percentage of Cambodia's arable land; therefore the government will not be able to continue granting as many concessions as in the last few years. New ELCs may be taken from protected areas, islands, or cancelled concessions, but fewer conflicts are likely to be related to these. Conversely, conflicts related to land grabbing by private companies and powerful people are likely to go on, fueled by greed and impunity. In the cities, many informal settlements are likely to

be dismantled to make way for development projects. In the countryside, new conflicts may burst out and many ongoing conflicts may escalate in the absence of satisfactory settlements.

What is most needed now, in addition to strengthening the rule of law and reviewing development policies, is the recognition that Cambodia's development has been unregulated. Powerful interests have benefited disproportionately from land arrangements and policies, whereas marginalized people and communities as well as the country's natural resources have borne the burden of change. Transparency has been lacking at all levels and impunity has been pervasive.

Not everything is permitted in the name of development. Equity, inclusiveness and human rights safeguards should be at the center of development policies. The government does not have a monopoly over the definition of development; critical voices must be allowed to raise concerns about development projects and their adverse effects on the already poor, marginalized sections of the population. A range of alternative choices are possible, such as assisting smallholder farmers.

In the absence of a comprehensive strategy aimed at addressing structural issues—exclusion, injustice and power abuse in relation to land and housing—temporary government initiatives will only patch up the problems for a short period of time. The first step must be complemented by a second (and much more difficult) one: enforcing existing laws and enhancing security of tenure for all—not just for those who live in non-disputed areas. The government now has a clear choice to make.

51 BABC/Equitable Cambodia and Heinrich Böll Stiftung, *A Human Rights Approach to Development of Cambodia's Land Sector* (2012), p. iv. See also pp. 28-31.

## RECOMMENDATIONS

ADHOC would like to address the following recommendations to the **Royal Government of Cambodia**:

### 1. Land and Housing Rights

- Adopt the draft National Housing Policy after making sure it is in line with international human rights standards. In this regard, as requested by the UN Special Rapporteur on the Right to Adequate Housing, carry out a mapping of the housing needs of the country;
- Adopt an Evictions Act in line with international human rights law. In the meantime, institute a moratorium on evictions in urban and rural areas until the process of land titling has been completed;
- Implement official land titling programs and tackle land disputes as a matter of priority;
- Accelerate the registration of indigenous communities as legal entities and prioritize the registration of their lands in accordance with the Land Law;
- Recognize the possession rights of people living in informal settlements, giving special attention to informal urban settlements;
- In relocation sites for evictees, build basic electricity and water/sanitation infrastructure and provide public education, health and security services.

### 2. Economic and Other Land Concessions

- Immediately disclose information about all existing ELCs, including their exact location, size, boundaries, duration, ownership, intended use, SEIAs, consultation processes and compensation schemes. Regularly update the MAFF website in this regard;
- Give priority to providing adequate compensation to the people affected by ELCs and other development projects;

- Complete a comprehensive review of existing ELCs and disclose information on cancelled concessions, follow-up to cancellations, and state revenues derived from ELCs;
- Increase taxes on ELCs based on output production and make it a legal obligation for companies to publish all financial information related to their land concessions;
- Punish companies that do not comply with legal and contractual requirements by revoking their concessions and initiating legal proceedings against them;
- Reduce the size of concessions exceeding the 10,000-hectare limit and whose use does not fit with the exception set out in the law;
- Extend the moratorium on the granting on new ELCs and publicly disclose how many ELCs were in the pipeline on 7 May 2012 (along with supporting evidence);
- Closely monitor Social Land Concessions and investigate allegations of abuse, corruption and mismanagement in relation to SLCs.

### 3. Natural Resources

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

#### 4. Conflict Resolution

- Prioritize the settlement of disputes over land and provide conflict resolution institutions and mechanisms with adequate financial, human and institutional resources;
- Strengthen the Cadastral Commission at all levels and clarify the institutional and legal framework for the National Authority for Land Dispute Resolution;
- Adopt a law on the status of judges and prosecutors as well as a law on the organization and functioning of the courts as a matter of priority. Exercise oversight of the courts and punish civil servants who are found guilty of embezzlement or professional misconduct;
- Continue jointly investigating land cases with civil society organizations.

#### 5. Rule of Law and Democratic Freedoms

- Stop cracking down on peaceful protests of communities affected by land and housing rights violations;
- Stop judicial harassment of community representatives, human rights workers and activists;
- Provide state and local authorities with trainings on the Law on Peaceful Demonstration, especially article 3, which exempts meeting organizers of notification requirements for all educational dissemination activities for social interests;
- Stop providing RCAF protection to private companies and concessionaires. Launch meaningful investigations into allegations of abuses committed by the armed forces;
- Put an end to the “sponsorship” system, whereby powerful individuals fund RCAF units.

#### 6. Development Policies and Strategies

- Promote assistance to smallholder farming as an alternative development strategy and open broad consultations on development policies and strategies and their impacts on land, housing and

natural resources rights;

- Seek technical assistance from development partners in order to conduct a comprehensive evaluation of development policies, taking due account of their political economy and adverse effects;

#### 7. International Cooperation

- Extend invitations to the UN Special Procedures thematic mandate holders who have requested visits to Cambodia, notably the Special Rapporteur on the Independence of Judges and Lawyers and the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, and extend a standing invitation to all thematic Special Procedures;
- Fully cooperate with the UN Treaty Bodies to implement recommendations made to Cambodia since 1993, as well as with the UN Human Rights Council to implement recommendations made in the framework of the Universal Periodic Review process.

ADHOC addresses the following recommendations to **business enterprises**:

- When carrying out business activities, exercise due diligence and identify, prevent and mitigate negative human rights impacts in line with the UN Guiding Principles on Business and Human Rights;
- Concessions should be managed in line with legal and contractual requirements. In particular, refrain from causing unnecessary soil deterioration and land clearing. Absolutely refrain from illegally logging in forested areas;
- Do not start operations before official confirmation (through sub-decree) that a concession has been granted. Never use unofficial notification from state authorities as an excuse to start clearing people’s farm lands;
- Respect the rights of residents and engage in consultations at all times and about all issues that are of interest to them.



ADHOC addresses recommendations to Cambodia's **development partners** as follows:

- Assess the effectiveness of programs and projects of assistance to Cambodia's land sector, focusing on enhancement of land tenure security for all, instead of quantitative data (number of land titles that have been issued);
- Investigate allegations of abuses committed in relation to development assistance programs, and suspend financial assistance in case evidence incriminates the Cambodian authorities;
- Consider phasing out assistance to the land sector if the authorities demonstrate no clear political will to prioritize the needs of people and communities who are most in need of land titles, including informal dwellers and indigenous people;
- Continue consulting with civil society organizations working on land, housing and natural resources issues.

## ANNEXES

## 1. ELCs GRANTED INSIDE PROTECTED AREAS

PROTECTED AREA	ORIGINAL AREA - 1993 ROYAL DECREE (HA)	ELCs 2008-2011 (HA)	ELCs 2012 (HA)	REMAINING LAND AREA (HA)
1 Virakchey National Park	332,500	108,513	0	223,987
2 Kulen Prom Tep Wildlife Sanctuary	402,500	79,349	126,796	196,355
3 Botum Sakor National Park	171,250	84,074	0	87,176
4 Bokor National Park	140,000	40,704	0	99,296
5 Ream National Park	150,000	9,915	0	140,085
6 Phnom Aural Wildlife Sanctuary	253,750	78,208	2,800	172,742
7 Peam Krasaup Wildlife Sanctuary	23,750	25,897*	0	0*
8 Phnom Samkors Wildlife Sanctuary	333,740	16,622	0	317,118
9 Roneam Daun Sam Wildlife Sanctuary	178,750	8,190	9,114	161,446
10 Boeung Per Wildlife Sanctuary	242,500	112,631	0	129,869
11 Lumphat Wildlife Sanctuary	250,000	67,287	27,173	155,540
12 Phnom Prech Wildlife Sanctuary	222,500	29,009	29,072	164,419
13 Phnom Namlear Wildlife Sanctuary	47,500	9,546	25,513	12,441
14 Snuol Wildlife Sanctuary	75,000	126,027*	0	0*
15 Banteay Chhmar Protected Landscape	81,200	9,000	0	72,200
16 Preah Vihear Protected Landscape	5,000	51,268*	0	0*
17 Kirirom National Park	35,000	1,494	51,808*	0*
18 Dung Peng Multiple Use Area	27,700	0	321	27,379
TOTAL			272,597*	

\* Peam Krasaup Wildlife Sanctuary, Snuol Wildlife Sanctuary, Preah Vihear Protected Landscape and Kirirom National Park have virtually been entirely obliterated by ELCs. When granting new ELCs or re-classifying land in these protected areas from 2008-2011 and in 2012, the government seems to have failed to assess how many

hectares were remaining. As a result, the number of hectares granted as ELCs (or re-classified as state private land) exceeds the official size of these protected areas. Causes may be that some concessions overlap, or that these protected areas have been included in larger ELCs (which also affect non-protected areas).

ADHOC has chosen to provide an overall figure for the year 2012 (272,597 hectares). However, one might wish to remove 18,302 hectares  $[51,808 + 1,494 - 35,000]$  from this total figure, since a maximum of 35,000 hectares of land could logically be granted as ELCs inside Kirirom National Park. The abovementioned total figure would then be 254,295 hectares. The same reasoning applies to the other three protected areas (Peam Krasaup Wildlife Sanctuary, Snuol Wildlife Sanctuary and Preah Vihear Protected Landscape), so that 99,442 hectares  $[(25,897 - 23,750) + (126,027 - 75,000) + (51,268 - 5,000)]$  would have to be removed from the total number of hectares granted as ELCs inside protected areas.

Once again, the figures we provide in this report are based on official documents (sub-decrees). Inconsistencies with the physical reality and official information on protected areas can only be attributed to the lack of transparency surrounding the ELC policy and processes.

**2. ELCS GRANTED AFTER 7 MAY 2012**

SUB-DECREE #	DATE	CONCESSIONAIRE	DURATION (Y)	SIZE (HA)	PURPOSE	AREA	PROVINCE
70	17/05/2012	n/a	n/a	9,018	Rubber	Koh Gnek	Mondulkiri
71	18/05/2012	S.K. Plantation (Cambodia) PTE	n/a	8,000	Rubber	Kon Momm	Rattanakiri
72	18/05/2012	Ly Ye Rubber Co. Ltd.	n/a	7,710	Rubber & Agro-Industry	Ta Siem	Siem Reap
73	18/05/2012	H.M.H. Kampong Thom	n/a	5,914	Rubber	San Tuk	Kampong Thom
78	06/06/2012	Khun Seu Import Export	70	8,200	Rubber & Agro-Industry	Kulen Prom Tep	Oddar Meanchey
79	07/06/2012	Lim Royal Joint Stock	70	9,068	Agro-Industry	Phnom Prech	Mondulkiri
80	07/06/2012	Roat So Khorn	70	9,000	Rubber & Agro-Industry	Lumphat	Rattanakiri
81	07/06/2012	A.2.A. Town (Cambodia) Co. Ltd.	70	7,668	Development	Kirirom	Kampong Speu
82	07/06/2012	n/a	n/a	9,129	Agro-Industry	Kulen Prom Tep	Preah Vihear
83	07/06/2012	n/a	n/a	1,865	Rubber & Agro-Industry	Kulen Prom Tep	Oddar Meanchey
84	07/06/2012	n/a	n/a	1,195	Rubber & Agro-Industry	Kulen Prom Tep	Oddar Meanchey
85	07/06/2012	n/a	n/a	9,477	Agro-Industry	Phnom Namlear	Mondulkiri
86	07/06/2012	n/a	n/a	4,095	Rubber & Agro-Industry	Kulen Prom Tep	Preah Vihear
87	07/06/2012	n/a	n/a	9,700	Agro-Industry	Kulen Prom Tep	Preah Vihear
90	12/06/2012	BSC Import Export Co. Ltd.	70	4,557	Agro-Industry	Roneam Daun Sam	Battambang
91	14/06/2012	L.K.L. Construction Co. Ltd.	70	5,559	Agro-Industry	Phnom Namlear	Mondulkiri

**2. ELCS GRANTED AFTER 7 MAY 2012**

SUB-DECREE #	DATE	CONCESSIONAIRE	DURATION (Y)	SIZE (HA)	PURPOSE	AREA	PROVINCE
92	12/06/2012	Metrey Pheap Kase Usahakam	70	8,520	Agro-Industry	Kulen Prom Tep	Preah Vihear
103	16/07/2012	n/a	n/a	7,668	School (?)	Kirirom	Kampong Speu
104	16/07/2012	n/a	n/a	n/a	Tourism	Koh Tbal	Kep
115	03/08/2012	Green Choice (Cambodia) Co. Ltd.	n/a	7,863	Rubber & Agro-Industry	Sangkum Thmey and Rovieng	Preah Vihear
116	03/08/2012	A Me Nen (Cambodia) Co. Ltd.	n/a	7,359	Rubber & Agro-Industry	Kulen	Preah Vihear
117	03/08/2012	Distinct Harvest (Cambodia) Co. Ltd.	n/a	7,960	Rubber & Agro-Industry	Sangkum Thmey and Rovieng	Preah Vihear
125	18/08/2012	n/a	n/a	8,200	Rubber & Agro-Industry	Kulen Prom Tep	Oddar Meanchey
126	17/08/2012	n/a	n/a	8,520	Rubber & Agro-Industry	Kulen Prom Tep	Preah Vihear
127	17/08/2012	n/a	n/a	4,557	Agro-Industry	Roneam Daun Sam	Battambang
130	23/08/2012	Angkor Sugar	n/a	6,328	Sugarcane	Kon Kreal	Battambang
131	23/08/2012	Tun Le Sugarcane	n/a	6,164	Sugarcane	Chong Kal	Oddar Meanchey
132	23/08/2012	Cambodia Cane En Sugar Welly	n/a	5,908	Sugarcane	Samraong	Oddar Meanchey
133	24/08/2012	Rat Sokhorn Inc.	n/a	9,000	Rubber & Agro-Industry	Lumphat	Rattanakiri
135	04/09/2012	n/a	n/a	n/a	n/a	n/a	n/a
149	14/09/2012	Heng Heang – Siv Chanthu Green Sport	n/a	4,000	Rubber	Sen Monorom, Pich Chreada	Mondulakiri



2. ELCS GRANTED AFTER 7 MAY 2012							
SUB-DECREE #	DATE	CONCESSIONAIRE	DURATION (Y)	SIZE (HA)	PURPOSE	AREA	PROVINCE
151	18/09/2012	n/a	n/a	6,000	Rubber & Agro-Industry	Kulen Prom Tep	Preah Vihear
220	03/12/2012	n/a	n/a	603	Development	Romeas Hek	Svay Rieng
		TOTAL [at least]*		208,805			

\* ADHOC will continue looking for missing information.

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