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Business and Human Rights in Cambodia: Constructing the Three Pillars



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CAMBODIAN CENTER FOR HUMAN RIGHTS

REPORT:

**BUSINESS AND HUMAN RIGHTS IN CAMBODIA:
CONSTRUCTING THE THREE PILLARS**

A report by the Cambodian Center for Human Rights

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CAMBODIAN CENTER FOR HUMAN RIGHTS ('CCHR')

CCHR is a non-political, independent, non-governmental organization that works to promote and protect democracy and respect for human rights throughout Cambodia. CCHR's vision is of a non-violent Cambodia in which people enjoy their fundamental human rights, are treated equally, are empowered to participate in democracy and share the benefits of economic development. CCHR desires rule of law rather than impunity; strong institutions rather than strong men; and a pluralistic society in which variety is harnessed and celebrated rather than ignored or punished. CCHR's logo shows a white bird flying out of a circle of blue sky - this symbolizes Cambodia's claim for freedom. To realize its vision, CCHR works to promote and protect democracy and respect for human rights - primarily civil and political rights - throughout Cambodia.

Front cover: Construction continues on Golden Tower 42 and the De Castle Royal Tower in Phnom Penh.

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DEFINITIONS AND ACRONYMS

AC	Cambodian Arbitration Council
ACFTA	ASEAN China Free Trade Agreement
AICHR	ASEAN Inter Governmental Commission of Human Rights
ADHOC	The Cambodian Human Rights and Development Association
ASEAN	Association of Southeast Asian Nations
BAT	British American Tobacco
BFC	Better Factories Cambodia
BSIC	Beer Selling Industry Cambodia
CBI	Clean Business Initiative
CC	Cadastral Commission
CCHR	Cambodian Center for Human Rights
CEDAW	The UN Convention on the Elimination of All Forms of Discrimination against Women
CHP	Community Hearings Program
CESCR	The UN Committee on Economics, Social and Cultural Rights
CHRC	Cambodian Human Rights Committee
CNPA	Cambodian National Petroleum Authority
CRC	The UN Convention on the Rights of the Child
CSR	Corporate Social Responsibility
ELC	Economic Land Concession
GDP	Gross Domestic Product
GMAC	The Garment Manufacturers' Association in Cambodia
ICCPR	The International Covenant on Civil and Political Rights
ICERD	The UN International Convention of the Elimination of All Forms of Racial Discrimination
ICESCR	The UN International Covenant on Economic Social and Cultural Rights
ILO	International Labour Organization
LDR	Labor Dispute Resolution
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
NAC	National Assembly Commission on Human Rights and Reception of Complaints
NARLD	National Authority for the Resolution of Land Disputes
NGO	Non Governmental Organization

NHRI	National Human Rights Institution
OECD	Organisation for Economic Co-operation and Development
OHCHR	The Office of the UN High Commissioner for Human Rights
Paris Principles	The principles as set out at the First International Workshop on National Institutions for the Promotion and Protection of Human Rights, held in Paris in 1991.
PGS	Petroleum Gas Services
Project	The CCHR Business and Human Rights Project
UCTA	US Cambodian Bilateral Trade Agreement
UDHR	The UN Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNDRIP	The UN Declaration on the Rights of Indigenous People
RGC	Royal Government of Cambodia
SC	Senate Commission on Human Rights, Reception of Complaints and Investigation
SLC	Social Land Concession
SRSR	The UN Special Representative to the Secretary General
WRC	Worker Rights Consortium

EXECUTIVE SUMMARY

BACKGROUND

In August 2009, CCHR launched the Cambodian Business and Human Rights Project to advance understanding of human rights within the Cambodian business community, and to encourage Cambodian businesses to commit to respecting human rights.



Since United Nations sponsored elections in 1993, Cambodia has embarked on an ambitious program of economic development, in which the private sector plays a prominent role. Cambodia remains one of the poorest countries in Asia and often Cambodians have been negatively affected by economic development projects. The economy rests primarily on four sectors: garments, tourism, construction and agriculture. In addition, there is an emergent extractive industry.

Left: Children collect rubbish in Koh Kong.

Globally, privatization, deregulation and liberalization of trade and capital movements have led governments to concede much of their influence over the lives of citizens to private sector actors. A ‘governance gap’ has emerged, where governments are unwilling or unable to protect citizens from human rights violations perpetrated by businesses. In countries like Cambodia, with developing economies and institutionalized corruption, the human rights governance gap is particularly acute. Close financial ties between individual government figures and businesses responsible for rights violations exacerbate the problem, and in some circumstances can make it difficult in practice to differentiate between government and businesses.

One response to this is an emerging consensus that businesses should focus more directly on respecting human rights. Such a focus is broader than merely ensuring compliance with local law and more fundamental than broad brush corporate social responsibility policies. This approach is gaining traction: specific human rights provisions are steadily becoming more prevalent in businesses’ policy statements and operating practices.

John Ruggie, the United Nations Special Representative to the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, has generated significant interest in human rights within the business community and among governments. In 2008, Ruggie produced the three pillars framework – protect, respect, remedy – which has become the authoritative focal point for the contemporary debate surrounding business and human rights.

This report analyzes business and human rights in Cambodia through Ruggie’s framework and does so by

In countries like Cambodia, with developing economies and institutionalized corruption, the human rights governance gap is particularly acute.

focusing on land rights, labor rights, and the freedoms of expression, assembly and association in particular. These are the most critical rights issues relevant to businesses in the Cambodian context. They affect a large part of the Cambodian population; they are unequivocally areas of pressing concern; and, they are areas where there can be a legitimate expectation for swift and comprehensive improvements.

PILLAR ONE: STATE DUTY TO PROTECT HUMAN RIGHTS

The fundamental premise of international human rights law is that states have a duty to prevent human rights violations affecting individuals within their jurisdiction.

Economically motivated land rights violations are endemic in Cambodia. Victims of evictions are rarely given an opportunity for participation or consultation beforehand and any information which is provided is often incomplete and inaccurate. When consultations do occur, they are often manipulative or coercive. Evictions are regularly conducted by armed Cambodian troops and police. The legal framework governing evictions is incomplete or unenforced, and remedial mechanisms are underdeveloped and corrupt. While the political and economic elite benefit from forced evictions, the victims are generally the most vulnerable members of Cambodian society.

Significant progress has been made in Cambodian labor rights through initiatives created by the US-Cambodian Bilateral Trade Agreement. Annual monitoring of factories has revealed a steady improvement in working conditions and the Arbitration Council remains Cambodia's leading remedial mechanism in terms of transparency, independence, neutrality and lack of corruption. However, there remain areas of concern. These initiatives apply only to garment factories; they will not function without the continuing involvement of the International Labor Organization; and, there is concern that they will only endure as long as they are deemed financially astute by the Royal Government of Cambodia ('RGC'). Despite an improvement in overall labor conditions, the Labor Law 1997 remains insufficiently enforced at state-level, a problem exacerbated by the corruption and inefficiency of the judicial remedial mechanisms that govern labor rights violations.

Despite a robust legal framework, arbitrary, and often violent, incursions on the freedoms of expression, assembly and association are commonplace in contemporary Cambodia. Cambodian activists regularly face the threat of physical violence and criminal charges when attempting to voice their opposition to developments which affect their land and labor rights.



Above: Forced eviction of Burnt Bridge Village in Preah Sihanouk in April 2007. Photo by the Cambodian Human Rights Action Committee ('CHRAC').

CCHR Recommendations

- **That the RGC end all illegal forced evictions, and take reasonable steps to ensure that Cambodians affected by Economic Land Concessions, Social Land Concessions and redevelopment contracts are accorded the legal protections to which they are entitled under Cambodian law and international human rights law. These include:**

adequate notice, consultation, adequate remuneration and alternative land or housing of a similar standard to that which they have lost.

- **That the RGC ensure the transparent management of Cambodia’s natural resources, including its forests, extractive resources and sand.**
- **That the RGC fully implement the Labor Law 1997 and ensure that its benefits are felt outside the garment sector. Priority should be given to pressing issues, including the lack of a national minimum wage.**
- **That the RGC protect and respect the Cambodian Constitution and international human rights standards by permitting peaceful demonstrations, prosecuting individuals responsible for the murder of trade unionists and ceasing the violent deployment of the police and the Royal Cambodian Armed Forces in the suppression of the freedoms of expression, assembly and association in relation to land and labor rights.**
- **That the RGC takes active steps to encourage and facilitate a corporate culture of respect for human rights in Cambodia, by supporting and participating in initiatives such as the CCHR Business and Human Rights Project.**

PILLAR TWO: BUSINESSES’ RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Businesses must comply with the laws of the host-state in order to maintain a legal licence to operate, including domestic legislation that prohibits human rights violations. Even where such legislation is weak or unenforced, businesses must still comply with prevailing social norms to ensure their social licence to operate. One universal social norm acknowledged by almost all stakeholders is compliance with the principles of relevant international human rights instruments, even where national law is absent. There is emerging evidence that a failure to comply with social norms by respecting human rights (even in the absence of an enforced national legal regime) can have significant reputational and financial consequences for businesses.

Even where such legislation is weak or unenforced, businesses must still comply with prevailing social norms to ensure their social licence to operate.

Businesses regularly violate the land rights of Cambodians. Although mandatory evictions are necessary to the economic and infrastructural development of any state, in Cambodia these evictions are frequently carried out in breach of international standards and seemingly with little reference to the domestic legal regime. Residents are rarely consulted on planned evictions, and when consulted they are

often offered substantially below the market-value of their land. Evictions are often violently administered by a combination of mercenaries hired by the businesses, armed police and the Royal Cambodian Armed Forces.

While international trade agreements have led to tangible improvements in the labor rights of workers in the garment industry, the Cambodian labor force in general is regularly exposed to deleterious working conditions. Even in the garment sector, gender discrimination, forced overtime and the use of short-term contracts to circumnavigate labor regulations still occurs; and evidence suggests that the minimum wage is insufficient for workers to maintain a decent

standard of living. In other sectors, wages are often lower than those of garment workers, gender discrimination is endemic and child labor is widespread. While some multi-national corporations have sought to fulfill their responsibility to respect human rights, more businesses must be encouraged to improve adherence to labor rights.

Cambodians who are the victims of land and labor violations often rely on free expression, assembly and association to advocate their cause and seek redress. Yet public and private forces collude to deny them these rights.



A range of businesses currently undertake corporate social responsibility activities in Cambodia, some of which have laudable philanthropic goals that have had a positive effect on human rights. However, there are a limited number of examples of Cambodian businesses that have fully committed to respecting the human rights of all those affected by their operations in a targeted and systemic way.

In spite of this, a number of signs do augur well for the future. The reception by businesses to the CCHR Business and Human Rights Project has been overwhelmingly positive. Only a few months after it was developed, nearly 30 Cambodian businesses had pledged their intention to take a more targeted approach to respecting rights by signing the Statement of Principles. Many more have participated in the dialogue process and heard leading businesses advocate the benefits of respecting rights and share their experience of doing so in practice. If a critical mass



of businesses do commit to take concrete steps to respect rights, Cambodian businesses' human rights record should improve. Responsible businesses, NGOs and the RGC can assist this process by giving commercial priority (e.g. when selecting suppliers and business partners) to those businesses who have already made a public commitment to respect human rights.

Above: Leading Cambodian businessmen Oknha Dr Mengly of MJQ Group (second from left) and Mr In Channy of Acleda Bank (third from left) at a CCHR Business and Human Rights conference.

Above Right: A Phnom Penh garment factory.

CCHR Recommendations

Below: De Castle Royal Tower under construction in Phnom Penh.

- That businesses operating in Cambodia desist from the violation of land and labor rights, and the freedoms of expression, assembly and association in relation to those rights, with immediate effect.
- That businesses go beyond mere corporate social responsibility initiatives and adopt clear human rights policies, including the full integration of those policies throughout their operations to give the commitments meaning.
- That businesses recognize that the realization of human rights protections for all individuals affected by their operations – including host communities – requires them to comply with their obligations under Cambodian law, and, furthermore, to respect these rights even when Cambodian law is silent or unenforced.



- That businesses acknowledge their capacity to commit, or to be complicit in, human rights abuses throughout their sphere of influence, and develop internal systems to mitigate this risk, including human rights impact assessments for all current and future activities.
- That Cambodian businesses address their lack of understanding of human rights by participating in dialogue, cooperating with other stakeholders and joining multi-stakeholder initiatives, such as the CCHR Statement of Principles on Business and Human Rights in Cambodia.
- That the RGC, civil society actors and responsible multi-national and local businesses support and promote those businesses which make a commitment to human rights (and deliver on that commitment in practice) by giving preference to them commercially.

PILLAR THREE: ACCESS TO EFFECTIVE REMEDIES

Providing access to remedial mechanisms is a fundamental element of both the state duty to protect and businesses' responsibility to respect human rights. Such mechanisms can be state or non-state based and may be judicial or may incorporate alternative dispute resolution techniques.

Judicial mechanisms: Despite repeated public pledges by the RGC of its commitment to judicial and legal reform, and much investment in reform programs, there has been no progress in the most important issue affecting the courts: their lack of independence from political and financial influence. Judicial mechanisms in Cambodia are in practice utilized by the political, economic and social elite to ensure impunity.

State-based non-judicial mechanisms: Corruption, a lack of transparency and professionalism, and over-arching political control beset the Cadastral Commission and the National Authority for the Resolution of Land Disputes that deal with land grievances. Political control also renders the other state-based non-judicial mechanisms ineffectual, and despite some progress, the National Human Right Institution, which was first promised in 2006, is yet to materialize. State-based non-judicial mechanisms operate to reinforce the hegemony of the elite; and other initiatives cited by the RGC merely obscure the inherent injustice in the system by allowing the RGC to claim to be dedicated to the human rights of Cambodian citizens.

The Arbitration Council is the leading example of a rights-compliant mechanism in Cambodia – it is widely considered to be legitimate, accessible, predictable, equitable and transparent.

Non-state non-judicial mechanisms: The Arbitration Council is the leading example of a rights-compliant mechanism in Cambodia – it is widely considered to be legitimate, accessible, predictable, equitable and transparent. With the exception of the Arbitration Council, CCHR’s Community Hearings Program, the Beer Selling Industry of Cambodia’s industry-based grievance mechanism (which has yet to be fully implemented) and a limited number of business-based internal grievance mechanisms which form part of corporate social responsibility strategies, non-state non-judicial mechanisms are underdeveloped in Cambodia. Nonetheless, given the chronic condition of the state-based administration of justice, such mechanisms may represent the best opportunity for the development of rights-compliant remedial mechanisms in Cambodia.

CCHR Recommendations

- **That the RGC engage in a thorough legislative overhaul of the judicial system, ending endemic politicization and corruption and ensuring adherence to international fair trials standards, by passing the new laws and following the recommendations of UN Special Rapporteur Surya Subedi in his recent report on the Cambodian judiciary;**
- **That the RGC immediately end the use of criminal charges in the suppression of the freedoms of expression, assembly and association.**
- **That the RGC ensure that all past victims of illegal forced evictions have access to an effective remedy and reform the Cadastral Commission and the National Authority for the Resolution of Land Disputes to clearly define their respective responsibilities and provide them with the independence, transparency and resources necessary to tackle high profile disputes and the backlog of cases.**
- **That the RGC implement the draft legislation for the Cambodian NHRI without delay, and that the RGC give this institution a mandate to monitor judicial activity in the country with full autonomy and independence.**

- **That businesses recognize that disputes will arise (and that time and money will be saved if these disputes are resolved early) and undertake to implement grievance mechanisms capable of providing adequate remedies to victims.**

CONCLUSIONS

The picture of business and human rights in Cambodia sketched in this report reveals significant gaps and failures under all three of Ruggie’s pillars. The RGC has repeatedly failed to discharge its duty to protect citizens from human rights abuses by businesses, a number of Cambodian businesses have shown a blatant lack of respect for human rights and most remedial mechanisms are underdeveloped, ineffective and/or corrupt. However, a detailed analysis of the situation also shows that substantive positive change is possible, and offers tantalizing prospects for improvement.

Particularly for businesses’ responsibility to respect, where the case to take substantive action is becoming more commercially persuasive and businesses themselves seem more ready to listen. There is now a clearly emerging ‘business case’, ‘legal case’ and ‘moral case’ for businesses in Cambodia to take substantive measures to comply with their responsibility to respect human rights.

There are benefits for businesses with a reputation for being socially responsible. Equally, there can be significant commercial costs to being associated with rights violations; costs which extend well beyond the effect on consumer demand as a result of a targeted campaign. Implementing and applying a human rights policy now will allow businesses to take advantage of these benefits, mitigate the risks and provide an invaluable early-mover advantage.

Implementing and applying a human rights policy now will allow businesses to take advantage of these benefits, mitigate the risks and provide an invaluable early-mover advantage.

The Cambodian Constitution incorporates international human rights standards directly into Cambodian law as a group of rights and freedoms to which the Cambodian people are entitled. While there continue to be serious weaknesses in the implementation of an enforced legal framework to support these rights, businesses retain a responsibility to comply. Liability and reputational damage for rights violations may also arise through the broadening net of extra-territorial measures or detailed reporting requirements imposed by other states.

Even in the absence of a quantified business case or the threat of specific legal sanctions being applied, morality should motivate Cambodian business to act. Human rights are universal; they are to be guaranteed to all human beings and businesses are capable of violating – and in the past have violated – these rights in Cambodia. All societal actors, including private enterprises, are obliged to respect human rights.

INTRODUCTION

1. In August 2009, CCHR – a non-political, independent, non-governmental organization that works to promote and protect democracy and respect for human rights throughout Cambodia – launched the Business and Human Rights Project ('the Project'). The Project was designed to encourage businesses to understand and respect human rights by engendering a climate of understanding, co-operation and dialogue between all stakeholders. The Project does not confront businesses, but, rather, attempts to engage all stakeholders through constructive communication. In this way, the Project seeks to advance understanding of human rights in the Cambodian business community, and to encourage Cambodian businesses to commit to respecting human rights. This report is intended to facilitate advocacy and capacity-building as part of this process.
2. The contemporary discourse on business and human rights springs from the rapid globalization during the 1990s 'as liberalization, technology, and innovations in corporate structure combined to expand prior limits on where and how businesses could operate globally.'¹ Globalization has the potential to contribute to sustainable global models of development and social justice which at the same time provide human rights protection and equitable economic growth.²
3. Unfortunately, however, the effects of globalization are ambiguous: in practice, the growth of the global marketplace has widened the poverty gap between the rich and the poor, and contributed to the exploitation of the vulnerable and disadvantaged.³ Global economic growth has had a profound effect on human rights, however:

A solely economic-centered approach to globalization appears dangerous because it (a) subordinates or marginalizes human rights concerns, (b) creates conditions permitting the continuation of human rights violations, (c) fails to recognize the multifaceted aspects of globalization and the panoply of stakeholders and participants and (d) fails to seek or identify solutions which will protect civil, political, economic, social and cultural rights and therefore enable the economic benefits of globalization to be reaped fully.⁴

4. When one considers that of the 100 largest discrete economic entities in the world, 44 are now businesses, the enormous power that businesses wield is revealed with stark clarity: 'the reality [is] that the nation-state is no longer the pre-eminent source of economic power. In addressing [human rights] we need to throw away our mental maps that assigned that role to governments. Like it or not, [businesses] have a role to play as well.'⁵ In the pre-globalised world, responsibility for the protection of human rights was the sole preserve of governments.⁶ Now, while governments have ceded much of their influence to private sector actors, many businesses have been unwilling to acknowledge that with great power, comes great responsibility.⁷

¹ Ruggie, J. 'Protect, Respect and Remedy: A Framework for Business and Human Rights' Report of the Special Representative of the United Nations Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises', *Innovations*, (Spring 2008), p. 209.

² Pillay, S. 'And Justice for All? Globalization, Multinational Corporation, and the Need for Legally Enforceable Human Rights Protections', *University of Detroit Mercy Law Review*, 81, (2003-2004), p. 491.

³ *Ibid*, p. 491.

⁴ Markovic, N. 'Corporate Responsibility and Human Rights: The Consequences of Globalisation', in M. Shanahan and G. Treuren (eds.), *Globalisation: An Australian Perspective* (2004), p. 33.

⁵ Haas, R.D. 'Business's Role in Human Rights in 2048', *Berkeley Journal of International Law*, 26, (2008), pp. 400-401.

⁶ Markovic, N. (2004), *Supra* note 4, p. 33.

⁷ *Ibid*, pp. 32-5.

5. As the relative power of states has waned, it has become apparent that many governments are incapable of meeting their obligation to protect citizens from human rights abuses: '[d]espite external pressure and well meaning promises, many governments simply do not have the resources to fulfill their responsibilities. Others have become so corrupt over time that they lack the will and ability to provide basic human rights. To their shame, unscrupulous [businesses] exacerbate the problem by taking advantage of the corruption in these countries to pad their profits.'⁸ A 'governance gap'⁹ has emerged where governments are unwilling or unable to protect their citizens from human rights violations perpetrated by businesses, and, so, 'the idea of ensuring that human rights are protected outside areas under the direct control of the state, and the possibility of corporations adopting a more socially aware role, [have] gained greater importance.'¹⁰ In Cambodia this process has advanced to the point where links between businesses and government can be so close that for many rights violations, the businesses involved are in reality synonymous with the state.
6. In the last two decades, this reality has begun to be acknowledged by all stakeholders, including businesses themselves. This can be seen in the huge array of corporate social responsibility ('CSR') initiatives on the corporate landscape. CSR 'is the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life, in ways that are both good for business and good for [international] development.'¹¹ In academic theory, CSR is a vague concept, incorporating a diverse range of elements, for example: that ethics, values and principles influence a business's actions; that a business is accountable and transparent; that a business shows commitment to – and performance in – social, environmental and economic areas (the so-called 'triple bottom-line', people, planet and profit); that a business engages with internal and external stakeholders in the development of policy; that a business ensures high levels of health and safety, and a healthy work-life balance; and, that a business respects fundamental human rights.¹²
7. In practice, however, CSR policies too often constitute *ad-hoc* philanthropic programs, which are not integrated into a business's policy framework, and with little or no regard for the peremptory nature of human rights. In response to this, in recent years an emerging consensus has begun calling for businesses to develop human rights protection policies independent from, and more fundamental than, their CSR policies: 'people are increasingly concerned about what they perceive to be the negative effects of globalization on the enjoyment of human rights and they are prepared to act... Ignore this, act irresponsibly, and as several corporation have discovered to their cost, their reputation and bottom line is at stake.'¹³
8. Specific human rights provisions are slowly becoming more prevalent in businesses' policy statements and operating practices. Further evidence that businesses have begun to accept the increasing level of expectation that they conduct their operations with respect for human rights is the rapid proliferation of voluntary industry-based international initiatives. These include the Fair Labor Association, the Voluntary Principles on Security and Human

⁸ Haas, R.D. (2008), *Supra* note 5, p. 401.

⁹ Ruggie, J. 'Business and Human Rights: Further steps toward the operationalization of the "protect, respect and remedy" framework', Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/14/27, (June 2010) p. 3.

¹⁰ Markovic, N. (2004), *Supra* note 4, pp. 33-34.

¹¹ Blowfield, M. and Murray, A. *Corporate Responsibility: A Critical Introduction* (2008), p. 13. Quoting World Bank.

¹² *Ibid*, p. 135.

¹³ Robinson, M. 'The Business Case for Human Rights', *Financial Times Management, Visions of Ethical Business*, (1998); and Jerbi, S. 'Business and Human Rights at the UN: What Might Happen Next?', *Human Rights Quarterly*, 31 (2009), p. 299.

Rights and the Kimberly Process to apprehend the trade in conflict diamonds, as well as similar initiatives launched by supranational intergovernmental bodies, for example, the UN Global Compact, the International Labour Organization ('ILO') Tripartite Declaration of Principles Concerning Multinational Enterprises and the OECD Guidelines for Multinational Enterprises.¹⁴

9. John Ruggie, the UN Special Representative to the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises ('SRSG'), has given the emerging business and human rights zeitgeist a leader. Ruggie's success contrasts sharply with earlier UN efforts in this area. In 2002, the UN attempted to introduce the Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights ('the Norms').¹⁵ The Norms drew on 'existing human rights documents and include[d] provisions on international criminal and humanitarian law, civil and political rights as well as economic, social and cultural rights, consumer protection, environmental standards, and anti-corruption.'¹⁶
10. In effect, then, the Norms would have placed legal obligations on businesses similar to those placed on states. However, while civil society actors and human rights activists welcomed the Norms, both governments and businesses (through the International Chamber of Commerce and the International Organisation of Employers) were virulent in their criticism, claiming that giving businesses the same level of human rights responsibility as states was unprecedented, inappropriate and legally dubious.¹⁷ The lack of support among key stakeholder groups led to the abandonment of the Norms, and the 2005 appointment of SRSG Ruggie.
11. Ruggie's initial mandate was five-fold: first, to identify standards of corporate responsibility; second, to clarify the role of states in business and human rights; third, to research the concepts of 'complicity' and 'sphere of influence' in relation to business and human rights; fourth, to develop methods for monitoring and tracking businesses' human rights performance; and fifth, to assemble a best-practice model for states and businesses.¹⁸ In the five years since his appointment, 'Ruggie has been largely responsible for moving what was a stalled and divisive debate to a new phase of dialogue and activity inside and outside the UN system.'¹⁹ In 2008, Ruggie produced the three pillars framework – protect, respect, remedy – which has become the authoritative focal point for the contemporary debate surrounding business and human rights.
12. Despite recent economic growth, with a GDP of approximately US\$10 billion,²⁰ Cambodia remains one of the poorest countries in Asia.²¹ The economy rests primarily on four sectors: garments, tourism, construction and agriculture.²² In addition, there is an

¹⁴ Jerbi, S. (2009), Ibid, p. 300.

¹⁵ UNHCHR, 'Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights' E/CN.4/Sub.2/2003/12/Rev.2, 26 (August 2003) Available at: <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.2003.12.Rev.2.En> Accessed 15 September 2010.

¹⁶ Seppala, N. 'Business and the International Human Rights Regime: A Comparison of UN Initiatives', *Journal of Business Ethics*, 87, (2009), p. 403.

¹⁷Ibid, p. 403.

¹⁸ McCorquodale, R. 'Corporate Social Responsibility and International Human Rights Law', in *Journal of Business Ethics*, 2009 (87), p. 386. Quoting UN Commission on Human Rights Resolution 2005/69 (20 April 2005).

¹⁹ Jerbi, S. (2009), Supra note 13, p. 301.

²⁰ World Bank Indicators 2008.

²¹ 2009 International Monetary Fund estimate. Available at: <http://www.imf.org>. Accessed 1 June 2010.

²² UN Human Rights Council, 'National Report Submitted In Accordance With Paragraph 15 (A) Of The Annex To Human Rights Council Resolution 5/1: Cambodia', Working Group on the Universal Periodic Review, Sixth session, Geneva, A/HRC/WG.6/6/KHM/1, (December 2009), p. 21 and Lum, T. 'Cambodia: Background and U.S. Relations', Congressional Research Service, (July 2007), p. 7.

emergent extractive industry.²³ As Cambodia's economy is primarily agrarian, and approximately 80 percent of Cambodians are engaged in subsistence agriculture; the vast majority of the economic growth the country has undergone since 1993 can be attributed to the surges in the garment and tourism sectors.²⁴ For example, the number of people directly employed in garment factories increased from 18,000 in 1995 to a peak of over 327,000 in 2008 and if indirect employment is included, the total number employed by the sector is estimated to exceed 500,000.²⁵ Its share of GDP has increased from 1.3 percent in 1995 to 15.9 percent in 2006.²⁶

13. The economic downturn has hit Cambodia hard: '[i]n 2009, it is likely Cambodia's economy contracted more than any other ASEAN country. Recent government estimates suggest growth was a nominal 1%, down from 10.2% in 2007.'²⁷ Furthermore, it is estimated that approximately 45,000 garment factory workers were made unemployed, and approximately 300,000 recent graduates of high schools and universities are without work.²⁸ The World Bank indicators for April 2010 report that real GDP is estimated to have contracted by 2 percent in 2009; garment export volumes decreased by 16% and both tourism and foreign investment significantly declined.²⁹ On the ground, the poorest urban and rural dwellers have often felt the worst effects of the crisis.
14. Nevertheless, since UN sponsored elections 1993, Cambodia has embarked on an ambitious and in many respects successful program of economic development, in which the private sector has played, and continues to play, a prominent role. Unfortunately, most Cambodians have not benefitted from this economic development. In countries such as Cambodia, with developing economies and institutionalized corruption, the human rights governance gap is particularly acute: '[d]eveloping countries have been locked into this pattern of competing, and [businesses] have become more powerful in their ability to influence national governments. The [businesses] have exploited the governments' fear of losing investments.'³⁰ Often, Cambodians have been negatively affected by economic development projects: losing land, housing and access to natural resources; or being forced to work in arduous and inhumane conditions. To exacerbate these impositions, when these people attempt to protest, their freedoms of expression, assembly and association have been brutally repressed. Against this backdrop, communities and non-governmental organizations in Cambodia have called for the benefits of economic development to be shared equally and freely among all, and for human rights to be respected by the private sector.

²³ 'Cambodian gold mine attracts Vietnamese enterprises', Posted by VBN on May 31st, 2010. Available at: <http://vietnambusiness.asia/cambodian-gold-mine-attracts-vietnamese-enterprises/> & 'Experts Gather to Debate Mineral Extraction', Kong Sothanarith, VOA Khmer | Original report from Phnom Penh Wednesday, 31 March 2010. Available at: <http://www.voanews.com/khmer-english/news/economy-business/a-40-2010-03-31-voa1-90235292.html> Accessed 16 September 2010.

²⁴ See for example: Fund For Peace Country Profile Cambodia. Available at: http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=398&Itemid=557. Accessed 19 July 2010 and Asian Development Bank, 'Cambodia's Garment Industry: Meeting the challenges of the post-quota environment', (October 2004), p. 21.

²⁵ RCAPS Working Paper No. 09- 3 'Challenges to the Cambodian Garment Industry in the Global Garment Value Chain' (July 2009), p. 6.

²⁶ CDRI (Cambodia's Leading Independent Development Policy Research Institute) Annual Development Review (2007/2008), p. 41.

²⁷ Dasgupta, S. and Williams, D. 'Women facing the economic crisis – The garment sector in Cambodia', in A. Bauer and M. Thant (eds.), *Poverty and Sustainable Development in Asia: Impacts and Responses to the Global Economic Crisis*, Asian Development Bank, Manila, Philippines, (2010) pp. 149-50.

²⁸ Amnesty International Report 'The State of the World's Human Rights', Index: POL 10/001/2010 (2010) p. 92.

²⁹ World Bank East Asia and Pacific Economic Update 2010, vol. Available at: http://siteresources.worldbank.org/INTEAPHALFYEARLYUPDATE/Resources/550192-1270538603148/eap_april2010_cambodia.pdf. Accessed 3 June 2010.

³⁰ Markovic, N. (2004), *Supra* note 4, p. 35.

15. Businesses are capable of violating – and in the past have violated – almost all recognized human rights, and for this reason SRSG Ruggie has staunchly refused to enter into the debate surrounding which human rights are more or less relevant to businesses.³¹ Nevertheless, Ruggie also posits that the character of business and human rights will be defined by context.³²
16. In Cambodia that context is one in which land rights, labor rights, and the rights to freedoms of expression, assembly and association are particularly relevant and for this reason they will be the focus of this report. These rights affect a large part of the Cambodian population; they are unequivocally areas of pressing concern; and, they are areas where there can be a legitimate expectation for swift and comprehensive improvements. Chapter 1 reviews the international business and human rights discourse through an analysis of Ruggie’s ‘protect, respect, remedy’ framework. Chapters 2 to 4 then apply this framework to the Cambodian context, each chapter concluding with recommendations from CCHR. Finally, the Conclusion will summarize the debate and make the case for businesses to take substantive action to satisfy their responsibility to respect rights.

³¹ Ruggie, J. (2008), *Supra* note 1, p. 190.

³² *Ibid*, p. 194.

1. RUGGIE'S THREE PILLARS FRAMEWORK

17. In his 2008 report to the UN Human Rights Council, Ruggie wrote, 'the business and human rights debate currently lacks an authoritative focal point. Claims and counter-claims proliferate, initiatives abound, and yet no effort reaches significant scale. Amid this confusing mix, laggards – states as well as [businesses] – continue to fly below the radar.'³³ It was this focal point that he sought to provide through his three pillars framework for business and human rights: '[I]t comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies.' Each of the three pillars are essential components of the framework. The state duty is at the heart of international human rights, the business responsibility has become a basic expectation of society and without access to remedy the regulation of the framework is rendered impossible: '[t]he three principles form a complementary whole in that each supports the others in achieving sustainable progress.'³⁴

1.1. PILLAR ONE: THE STATE DUTY TO PROTECT HUMAN RIGHTS

18. The fundamental premise of international human rights law is that states have a duty to prevent human rights violations affecting individuals within their jurisdiction.³⁵ All UN human rights treaties prescribe two basic obligations within that duty: first, that states and all their organs refrain from abusing human rights; and, secondly, that states ensure that the intended beneficiaries of those rights can enjoy them. This latter element places an obligation on states to proactively prevent violations conducted by non-state actors, including all types of private enterprises; 'national and transnational, large and small.'³⁶ For Ruggie, ensuring the rights enumerated in these international instruments are respected is the minimum standard in the sphere of business and human rights.³⁷

1.1.1. IMPLEMENTATION OF THE STATE DUTY TO PROTECT

19. Having accepted the duty to protect individuals from human rights abuses conducted by private sector actors, states have discretion to implement measures that ensure the fulfillment of this duty.³⁸ In practice, however, there is demonstrable inconsistency in implementation, both vertically (when a state accepts the duty to protect but fails to implement measures to ensure its fulfillment) and horizontally (when a state's various trade, investment, export credit, corporate law and securities agencies – which exercise considerable influence over businesses' operations – implement economic policies with no regard for their Government's international and domestic human rights obligations).³⁹

³³ Ruggie, J. (2008), *Supra* note 1, pp. 190-191.

³⁴ *Ibid*, p. 191.

³⁵ *Ibid*, pp. 192-3.

³⁶ Ruggie, J. 'Business and Human Rights: Towards Operationalizing the "Protect, Respect and Remedy" framework', Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, (2009), pp. 6-7; and Ruggie, J. (2008), *Supra* note 1, p. 193.

³⁷ Ruggie, J. (2010), *Supra* note 9, p. 13.

³⁸ Ruggie, J. (2008), *Supra* note 1, pp. 192-3.

³⁹ Ruggie, J. (2009), *Supra* note 36, p. 8.

What emerges, then, is that state business and human rights regulation is characterized by 'substantial legal and policy incoherence.'⁴⁰

20. Ruggie's suggested formulation of the state duty to protect human rights calls for a reconfiguration of the conceptual approach of states towards business and human rights: '[g]overnments should not assume they are helping business by failing to provide adequate guidance for, or regulation of, the human rights impact of corporate activities. On the contrary, the less governments do, the more they increase reputational and other risks to business.'⁴¹ Unfortunately in a number of developing nations, there appears to be a marked inclination towards creating favorable investment conditions at the expense of human rights guarantees.
21. Investment agreements exemplify this phenomenon: host states offer investors favorable protections through bilateral investment treaties which promise equitable treatment and guarantee that investment conditions will not be unilaterally altered. These treaties are legally enforceable – often for several decades – and can dramatically reduce the ability of the host state to implement measures to fulfill its duty to protect human rights: 'under threat of binding international arbitration, a foreign investor may be able to insulate its business venture from new laws and regulations, or seek compensation from the Government for the cost of compliance.'⁴² Ruggie demonstrates that economic growth and the protection of fundamental human rights need not be mutually exclusive by encouraging the adoption of innovative investment mechanisms which 'combine robust investor protections with adequate allowances for bona-fide public interest measures.'⁴³

1.1.2. A BUSINESS AND HUMAN RIGHTS FRAMEWORK

22. If states are to fulfill their duty to protect human rights, the proactive adoption of a coherent legislative, administrative and judicial framework to govern business and human rights is essential. Ruggie suggests that states focus on three core policy areas.
23. First, that states avoid restricting their ability to comply with their human rights obligations, for example through the sorts of trade agreements discussed above. The long-term human rights implications of investment projects must be considered at the contracting stage.⁴⁴
24. Secondly, that states utilize the opportunities made available to them through conducting business transactions with private sector actors to prevent human rights harm effected by those actors: 'the state's role as an economic actor is a key – but under-utilized – leverage point in promoting corporate human rights awareness and preventing abuses.'⁴⁵
25. Thirdly, that states systematically engender a culture of respect for human rights in the business sector. Appropriate measures to achieve this include: encouraging and regulating CSR policies which include human rights standard-setting; requiring businesses to conduct human rights risk assessments and to report on human rights performance, in the same way as required for financial reporting; enacting corporate law provisions to extend directors' duties to consider the broader social and human rights impacts of their operations; and, recognizing the 'corporate culture' of businesses in criminal law, whereby

⁴⁰ Ruggie, J. (2010), Supra note 9, p. 5.

⁴¹ Ruggie, J. (2008), Supra note 1, p. 193.

⁴² Ruggie, J. (2009), Supra note 36, p. 9.

⁴³ Ruggie, J. (2010), Supra note 9, p. 6.

⁴⁴ Ibid, p. 6.

⁴⁵ Ibid, p. 7.

'the adequacy of a company's internal systems of oversight and control [are] coupled with prevailing company ethics' as a factor in the prosecution or sentencing stages of criminal proceedings against a business.⁴⁶

26. In some states – notably the United States of America, Italy, the Netherlands, Canada, Australia and the United Kingdom – corporate criminal responsibility is developing to allow the prosecution of corporate violations of human rights. Indeed, in the US, the Alien Torts Claims Act (1789) has in recent years allowed foreign nationals to make tortious claims against businesses domiciled in the US but operating in foreign territories. This is a significant development in the attempt to increase the accountability of businesses.⁴⁷ Similarly, 'the recent jurisprudence of the International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda [...] suggest that future interpretation of the International Criminal Court Statute provisions may confer individual liability on directors of corporations for international crimes.'⁴⁸

1.2. PILLAR TWO: BUSINESSES' RESPONSIBILITY TO RESPECT HUMAN RIGHTS

27. It is not mere semantics that businesses' responsibility to respect human rights is distinguished from the state duty to protect human rights: put simply, international human rights law binds states, therefore non-state actors do not have a legal obligation to protect the human rights of individuals affected by their activities. Nevertheless, 'the [...] responsibility to respect human rights is not a law-free zone'⁴⁹ because all businesses must comply with the laws of the host-state in order to obtain and sustain a legal licence to operate, thus, businesses must respect domestic legislation that prohibits any or all human rights violations. If such legislation is weak or unenforced, however, businesses must still comply with social norms to ensure their social licence to operate.⁵⁰ While social norms are dramatically diverse, 'one of them has acquired near-universal recognition by all stakeholders, namely [businesses] responsibility to respect human rights',⁵¹ that is, to do no harm.⁵²

1.2.1. CONSEQUENCES OF FAILURE TO RESPECT RIGHTS

28. Even in the absence of strong local laws or enforcement, a failure to respect human rights can have reputational and financial consequences for businesses. The possibility of civil and criminal extra-territorial liability in other member states where businesses have operations has already been mentioned.⁵³ In addition, the requirement to make reference to human rights activities in corporate reporting obligations in such countries can have significant reputational and funding consequences. At present, reporting is required by some countries in areas which may correlate with individual rights (e.g. regarding the environment, corruption etc), however, seldom is human rights identified as a separate area for specific

⁴⁶ Ruggie, J. (2010), *Supra* note 9, p. 10.

⁴⁷ See generally: Pillay, S. (2003-2004), *Supra* note 2, pp. 489-524; Voiculescu, A 'Human Rights and the New Corporate Accountability: Learning from Recent Developments in Corporate Criminal Liability', *Journal of Business Ethics*, 87, (2009), pp. 419-432.

⁴⁸ Pillay, S. (2003-2004), *Supra* note 2, p. 521.

⁴⁹ Ruggie, J. (2010), *Supra* note 9, p. 14.

⁵⁰ Ruggie, J. (2009), *Supra* note 36, pp. 13-14.

⁵¹ *Ibid*, p. 13.

⁵² Ruggie, J. (2008), *Supra* note 1, p. 194.

⁵³ See paragraph 26.

reporting.⁵⁴ Nevertheless, a failure to respect human rights can genuinely be viewed as relevant to financial reporting, particularly when assessing stakeholder risks.⁵⁵

29. The financial risks from a failure to respect human rights generally stem from community challenges and resistance to company operations, which have been shown to be significant in the extractive and infrastructure sectors,⁵⁶ and are likely to exist similarly elsewhere. While it has been acknowledged that more work is required in order to accurately quantify these costs, the initial indications are that, '[t]hese are big numbers.'⁵⁷ In addition to the potential need to include these costs in financial reports, the quantification of the financial and commercial risks of human rights violations ought to provide businesses with strong motivation to respect human rights, even in countries with weak laws or a lack of enforcement.

1.2.2. SOFT LAW PROVISIONS

30. The increasing weight of the private sector as an organ of society capable of negatively affecting human rights – and the associated social expectation that businesses show commitment to, and performance in, human rights – is recognized in a number of international soft law instruments. For example, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises,⁵⁸ the OECD Guidelines for Multinational Enterprises,⁵⁹ and the UN Global Compact,⁶⁰ all acknowledge the responsibility to respect human rights.⁶¹ The entrenchment of this responsibility as a soft law human rights norm is reflected in its recent affirmation by the UN Human Rights Council.⁶² In addition, business and human rights guidelines have been produced by a number of prominent civil society actors, for example, Amnesty International's Human Rights Principles for Companies⁶³ and Social Accountability International's SA8000 Standards.⁶⁴

1.2.3. CORPORATE SOCIAL RESPONSIBILITY

31. In the last two decades, businesses have begun to acknowledge the importance of securing a social licence to operate through the development of CSR policies. However, a CSR policy

⁵⁴ Ruggie, J. 'Corporate Law Project: Overarching Trends and Observations' (July 2010), pp. 26-31. Report of Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, Available at: <http://www.reports-and-materials.org/Ruggie-corporate-law-project-Jul-2010.pdf> Accessed 16 September 2010.

⁵⁵ Ruggie, J. (2010), Supra note 9, p. 9.

⁵⁶ See for example, Herz, S, Vina, A, Sohn, J, *Development without Conflict: The Business Case for Community Consent* World Resources Institute, May 2007. Available at: http://pdf.wri.org/development_without_conflict_fpjc.pdf. Accessed 16 September 2010.

⁵⁷ Ruggie, J. (2010), Supra note 9, p. 15.

⁵⁸ International Labour Organisation, 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy'. Available at: <http://actrav.ilo.org/actrav-english/telearn/global/ilo/guide/triparti.htm>. Accessed 5 May 2010.

⁵⁹ OECD Guidelines for Multinational Enterprises Available at: <http://www.oecd.org/dataoecd/56/36/1922428.pdf>. Accessed 5 May 2010.

⁶⁰ UN Global Compact 'The Ten Principles' Available at: <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html>. Accessed 5 May 2010.

⁶¹ Ruggie, J. (2008), Supra note 1, pp. 193-4.

⁶² Ruggie, J. (2010), Supra note 9, p. 12.

⁶³ Amnesty International 'Human Rights Principles for Companies' Available at: <http://www.amnesty.org/en/library/asset/ACT70/001/1998/en/8d6c82f3-e81c-11dd-9deb-2b812946e43c/act700011998en.pdf>. Accessed 5 May 2010.

⁶⁴ Social Accountability International 'International Standard' Available at: http://www.sa-intl.org/data/n_0001/resources/live/2008StdEnglishFinal.pdf. Accessed 5 May 2010.

does not fulfill a business's responsibility to respect human rights: 'CSR are management-driven and corporate-determined policies that are designed to assist the corporation's business [...] even if [they are] genuinely aimed at a positive social end.'⁶⁵ In contrast, human rights are not optional – they are minimum standards which cannot be comprised. Random acts of philanthropic benevolence – which constitute many businesses' purported CSR policy – do not fulfill the responsibility to respect human rights. This responsibility is universally applicable; it compels positive action from all businesses at all times.⁶⁶

32. Furthermore, even when CSR policies contain explicit human rights elements, their effectiveness is often undermined by *laissez-faire* implementation, separation from core internal policy and monitoring mechanisms, and by a lack of transparency and external accountability.⁶⁷ For Ruggie, '[p]art of the problem has been that [businesses] have lacked a strategic concept for addressing human rights systematically. The [...] responsibility to respect provides such a concept.'⁶⁸ Thus, while CSR policies are capable of being legitimate vehicles for human rights protection, a conceptual reconfiguration of such policies is needed to ensure compliance with the responsibility to respect.⁶⁹

1.2.4. HUMAN RIGHTS DUE-DILIGENCE

33. Businesses are capable of violating, and do violate, almost all recognized human rights. Therefore, the responsibility to respect necessarily extends to all rights enumerated in the International Bill of Human Rights.⁷⁰ Nonetheless, the context in which a business operates will have significant ramifications on what approach they should take. For example, if the host-state fails to enforce or implement domestic legislation, businesses must expand the scope of their own responsibility to fill governance gaps created by governmental failures. As recognized by a conglomerate of leading global business associations, '[a]ll [businesses] have the same responsibilities in weak governance zones as they do elsewhere. They are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent.'⁷¹
34. The appropriate discharge of the responsibility to respect requires human rights 'due-diligence'⁷². Due-diligence comprises a 'comprehensive, proactive attempt to uncover human rights risks, actual and potential, over the entire life cycle of a project or business activity, with the aim of avoiding or mitigating those risks.' Particular attention must be given to three factors: first, the political and cultural context of the host-state, including, for example, existing human rights commitments and practices. Secondly, the specific impacts which a specific type of business might have in a given context, for example, the impacts a mining project may have on an indigenous host-community. Thirdly, the potential to contribute to human rights abuse through relationships with other entities, including both state and non-state actors.⁷³

⁶⁵ McCorquodale, R.(2009), Supra note 18, p. 391.

⁶⁶ Ruggie, J. (2010), Supra note 9, p. 13.

⁶⁷ Ibid, p. 12.

⁶⁸ Ibid, p. 12.

⁶⁹ Ibid, pp. 12-13.

⁷⁰ That is, the UN Universal Declaration of Human Rights (UDHR) (1948) and the treaties through which it was codified – the UN Covenant on Civil and Political Rights (ICCPR) (1966) and the UN Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) – as well as the eight core ILO Conventions.

⁷¹ International Organization of Employers, International Chamber of Commerce, and Business and Industry Advisory Committee to the OECD, 'Business proposals for effective ways of addressing dilemma situations in weak governance zones', 2006, p. 4. Available at <http://www.reports-and-materials.org/Role-of-Business-in-Weak-Governance-Zones-Dec-2006.pdf>. Accessed 29 April 2010.

⁷² Ruggie, J. (2008), Supra note 1, p. 199.

⁷³ Ruggie, J. (2010), Supra note 9, p. 13; and Ruggie, J. (2009), Supra note 36, p. 14.

35. In order to discharge the responsibility to respect, Ruggie recommends businesses adopt a four-strand approach to human rights due-diligence. First, that businesses adopt policies that evidence an intention to respect human rights, including specific functional guidance for their implementation. Secondly, that businesses consider potential and actual human rights impacts before they commence any activity or relationship ('impact assessments'). Thirdly, that such policies and assessments are fully integrated into a business's internal policy and control structure ('integration'). Fourthly, that human rights performance is tracked through ongoing monitoring and reporting mechanisms ('tracking performance').⁷⁴ Businesses should recognize that by implementing such due-diligence processes they mitigate the risk of domestic or international legal sanctions and the financial and reputational costs which can result from rights violations. By conducting thorough human rights due-diligence, a business has visibly taken all reasonable steps to ensure their responsibility to respect human rights is discharged.⁷⁵

1.3. PILLAR THREE: ACCESS TO EFFECTIVE REMEDIES

36. Even when both states and businesses have implemented appropriate policy measures to protect and respect human rights respectively, the likelihood of grievances⁷⁶ remains high. For this reason, providing access to remedial mechanisms is a fundamental element of both the state duty to protect and businesses' responsibility to respect. To be effective, legislation regulating businesses' activities requires accompanying mechanisms to investigate and redress grievances.⁷⁷ State-based mechanisms assist in 'enforcing or incentivizing [...] compliance with relevant law and standards.'⁷⁸ Similarly, credible human rights due-diligence requires that businesses establish mechanisms through which disputes can be mediated.⁷⁹ Non-state mechanisms 'have the added benefit of giving early warning of problems and helping mitigate or resolve them before abuses occur or disputes compound.'⁸⁰
37. Without mechanisms capable of providing judicial, administrative and legislative remedies when relevant, or adequate reparations for victims if necessary, human rights commitments are rendered meaningless.⁸¹ Yet, remedial mechanisms in the sphere of business and human rights – judicial and non-judicial, state based and non-state based – remain embryonic: '[r]eality falls far short of constituting a comprehensive and inclusive system of remedy for victims of corporate-related human rights abuse. Although progress has been made, all types of mechanisms [...] remain underdeveloped.'⁸²

1.3.1. JUDICIAL MECHANISMS

⁷⁴ Ruggie, J. (2008), *Supra* note 1, pp. 200-202.

⁷⁵ Ruggie, J. (2010), *Supra* note 9, pp. 17-18.

⁷⁶ 'A grievance is [...] a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, explicit or implicit promises, customary practice, or general notions of fairness that may differ from standard economic and bureaucratic rationales.' Ruggie, J. (2010), *Supra* note 9, p. 18.

⁷⁷ Ruggie, J. (2008), *Supra* note 1, p. 194 and pp. 202-4.

⁷⁸ Ruggie, J. (2009), *Supra* note 36, p. 26.

⁷⁹ Ruggie, J. (2008), *Supra* note 1, p. 194; pp. 202-4.

⁸⁰ Ruggie, J. (2009), *Supra* note 36, p. 26.

⁸¹ *Ibid*, p. 14.

⁸² Ruggie, J. (2010), *Supra* note 9, p. 22.

38. Under international human rights law '[a] state has an obligation [...] to provide a remedy where there is a violation of human rights'⁸³, and the UN treaty bodies are increasingly determined in calling for states to take a more proactive approach to the investigation of businesses alleged to have been involved in human rights abuses, and punishment if allegations are proved. Nevertheless, access to judicial mechanisms remains limited, particularly in contexts where the need for such access is greatest: '[j]udicial mechanisms are often under-equipped to provide remedies for victims of corporate abuse. Victims [...] may lack a basis in domestic law on which to found a claim. Even if they can bring a case, political economic or legal considerations may hamper enforcement.'⁸⁴
39. Victims face considerable obstacles in both civil claims and criminal proceedings. In civil law, complainants may have no available course of action, and, given that the availability of aggregated or representative claims is often unduly constricted, the costs an individual victim faces can be prohibitive.⁸⁵ Furthermore, there are often over-whelming financial, social and political disincentives for lawyers to represent complainants, for example, 'where human rights defenders are obstructed or intimidated, victims may be without any legal or related support at all.'⁸⁶ When these factors coexist, 'it [can be] almost impossible for victims to access effective judicial remedy.'⁸⁷ Correspondingly, in criminal law, in addition to the quagmire of attempting to prove intent in the business context (a fundamental tenet of criminal responsibility), 'even where a legal basis exists, if State authorities are unwilling or unable to dedicate the resources to pursue allegations, [...] there may be little that victims can do.'⁸⁸ Both legal and practical barriers can thus comprehensively reduce the possibility of substantive access to judicial remedy for victims of human rights abuse conducted by businesses, whether in civil or criminal law.
40. Inevitably, these barriers – whether legal or practical – are felt most acutely by the most vulnerable members of society, for example, children, indigenous peoples and individuals with physical and mental disabilities.⁸⁹ In order to improve access for such 'at-risk'⁹⁰ groups, '[g]overnments have a critical role [...] to raise awareness of the risks facing these individuals and communities, and to ensure that their rights are adequately protected.'⁹¹ Furthermore, it is critical that both states and businesses act to uphold the independence and integrity of the judiciary, and that states abstain from 'deliberately erect[ing] barriers to prevent cases from being brought against businesses or [obstructing] the peaceful and legitimate activities of human rights defenders.'⁹²

1.3.2. NON-JUDICIAL MECHANISMS

41. Non-judicial remedial mechanisms can function in harmony with judicial mechanisms, each filling gaps created by weaknesses in the other. Non-judicial remedies are particularly relevant in contexts where social, economic or political factors render courts unable or unwilling to grant appropriate access to remedy. Non-judicial mechanisms can provide, 'a more immediate, accessible, affordable and adaptable point of initial recourse.'⁹³ They can be both state based and non-state based, but must all adhere to six core principles in order

⁸³ McCorquodale, R. (2009), *Supra* note 18, p. 393.

⁸⁴ Ruggie, J. (2008), *Supra* note 1, p. 194; pp. 205-6.

⁸⁵ Ruggie, J. (2009), *Supra* note 36, p. 23.

⁸⁶ Ruggie, J. (2010), *Supra* note 9, p. 21.

⁸⁷ *Ibid*, p. 21.

⁸⁸ McCorquodale, R. (2009), *Supra* note 18, p. 394; and Ruggie, J. (2009), *Supra* note 36, p. 23.

⁸⁹ Ruggie, J. (2009), *Supra* note 36, p. 23.

⁹⁰ *Ibid*, p. 23.

⁹¹ *Ibid*, p. 23.

⁹² Ruggie, J. (2010), *Supra* note 9, p. 20.

⁹³ Ruggie, J. (2008), *Supra* note 1, p. 205.

to ensure credibility and effectiveness. Such mechanisms must at all times be: legitimate (valid and independent); accessible (barriers to access must be mitigated); predictable (use clear procedural rules and produce consistent outcomes); equitable (reasonable and impartial); rights-compatible (comply with international human rights standards, in particular those pertaining to fair trials rights); and transparent (outcomes and analyses must be clearly promulgated without secrecy).⁹⁴

1.3.2.1. State-Based Non-Judicial Mechanisms

42. The state duty to protect human rights includes an obligation to provide access to remedy through all appropriate means, yet the potential for state-based non-judicial mechanisms is often ignored.⁹⁵ The foremost state-based non-judicial mechanisms to be recommended by Ruggie are National Human Rights Institutions ('NHRIs'): 'where NHRIs are able to address grievances involving [businesses], they can provide a means to hold businesses accountable. NHRIs are particularly well-positioned to provide processes – whether adjudicative or mediation-based – that are culturally appropriate, accessible and expeditious.'⁹⁶
43. For Ruggie, 'the universe of State-based non-judicial grievance mechanisms remains both under-populated and under-resourced. These gaps contribute to the heavy reliance by aggrieved parties and their representatives on campaigns and lawsuits against companies.'⁹⁷ He recommends that states extend the mandates of existing investigative institutions to include remedial mechanisms, or add new procedures or institutions. Either way, '[s]tates should view the provision of remedy comprehensively so that judicial and non-judicial approaches begin to cohere as a system of remedial options for victims of corporate-related abuse.'⁹⁸

1.3.2.2. Non-state Non-Judicial Mechanisms

44. Providing recourse to effective remedial mechanisms is also an integral element of businesses' responsibility to respect human rights. Such mechanisms form part of the 'tracking performance' strand of human rights due-diligence by allowing businesses to track grievances and thus maintain credible human rights monitoring systems.⁹⁹ In addition, there are clear incentives to the implementation of non-state remedial mechanisms: '[c]urrently, the primary means through which grievances against [businesses] play out are litigation and public campaigns. For a [business] to take a bet on winning lawsuits or successfully countering hostile campaigns is at best optimistic risk management.'¹⁰⁰ A precautionary measure is for businesses to address grievances before employees or consumers lodge complaints through the courts or adverse publicity campaigns. Non-state remedial mechanisms can be implemented by an individual business directly, through collaboration within a business sector, or through referral to wholly external mediators.¹⁰¹

⁹⁴ Ibid, pp. 206-7.

⁹⁵ Ruggie, J. (2010), Supra note 9, p. 19.

⁹⁶ Ruggie, J. (2008), Supra note 1, pp. 207-8.

⁹⁷ Ruggie, J. (2010), Supra note 9, p. 20.

⁹⁸ Ibid, p. 20.

⁹⁹ Ruggie, J. (2009), Supra note 36, p. 24.

¹⁰⁰ Ruggie, J. (2008), Supra note 1, p. 207.

¹⁰¹ Ruggie, J. (2010), Supra note 9, p. 19.

1.4. CONCLUSIONS

45. SRSG Ruggie's protect, respect, remedy framework has provided the lens through which to view business and human rights, and has initiated the process of closing the debilitating governance gaps which have opened as a result of globalization. Although lacking the legal force of the Norms, the three pillars have engendered a crucial multi-stakeholder consensus by acquiring the support of civil society actors, governments and the international business community.¹⁰² In addition, the three pillars represent a soft-law framework which can serve as a testing ground for the future development of a binding business and human rights instrument.¹⁰³ Ruggie's success is reflected in his mandate being extended to 2011, to operationalize and promote the framework. Ruggie's framework is recognized as legitimate, credible and authoritative by the international community;¹⁰⁴ and, importantly, as being capable of implementation, and therefore it is through this framework that business and human rights in Cambodia will be analyzed in the following chapters.

¹⁰² Voiculescu, A, (2009), Supra note 47, pp. 420-22; and IOE, ICC and BIAC 'Joint initial views of the International Organisation of Employers (IOE), the International Chamber of Commerce (ICC) and the Business and Industry Advisory Committee to the OECD (BIAC) to the Eighth Session of the Human Rights Council on the Third report of the Special Representative of the UN Secretary-General on Business and Human Rights', May 2008.

¹⁰³ Nolan J. and Taylor, L. 'Corporate Responsibility for Economic, Social and Cultural Rights: Rights in Search of a Remedy?', *Journal of Business Ethics*, 87, (2009), p. 434.

¹⁰⁴ IOE, ICC and BIAC (2008), Supra note 102.

2. THE STATE DUTY TO PROTECT IN CAMBODIA

46. As we have seen, the primary duty to ensure human rights are protected by businesses falls on the state. It is thus important to begin a discussion of the Cambodian context with an assessment of the RGC's compliance with that duty.
47. Cambodia has signed, ratified or acceded to almost all major international human rights and labor standards instruments. These include the International Bill of Human Rights which comprises the UN Universal Declaration of Human Rights ('UDHR') (1948) and the treaties through which it was codified – the UN Covenant on Civil and Political Rights ('ICCPR') (1966) and the UN Covenant on Economic, Social and Cultural Rights ('ICESCR') (1966) – as well as the eight core ILO Conventions.¹⁰⁵ The RGC therefore has an unequivocal obligation to protect against human rights violations in its territories, even those by non-state actors such as businesses. Indeed, Article 31 of the Constitution of the Kingdom of Cambodia ('the Constitution') incorporates international human rights standards directly into Cambodian law as a group of rights and freedoms to which all Cambodian citizens are entitled.¹⁰⁶
48. The implementation measures to fulfill such obligations are at the discretion of the state, and overall, the RGC has failed to develop a coherent business and human rights policy framework. Notwithstanding a small number of tangible improvements in recent years, human rights violations perpetrated by businesses with state support or acquiescence remain endemic. The following sections comprise an analysis of areas of pressing concern: land rights; labor rights; and the freedoms of expression, assembly and association.

2.1. LAND RIGHTS

49. The well-documented example of human rights abuses perpetrated by businesses with the support or compliance of the RGC is the emergent contemporary trend of land rights violation through economically motivated and allegedly illegal forced evictions.¹⁰⁷ It is estimated that approximately 150,000¹⁰⁸ Cambodians live at the risk of these evictions,

¹⁰⁵ ILO Convention 29 – Forced Labour Convention, 1930; ILO Convention 87 – Freedom of Association and Protection of the Right to Organise Convention, 1948; ILO Convention 98 – Right to Organise and Collective Bargaining Convention, 1949; ILO Convention 100 – Equal Remuneration Convention, 1951; ILO Convention 105 – Abolition of Forced Labour Convention, 1957; ILO Convention 111 – Discrimination (Employment and Occupation) Convention, 1958; ILO Convention 138 – Minimum Working Age Convention, 1973; ILO Convention 182 – Worst Forms of Child Labour Convention, 1999.

¹⁰⁶ Article 31 of the Constitution of the Kingdom of Cambodia: 'The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights. Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.'

¹⁰⁷ A forced eviction is: 'the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection', in Amnesty International 'Rights Razed: Forced Evictions in Cambodia', 11 February 2008, AI Index: ASA 23/002/2008, p. 1, quoting Committee on Economic, Social and Cultural Rights General Comment 7, Sixteenth session (1997) (58): The right to adequate housing (art. 11 (1) of the Covenant): forced evictions, para. 3.

¹⁰⁸ Amnesty International, (2008) 'Rights Razed' Ibid, p. 7.

which represent a clear contravention of Cambodia's international human rights obligations:

Those affected by evictions have had no opportunity for genuine participation and consultation beforehand. Information on planned evictions and on resettlement packages has been incomplete and inaccurate, undermining the rights of those affected to information, and to participate in decisions which affect the exercise of their human rights, in particular the right to adequate housing. The lack of legal protection from forced eviction, and lack of regulation of existing standards has left an accountability gap which increases the vulnerability of marginalized people, particularly those living in poverty, to human rights abuses.¹⁰⁹

50. The RGC has failed to prevent – and in many instances has, through the deployment of the Cambodian army and police force, proactively facilitated¹¹⁰ – the expropriation of the land of vulnerable Cambodians by the political and economic elites. Entrenched corruption and secrecy in the governmental sphere ensures that the seizure of land can be conducted with impunity.¹¹¹

2.1.1. THE LEGAL FRAMEWORK

51. Article 11(1) ICESCR asserts the right to an adequate standard of living, including the right to housing and the right to land necessary for subsistence. This provision is consolidated for vulnerable social groups in the UN International Convention on the Elimination of All Forms of Racial Discrimination ('ICERD') (1965), the UN Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW') (1979) and the UN Convention on the Rights of the Child ('CRC') (1989). The UN Committee on Economic, Social and Cultural Rights ('CESCR') has stated that 'instances of forced eviction are *prima facie* incompatible with the requirements of the [ICESCR] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.'¹¹² CESCR has given further clarification of the requirements for the mandatory confiscation of land to be compliant with the ICESCR: those affected must be consulted in advance; they must be given reasonable advance notice; the process must be transparent; all persons carrying out the eviction must be identifiable; legal remedies must be available; and legal aid should be provided to those seeking redress.¹¹³ The right to an effective remedy in instances of alleged rights violations is a fundamental norm of international human rights law, as emphasized in both the ICCPR and the ICESCR.
52. In Cambodia, legal provisions protect residents against arbitrary forced evictions, and these are theoretically comprehensive. Broadly-speaking, Article 31 of the Constitution incorporates all relevant international human rights provisions into Cambodian law and, furthermore, while mandatory evictions are necessarily not forbidden by Cambodian law, Article 44 of the Constitution – which protects the rights of Cambodian citizens to own land both individually and collectively – prohibits the confiscation of land unless it is 'in the public interest as provided for under law' and with 'fair and just compensation in advance.'¹¹⁴ The Land Law 2001 was drafted to give effect to the property rights outlined in

¹⁰⁹ Ibid, p. 3.

¹¹⁰ 'See for example: Cambodian Troops Evict Squatters', TV NZ, 6 June 2006. Available at: <http://tvnz.co.nz/view/page/411319/742272>. Accessed 22 February 2010. Thin Lei Win - 'Land grabs and forced evictions in Cambodia' Published 08 Jul 2010. Available at: http://www.alertnet.org/db/an_art/52132/2010/06/8-144738-1.htm. Accessed 16 July 2010.

¹¹¹ Amnesty International, (2008) 'Rights Razed', Supra note 107, p. 3.

¹¹² Ibid, p. 13, quoting Committee on Economic, Social and Cultural Rights, General Comment 4: The Right to Adequate Housing (art. 11 (1) of the Covenant), Sixth Session, 13 December 1991, para. 18.

¹¹³ Ibid, p. 14, citing Committee on Economic, Social and Cultural Rights, General Comment 7: The Right to Adequate Housing (art. 11 (1) of the Covenant), 1997, para. 15.

¹¹⁴ Article 44 Constitution of the Kingdom of Cambodia; and Amnesty International, (2008) 'Rights Razed', p. 14.

the Constitution. Between 1975 and 1979 the Khmer Rouge revoked all land ownership and destroyed all land records. The Land Law 2001 established that all land claims dating to before 1979 were no longer recognized and introduced a system to reinstate ordinary conceptions of land ownership. Thus legal possession for a continuous period of 5 years, starting prior to 2001 entitles an individual to apply for full legal ownership provided that occupation was: 'unambiguous, non-violent, notorious to the public, continuous and in good faith.'¹¹⁵ It is noteworthy, however, that this is merely a right to apply for legal ownership not a right to receive such ownership; indeed, legal possessors of land appropriate for economic development are often refused legal ownership.¹¹⁶ Furthermore, the Land Law 2001 capped legal possession, stating that any land which was not possessed before August 31 2001 reverted to the state.¹¹⁷

53. The Land Law 2001 recognizes five categories of land. First, Private Property which is land legally possessed or owned by private individuals, giving the possessor or owner the right to transfer the property and exclude others from it. Second, Monastery Property which is collectively owned land, giving the owners a right to permanent occupation. Third, Indigenous Community Property which is collectively owned land, giving the owners a right to permanent occupation (although, as will be seen in subsequent sections, this requires registration via a registration mechanism which is yet to be implemented). Fourth, State Public Property which is any land owned by the state with public utility or cultural value – for example, roads, rivers, hospitals or archaeological sites – which can be owned or possessed only by the state. Fifth, State Private Property, which is 'all land that is neither state public land, nor legally privately or collectively owned or possessed.'¹¹⁸ Land incapable of fulfilling the private ownership criteria can therefore be categorized as either State Private Property (which can be transferred at the discretion of the RGC) or State Public Property (which can be redeveloped through 'beautification projects'¹¹⁹ and the construction of infrastructure).¹²⁰ In practice, both categorizations result in the unilateral expropriation of inhabited land.

2.1.2. LAND CONCESSIONS AND REDEVELOPMENT CONTRACTS

54. If land is categorized as State Private Property, it is capable of being transferred by Economic Land Concession ('ELC'): 'ELCs are long-term leases granted over land for agro-industrial exploitation.'¹²¹ Approximately 1,000,000 hectares of land in rural Cambodia have been granted to private enterprises in the form of ELCs.¹²² Evictions often take place when occupiers of land cannot establish that they fulfill the private ownership criteria, and so the land they occupy is unilaterally (re)classified as State Private Property and subsequently transferred to businesses in the form of an ELC. In theory, ELCs are subject to strict limitations: '[ELCs] cannot exceed 10,000 hectares, and can only be granted up to 99 years. Concessionaires must begin operations within one year of the concession being granted. Any concession that does not follow the Land Law is null and void [...], a land use plan [must be] adopted for the area, an Environmental and Social Impact Assessment [must be] conducted [and] public consultations regarding the proposed project must have been

¹¹⁵ Land Law (2001) Article 38.

¹¹⁶ Cambodian Human Rights Action Committee (CHRAC) 'Losing Ground: Forced Evictions in Cambodia', September (2009), p. 65.

¹¹⁷ Land Law (2001) Article 29.

¹¹⁸ CHRAC (2009), *Supra* note 116, p. 66.

¹¹⁹ Amnesty International, (2008) 'Rights Razed' *Supra* note 107, pp. 6-7.

¹²⁰ CHRAC (2009), *Supra* note 116, pp. 65-66.

¹²¹ CHRAC (2009), *Supra* note 116, p. 68; citing Land Law 2001 Article 49.

¹²² OHCHR (Office of the High Commissioner for Human Rights Cambodia) 'Economic land concessions in Cambodia: A human rights perspective', (June 2007), p. 1.

held.¹²³ Unfortunately, few of these conditions are ever met. The Land Law 2001 also mandates Social Land Concessions ('SLCs'), which are, in theory, a 'mechanism to grant state private land to poor landless families for residential and farming purposes.'¹²⁴ Like ELCs, SLCs can only be granted on State Private Property, with the added condition that they must be exercised in the interest of the public good. Nevertheless, the examples cited in later sections of this report demonstrate that SLCs are regularly granted for purely economic motivations.¹²⁵

55. On the other hand, land which fails to fulfill the private ownership criteria is categorized as State Public Property and cannot be transferred through ELCs or SLCs as it is only capable of being owned by the state. Nonetheless, many evictions have been justified through the categorization of inhabited land as State Public Property. This land can then be subject to infrastructural enhancements, or so-called beautification projects which ostensibly appear to be purely economic redevelopments: 'in the name of development, the Cambodian authorities have forcibly uprooted thousands of people from their homes in the capital Phnom Penh and resettled them outside the city in far worse conditions and hidden from the public eye. Most of the families had lived in rudimentary housing in informal communities, often with temporary infrastructure, sanitation and water supplies. Now they live in even more deprived slums, with even less access to basic services and jobs.'¹²⁶ Similarly to ELCs and SLCs, these redevelopment contracts are commonly granted without proper consultation with the affected communities, insufficient remuneration is offered and relocation sites are lacking basic amenities.¹²⁷
56. So thick is the veil of secrecy regarding the granting of land concessions and redevelopment contracts that the distinction between State Private Property and State Public Property is rendered irrelevant:

[T]here is no coordinated identification, mapping and registration of state land [...] In practice, observers see that people are denied recognition of their possessory rights because they live on "state land". The Government rarely distinguishes between the two types of state land [...]. Without any publically available records [...] it is almost impossible to dispute Government statements that a community is living illegally on state land.¹²⁸

57. In practice, then, the RGC appear to arbitrarily grant ELCs, SLCs and redevelopment contracts to businesses which contravene the spirit and letter of the Land Law 2001 and its implementing sub-decrees. Many of the general principles enumerated in the Land Law 2001 have yet to be implemented through the sub-decrees and regulations promised in that Law; and where they have been, they are simply not enforced. The RGC asserts close control over the administration of land, ensuring that registration and classification is carried out arbitrarily according to the wishes of the political and economic elite. The inevitable result is the violation of fundamental human rights. As will be demonstrated in subsequent sections, this problem is compounded by a convoluted system of dispute resolution whereby jurisdiction over land grievances is divided between the ordinary courts, the Cadastral Commission ('CC') and the National Authority for the Resolution of Land Disputes ('NARLD').

¹²³ CHRAC (2009), Supra note 116, p. 68; citing Land Law 2001 Articles 59, 61 and Sub-Decree No. 146 on Economic Land Concessions 2005.

¹²⁴ OHCHR (2007), 'Economic Land Concessions' Supra note 122, p. 3.

¹²⁵ See paragraphs 98-118 below.

¹²⁶ CHRAC (2009), Supra note 116, p. 67; and Amnesty International Report 'Cambodia: Urban Development or Relocating Slums?', Index: ASA/23/002/2009, (May 2009), p. 2.

¹²⁷ Amnesty International (2009), Ibid, p. 2.

¹²⁸ CHRAC (2009), Supra note 116, p. 68.

2.1.2.1. Indigenous Peoples' Land Rights

58. A population of approximately 190,000 Indigenous Peoples live in Cambodia, mainly in the north-eastern provinces of Monduliri and Ratanakiri.¹²⁹ These people suffer from entrenched economic, social and cultural marginalization and are particularly vulnerable to land rights violations. They are consequently afforded a special status in international human rights law which goes beyond the basic protections described above: the rights of Indigenous Peoples to possession of ancestral lands and resources, and to maintain their traditions and customs (which are often inextricably linked to their ancestral lands) are now an established principle of the international human rights framework. The UN Declaration on the Rights of Indigenous Peoples ('UNDRIP') sets out a range of rights with respect to the lands, territories and resources which Indigenous Peoples have traditionally owned, occupied or otherwise used or acquired. In particular, UNDRIP declares that Indigenous Peoples shall not be forcibly evicted and shall only be relocated with their 'free, prior and informed consent'¹³⁰ secured through good-faith consultation and cooperation; that relocation should only take place 'after agreement on just and fair compensation and, where possible, with the option of return'; and that Indigenous Peoples have 'the right to participate in decision-making in matters which affect their rights'.¹³¹
59. The RGC voted for UNDRIP in the General Assembly of the United Nations.¹³² Furthermore, Cambodia is a party to ICERD and is therefore bound by the assertion of the UN Committee on Racial Discrimination that discrimination against Indigenous Peoples falls within the scope of ICERD.¹³³ Article 1(1) ICERD prohibits: 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'¹³⁴ Notwithstanding the unequivocal non-discrimination declared in Article 31 of the Constitution, 'discrimination against Indigenous Peoples in Cambodia, in effect, remains persistent and institutionalized.'¹³⁵
60. The abuse of Indigenous Peoples' land rights is the most significant expression of this discrimination in the context of business and human rights. The Land Law 2001 made special provision for indigenous land rights by recognizing Communal Indigenous Property as a category of land: '[i]ndigenous communities are entitled to gain collective ownership over residential land, agricultural land or land kept fallow as part of a traditional agricultural system, mirroring the way in which many Indigenous groups in Cambodia manage land.'¹³⁶ However, for such collective ownership to exist, the land must be registered. While the implementing sub-decree for the registration of indigenous land was passed in 2009, the requirement for an indigenous community to be recognized as a legal entity by the Ministry of Interior before it can use this registration procedure renders the system inoperative: '[t]he procedure for registering the community will be set out in a sub-decree drafted by the Ministry. However, there is no public draft of this sub-decree, and no

¹²⁹ UN Economic and Social Council, Permanent Forum on Indigenous Issues, Sixth session New York, 14-25 May 2007, Item 3 of the Provisional Agenda, Special Theme: Territories, Lands and Natural Resources. E/C.19/2007/7.

¹³⁰ UNDRIP, Article 10.

¹³¹ Ibid.

¹³² Open Letter of Concern on the Alarming Situation of Indigenous Peoples in Cambodia, 2010. Available at: http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=4370:open-letter-of-concern-on-the-alarming-situation-of-indigenous-peoples-in-cambodia&catid=62:southeast-asia-indigenous-peoples&Itemid=84. Accessed 14 May 2010.

¹³³ Amnesty International, (2008) 'Rights Razed', Supra note 107, p. 22.

¹³⁴ Article 1(1) UN International Convention on the Elimination of All Forms of Racial Discrimination (1966).

¹³⁵ Indigenous Peoples NGO Network 'The Rights of Indigenous Peoples in Cambodia', Submitted to the UN Committee on the Elimination of Racial Discrimination, (February 2010), p. 2.

¹³⁶ Amnesty International, (2008) 'Rights Razed', Supra note 107, pp. 22-23.

clear information on when it will be completed and passed.¹³⁷ To date, no indigenous community has received collective land title or the concomitant protections afforded to land recognized as Communal Indigenous Property.¹³⁸

61. Consequently, Indigenous Peoples have been subjected to illegal forced eviction through the same combination of ELCs, SLCs and redevelopment contracts as other Cambodians. Indeed, because much indigenous land is forested, Indigenous Peoples are particularly vulnerable to such evictions: the Forestry Law 2002 mandated that all forests are the property of the state, thus – despite granting Indigenous Peoples the right to use forests for the maintenance of their customs, beliefs, religions and living – such land has been made ideal for economic development.¹³⁹ This problem is further exacerbated by the tendency of indigenous land to accommodate vast natural resources: '[c]oncessions have been for developments such as commercial plantations, extractive industries, including minerals, oil and gas, water diversion, irrigation and hydropower dam projects; along with special zones being earmarked for infrastructure developments to facilitate large scale tourism projects.'¹⁴⁰ RGC policy betrays a disproportionate concentration of concessions on indigenous land in violation of both Cambodian law and international human rights law.¹⁴¹ The widespread manipulative, coercive and violent eviction of Indigenous Peoples from their ancestral lands at best reflects a complete disregard for the disenfranchisement and marginalization of Indigenous Peoples, and at worst reveals a program of premeditated exploitation of their vulnerability.

2.1.2.2. Natural Resources

62. The RGC's management of Cambodia's natural resources is an emerging area of concern in the sphere of land rights:

Cambodia is on the verge of a petroleum and minerals windfall. If managed well, revenue from these new extractive industries could provide the Cambodian government with the best chance in a generation to rebuild state infrastructure and lift its people out of poverty. If mismanaged through corruption or ineptitude, the money generated runs the risk of widening the gap between rich and poor and weakening democracy still further by entrenching the positions of the ruling elite.¹⁴²

63. It is estimated that Cambodia possesses approximately 2 billion barrels of oil and 10 trillion cubic feet of natural gas in the Gulf of Thailand.¹⁴³ Since the 1990s, Cambodia's forestry resources have been allocated to businesses – which are often tied inextricably to senior members of the RGC – allegedly through nepotistic patronage and corruption.¹⁴⁴ NGO Global Witness considers that this trend is now being replicated with the country's extractive resources: '[t]he same political elite who squandered the country's timber resources are now responsible for managing its mineral and petroleum wealth. Like high-value timber, these resources are a one-off opportunity. Once they are gone, they are gone forever.'¹⁴⁵

¹³⁷ CHRAC (2009), Supra note 116, p. 70.

¹³⁸ Indigenous Peoples NGO Network, (2010), Supra note 135, p. 7.

¹³⁹ Amnesty International, (2008), 'Rights Razed' Supra note 107, p. 23; and Indigenous Peoples NGO Network, (2010), Supra note 135, pp. 5-6.

¹⁴⁰ Indigenous Peoples NGO Network, (2010), Supra note 135, pp. 4-5.

¹⁴¹ Ibid, pp. 11-15.

¹⁴² Global Witness 'Country for Sale: How Cambodia's Elite has Captured the Country's Extractive Industries', (February 2009), p. 5.

¹⁴³ Lum, T (July 2007), Supra note 22, p. 9.

¹⁴⁴ See generally: Global Witness, 'Cambodia's Family Trees: Illegal logging and the stripping of public assets by Cambodia's elite', (June 2007).

¹⁴⁵ Global Witness (2009), Supra note 142, p. 5.

64. There is evidence to suggest millions of dollars of bonuses paid by companies to secure extractive concessions have disappeared. Extractive concessions have been granted to companies owned by Cambodia's military and political elite; and the Royal Cambodian Armed Forces have been deployed to guard extractive sites and to remove inhabitants from these areas by force and with no prior consultation.¹⁴⁶ The management of Cambodia's natural resources is under exclusive mandate to the Cambodian National Petroleum Authority ('CNPA'), a body directly controlled by Prime Minister Hun Sen and Deputy Prime Minister Sok An: 'Allocation of concessions has taken place under a blanket of secrecy. Oil company contracts and information on concession allocations are a closely guarded secret within the CNPA. It is known however that the CNPA has allocated all of Cambodia's undisputed offshore blocks to private companies.'¹⁴⁷
65. A 2010 report by Global Witness claims that the pattern it has alleged for Cambodia's timber and extractive resources is being replicated with its sand. Despite RGC claims that sand export has been banned, export of sand to Singapore is booming; sand with a retail value of approximately US\$248 million is allegedly being exported annually. Once again, individuals close to the Prime Minister Hun Sen and the ruling CPP have exclusive control of this revenue: 'there is a complete lack of transparency and accountability surrounding the allocation and beneficiaries of [...] sand licences, and Global Witness found irregular payments.'¹⁴⁸ The effects of dredging sand without adhering to international best practice standards – which have been uniformly ignored in Cambodia – can be devastating for the local eco-system; and, consequently, have a cataclysmic effect on the ability of members of the host-community to maintain their livelihoods and food supplies. Dredging and transportation of sand has already resulted in a significant reduction in fish and crab stocks.¹⁴⁹
66. With the exception of Indigenous Peoples, the people of Cambodia have no consecrated legal right to benefit from the country's natural resources. Nonetheless, any Cambodians living in the affected areas have land rights and food rights which must be respected. Furthermore, mineral resources are often located in Indigenous areas and – as established above – Indigenous Peoples have rights with respect to the natural resources of their territories. Notwithstanding the legal issues involved, the ramifications of this pattern of RGC kleptocraticism for any legitimate conception of social justice for the Cambodian people are devastating.

2.1.3. SUMMARY

67. Economically motivated land rights violations, contrary to both Cambodian and international human rights law, are endemic in Cambodia. Victims are rarely given an opportunity for participation or consultation in the process beforehand and a comprehensive lack of transparency means that information is often incomplete and inaccurate. Ordinary people are effectively denied the right to have a voice in decisions which affect their human rights. When consultations do occur, they are often manipulative or coercive. Evictions are regularly conducted by armed Cambodian troops and police officers. The legal framework governing evictions is incomplete or unenforced and remedial mechanisms are underdeveloped and corrupt. While the political and economic

¹⁴⁶ Ibid, pp. 5-6.

¹⁴⁷ Ibid, p. 6.

¹⁴⁸ Global Witness 'Shifting Sand: Why Singapore's demand for Cambodian sand threatens ecosystems and undermines good governance' (May 2010), pp.2-3. Available at:

http://e360.yale.edu/images/digest/shifting_sand_final.pdf Accessed: 14 July 2010.

¹⁴⁹ Ibid, p.20.

elite benefit from forced evictions, the victims are invariably among the most vulnerable members of Cambodian society.¹⁵⁰

2.2. LABOR RIGHTS

68. Cambodia's Labor Law 1997 is 'one of the most progressive ones in the region, encompassing all the basic international norms such as freedom of association and the right to collective bargaining.'¹⁵¹ Yet, Cambodia is an extremely poor country with a developing economy which has a history of 'weak adherence to labor standards in industrial production and some of the lowest labor costs in the world.'¹⁵² In the past, workers have faced the violation of many of their labor rights guaranteed by Cambodian labor legislation, including: 'long working hours, forced and excessive overtime, illegal pay deductions, lack of safe and sanitary working conditions, and denial of the freedom to associate and bargain collectively.'¹⁵³
69. Until the US-Cambodian Bilateral Trade Agreement ('UCTA') (1999), enforcement of the Labor Law 1997 was almost non-existent. Poorly paid RGC labor inspectors accepted bribes to falsify reports, overlap between senior members of the RGC and captains of industry meant violations were meticulously ignored and - because unions were often used to generate political support for their leaders or as vehicles for extortion rather than to promote workers' rights - trade unionism was weak.¹⁵⁴ Thus, '[o]wners' strong bargaining power, combined with weak enforcement of labor regulations and an environment of corruption, contributed to very poor working conditions before the 1999 trade agreement came into effect.'¹⁵⁵ In the last decade, however, there has been a noticeable improvement in adherence to labor rights in Cambodia.

2.2.1. THE LEGAL FRAMEWORK

70. The protection of the labor rights of its workforce is a fundamental element of the human rights obligations of a state. Cambodia has embraced this obligation through the ratification of the eight core ILO Conventions: ILO Convention 29 - Forced Labor Convention (1930); ILO Convention 87 - Freedom of Association and Protection of the Right to Organise Convention (1948); ILO Convention 98 - Right to Organise and Collective Bargaining Convention (1949); ILO Convention 100 - Equal Remuneration Convention (1951); ILO Convention 105 - Abolition of Forced Labour Convention (1957); ILO Convention 111 - Discrimination (Employment and Occupation) Convention (1958); ILO Convention 138 - Minimum Working Age Convention (1973); ILO Convention 182 - Worst Forms of Child Labour Convention (1999). As a party to ICESCR, Cambodia has recognized that workers have the right to enjoy just and favorable working conditions and the right to form trade unions and bargain collectively. Furthermore, the abolition of exploitative child labor is enshrined in CRC, workplace discrimination against women and on the basis of race is prohibited by CEDAW and ICERD respectively. In the sphere of labor rights, then, an

¹⁵⁰ The World Organisation Against Torture 'Cambodia: Forced Eviction of Indigenous Families from Their Ancestral Lands', OMCT Action File (KHM 230210.DESC), (February 2010) (A), pp. 5-6.

¹⁵¹ Oka, C. 'Accounting for the Gaps in Labour Standard Compliance: The Role of Reputation-Conscious Buyers in the Cambodian Garment Industry', *European Journal of Development Research*, (2009), p. 4.

¹⁵² Berik, G. and van der Meulen Rodgers, Y. 'Options for Enforcing Labor Standards: Lessons from Bangladesh and Cambodia', University of Utah Department Of Economics Working Paper Series, Working Paper No: 2008-14, June (2008), p. 2.

¹⁵³ Berik G. and van der Meulen Rodgers, Y. *Ibid*, p. 3.

¹⁵⁴ *Ibid*, p. 22.

¹⁵⁵ *Ibid*, pp. 22-23.

image of a comprehensive human rights protection framework for Cambodian citizens once more emerges; and, again, all such protections are strengthened through their direct applicability as mandated by Article 31 of the Constitution.¹⁵⁶

71. The Labor Law 1997 is the implementing legislation enacted by the RGC to ensure the realization of these rights, and it offers substantial protections against the violation of labor rights. The law is extensive, establishing numerous substantive principles, for example: 15 as the minimum working age (although it is lowered to 12 and raised to 18 in certain prescribed circumstances related to the nature of the work undertaken);¹⁵⁷ equal work for equal pay irrespective of age, gender or ethnicity;¹⁵⁸ hygienic, sanitary and safe working conditions with criminal sanctions attached to the failure of an employer to meet certain standards;¹⁵⁹ minimum holiday entitlements (one and a half days per month worked) and maximum working hours (48 hours per week at a maximum of 10 hours a day and over a maximum of 6 working days);¹⁶⁰ guaranteed maternity leave and maternity pay for 90 days;¹⁶¹ the absolute prohibition of discrimination on the basis of age, gender, ethnicity, religion, or any other inherent characteristic (including politics) in making any professional decision, including on recruitment, advancement or remuneration;¹⁶² the right to join trade unions and negotiate collective labor agreements;¹⁶³ a minimum wage which must 'ensure every worker of a decent standard of living compatible with human dignity' and is to be bestowed without discrimination;¹⁶⁴ and the absolute prohibition of forced labor.¹⁶⁵ Unfortunately, prior to the UCTA many of the aspirational provisions enumerated in the Labor Law 1997 were undermined by poor enforcement.¹⁶⁶

2.2.2. US-Cambodia Bilateral Trade Agreement

72. In January 1999 the RGC and the US Government signed the UCTA, an agreement which guaranteed the growth of Cambodian garment exports to the US if the RGC demonstrated an improvement in the working conditions in the country's factories.¹⁶⁷ The UCTA was novel in offering additional inducements on the basis of improved human rights performance, rather than imposing sanctions if rights standards were not maintained.¹⁶⁸ In the Cambodian context this trade-incentives approach has offered a viable alternative to the more commonly used trade-sanctions approach.¹⁶⁹
73. The UCTA was contingent upon the RGC allowing the ILO to act as an independent labor standards ombudsman. This led to two interrelated ILO-led programs: first, the Better Factories Cambodia ('BFC') program which consisted of monitoring and reporting on labor conditions in factories; and secondly, the Labor Dispute Resolution ('LDR') program which facilitated the establishment of the Arbitration Council ('AC'). These programs will be

¹⁵⁶ See above at note 106.

¹⁵⁷ Article 177 Labour Law 1997.

¹⁵⁸ Article 106 Labour Law 1997.

¹⁵⁹ Articles 229, 230 and 83 Labour Law 1997.

¹⁶⁰ Chapter IV, Section 2 Labour Law 1997.

¹⁶¹ Article 182 Labour Law 1997.

¹⁶² Chapter I, Section 2 Labour Law 1997.

¹⁶³ Chapter V Labour Law 1997.

¹⁶⁴ Articles 104 and 106 Labour Law 1997.

¹⁶⁵ Article 15 Labour Law 1997.

¹⁶⁶ Berik G. and van der Meulen Rodgers, Y. (2008), *Supra* note 152, p. 22.

¹⁶⁷ Berik G. and van der Meulen Rodgers, Y. (2008), *Supra* note 152, p. 11; and Shea, A, Nakayama, M. and Heymann, J. 'Improving Labour Standards in Clothing Factories: Lessons from Stakeholder Views and Monitoring Results in Cambodia', *Global Social Policy*(10), (2010), p. 88.

¹⁶⁸ Shea, A, Nakayama, M. and Heymann, J. (2010), *Supra* note 167, p. 89.

¹⁶⁹ Berik, G. and van der Meulen Rodgers, Y. (2008), *Supra* note 152, pp. 4-5.

explored in greater depth in subsequent sections, yet it is important to note that in combination they have led to quantifiable improvements in working conditions. In addition, through interaction with UCTA programs, ‘workers have acquired valuable information and training [...] which they have used to strengthen their own position.’¹⁷⁰ A further positive ramification of the UCTA was the progress made by the RGC in drafting legislation which filled gaps in the Labor Law 1997, in particular promulgating a minimum wage for garment workers and strengthening union rights.¹⁷¹

2.2.2.1. ILO Better Factories Cambodia

74. The first UCTA initiative to be launched was the BFC program in 2001.¹⁷² The fundamental objective of BFC is to improve labor conditions in Cambodia by:

Establishing and operating an independent system to monitor working conditions in garment factories; [p]roviding assistance in drafting new laws and regulations where necessary as a basis for improving working conditions and giving effect to the labor law; [i]ncreasing the awareness of employers and workers of core international labor standards and workers' and employers' rights under Cambodian labor law; [i]ncreasing the capacity of employers and workers and their respective organizations to improve working conditions in the garment sector through their own efforts; [and] [b]uilding the capacity of government officials to ensure greater compliance with core labour standards and Cambodian labour laws.’¹⁷³

75. BFC is managed by the ILO with support from the RGC, the Garment Manufacturers' Association in Cambodia ('GMAC') and Cambodian trade unions, and in collaboration with international buyers (for example, Wal-Mart, Disney, Nike, Adidas and Levi Strauss), and is jointly-funded by these stakeholders and various international donors.¹⁷⁴
76. While BFC undertakes other activities, including training and capacity building programs, its principal role is monitoring factories through inspections. Inspectors visit factories in pairs unannounced to assess compliance with a checklist of 500 items, including: ‘child labor, freedom of association, employee contracts, wages, working hours, workplace facilities, noise control and machine safety.’¹⁷⁵ Workers are also interviewed outside working hours to ensure they can answer without fear of reprisals.¹⁷⁶ Preliminary data is shared with factory management with recommendations for improvements. This is followed by a period for the implementation of these recommendations and a second random inspection to monitor progress.¹⁷⁷
77. Nonetheless, concerns have been voiced over the legitimacy of the data generated by BFC labor conditions audits. Businesses are under pressure from international buyers to reduce costs which ‘increases the likelihood that manufacturers will find ways of cheating the auditing system.’¹⁷⁸ In addition, few Cambodian workers are inclined to report frankly on their conditions of work for fear of job loss: ‘[m]any of the workers have little opportunity

¹⁷⁰ Shea, A. Nakayama M. and Heymann, J. (2010), Supra note 167, p. 86.

¹⁷¹ Berik G. and van der Meulen Rodgers, Y. (2008), Supra note 152, p. 26.

¹⁷² Shea, A. Nakayama, M. and Heymann, J. (2010), Supra note 167, pp. 89-90.

¹⁷³ International Labour Organization ‘Better Factories Cambodia, First Synthesis Report On Working Conditions In Cambodia’s Garment Sector’, (November 2001), p. 2.

¹⁷⁴ Global Business Initiative on Human Rights ‘Business and Human Rights Roundtable: A Focus on South-East Asia’, November (2009), p. 12; and Rarick, C.A. and Firlej, K. ‘Better Factories Cambodia: Building A Country Void Of Sweatshops’, Journal of the International Academy for Case Studies 15 (1), (2009), p. 67.

¹⁷⁵ Marston, A. ‘Labor Monitoring in Cambodia’s Garment Industry: Lessons for Africa’, Realizing Rights: The Ethical Globalization Initiative, (May 2007), p. 3.

¹⁷⁶ Ibid, p. 3; and Shea, A. Nakayama, M. and Heymann, J. (2010), Supra note 167, p. 90.

¹⁷⁷ Shea, A. Nakayama, M. and Heymann, J. (2010), Supra note 167, p. 90.

¹⁷⁸ Rarick, C.A. and Firlej, K. (2009), Supra note 174, p. 67.

for other employment.¹⁷⁹ Both of these problems are exacerbated by the recent global economic climate.

2.2.2.2. Analysis of the UCTA

78. Ultimately, BFC is seeking to rid Cambodia of sweatshops and to establish it as ‘the model country in terms of socially responsible manufacturing’,¹⁸⁰ allowing it to compete more effectively for international manufacturing contracts. As illustrated above, labor conditions in Cambodia have improved exponentially in the last decade: ‘[i]n comparison with other countries, ILO reports have shown that most [Cambodian] factories are paying workers a minimum wage, providing paid leave each year and ensuring there is no child labor. Safety standards have also been significantly improved.’¹⁸¹ BFC is widely credited as the catalyst for this improvement: ‘the program has set in motion a process for improving working conditions in the garment sector and has achieved [...] improvements in working conditions.’¹⁸² The influence of the UCTA has also spread to the private sector, as companies began offering similar inducements to improve human rights performance.¹⁸³
79. Perhaps the greatest indicator that these labor standards initiatives have been a success is that despite the expiration of the UCTA and the trade incentives it carried, they have been renewed and have expanded in scope to include ‘new training programs for workers, capacity building, remediation, and improved information dissemination.’¹⁸⁴ It can be inferred, then, that the RGC have recognized that the ILO programs represent ‘a niche strategy to attract reputation-conscious buyers’, and that, simultaneously, ‘these buyers have come to appreciate ILO monitoring as a stamp of approval.’¹⁸⁵ Both the RGC and garment factory owners ‘have decided that there is an international market for good labor standards that are verified through credible, transparent monitoring. They have decided to continue the strategy indefinitely, despite the end of the quota system.’¹⁸⁶ The potential impact of international trade agreements as an inducement for improved performance in the Cambodian business and human rights sphere cannot, therefore, be underestimated.
80. Despite the successes outlined above, there are still substantial weaknesses in the RGC’s discharge of its duty to protect labor rights. Perhaps the most fundamental is that improvements are restricted to the garment sector: for example, Article 104 Labor Law 1997 guarantees a national minimum wage, and Article 107 provides that the level of this wage is to be established by sub-decree and that it will be established ‘without distinction among professions or jobs.’¹⁸⁷ However, in reality the implementation of the minimum wage has only been applied only to garment factory workers. While the controversial recent increase of the minimum wage to just \$61 in July,¹⁸⁸ provoked protest and outcry amongst garment workers for being inadequate, even this modest wage was limited to the

¹⁷⁹ Ibid, p. 67.

¹⁸⁰ Ibid, p. 67.

¹⁸¹ Marston, A. (2007), Supra note 175, p. 3.

¹⁸² Berik G. and van der Meulen Rodgers, Y. (2008), Supra note 152, p. 25. See also: Marston, A. (2007), Supra note 175, p. 3; Shea, A. Nakayama, M. and Heymann, J. (2010), Supra note 167, pp. 89-90; Rarick, C.A. and Firlej, K. (2009), Supra note 174, pp. 65-68.

¹⁸³ Polaski, S. ‘Combining global and local forces: The case of labor rights in Cambodia’, Carnegie Endowment for International Peace, (March 2006), p. 7.

¹⁸⁴ Berik G. and van der Meulen Rodgers, Y. (2008), Supra note 152, p. 11.

¹⁸⁵ Oka, C. (2009), Supra note 151, p. 4.

¹⁸⁶ Polaski, S. (2006), Supra note 183, p. 13.

¹⁸⁷ Article 107 Labour Law 1997.

¹⁸⁸ Labour Advisory Committee Statement available at: <http://www.gmac-cambodia.org/announcement/statement/lac-08-july-2010/LAC-Statement-Eng.doc> Accessed 28 July 2010.

garment sector. While accurate data is sparse, other workers are apparently forced to live on considerably less.¹⁸⁹

81. A further concern is that while it has a mandate to monitor and report on factories' compliance with Cambodian and international labor standards, the ILO has no enforcement power, and the 'Ministry in charge of labor inspection and remediation suffers from incapacity and corruption, which prevents it from effectively enforcing the labor law.'¹⁹⁰ The long-term sustainability of the UCTA vision requires the RGC allowing the ILO to withdraw by taking responsibility for the effective management of its initiatives. For the initiatives to maintain the credibility and legitimacy garnered by ILO involvement, the RGC must act to stymie the endemic corruption in the Ministry of Labor.
82. Finally, the benefits of the UCTA fundamentally relied on the financial incentives which formed the basis of that agreement. While this in itself should not attenuate acclaim, it is important to acknowledge that economic inducements were arguably the motivating factor for the RGC. In the past decade, 'Hun Sen has cultivated ties with China, which has become a major source of foreign assistance and investment in Cambodia [and] as Chinese economic support increases [...] Western countries may lose their leverage in calling upon the Cambodian Government to engage in democratic practices and the rule of law.'¹⁹¹ When viewed from this perspective, the ASEAN-China Free Trade Agreement ('ACFTA') is a serious cause for concern. Taking effect from 1 January 2010, ACFTA provides a timely illustration of Cambodia's involvement in international trade agreements which have the potential to constrain the implementation of measures designed to protect human rights. The ACFTA contains no provisions relating to labor rights, reducing the likelihood that the RGC will fortify and extend protections for Cambodian workers.¹⁹²

2.2.3. SUMMARY

83. While significant progress has been made in Cambodian labor rights since the UCTA, and the RGC must be congratulated for promulgating the ILO initiatives that agreement carried, there are still areas of significant concern. Three fundamental flaws in the UCTA initiatives are: first, that they apply only to garment factories; second, they will be unable to function without the continuing involvement of the ILO; and, third, there is a persistent concern that they will only endure for as long as they are deemed financially astute by the RGC, something which is likely to change if trade with China increases.¹⁹³ Furthermore, despite an improvement in overall labor conditions, the Labor Law 1997 remains insufficiently enforced at state-level, a problem which is exacerbated – as will be seen in subsequent sections – by the corruption and inefficiency of the judicial remedial mechanisms that govern labor rights violations.

2.3. THE FREEDOMS OF EXPRESSION, ASSEMBLY AND ASSOCIATION

84. In a 2010 submission to the UN Human Rights Council, the RGC claimed that it 'encouraged the freedom of the press, [...] of expression, the right to demonstrate and the freedom to attend rallies within the legal framework' and that 'Cambodia has a free press and trade unions'. Unfortunately, despite a comprehensive legal framework, there is compelling

¹⁸⁹ World Bank 'A Fair Share for Women: Cambodia Gender Assessment, (2004), p 46.

¹⁹⁰ Oka, C. (2009), *Supra* note 151, p. 4.

¹⁹¹ Lum, T. (2007), *Supra* note 22, pp. 11-12.

¹⁹² See: Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China, available at: <http://www.aseansec.org/16646.htm>. Accessed 19 July 2010.

¹⁹³ Rarick, C.A. and Firlej, K. (2009), *Supra* note 174, p. 67.

evidence that the freedoms of expression, assembly and association – and their various subsidiary rights – are repeatedly and callously violated by the RGC. ‘Cambodians do not enjoy the freedom to express opinions that conflict with those of the Government. The Government has used the full force of the criminal law on incitement, defamation and disinformation to restrict opinions being expressed on sensitive issues including [...] corruption [and] land grabbing.’¹⁹⁴ In terms of business and human rights, these violations are particularly pertinent when related to land rights and labor rights. Violations of the freedoms of expression, assembly and association exacerbate violations of land and labor rights.

2.3.1. THE LEGAL FRAMEWORK

85. Article 19 of the ICCPR provides that ‘[e]veryone shall have the right to freedom of expression’; Article 21 ICCPR provides that, ‘[t]he right of peaceful assembly shall be recognized’; and Article 22 ICCPR provides that, ‘[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.’¹⁹⁵ In addition, Article 8 ICESCR provides that states party to the Convention must ensure ‘[t]he right of everyone to form trade unions and join the trade union of his choice’; ‘[t]he right of trade unions to function freely’; and ‘the right to strike’,¹⁹⁶ and similar provisions are contained in the core ILO Convention 87 – Freedom of Association and Protection of the Right to Organise Convention (1948).
86. Once more, Cambodia is a party to all of these instruments, and all their protections are entrenched by Article 31 of the Constitution. In addition, these freedoms are expressly guaranteed by Article 41 of the Constitution, which states, ‘Khmer citizens shall have freedom of expression, press, publication and assembly’; Article 36 of the Constitution which posits, ‘Khmer citizens [...] shall have the right to form and to be members of trade unions’; and Article 37 of the Constitution which declares the ‘right to strike and to non-violent demonstration.’ Finally, the Labor Law 1997 asserts the rights to join trade unions, negotiate collective labor agreements and strike;¹⁹⁷ and Article 2 of the Law on Peaceful Demonstration 2010 provides that the purpose of the law is to ensure freedom of expression of Cambodian citizens through peaceful demonstration.¹⁹⁸ Despite comprehensive legal protections, the various rights associated with the freedoms of expression, assembly and association are violated with impunity.¹⁹⁹

2.3.2. THE RIGHT TO FORM TRADE UNIONS AND THE RIGHT OF TRADE UNIONS TO FUNCTION FREELY

87. The failure of the RGC to uphold the right to form trade unions and the right of trade unions to function freely merits further consideration. The assassinations of three senior members of the Free Trade Union of Workers of the Kingdom of Cambodia – Chea Vichea, Ros Sovannarith and Hy Vuthy – between 2004 and 2007 have been described as a microcosm of the restrictions on the freedoms of expression, assembly and association in

¹⁹⁴ ‘Joint submission by non-governmental organizations on freedom of expression and assembly for the universal periodic review of Cambodia’s fulfilment of its human rights obligations and Commitments’, April 2010. Available at: http://www.adhoc-chra.org/gallery/files/Joint_UPR_Submission_Cambodia_ENG.pdf Accessed 16 September 2010.

¹⁹⁵ UN International Covenant on Civil and Political Rights (1966).

¹⁹⁶ UN International Covenant on Economic, Social and Cultural Rights (1966).

¹⁹⁷ Chapter V, XIII Labour Law 1997.

¹⁹⁸ Law on Peaceful Demonstration 2010.

¹⁹⁹ Joint NGO submission, Supra note 194.

Cambodia.²⁰⁰ The Cambodia Office of the UN High Commissioner for Human Rights ('OHCHR') has noted with concern the failure of the RGC to respond adequately to these killings:

*In September 2008, the investigating judge closed the investigation in the case of the assassination of trade unionist Hy Vuthy because the police had not produced sufficient evidence. OHCHR and ILO encouraged the police to continue the investigation, apparently with no result. In the case of the murder in 2004 of trade union leader Chea Vichea, the two men who had been imprisoned for five years [despite weak evidence and severe procedural irregularities] continued to appeal their conviction.'*²⁰¹

88. In the first two cases, scapegoats with solid alibis were convicted of the killings (the two men convicted for Chea Vichea's murder have been released but not exonerated, while the man convicted for Ros Sovannarith's murder is serving a 15 year prison sentence). The last case was closed due to a lack of identified suspects, despite statements by Phnom Penh's police chief indicating that there were two suspects for whom he had obtained arrest warrants.²⁰² It has been alleged that the murders were in fact motivated by perceived opposition to the RGC, and they have therefore had a 'chilling effect on the ability of trade unionists to defend labour rights.'²⁰³ In a recent development, the film 'Who killed Chea Vichea' was banned from being screened at a public event.²⁰⁴

2.3.3. THE RIGHT TO NON-VIOLENT DEMONSTRATION AND THE RIGHT TO STRIKE

89. According to empirical data amassed by the Cambodian Human Rights and Development Association ('ADHOC'), of 155 peaceful demonstrations planned in 2008, the majority of which were linked to either land or labor disputes – 108 were suppressed by the RGC: '[t]he Government has severely restricted assembly and public demonstration, and this restriction has often been marked with excessive force.'²⁰⁵ For example, in March 2010, security forces shot at unarmed villagers protesting against the loss of subsistence farmland in Siem Reap province. To date, no authority has investigated this incident.²⁰⁶ In many provinces, particularly those where disputes over land and natural resources are prevalent, local communities and civil society groups are required to seek permission from the provincial authorities prior to organizing peaceful demonstrations. These requests are often refused.²⁰⁷ The OHCHR has presented evidence that 'when people organized themselves to seek redress or claim their rights under national law, they were ignored, threatened, accused of a number of offences (including incitement) or – increasingly – imprisoned.'²⁰⁸ Approximately 60 individuals have been detained in custody in this manner, and countless more have been arrested and faced criminal charges.²⁰⁹ As will be seen in subsequent sections, the use of criminal charges to suppress the freedoms of expression, assembly and association by the RGC is integral to the failing of Cambodian

²⁰⁰ Ibid.

²⁰¹ OHCHR Annual Report 'Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights', Submitted to the UN Human Rights Council, 12th session A/HRC/12/41, (August 2009), p. 12.

²⁰² CLEC 'Tom Lantos Human Rights Commission Hearing, Testimony by Mr. Tola Moeun Head of Labor Program Unit, United States Congress, Washington, DC, September 10, (2009), p. 2.

²⁰³ OHCHR Annual Report 'Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights', Submitted to the UN Human Rights Council, 7th session A/HRC/7/56, (February 2008), p. 11; and Joint NGO Submission, Supra note 194.

²⁰⁴ 'Labor Day "Who Killed Chea Vichea" Documentary Incident', published May 02, 2010, Available at: <http://ki-media.blogspot.com/2010/05/labor-day-who-killed-chea-vichea.html> Accessed 14 July 2010.

²⁰⁵ Joint NGO Submission, Supra note 194.

²⁰⁶ Amnesty International (2010), Supra note 28, p. 93.

²⁰⁷ OHCHR Annual Report (2008), Supra note 203, pp. 12-13.

²⁰⁸ OHCHR Annual Report (2009), Supra note 201, p. 15.

²⁰⁹ Ibid, p. 15.

judicial mechanisms to provide effective access to remedies in the business and human rights sphere.

90. In addition, there are documented instances of the suppression of legitimate strike action: '[t]he Cambodian authorities regularly use violence or the threat of it to restrict workers rights to peacefully protest over legitimate labour rights issues. Peaceful gatherings outside factories by striking workers have repeatedly been forcibly dispersed by armed police in recent years.'²¹⁰ As will be seen in subsequent sections, a number of businesses have been complicit in the violent suppression of strike action by their workers.

2.3.4. FREEDOM OF THE PRESS

91. In June 2007, the RGC banned the distribution of a report by the NGO Global Witness entitled 'Cambodia's Family Trees: Illegal Logging and the Stripping of Public Assets by Cambodia's Elite', which alleged the involvement of RGC officials and their families in illegal logging activities.²¹¹ Furthermore:

Journalists were warned not to report on or reproduce extracts of the report and the French language newspaper Cambodia Soir was shut down by its board after a two-day strike by journalists protesting against the sacking of one of their colleagues who had reported details of the Global Witness report. The Office (of the United Nations High Commissioner for Human Rights) monitored and provided protection to individuals in the context of several acts of intimidation connected with the report.²¹²

92. A second Global Witness report, entitled 'Shifting Sand: How Singapore's Demand for Cambodian Sand Threatens Ecosystems and Undermines Good Governance', which contained analogous allegations relating to the illegal export of Cambodian sand reserves to Singapore, was treated similarly by the RGC, with Prime Minister Hun Sen going so far as to threaten the release of information exposing a sex-scandal involving a senior Global Witness staff member if the NGO refused to desist from their investigative activities.²¹³

2.3.6. SUMMARY

93. According to a 2009 OHCHR report to the UN Human Rights Council, in the past two years, arbitrary restrictions on freedom of assembly, expression and association have been imposed by local authorities, 'to deter or denounce the effort by these communities, or the organizations supporting them, to exercise their constitutional rights and freedoms to organize themselves to protect their right to their land and livelihoods. Whilst these accusations rarely lead to charges, their effect is to keep these civil society actors in fear of legal action by the authorities.'²¹⁴
94. Despite a robust legal framework, arbitrary, and often violent, attacks on the freedoms of expression, assembly and association are commonplace in contemporary Cambodia. Cambodians attempting to voice their opposition to developments which affect their land and labor rights, regularly face the threat of physical violence and criminal charges. This makes attempts to advocate their cause and seek appropriate remedies dangerous.

²¹⁰ Oka, C. (2009), Supra note 151, p. 13; and CLEC (2009), Supra note 202, p. 3.

²¹¹ OHCHR Annual Report (2008), Supra note 203, pp. 7-8; and Joint NGO Submission, Supra note 194, p. 5.

²¹² OHCHR Annual Report (2008), Supra note 203, pp. 7-8.

²¹³ Phnom Penn Post, 'PM slams critics over revenues' 27 May 2010. Available at: http://www.phnompenhpost.com/index.php?option=com_jcs&view=jcs&layout=form&Itemid=254 Accessed 21 July 2010.

²¹⁴ OHCHR Annual Report (2009), Supra note 201, p. 11.

2.4. CCHR RECOMMENDATIONS

- **That the RGC end all illegal forced evictions, and take reasonable steps to ensure that Cambodians affected by Economic Land Concessions, Social Land Concessions and redevelopment contracts are accorded the legal protections to which they are entitled under Cambodian law and international human rights law. These include: adequate notice, consultation, adequate remuneration and alternative land or housing of a similar standard to that which they have lost.**
- **That the RGC ensure the transparent management of Cambodia's natural resources, including its forests, extractive resources and sand.**
- **That the RGC fully implement the Labor Law 1997 and ensure that its benefits are felt outside the garment sector. Priority should be given to pressing issues, including the lack of a national minimum wage.**
- **That the RGC protect and respect the Cambodian Constitution and international human rights standards by permitting peaceful demonstrations, prosecuting individuals responsible for the murder of trade unionists and ceasing the violent deployment of the police and the Royal Cambodian Armed Forces in the suppression of the freedoms of expression, assembly and association in relation to land and labor rights.**
- **That the RGC takes active steps to encourage and facilitate a corporate culture of respect for human rights in Cambodia, by supporting and participating in initiatives such as the CCHR Business and Human Rights Project.**

3. BUSINESSES' RESPONSIBILITY TO RESPECT IN CAMBODIA

95. While the primary duty to protect human rights in Cambodia lies with the RGC, businesses themselves have a responsibility to respect rights. Not only does discharging this responsibility satisfy fundamental moral obligations and ensure legal compliance, but it is likely to be good for business in the long term. This chapter examines the track record of Cambodian businesses in discharging this responsibility to date, where, unfortunately, these factors are often overlooked in favor of short term financial gain.
96. As exploration of Cambodia's significant oil fields approaches completion, major international extractive companies are set to play an increasingly important role in the Cambodian economy over the next decade. The activities of these oil companies are likely to place businesses' responsibility to respect human rights even more firmly under the microscope of international opinion.
97. While this chapter refers to work by other civil society actors to 'name and shame' a number of specific companies responsible for rights violations, some of the positive human rights activities by businesses are also surveyed. It is impossible to assess the record of Cambodian businesses without openly examining documented past abuses. However, CCHR considers that the negative pressure exerted via the 'naming and shaming' approach needs to be balanced with collaboration between civil society actors, Cambodian businesses and the RGC to work together on improving rights compliance going forward.

3.1. LAND RIGHTS

98. In recent years there have been numerous instances of land rights violations perpetrated by both foreign and domestic businesses operating in Cambodia. More specifically, businesses lease land from the RGC through ELCs and SLCs, or undertake infrastructural projects through RGC redevelopment contracts, and consequently partake in – or, at the very least, are complicit in – government mandated forced evictions, leaving thousands of Cambodians homeless and unable to sustain their livelihoods.²¹⁵

3.1.1. BUSINESS-LED ILLEGAL FORCED EVICTIONS

3.1.1.1. Pheapimex Co. Ltd.

99. In 2000, Pheapimex was granted two agro-industry concessions totaling over 300,000 hectares in Kampong Chhnang. Since the 1990s, Pheapimex – owned by Cambodia People's Party Senator Okhna Lao Meng Khin and his wife, who are famously close to Prime Minister Hun Sen – has developed an infamous reputation as a logging concessionaire:

In a forest industry dominated by illegal logging and conflict with local people, Pheapimex held the dubious distinction of being notorious amongst the concessionaires for its ruthlessness and the level of destruction inflicted upon its concession areas. It has enjoyed a long relationship with the Cambodian armed forces, and has used members of the military to provide security and exert control over its forest concessions.²¹⁶

²¹⁵ See paragraphs 51-54 above for a summary of the Cambodian legal framework and explanation of the different land concessions.

²¹⁶ Global Witness, (2009), Supra note 142, p. 24.

100. The areas covered by the 2000 concessions are heavily forested and were therefore deemed ideal for developing high pulp-yield acacia and eucalyptus plantations and for building a paper mill. The eviction affected '[h]undreds of villages in about 50 communes where families rely on the forest for gathering non-timber products and grazing cattle.'²¹⁷ Logging concessions were in theory suspended in 2002, yet allegedly deforestation continues unabated.²¹⁸

3.1.1.2. 7NG

101. In 2003, 7NG was granted a redevelopment contract which extinguished the possession rights of residents of 4.7 hectares of land in Dey Krahom, Phnom Penh.²¹⁹ The initial plan was not resisted because it was ostensibly granted to provide residents with adequate housing as well as to stimulate economic growth.²²⁰ However, in 2005 the agreement was changed amid widespread allegations of bribery, giving 7NG the right to redevelop the entirety of Dey Krahom in exchange for building alternative housing for residents 20km away.²²¹ In spite of protests by villagers (who had not been consulted), 7NG continued with its redevelopment schedule, having secured the proactive support of the Phnom Penh Municipality.

102. Between 2005 and 2009, 7NG allegedly embarked on a campaign of intimidation and coercion to induce residents to accept the contract and leave Dey Krahom with a relocation package substantially below the market value of their land. Some families accepted these terms, but others remained and attempted to continue negotiations until the company unilaterally withdrew from talks.²²²

103. In January 2009, 7NG construction workers, armed police and military police forcibly evicted around 400 families from their homes in Dey Krahom:

The eviction was carried out in the middle of the night, with bulldozers, tear gas, rubber bullets, batons, and workers equipped with sticks and axes contracted to demolish the houses. All families were brutally taken out their houses and those who resisted and attempted to protect their property were beaten and pulled away. The residents were thrown onto the street to watch their homes being destroyed. At dawn, what remained was a heap of debris and ashes.²²³

104. Weeks after the eviction, only 30 families had been relocated to the alternative site which still had no clean water, electricity or basic sanitation.²²⁴ As most residents were city-centre market-stall holders and street vendors, the eviction has left them homeless and without an income.

3.1.1.3. Wuzhishan L.S. Group Co. Ltd.

²¹⁷ CHRAC (2009), Supra note 116, pp. 25-9.

²¹⁸ Global Witness, (2009), Supra note 142, p. 13.

²¹⁹ CHRAC (2009), Supra note 116, p. 31.

²²⁰ LICADHO, 'The Eviction of Dey Krahom', (January 2009), p. 1.

²²¹ Ibid, p. 1.

²²² Ibid, p. 1; and 'The Eviction of Dey Krahom Residents: A Setback for the Rule of Law', Statement by the Cambodia Office of the High Commissioner for Human Rights, 28 January 2009. Available at:

http://www.un.org.kh/index.php?option=com_content&view=article&id=121:statement-by-the-cambodia-office-of-the-high-commissioner-for-human-rights&catid=43:latest-press-releases&Itemid=76. Accessed 17 May 2010.

²²³ 'The Eviction of Dey Krahom Residents: A Setback for the Rule of Law', Ibid.

²²⁴ Frankental, P. 'Economic Progress in Cambodia Compromises Human rights', *Daily Telegraph*, February 11 2009. Available at:

http://blogs.telegraph.co.uk/news/peterfrankental/8553757/Economic_progress_in_Cambodia_compromises_human_rights/. Accessed 6 September 2010.

105. In 2004, Wuzhishan – a China-based company – was granted an ELC for a pine tree plantation in Mondulkiri. Despite no environmental or social impact assessments, a concession of 200,000 hectares of land (20 times the maximum mandated by the Land Law 2001) was granted to the company, including land inhabited by the Indigenous Phnong people.²²⁵ Despite the protections to be afforded to Indigenous People contained in the Land Law 2001, its implementing sub-decrees and the Forestry Law 2002, there were no consultations with the Phnong people prior to the granting of the concession; and community leaders have since alleged that Wuzhishan and local authorities intimidated them into thumb-printing *post-hoc* approval statements.²²⁶

106. By 2005, the plantation had substantively encroached on the lands and resources of the Phnong:

*It had enveloped and partly destroyed farmlands, forests and crops, grazing land, ancestral forests and traditional burial sites around the villages. To the community members, loss of access to forest land meant loss of products that provide nutrition, medicine, fuel, and non-forest timber products that boost income. The encroachment impacted also on the culture of the Phnong, whose beliefs, religious practices and traditional environment are intimately associated. The forest in particular is central to the spiritual life of the Phnong.*²²⁷

107. No settlement had been negotiated by 2008 leaving the Phnong – already a marginalized group – at risk of further land rights exploitation.²²⁸

3.1.1.4. New Cosmos Development

108. In 2004, New Cosmos – a Chinese company – was granted a 900 hectare ELC in the Aurul district of Kompong Speu province.²²⁹ Despite masquerading as eco-tourism, in reality the concession resulted in the development of a luxury golfing resort around a natural hot springs site.²³⁰ The springs are of cultural and spiritual significance to the resident Suy Indigenous People, yet on several occasions, the company and local authorities allegedly tried to remove the statue of the Suy goddess, Yeay Te. Suy elders began to maintain a permanent presence by the statue to prevent its removal. Community members were allowed access to the statue, but armed security guards barred them from other areas important for the spiritual life and economic livelihood of the Suy.²³¹ Furthermore, it was alleged that New Cosmos hired soldiers from Battalion 313 of the Cambodian Army to act as mercenaries in the protection of the concession.²³² The Suy community were vocal in their opposition, organizing two national advocacy forums (despite alleged intimidation of their leaders), and eventually succeeding in forcing New Cosmos to halt the development in 2005.²³³ Their success was short-lived: as will be discussed below, in 2009 another business was granted a concession over the same area of land.

3.1.1.5. Koh Kong Sugar Co.

²²⁵ Amnesty International 'Cambodia: Ignoring the Rights of Indigenous Peoples', AI Index: ASA, (June 2008), p. 1.

²²⁶ Ibid, p. 1.

²²⁷ Ibid, p. 2.

²²⁸ Ibid, p. 3.

²²⁹ The World Organisation Against Torture, 'Cambodia: Suy Indigenous Peoples At Risk Of Extinction', OMCT Action File (KHM 260310.DESC) (March 2010) (B), p. 2; and OHCHR Cambodia (June 2007), 'Economic Land Concessions' Supra note 122, p. 16.

²³⁰ The World Organisation Against Torture, Ibid, p. 2.

²³¹ OHCHR Cambodia 'Economic Land Concessions' June 2007, Supra note 122, p. 16.

²³² Cardamom Mountains Wildlife Sanctuaries Project (CMWSP), 'Information for the Working Group on Forest and Environment on attainment of Donor Working Group indicators in Phnom Aural and Phnom Samkos Wildlife Sanctuaries', (May 2005), p. 2.

²³³ The World Organisation Against Torture, (2010), Supra note 229, p. 2.

109. In 2006, Koh Kong Sugar Co. was granted an agro-industry ELC for 9,700 hectares of land in Koh Kong province. With the assistance of the police, Koh Kong Sugar forcibly evicted hundreds of residents in order to turn the area into a vast sugar plantation: '[m]ore than 50 families lost their homes in Trapeang Kandol village alone.'²³⁴ Lawyers for the individuals affected claim that the land is worth around US\$500 to US\$1000 per hectare, yet Koh Kong Sugar, which is owned by Senator Ly Yong Phat, offered a compensation package which amounted to US\$50 per hectare. Nonetheless, '[a] petition sent to Cambodia's Parliament failed to achieve anything.'²³⁵ Not only did residents lose their homes, but, because they used the land to harvest watermelons and maize as cash crops and rice to feed themselves, they have also lost their livelihoods and their principal source of nourishment. In addition, it is alleged that when residents resisted eviction, military police shot at protesters using live ammunition.²³⁶

3.1.1.6. Shukaku Inc.

110. In 2008, Shukaku was granted a redevelopment contract for 133 hectares of land encompassing the Boeung Kak Lake in Phnom Penh and its surrounding area.²³⁷ Families living in the development zone allegedly began experiencing pressure and intimidation to leave the area in August 2008, when the developer commenced filling in the lake as part of its development plans. While few details about the development have been made public, it is estimated that approximately 20,000 people will be displaced. Included in this figure are the more than 1000 families that have already been evicted without their land rights being properly adjudicated and acknowledged.²³⁸ In March 2010, the World Bank Inspection Panel recommended a full investigation into the Boeung Kak Lake area after finding that 'no progress has been made on the ground to implement specific actions that ensure that the communities who are resettled from the BKL area will be supported in a way consistent with the agreed Resettlement Policy Framework.'²³⁹ It is noteworthy that Senator Okhna Lao Meng Khin – director of Pheapimex – is also listed as a director of Shukaku.²⁴⁰

3.1.1.7. CIV Development Co.

111. In 2008, CIV Development was granted a 769 hectare ELC for a rubber plantation in the Snoul district of Kratie province in violation of the Indigenous Peoples' land rights of 250 resident Indigenous Stieng families.²⁴¹ There was no prior consultation with the Stieng People, and protests met a swift response:

When community representatives protested the company's encroachment on their land, four indigenous Stieng men were summoned to court by the prosecutor after the company filed criminal complaints. However in the view of the NGO lawyers representing the villagers, there is insufficient evidence to support these serious charges, and the company and prosecutor are using judicial mechanisms to intimidate the villagers.²⁴²

²³⁴ 'Foreign and Domestic Companies Grabbing Farmers' Land with Authorities' Complicity to Build Casinos', Asia News, 16 April 2007. Available at: <http://www.asianews.it/index.php?!=en&art=9004&size=> Accessed 16 September 2010.

²³⁵ Ibid.

²³⁶ Ibid; and CHRAC (2009), Supra note 116, p. 13.

²³⁷ Global Witness, (2009), Supra note 142, p. 25.

²³⁸ Bank Information Center, Press Release 28 April 2010, World Bank agrees to full investigation into land activities in Cambodia. Available at: <http://www.bicusa.org/en/Article.11866.aspx> Accessed 16 September 2010.

²³⁹ Cambodia: Land Management and Administration Project (Credit No. 3650 - KH) March 31, 2010. Available at: http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/CAM_LMAP-FinalEligRep_March31.pdf Accessed 16 September 2010.

²⁴⁰ CHRAC (2009), Supra note 116, pp. 25-9; and Global Witness, (2009), Supra note 142, p. 25.

²⁴¹ CHRAC (2009), Supra note 116, p. 31.

²⁴² Indigenous Peoples NGO Network (2010), Supra note 135, p. 12.

112. Evictions have commenced, with those families who have already been removed asserting that their prior notification consisted of company bulldozers appearing on their land.²⁴³

3.1.1.8. HLH Groups Ltd.

113. In 2009, Singapore based HLH Groups was granted a larger 10,000 hectare agro-industry ELC over the same area of Suy land described above in relation to New Cosmos Development, this time for the purpose of cultivating the entire area with genetically modified corn crops.²⁴⁴ Significantly, this required the RGC to pass a sub-decree transforming the land from State Public Land to State Private Land, at once setting a disturbing precedent and illustrating the existent arbitrary management of land.²⁴⁵ In contravention of their land and cultural rights, the dispossession of the Suy community has commenced, no negotiated settlement has been reached and all attempts at peaceful protest are allegedly ignored by the company and local authorities.²⁴⁶ In addition, the concession has allegedly exacerbated a pre-existing water shortage in the area.²⁴⁷ 350 Suy families in five villages are now at risk of illegal forced eviction. The gravity of this risk cannot be underestimated: the global Suy population is approximately 1,200, all of whom live in Cambodia, the majority of whom now face being forcibly removed from their ancestral lands by HLH Groups.²⁴⁸

3.1.2. NATURAL RESOURCES

114. The case of Pheapimex above is illustrative of the manner in which Cambodia's timber stocks have been handled. It has been estimated by Global Witness that between 2002 and 2007 Cambodia lost 29 percent of its tropical forests to logging syndicates led by relatives of Prime Minister Hun Sen and other senior CPP officials:

The most powerful logging syndicate in Cambodia is led by Dy Chouch, also known as Hun Chouch, his ex-wife Seng Keang and Khun Thong, their business partner. This group operates under the name Seng Keang Company. Dy Chouch is the first cousin of Prime Minister Hun Sen. Seng Keang is a friend of Bun Rany, the wife of Hun Sen. Khun Thong is the brother-in-law of Minister for Agriculture, Forestry and Fisheries ('MAFF') Chan Sarun and father-in-law of Director General of the Forest Administration Ty Sokhun. Seng Keang's brother, Seng Kok Heang [...] is an officer in the Royal Cambodian Armed Forces ('RCAF') Brigade 70 elite military unit.²⁴⁹

115. Through a number of businesses – including Seng Keang Company, Kingwood Industry and Pheapimex – members of Cambodia's social and political elite hold a tight grip on Cambodia's timber resources: '[e]ight years after Prime Minister Hun Sen pledged to stamp out forest crime, illegal logging continues to erode Cambodia's most valuable forests.'²⁵⁰

116. Private businesses are also deeply involved in alleged rights violations relating to Cambodia's extractive resources. For example, a business known as Petroleum Geo Services ('PGS') has undertaken seismic surveying of the Tonle Sap Basin; 'a UNESCO Biosphere Reserve whose waters provide an estimated 230,000 tonnes of fish each year. These fish stocks supply 40-70 per cent of the country's annual protein intake and afford an

²⁴³ The World Organisation Against Torture, Supra note 229, p. 3.

²⁴⁴ Ibid, pp. 2-3.

²⁴⁵ Ibid, pp. 2-3.

²⁴⁶ Ibid, pp. 2-3.

²⁴⁷ Ibid, pp. 2-3.

²⁴⁸ LICADHO, 'Eviction and Land Grabbing Surges Across Cambodia', April 2010. Available at: <http://www.licadho-cambodia.org/articles/20100402/109/index.html>. Accessed 6 September 2010.

²⁴⁹ Global Witness, (2007), Supra note 144, p. 6.

²⁵⁰ Ibid, p. 89.

essential source of livelihoods for around two million Cambodians.²⁵¹ The granting of extractive concessions has generated a 'black-gold rush involving American, Australian, Chinese, Indonesian, Japanese and Korean companies, all battling for lucrative rights. All of Cambodia's offshore blocks [...] and [some] onshore block[s] have already been allocated to domestic or foreign companies.'²⁵² The granting of onshore extractive concessions is inherently more likely to interfere with the human rights of the Cambodian people; these concessions seriously threaten the land and food rights of local residents.²⁵³

117. Similarly, private businesses are allegedly involved in the dredging and transportation of Cambodian sand reserves to Singapore. Global Witness claims that two individuals are primarily responsible for sand exports: First, Senator Ly Yong Phat, also owner of the Koh Kong Sugar Company, allegedly exports approximately 300,000 tonnes of sand annually through the L.Y.P. Group Co. Ltd., Winton Enterprises, the Riverton Group (S) PTE Ltd, Ta Chang Selindo Cambodia Co, Teelek Resource Management and Wan Qi PTE Ltd;²⁵⁴ and, second, Okhna Mong Reththy – who also appears to be implicated in land rights violations in Sihanoukville²⁵⁵ and the export of illegal timber through Okhna Mong Port²⁵⁶ – allegedly exports approximately 379,000 tonnes of sand annually through the Mong Reththy Group Co Ltd and Nim Meng Import and Export Development Co Ltd.²⁵⁷ A third business – Udom Seima Peanikch Industry and Minde Co. Ltd – has also been granted a sand licence and allegedly exports approximately 117,000 tonnes of sand annually.²⁵⁸ According to Global Witness, these businesses ignore 'national environmental and social safeguards, and international industry best practices [constituting] violation of Cambodia's national legislation [and] international commitments to protect human rights.'²⁵⁹

3.1.3. SUMMARY

118. Businesses violate the land rights of Cambodians with alarming regularity, and the system of land concessions and development contracts granted by the RGC is not merely failing to prevent this, it is being used as a tool to permit and exacerbate these violations. Although mandatory evictions are necessary to the economic and infrastructural development of any state, in Cambodia many of these evictions have been carried out in contravention of international standards and seemingly with little reference to the domestic legal regime. Residents are rarely consulted on planned evictions, and when consulted they are frequently offered substantially below the market-value for their land. Evictions are often violently administered by a combination of mercenaries hired by the businesses, armed police and the Royal Cambodian Armed Forces. Indeed, the increasing financial links between businesses and the Cambodian army are a further cause for alarm.²⁶⁰ The impact on the human rights of ordinary Cambodians from the stripping of Cambodia's natural resources by businesses – often owned by the country's elite – cannot be underestimated. This is undoubtedly a failure by the businesses involved to discharge their responsibility to respect rights.

²⁵¹ Global Witness, (2009), Supra note 142, p. 7, p. 50.

²⁵² Ibid, p. 11.

²⁵³ Ibid, p. 7.

²⁵⁴ Global Witness, (2010), Supra note 148, p. 7-9.

²⁵⁵ OHCHR Cambodia 'Economic land concessions', (2007), Supra note 122, p. 11.

²⁵⁶ Global Witness, (2007), Supra note 144, p. 8.

²⁵⁷ Global Witness, (2010), Supra note 148, p. 12-13.

²⁵⁸ Ibid, p. 14.

²⁵⁹ Ibid, p. 3.

²⁶⁰ See generally Global Witness, (2009) Supra note 142, and for example: 'Global Witness urges Cambodia's donors to condemn sponsorship of military units by private businesses' Press Release – 05/03/2010. Available at: http://www.globalwitness.org/media_library_detail.php/935/en/global_witness_urges_cambodias_donors_to_condemn_sponsorship_of_military_units_by_private_businesses. Accessed 16 September 2010.

3.2. LABOR RIGHTS

119. Despite progressive labor regulations and the presence of international trade agreements which act to bolster these provisions,²⁶¹ the Cambodian labor force is regularly exposed to detrimental working conditions. ILO labor monitoring initiatives launched as a result of the UCTA have meant that for the first time there is credible data with which to track labor rights performance over an extended period of time. This data indicates a steady improvement in the garment sector, but also that some problems remain. Empirical data is, however, extremely limited outside this one sector. The following sub-sections therefore analyze the information which has been gathered on businesses' compliance with their responsibility to respect labor rights.

3.2.1. LABOR CONDITIONS IN GARMENT FACTORIES

120. Garments account for 80 percent of Cambodia's exports and the garment industry accounts for 12 percent of the country's GDP.²⁶² Officially, approximately 300,000 people are directly employed in the garment sector – although thousands more work in unregistered subcontracting factories – accounting for 65 percent of the country's manufacturing workforce. '[o]wing to a favorable international trade environment in the 1990s, the country's openness to foreign investment, and its abundance of low wage, low skilled labor, the garment industry quickly developed into the country's single biggest export earner and formal employer, generating revenues in excess of \$2 billion per year and providing employment for thousands of workers.'²⁶³ It is therefore an important achievement that labor conditions in the garment sector have markedly improved since the UCTA. A significant percentage of the Cambodian labor force have benefited from the improved performance in and adherence to international labor rights. Nevertheless, there are still important areas of non-compliance that must be addressed.

121. The 2010 ILO report on labor conditions in garment factories observed: 99 percent compliance with national minimum wage for regular workers; 93 percent compliance with national minimum wage for casual workers; 100 percent compliance with overtime rates for regular workers; 100 percent compliance with overtime rates for casual workers; 98 percent compliance with the minimum requirement of 18 days annual leave; 65 percent compliance with the requirement for paid maternity leave; 78 percent compliance with the requirement for paid sick leave; 93 percent compliance with the requirement for voluntary overtime; 35 percent compliance with the 2 hour daily overtime limit; and 65 percent compliance with safety regulations.²⁶⁴ While these percentages show a distinct improvement when compared with 1990s levels of compliance, some areas remain weak. In addition, the report found the following human rights violations: 13 percent of factories engaged in discrimination; 21 percent of factories had no trade union; 2 percent of factories interfered with the right to freedom of association.²⁶⁵

²⁶¹ An overview of the Cambodian legal framework governing labor law is set out at paragraphs 68-71 above.

²⁶² ILO 'Better Factories Cambodia, Facts and Figures', Available at: www.betterfactories.org/content/documents/Facts%20and%20Figures.pdf. Accessed 24 May 2010; and Shea, A. Nakayama, M. and Heymann, J. (2010), Supra note 167, p. 87.

²⁶³ Dasgupta, S. and Williams, D. (2010), Supra note 27, p. 149; ILO, Ibid; and Shea, A. Nakayama, M. and Heymann, J. (2010), Supra note 167, p. 87.

²⁶⁴ ILO Better Factories Cambodia - 'Twenty-Fourth Synthesis report on working conditions in Cambodia's garment sector', (30 April 2010), p. 13.

²⁶⁵ Ibid, p. 14.

122. So, whilst monitoring indicates strong compliance with minimum wage and overtime regulations, this compliance drops dramatically in relation to workplace safety, for example installing guards on sewing machines, and working hours with excessive and mandatory overtime represent common problems.²⁶⁶ In addition, short-term labor contracts are becoming increasingly common, meaning that jobs are less secure and employers are not required to abide by labor regulations.²⁶⁷ Furthermore, gender discrimination is extensive and interference with workers' rights to form trade unions and bargain collectively remains common-place.²⁶⁸ A study commissioned by the Community Legal Education Center ('CLEC') in 2009 concluded that a minimum wage of at least \$71.99 a month is needed to pay for basic needs such as food and shelter.²⁶⁹ The 2010 raise in minimum wage for garment factory workers (to \$61) falls short of this level, and even this figure will not apply to workers in other sectors of the economy.

3.2.2. GENDER DISCRIMINATION

123. Gender discrimination in the workplace is another significant instance of non-compliance with human rights norms in the garment sector and beyond. The 2010 ILO report found gender discrimination in 13 percent of factories, which 'typically involves unfair treatment of pregnant workers (for example, dismissal when they become visibly pregnant)'²⁷⁰, but is also reflected in the fact that more generally 'women are still both underrepresented in paid (formal) employment and generally lower paid than men.'²⁷¹ Furthermore, there are difficulties for those – predominantly women – attempting to juggle factory work with raising children: 'it is nearly impossible for Cambodian women to work at a factory and care for a family.'²⁷² Although sexual harassment is less prevalent in factories, it remains a tangible problem: '5% of women workers who participated in the [ILO] Gender Survey experienced sexual harassment in the form of unwanted touching. The [ILO] Gender Survey found that significant numbers of women workers were subject to derogatory language from management (just over 25%) and also from co-workers (just under 25%).'²⁷³ Outside the factories – as the experiences of beer promoters discussed in subsequent sections will demonstrate – sexual harassment remains depressingly prevalent.

124. Female factory workers are exposed to 'various forms of risky employment, exploitation, unsafe migration, and trafficking as a result of income loss and retrenchment. Research over the past decade, for example, has revealed longstanding, often cyclical, labor flows between the garment sector and various forms of sex work—both direct and indirect.'²⁷⁴ This has become a particularly pressing concern given the downturn sparked by the global financial crisis, which has led to widespread dismissals, reduction in overtime, and compulsory unpaid leave. According to one survey, 52 percent of women now have insufficient income to support their families.²⁷⁵

²⁶⁶ Shea, A. Nakayama, M. and Heymann, J. (2010), *Supra* note 167, p. 99; Berik, G. and van der Meulen Rodgers, Y. (2008), *Supra* note 152, p. 27.

²⁶⁷ CLEC (2009), *Supra* note 202, p. 2.

²⁶⁸ Berik, G. and van der Meulen Rodgers, Y. (2008), *Supra* note 152, p. 27; Shea, A. Nakayama, M. and Heymann, J. (2010), *Supra* note 167, p. 87.

²⁶⁹ Chandararot, K and Dannet, L, *Study on Minimum Wage for Cambodia's Garment Industry* Cambodia Institute of Development Study, September 2009, p.8. Available at: http://www.clec.org.kh/files/Minimum_wage_study_in_Garment_Sector_Cambodia.pdf Accessed 16 September 2010.

²⁷⁰ ILO (2010), *Supra* note 264, p. 14.

²⁷¹ Dasgupta, S. and Williams, D. (2010), *Supra* note 27, p. 158.

²⁷² Shea, A. Nakayama, M. and Heymann, J. (2010), *Supra* note 167, p. 100.

²⁷³ ILO (2010), *Supra* note 264, p. 9.

²⁷⁴ Dasgupta, S. and Williams, D. (2010), *Supra* note 27, p. 159.

²⁷⁵ *Ibid*, p. 161.

125. Women comprise 90 percent of garment workers and 50 percent of the overall Cambodian workforce and as such are a major contributor to the national economy.²⁷⁶ Women also, 'play a key role as household heads (responsible for domestic duties), particularly in rural areas. When housework such as washing, cooking, cleaning, and taking care of children is included, research has shown that women in Cambodia tend to work more hours per day than their male counterparts.'²⁷⁷ Despite the RGC 'Neary Rattanak'²⁷⁸ (Women as Valuable Gems) empowerment program, gender disparities are widespread in the country creating 'structural imbalances that [...] prevent women from realizing the same employment potential as men.'²⁷⁹ It is therefore crucial that businesses ensure stringent adherence to Cambodian and international non-discrimination standards.

3.2.3. CHILD LABOR

126. Despite high compliance with child labor regulations in the garment industry, the use of child labor is prevalent in the Cambodian private sector more generally. ILO Convention 182 (1999) posits that the worst forms of child labor include: 'work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.'²⁸⁰ Importantly, the ILO has declared that this includes work which hinders access to education.²⁸¹ Similarly, Article 177 of the Cambodian Labor Law 1997 states, '[t]he minimum allowable age for any kind of employment or work, which, by its nature, could be hazardous to the health, the safety, or the morality of an adolescent, is eighteen years.'²⁸² The reasonable conclusion from these provisions is that the worst forms of child labor are illegal in Cambodia. Nonetheless, Cambodian children – including many who are younger than the absolute minimum working age of 12 – are engaged in many activities which constitute the worst forms of child labor, including: 'work in brick factories, work in commercial rubber plantations, work in salt production, work in fish processing, portering work, domestic work, prostitution, pornography, begging and scrap collecting.'²⁸³

127. The prevalence of children working in brick factories makes this phenomenon a particularly pressing concern: one empirical study of brick factories in Battambang province discovered approximately 400-500 child workers spread across all 26 factories surveyed, around 20% of whom could be unequivocally categorized as engaging in the worst forms of child labor.²⁸⁴ Cambodian brick factories are unsanitary, dangerous and lacking in basic health and safety precautions: '[n]early all brick factories [...] have poor and hazardous work[ing] conditions due to unbearable heat, flying and burning ash, falling bricks, lack of sanitation, no first-aid kits, and no [...] safety regulations. [Yet], wearing protective devices is not yet a common practice for child workers.'²⁸⁵ Long working hours have a devastating impact on the children's capacity to access education, and the long-term effects of the hazardous working conditions on the children's physical and mental health can be catastrophic. Child brick factory workers have complained of: '[watering and itching] eyes due to smoke and flying ash, backache, chest pain[s], frequent headache[s],

²⁷⁶ Ibid, pp. 149 and 156.

²⁷⁷ Ibid, pp. 155-156.

²⁷⁸ UN Human Rights Council (2010), *Supra* note 22, p. 4.

²⁷⁹ Dasgupta, S. and Williams, D. (2010), *Supra* note 27, p. 158.

²⁸⁰ ILO Convention 182 – Worst Forms of Child Labour Convention (1999).

²⁸¹ Bunnak, P. 'Child Labor in Brick Factories: Causes and Consequences', Research Study for the Campaign for Combating the Worst Forms of Child Labor in Cambodia', LICADHO, (August 2007), p. 2.

²⁸² Article 177(2) Labour Law (1997).

²⁸³ Bunnak, P. (2007), *Supra* note 281, p. 3.

²⁸⁴ Ibid, p. 55.

²⁸⁵ Ibid, p. 56.

skin rashes, breathing difficult[ies], stomach ache[s], minor cuts and wounds and minor burns.²⁸⁶

128. The practical contribution of children is essential to the subsistence of many Cambodian families, therefore, it is inappropriate to apply western child labor standards inflexibly in the Cambodian context: '[m]ost "child labour" in Cambodia is family and community-based, and contributes positively to family survival [...] At times the children's work is combined with schooling and/or provides opportunities to learn useful skills.'²⁸⁷ This reality is revealed in the flexibility of the Labor Law 1997, which mandates three minimum working ages according to the nature of the work undertaken: 18, 15 and 12. Nonetheless, the worst forms of child labor – those which are hazardous to the physical and mental health of children and prevent them from accessing education – must be abolished.

3.2.4. SUMMARY

129. While the UCTA has seen businesses make significant progress in compliance with labor rights in the last decade, there are several areas of pressing concern. In the garment sector, gender discrimination, forced overtime and the use of short-term contracts to circumnavigate labor regulations is prevalent; and, it is debatable whether the national minimum wage is sufficient to uphold the right to an adequate standard of living. Although there is a scarcity of data from other sectors, it is known that wages are often lower than those of garment workers,²⁸⁸ gender discrimination is endemic and child labor is widespread. While some multi-national corporations have sought to fulfill their responsibility to respect human rights by proactively seeking to uphold union rights,²⁸⁹ more businesses must be encouraged to use their leverage to encourage adherence to labor rights more generally.

3.3. THE FREEDOMS OF EXPRESSION, ASSEMBLY AND ASSOCIATION

130. A common pattern of behavior for businesses involved in the violation of both land rights and labor rights is the subsequent interference with the freedoms of expression, assembly and association. In some instances this interference is conducted by state authorities – often armed police – with the complicity of the business, although in others, usually those associated with land violence, businesses used hired mercenaries from the Royal Cambodian Armed Forces to brutally suppress those who attempt to publicly express their grievances. Both trends demonstrate a comprehensive disregard for the responsibility of businesses to respect human rights.

3.3.1. THE RIGHT TO FORM TRADE UNIONS AND THE RIGHT OF TRADE UNIONS TO FUNCTION FREELY

131. In 2006, there were an estimated 1,000 trade unions in the garment sector alone, an increase which reflects the improvement in Cambodian union rights from the mid-1990s

²⁸⁶ Ibid, p. 56.

²⁸⁷ Gourley, S. 'Selected Notes on Child Labour in Cambodia', LICADHO, (2008), p. 1. Available at: <http://www.licadho-cambodia.org/reports/files/12NOTES%20ON%20CHILD%20LABOUR%20IN%20CAMBODIA.pdf>
Accessed 5 August 2010.

²⁸⁸ World Bank (2004), Supra note 189, p 46.

²⁸⁹ See, for example, paragraphs 132-134 below.

when 'Cambodia ranked roughly in the middle of all Asian countries in the exercise of trade union rights, a ranking that is not necessarily favorable given Asia's poor record in union rights compared to other regions.'²⁹⁰ Nonetheless, the following incidents illustrate that violations of union rights are still widespread.

132. In October 2006, the River Rich factory dismissed 30 union leaders and members for attempting to form an independent union and strikes demanding their reinstatement were suppressed by riot police. In a well-coordinated public-relations campaign, pressure from the Coalition of Cambodian Apparel Workers Democratic Unions and the International Textile Garment Leather Workers' Federation eventually forced the factory's major buyers – Inditex and H&M – to intercede and demand that the factory's management reinstate the fired workers; but this success can hardly be regarded as being illustrative of flourishing union rights in Cambodia.²⁹¹
133. Similarly, in 2006 the Worker Rights Consortium ('WRC') entered into negotiations with the management of the PCCS factory to encourage them to use non-determined contracts. PCCS were using short-term fixed length contracts to deprive workers of loyalty benefits, maternity leave and employment security protections. Despite asking for no more than what was guaranteed by Cambodian labor regulations, the WRC failed to provoke a policy change from PCCS management until it enlisted the support of the factory's major buyer, Adidas, which threatened to cancel all its existing and future orders unless the factory adhered to the provisions of the Labor Law 1997. Again, the determining factor was the financial pressure exerted by the buyer rather than respect for union rights.²⁹²
134. The failure of the RGC to enforce labor standards, in particular union rights, has thus led to an increased regulatory role for businesses.²⁹³ Two major international clothing brands sourcing from Cambodia have been particularly involved in the development: Gap and H&M. Both companies have local representatives responsible for negotiating with union leaders and factory management on a daily basis, acting as a neutral mediator, ensuring the early resolution of disputes and encouraging compliance with union rights.²⁹⁴ This is a positive illustration of multi-national corporations embracing their responsibility to respect human rights.
135. In an unprecedented development, in 2009 the NagaWorld Casino filed criminal charges of defamation, perjury and incitement against 14 union leaders who had been involved in collectively bargaining for improved working conditions. In law, this would be possible only if the union leaders had encouraged illegal strike action, yet workers at NagaWorld had not been on strike since 2001. The union leaders were summoned to Phnom Penh Municipal Court and questioned by the Court Clerk, and – in the face of such concerted anti-union pressure – the leaders gave up their demands. This appears to be the first use of criminal charges by a private enterprise through the civil courts in relation to a labor dispute, although a similar case involving M & V Garment Factory later in 2009 suggests that a precedent may have been set; a development with worrying implications for labor rights in Cambodia.²⁹⁵ It is also noteworthy that the owner of NagaWorld, Dr Chen Lip Keong, has purchased the extractive rights to an offshore oil block and is an economic advisor to Prime Minister Hun Sen.²⁹⁶

²⁹⁰ Berik G. and van der Meulen Rodgers, Y. (2008), *Supra* note 152, p. 22.

²⁹¹ Oka, C. (2009), *Supra* note 151, p. 13.

²⁹² *Ibid*, p. 13.

²⁹³ *Ibid*, p. 16.

²⁹⁴ *Ibid*, pp. 14-15.

²⁹⁵ CLEC (2009), *Supra* note 202, pp. 2-3.

²⁹⁶ Global Witness (2009), *Supra* note 142, p. 45.

3.3.2. THE RIGHT TO NON-VIOLENT DEMONSTRATION AND THE RIGHT TO STRIKE

136. Workers expressing their right to strike are often violently suppressed. In stark contrast to the incident at the River Rich garment factory mentioned above, the following episodes have taken place in recent years: in 2007, a strike by female workers at the Fortune Garment Woolen Knitting Company in Kandal province was suppressed by armed police with electric batons and tear gas;²⁹⁷ in 2009, approximately 1000 garment workers from the Sang Wu Factory who were on strike to get the factory owner to respect Cambodian Labor Law, faced Samroang Torng district police firing their weapons into the air in order to suppress the demonstration;²⁹⁸ and, in 2010, 40 workers from the Jin Chan garment factory in Phnom Penh protesting because their salary had not been paid for three months were assaulted by local policemen.²⁹⁹ Although in these instances the human rights violations were conducted by public authorities, the complicity of the businesses in the violent suppression of their workers is undeniable.

137. Cambodians attempting to demonstrate peacefully against land rights violations have been similarly suppressed. In the dispute involving Senator Ly Yong Phat's Koh Kong Sugar Company, protesters at the concession site were 'met with violence by armed company security guards, who are military personnel, resulting in the shooting and injury of a female villager, and assault of four other villagers.'³⁰⁰ In both the Wuzhishan and New Cosmos disputes community members have been prevented from organizing meetings, and faced concerted threats and intimidation.³⁰¹ When villagers protested against the CIV Development concession, false charges of robbery and destruction of property were brought against five villagers, despite independent NGO observers confirming that the protests were entirely peaceful.³⁰² In relation to land disputes, businesses have used hired mercenaries and the judicial system to intimidate protesters into submission.

3.3.3. SUMMARY

138. Given the problems with the judicial system – which will be analyzed in depth in subsequent sections – Cambodians who are the victims of land and labor violations often rely on free expression, assembly and association to advocate their cause and seek redress. Yet, public and private forces collude to deny them this right. To illustrate the gravity of the situation, Keth Soreoun – one of the five villagers who faced criminal charges in relation to the CIV Development protest – has been quoted as saying he is afraid he will be 'arbitrarily arrested or killed.'³⁰³ This is a damning condemnation of the health of the rule of law in Cambodia.

3.4. RESPONSIBLE BUSINESSES IN CAMBODIA

139. While many unscrupulous businesses operating in Cambodia exploit the apparent unwillingness of the RGC to uphold the fundamental rights of its citizens, there is an emergent element within the private sector which is striving to meet the social expectation

²⁹⁷ Joint NGO Submission, *Supra* note 194, p. 8.

²⁹⁸ 'Police Fired into Air to Suppress Demonstration' Available at: http://www.sithi.org/temp.php?url=incident_show.php&CID=1302. Accessed 16 July 2010.

²⁹⁹ 'Police Violently Suppressed Demonstration At Jin Chan Factory'. Available at: http://www.sithi.org/temp.php?url=incident_show.php&CID=1353. Accessed 16 July 2010.

³⁰⁰ OHCHR 'Economic land concessions', (2007), *Supra* note 122, pp. 17-18.

³⁰¹ *Ibid*, p. 18.

³⁰² The World Organisation Against Torture, (2010) *Supra* note 150, pp. 3-4.

³⁰³ *Ibid*, p. 4.

to conduct business operations in a responsible manner. Most commonly, this is expressed through a budding CSR movement which has developed rapidly in recent years. Examples include: a Total (Cambodge) Company project called 'Promoting Energy Entrepreneurship in Cambodia's Rural Areas', which 'aimed to support the development of rural electricity enterprises by building the capacity of entrepreneurs'; a Manhattan Textile Company project to 'support cotton farmers by providing seeds, training and quality-control'; and a project called Les Artisans d'Angkor 'established to provide sustainable and fair development for arts and crafts in Siem Reap.'³⁰⁴

140. Other Cambodian businesses with prominent CSR programs include MJQ Group, ACLEDA Bank Plc and Angkor One. These programs typically include ensuring respect for employee rights and generous benefits, specific environmental or poverty relief schemes and in the case of ACLEDA, policies to prevent investment in schemes which will have unduly negative impacts on people, planet or ethics.³⁰⁵

141. In Cambodia, multinational clothing companies Gap and H&M have in recent times attempted to have a positive influence on the rights situation in the garment sector. Both are significant purchasers of clothing from Cambodian garment factories, and have used their leverage as buyers to bring about tangible improvements in human rights.³⁰⁶ In addition to supporting trade union rights, they have been proactively involved in resolving disputes and have implemented substantive controls and monitoring procedures coordinated by representatives in Cambodia.³⁰⁷

142. A multi-stakeholder CSR initiative which has emerged in Cambodia in recent years is the Clean Business Initiative ('CBI'), a network of businesses collaborating to: 'to improve the business environment by supporting fair competition and to promote clean business practice within company operations.'³⁰⁸ While the initiative is focused primarily on corruption and thus overlaps with (but is not directly related to) human rights, the CBI is an example of an industry based mechanism for the promotion of corporate social responsibility, and as such represents a potential model for similar initiatives dedicated to the promotion and protection of fundamental rights, such as the Project.

143. British American Tobacco ('BAT') has been the subject to significant criticism in respect of the nature of its product, how it is marketed in the developing world and the way it carries out its operations.³⁰⁹ Much of this criticism is justified and BAT should not necessarily be held out as a model business. Nevertheless, recently in Cambodia, BAT has taken some tangible steps to improve respect for human rights and can be praised for this. Its policies adhere with all Ruggie's requirements to fulfill the responsibility to respect human rights and it has signed the UN Global Compact, and the CCHR Statement of Principles. BAT has implemented this commitment by integrating human rights into a range of company

³⁰⁴ Bolster, P. and Brimble, P. *Cambodia: Corporate Social Responsibility and the Cambodia Business Initiative in Rural Development*, pp. 289-290

³⁰⁵ Unpublished CCHR Report 'Working together on Business and Human Rights in Cambodia' Workshop #2' (26 March 2010), p.4. Available on request.

³⁰⁶ Oka, C. (2009), *Supra* note 151, p. 14.

³⁰⁷ For details see

http://www.gapinc.com/GapIncSubSites/csr/Goals/SupplyChain/SC_Helping_Factories_Move_Forward.shtml and http://www.hm.com/gb/corporateresponsibility/supplychainworkingconditions/introduction_supplychainworkintroduction.nhtml. Accessed 15 July 2010.

³⁰⁸ See: <http://www.cleanbusiness.com.kh/>. Accessed 22 May 2010.

³⁰⁹ See for example: <http://www.timesonline.co.uk/tol/news/world/africa/article6917289.ece> (last accessed 6 September 2010), http://news.bbc.co.uk/2/hi/programmes/this_world/7477468.stm (last accessed 6 September 2010), <http://www.time.com/time/health/article/0,8599,1911796-1,00.html> (last accessed 6 September 2010) and http://www.nytimes.com/2008/12/29/health/policy/29tobacco.html?_r=1&bl&ex=1230786000&en=92a4970e15389382&ei=5087%0A (last accessed 9 September 2010).

policies and has initiated a human rights due-diligence process by making human rights an element of BAT's yearly audit process, and monitoring human rights through regional Human Rights Committees.³¹⁰

144. Importantly in the Cambodian context, BAT employs strategies to avoid complicity in human rights violations in its supply chain. Many human rights issues surround agricultural supply chains, for example, child labor, land rights and occupational health and safety considerations. In Cambodia, BAT only uses contract farming – that is, it subcontracts tobacco production to Cambodian farmers rather than exploiting the land concession system to appropriate their land - and it ensures that all farmers sign an agreement which guarantees they will respect human rights. Furthermore, BAT is an ILO anti-child labor business champion. It is noteworthy that despite campaigning publically for human rights, BAT has excellent relations with RGC: they have received 4 Gold Medals for contribution to socio-economic development in Cambodia, and act as a RGC consultant for potential foreign investors.³¹¹

3.4.1. BEER SELLING INDUSTRY CAMBODIA

145. In December 2006, in response to adverse media scrutiny of the lives of Cambodian beer promoters – many of whom were compelled into alcoholism and prostitution by the nature of their work and their working conditions – several major breweries operating in Cambodia (Asia Pacific Breweries, Cambodia Brewery Limited, Cambrew Ltd., Carlsberg a/s, Guinness & Heineken International) established Beer Selling Industry Cambodia ('BSIC') with the objective of 'improving the health, safety and working conditions of beer promoters by setting industry standards.'³¹² These standards are depicted in the BSIC Code of Conduct through which BSIC members undertake to use employment contracts as required by the Labor Law 1997, establish a fixed minimum salary, implement clear supervision structures and grievance mechanisms, introduce BSIC branded uniforms, provide transportation for promoters, ban the consumption of alcohol during working hours, provide appropriate training for promoters and submit to an annual, independent monitoring and reporting process to ensure compliance and track performance.³¹³

146. Subsequent monitoring surveys have revealed that, since its inception, the BSIC Code of Conduct has quantifiably improved the standard of living of beer promoters. By 2009, approximately 90 percent of 493 beer promoters surveyed 'considered themselves safer in the workplace, better able to deal with difficult customers, more supported by their direct superior, and better trained to look after their health.'³¹⁴ Furthermore, instances of sexual harassment and verbal abuses had dropped significantly, and overall satisfaction with working conditions had risen substantially.³¹⁵

147. Nonetheless, the program has not been a unilateral success: because of ineffectual implementation of the Code of Conduct and intense competition with non-BSIC beer promoters, health and safety awareness and performance remains disturbingly low among

³¹⁰ See: http://www.bat.com/group/sites/UK_3MNFEN.nsf/vwPagesWebLive/DO6ZYBN4?opendocument&SKN=1. Accessed 24 May 2010.

³¹¹ See: http://www.bat.com/group/sites/UK_3MNFEN.nsf/vwPagesWebLive/DO6ZYBN4?opendocument&SKN=1. Accessed 24 May 2010.

³¹² See: <http://www.bsic.com.kh/index.php?page=about>. Accessed 22 May 2010.

³¹³ See: <http://www.bsic.com.kh/index.php?page=about>. Accessed 22 May 2010.

³¹⁴ Centre for Advanced Study 'Compliance to and Impact of the BSIC Code of Conduct: Monitoring Survey 2009', April 2009, p. 2.

³¹⁵ Ibid, p. 49.

BSIC promoters.³¹⁶ Specifically, this relates to the continued widespread consumption of alcohol during working hours, a practice which is seen by many beer promoters as integral to the success or failure of their attempts to attract customers.³¹⁷ Furthermore, by 2009 the grievance mechanism which was promised in 2006 had not yet been fully implemented, meaning that 'serious grievances can still not be properly monitored and specific action taken against outlets where serial abuse occurs.'³¹⁸ Notwithstanding these criticisms, BSIC should be lauded as an innovative collective industry initiative for improving human rights performance and remedying grievances.

3.4.2. CCHR'S BUSINESS AND HUMAN RIGHTS PROJECT

148. CCHR began the Project in the latter part of 2009 with the goal of building on existing interest in corporate social responsibility initiatives and moving towards a more targeted focus on business and human rights. Since this time, CCHR has worked with businesses, civil society actors, and the RGC to facilitate dialogue, education and awareness in this area.

149. The response from all three groups of stakeholders, but particularly businesses, has been encouraging. Over 70 national and international businesses with operations in Cambodia participated in a series of seminars and workshops, along with representatives from NGOs and the RGC. These events featured guest speakers from leading responsible businesses in Cambodia, RGC business advisers and NGOs with specific expertise in this area. With input from the participating stakeholders, a Statement of Principles was developed containing 10 key principles for businesses to adhere to ensure respect for human rights. As at August 2010, the following businesses have signed the Statement of Principles and in doing so made a public pledge to uphold them in their Cambodian operations:³¹⁹

3 Tech (Cambodia) Co., Ltd	Great Alliances
American Intercon Institute & School	Green Ventures Co., Ltd
Amret MFI	FV Hospital
APV (Cambodia) Co., Ltd	KPMG Cambodia Co. Ltd
A2 Communication Co., Ltd	Hydrologic Social Enterprise
Bonna Reality Group	LYLY Food Industry Co. Ltd
Botica Construction	Master Service Cambodia Group
British American Tobacco Cambodia	PTM Travel and Tours
Cambodian Development Enterprise Organization	Phnom Penh Hotel

³¹⁶ Ibid, p. 3; and 'Heineken: Overview of Controversial Business Practices in 2008', Centre for Research on Multinational Corporations, (April 2009), pp. 9-10.

³¹⁷ Centre for Advanced Study (2009), Supra note 314, p. 3.

³¹⁸ Ibid, p. 3.

³¹⁹ An up to date list of companies which have signed the Statement of Principles can be found at the Cambodian Business and Human Rights portal: <http://business.sithi.org/>

City Suki Restaurant	Rock Production
CMT Choun Mom Thuch	Scmiebel Electronics
CYPL	Thai Business Association in Cambodia
Forte Insurance (Cambodia) Plc	Veasna Computer

150. The positive reception to the Project among the business community demonstrates that there is scope for continuing efforts in Cambodia to work collaboratively to promote respect for human rights by businesses.

3.4.3. SUMMARY

151. As has been established, philanthropic CSR projects do not fulfill the business responsibility to respect human rights, yet the growth of these projects does illustrate a willingness within the business community to operate ethically. This has been borne out by the willingness to engage with the Project and the commitment which some businesses have already undertaken by signing the Statement of Principles. Furthermore, there are examples of Cambodian businesses taking substantive action and committing to policies which are specifically aimed at fulfilling their responsibility to respect the human rights of those affected by their operations. This nascent movement – which must be encouraged and nurtured – is to be lauded.

3.5. CCHR RECOMMENDATIONS

- **That businesses operating in Cambodia desist from the violation of land and labor rights, and the freedoms of expression, assembly and association in relation to those rights, with immediate effect.**
- **That businesses go beyond mere CSR initiatives and adopt clear human rights policies, including the full integration of those policies throughout their structure to give the commitments meaning.**
- **That businesses recognize that the realization of human rights protections for all individuals affected by their operations – including host communities – requires them to comply with their obligations under Cambodian law, and, furthermore, to respect these rights even when Cambodian law is silent or unenforced.**
- **That businesses acknowledge their capacity to commit, or to be complicit in, human rights abuses throughout their sphere of influence, and develop internal systems to mitigate this risk, including human rights impact assessments for all current and future activities.**
- **That businesses join multi-stakeholder initiatives, such as the CCHR Statement of Principles on Business and Human Rights in Cambodia, to demonstrate an intention to respect and protect the fundamental human rights of the people of Cambodia.**

- **That the RGC, civil society actors and responsible multi-national and local businesses support and promote those businesses which make a commitment to human rights (and deliver on that commitment in practice) by preferring them commercially to those which fail to do so.**

4. ACCESS TO EFFECTIVE REMEDIES IN CAMBODIA

152. Ready access to justice is a vital characteristic of any legitimate democracy. It is also an integral element of international human rights law: '[s]tates parties to the ICCPR and the ICESCR have an obligation to ensure that effective remedy is provided to any person whose rights have been violated. When it is granted, such a remedy must be enforced by a competent authority.'³²⁰ Providing access to effective remedies for rights violations committed by both state and non-state actors (including businesses) is thus part of the RGC's duty to protect. Cambodia has acknowledged this principle in Article 39 of the Constitution:

*Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts.*³²¹

153. Providing access to effective remedies is also integral to businesses' responsibility to respect human rights. Although these remedial mechanisms can be administered internally, externally or collectively within an industry or sector, in Cambodia (with some notable exceptions) they are in the developing stages. The following section comprises an analysis of judicial mechanisms, state-based non-judicial mechanisms and non-state non-judicial mechanisms in the Cambodian context.

4.1. JUDICIAL MECHANISMS

154. Despite RGC claims that it has made concentrated efforts on 'improvement of the legal and judiciary systems through its reform process, mainly on the enactment of laws, setting out of the strategies and taking of necessary steps and measures to strengthen the capacity, independence, and neutrality of the Courts system',³²² in practice, impunity makes the rule of law substantively non-existent in Cambodia.³²³ Cambodia has a two-tiered court system:

*The Courts of First Instance (Provincial/Municipal Level) and the Military Court are the primary Courts for the first trial. Each Court of first instance is competent in the territory of particular provinces/municipalities nationwide; whereas the Military Court located in Phnom Penh has its competency in the whole territory of the Kingdom of Cambodia; the Appeal Court and the Supreme Court are the Appellate Courts located in Phnom Penh, both institutions have their jurisdiction in the whole territory of the Kingdom of Cambodia.*³²⁴

155. Notwithstanding some positive developments observed by CCHR in the adherence to fair trial rights in the day to day operations of the courts,³²⁵ the overall assessment of the Cambodian judiciary by independent observers is that it is politicized, corrupt, and lacking

³²⁰ Amnesty International, (2008), 'Rights Razed', Supra note 107, p. 19.

³²¹ Article 39 Constitution of the Kingdom of Cambodia.

³²² UN Human Rights Council, 'National Report Submitted In Accordance With Paragraph 15 (A) Of The Annex To Human Rights Council Resolution 5/1: Cambodia', Working Group on the Universal Periodic Review, Sixth session, Geneva, A/HRC/WG.6/6/KHM/1, December 2009 p. 7.

³²³ OHCHR Annual Report (2008), Supra note 203, p. 10.

³²⁴ UN Human Rights Council (2009), Supra note 322, p. 8.

³²⁵ CCHR, "Fair Trial Rights in Cambodia" July 2010. Available at:

[http://www.cchrcambodia.org/English/add_report/reports/tmp-report-en\(071310_1279077859\).pdf](http://www.cchrcambodia.org/English/add_report/reports/tmp-report-en(071310_1279077859).pdf) Accessed 25 August 2010.

in independence and transparency.³²⁶ According to the OHCHR, in Cambodia, ‘the poor and vulnerable are usually not able to obtain justice through the courts. Basic procedural guarantees and rights are routinely violated, such that people often become victims of the justice system. This helps to explain the widespread popular distrust of the justice system, often regarded as a mechanism for further abuse.’³²⁷

4.1.1. LAND DISPUTES IN THE COURTS

156. Disputes over unregistered land (the vast majority of disputes in Cambodia) are primarily heard by the CC and the NARLD. Nonetheless, when land disputes are heard by the courts, the lack of independence and integrity of the Cambodian judicial system is openly apparent. Members of the RGC and the Royal Cambodian Armed Forces are either actively involved or deeply influential at all levels of judicial and non-judicial mechanisms for the resolution of land disputes, severely compromising their credibility and legitimacy. The Green Rich case is one prominent example:

*The Ministry of Environment found that Green Rich had violated the terms of its contract by logging outside the concession area and destroying a section of Botum Sakor national park in Koh Kong province. The Ministry of Environment filed a lawsuit against the company in early 2005, but the case was dismissed by the provincial court in November 2005 after a hearing where the Council for the Development of Cambodia and the Ministry of Agriculture testified in favour of Green Rich. The Ministry of Environment filed an appeal, but this was dropped in November 2006 for unknown reasons.*³²⁸

4.1.2. LABOR DISPUTES IN THE COURTS

157. The Labor Law 1997 states that employers and employees must attempt conciliation before they can have recourse to the ordinary courts. This means that the AC (a non-state non-judicial mechanism which will be examined subsequently) is in practice the court of first instance. Only if the AC fails to conciliate or arbitrate, or if parties wish to appeal a judgment, are grievances referred to the ordinary courts.³²⁹ As with land rights, labor disputes which do reach the ordinary courts are characterized by a lack of neutrality and independence. For example:

*We witnessed the operation of this system first-hand at an August 2006 trial of three workers fired from the Genuine Garment Factory for allegedly locking a group of employers in the factory. In the courtroom, the electricity was not working, which made it dark and stifling hot. The trial began an hour late. None of the witnesses had been instructed in court procedure. The prosecutor intimidated both the witnesses and the accused, ordering them where to stand and where to look, and reducing one who was ill with typhoid fever to tears. None of the 24 Chinese employers who claimed to be victims of the workers' alleged actions attended the trial.*³³⁰

158. Reporting restrictions, another example of the lack of transparency which stifles the administration of justice in Cambodia, mean that data relating to labor disputes heard in the ordinary courts is limited. Nonetheless, prohibitive costs and endemic corruption mean that individuals seeking to resolve labor disputes generally avoid taking their cases to court. While enforcement of an AC judgment would technically require one party to commence court proceedings, there are no recorded instances of this occurring: ‘[p]ractically, it is not expected that enforcement would be feasible, due to (a) the high costs

³²⁶ Joint NGO Submission, Supra note 194, p. 3.

³²⁷ OHCHR Annual Report (2008), Supra note 203, p. 9.

³²⁸ OHCHR ‘Economic land concessions’, (June 2007), Supra note 122, p. 19.

³²⁹ UNDP Cambodia ‘Pathways to Justice: Access to Justice with a Focus on Poor, Women and Indigenous Peoples’ 2005, pp. 164-70; and Zack, A.M. ‘How Labor Arbitration has changed the Workplace Landscape in Cambodia’, *Dispute Resolution Journal*, (May-July 2009), pp. 78-9.

³³⁰ Shea, A. Nakayama, M. and Heymann, J. (2010), Supra note 167, p. 101.

and delays involved in court proceedings in Cambodia, and (b) the susceptibility of the courts to corruption, which would most likely result in one or other party to the dispute having the case heard *de novo*.³³¹

4.1.3. THE FREEDOMS OF EXPRESSION, ASSEMBLY AND ASSOCIATION

159. The use or threat to use criminal charges is regularly employed to intimidate union leaders into ceasing their organizing activities. The NagaWorld case mentioned above involving 14 union leaders who had been laid-off is a recent example:

The lay-offs came after the workers tried to negotiate with management over workers' annual bonuses. Naga denied that the lay-offs were connected to the negotiations, blaming the economic crisis and poor performance [...]. The workers' union pushed for reinstatement of the union representatives and threatened on several occasions to strike. In July 2009, all 14 unionists were summoned to the Phnom Penh Municipal Court to be questioned about complaints against them, filed by Naga management, accusing them of criminal defamation, disinformation and incitement. Two of them immediately resigned from the union and were not questioned by the court prosecutor. [...] If charged and convicted of disinformation and other criminal charges, each unionist would face up to three years in prison and costly fines.³³²

160. A similar case involved union leaders of M & V Garment Factory who requested an improvement in labor conditions. The following day criminal charges were submitted to Phnom Penh municipal court against a union leader and three workers. They were each sentenced to a one year suspended prison sentence and a fine totaling US\$500.³³³

161. There is an analogous pattern of baseless criminal charges being brought against individuals attempting to exercise their freedoms of expression and assembly in relation to their land rights: 'the judicial system is being misused to silence any persons from voicing critical opinions of the Government. Consequently there has been a recent increase in the number of charges for defamation, incitement and disinformation made against activists. Threats and intimidation against both indigenous and non-indigenous community members trying to protect their land and natural resources have increased.'³³⁴

162. In the dispute between CIV Development and Stieng indigenous residents mentioned above, seemingly baseless criminal charges were brought against four protesting members of the host-community by the company and upheld by the provincial prosecutor.³³⁵ A similar pattern was evident at the violent eviction of over 100 families in Sihanoukville by armed police officers in April 2007. In that case, 13 villagers were arrested and charged with battery, injury and wrongful damage to property offences. Despite the lack of concrete evidence, 'eight men were convicted: most of them had served their sentences in pre-trial detention and were eligible for release, but they all remain in detention due to the prosecutor's appeal against their sentences. No action has been taken against police officers who used excessive force, destroying homes and assaulting residents.'³³⁶ The use of the courts to exacerbate these human rights violations is a damning indictment of the judicial system and, indeed, the rule of law in Cambodia.

³³¹ Adler, D. Sage, C. Woolcock, M, 'Interim Institutions and the Development Process: Opening Spaces for Reform in Cambodia and Indonesia', BWPI Working Paper 86, (March 2009), pp. 8-9.

³³² CLEC (2009), Supra note 202, pp. 2-3.

³³³ Ibid, pp. 2-3.

³³⁴ Indigenous Peoples NGO Network, (2010), Supra note 135, p. 11; UNDP (2005), Supra note 329, p. 163.

³³⁵ Indigenous Peoples NGO Network, (2010) Supra note 135, p. 12.

³³⁶ OHCHR Annual Report, (2008), Supra note 203, p. 13.

4.1.4. SUMMARY

163. The lack of independence of the Cambodian courts means that they provide a wholly inadequate remedy for human rights abuses. A recent report by United Nations Special Rapporteur Surya Subedi ('the Subedi Report') found that the Cambodian justice system, 'lacks the physical and legal structure needed to enable it to function as an independent judiciary'.³³⁷ Subedi also emphasized that, 'The courts are not trusted by the people to provide impartial justice.'³³⁸ In addition to cataloguing the problems facing the judicial system, the Subedi report proposed a number of specific reforms which provide a roadmap of action for the RGC to address the situation.³³⁹

164. The issue of impunity lies at the heart of the myriad human rights issues in Cambodia. The lack of transparency, neutrality, independence, professionalism and capacity of the Cambodian judiciary is well documented.³⁴⁰ As civil servants, both judges and prosecutors are poorly paid (often worse than garment workers), which combined with the impunity guaranteed by Article 51 of the Civil Service Code encourages corruption from interested parties and executive interference in judgments.³⁴¹ Far from providing effective remedy to victims of human rights violations, judicial mechanisms in Cambodia are in practice mechanisms utilized by the political, economic and social elite to ensure impunity and exacerbate the plight of ordinary Cambodians.

4.2. STATE-BASED NON-JUDICIAL MECHANISMS

4.2.1. LAND RIGHTS

165. The Land Law 2001 mandated that the investigation and resolution of conflicts over unregistered land was to be conducted by the newly formed CC, under the backing of the Ministry of Land. Disputes over registered land, on the other hand, were to remain under the jurisdiction of the ordinary courts.³⁴² Due to the exponential increase in land disputes since 2002, the RGC instituted the NARLD by royal decree, which is mandated to investigate and resolve disputes 'beyond the jurisdiction of the National Cadastral Commission.'³⁴³ Unfortunately a lack of clarity in the various implementing instruments has led to an apparent jurisdictional overlap between the CC, the ordinary courts and the NARLD.³⁴⁴

4.2.1.1. The Cadastral Commission

166. Although a form of alternative dispute resolution, the CC is regulated by law and produces legally binding judgments, and can therefore be considered a state-based non-judicial mechanism for the purposes of Ruggie's three pillars framework.³⁴⁵ Any individual, group

³³⁷ Subedi, S.P., "Report of the Special Rapporteur on the situation of human rights in Cambodia" United Nations Human Rights Council 16 September 2010, p 11.

³³⁸ Ibid.

³³⁹ Ibid, pages 16-20.

³⁴⁰ Adler, D. Sage, C. Woolcock, M. (2009), *Supra* note 331, p. 7; Shea, A. Nakayama, M. and Heymann, J. (2010), *Supra* note 167, p. 101.

³⁴¹ Shea, A. Nakayama, M. and Heymann, J. (2010), *Supra* note 167, p. 101.

³⁴² Amnesty International (2008), 'Rights Razed', *Supra* note 107, p. 9.

³⁴³ Ibid, p. 9.

³⁴⁴ Ibid, p. 9.

³⁴⁵ UNDP Cambodia, (2005), *Supra* note 329, p. 43. For constitution of Cadastral Commission see: Sub-decree on the Organization and Functioning of the Cadastral Commission (No. 47 ANK/BK, 31 May 2002); Joint Prakas on Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes (No. 02 PKR.03, November 26 2003); Prakas on the Guidelines and Procedures of the Cadastral Commission (No. 112 DNS/BRK, 21 August 2002).

or legal representative may submit a land grievance to the district CC at first-instance, and then to the provincial CC if there is no resolution. Both of these bodies promote conciliation; however, if they fail, grievances are referred to the national CC for a decision.³⁴⁶ If resolution still cannot be reached, application for judicial review can be made through the ordinary courts.³⁴⁷ Any criminal charges or contractual disputes related to land disputes are immediately referred to the ordinary courts.³⁴⁸

167. In practice, the vague nature of the CC means that while it can facilitate the resolution of small-scale disputes between villagers at district level via conciliation, the material and human resources necessary to arbitrate high-profile disputes between parties with hugely disparate financial and political resources are not available: '[t]he National Cadastral Commission [was] unable to provide a single decision [from] its creation until July 2005. The law does not establish time limits for providing decisions.'³⁴⁹ This ineffectiveness is heightened for the most vulnerable members of Cambodian society, in particular Indigenous Peoples, because there is widespread ignorance regarding the existence of the commission, and – despite being purportedly free to access – incidental expenses attached to submitting a claim to the CC can be prohibitive.³⁵⁰

168. While submitting a claim to the CC is quicker and cheaper than going to an ordinary court, inefficiency and interminable delays are widespread and, furthermore, the CC is 'criticised for being biased and corrupt and for its lack of expertise.'³⁵¹ In addition, because many land concessions are granted to businesses tied – to a greater or lesser degree – to the RGC, and the RGC are responsible for appointing members of the CC, there are justifiable concerns that the commission is politicized and partial:

[T]he [CC] has been ineffective in resolving high profile land disputes; due to improper referral of their complaints to the municipal courts and continued backlog of cases since its establishment. Once the complaint has reached the court however it is the court's responsibility to decide whether the correct procedures were followed, if there was a conflict of interest, or if the Cadastral Commission acted beyond its power, and, if so, the Cadastral Commission must take action in line with the court's directions. Unfortunately the lack of independence of the courts has often led communities to take their complaints directly to the Prime Minister.'³⁵²

169. The ever-present corruption within the judicial system has therefore undermined the legitimacy and credibility of the CC.

4.2.1.2. The National Authority for the Resolution of Land Disputes

170. The NARLD was instituted in 2006, presumably to combat the inefficiency of the CC. Yet, in comparison to the CC, its 'powers, jurisdiction and track record of resolving disputes [are] much less clear.'³⁵³ A report submitted to the UN Human Rights Council by the Asian Legal Resource Centre asserted that between its inception in February 2006 and April 2007 around 2,000 grievances were submitted to the NARLD; none had been satisfactorily resolved: '[i]t ha[d] managed to seize and return to the public domain over 170,000 hectares of woodlands that the powerful and the rich had illegally cleared for private

³⁴⁶ UNDP Cambodia, (2005), Supra note 329, p. 150.

³⁴⁷ Indigenous Peoples NGO Network, (2010), Supra note 135, p. 11.

³⁴⁸ Ibid, p. 11.

³⁴⁹ UNDP Cambodia, (2005), Supra note 329, p. xi.

³⁵⁰ Ibid, p. xi; p. 153.

³⁵¹ Ibid, p. 159.

³⁵² Indigenous Peoples NGO Network, (2010), Supra note 135, p. 11.

³⁵³ CHRAC (2009), Supra note 116, p. 71.

ownership, but ha[d] not taken any legal action against persons for their illegal acts.’³⁵⁴ Rather than alleviating the inefficiency of the CC, then, the NARLD has emulated it.

171. An area of concern surrounding the NARLD is the precise nature of its mandate. The Land Law 2001 and a number of secondary legislative instruments clearly divide jurisdiction over land disputes between the CC (unregistered land) and the ordinary courts (registered land and judicial review of unresolved unregistered land disputes). There should not be a gap in jurisdiction between them which the NARLD is required to fill.³⁵⁵ Furthermore, ‘[t]he Authority has no established rules or procedures and is made up of senior government officials, including senior police and military figures, whose background and position make them ill suited for this important and sensitive role, particularly considering the number of high profile land-grabbing cases which involve military figures.’³⁵⁶ Unfortunately, the lack of transparency regarding the jurisdiction, rules and procedures of the NARLD is paralleled in relation to its activities.

4.2.2. NATIONAL HUMAN RIGHTS INSTITUTIONS

172. NHRIs are independent, autonomous bodies designed to promote and protect human rights and fundamental freedoms within a country. Their mandate, power and scope ought to be enshrined in law, by statute or through constitutional incorporation. However, NHRIs are governed by the principles as set out at the First International Workshop on National Institutions for the Promotion and Protection of Human Rights, held in Paris in 1991 (‘the Paris Principles’).³⁵⁷ NHRIs are expected to monitor the human rights situation within a country and submit recommendations, proposals and reports on any matters relating to the same to the relevant governmental body. They are asked to ensure conformity with and the implementation of international standards and regulations. The Paris Principles also require that NHRIs be responsible for human rights education and public awareness, and are encouraged to create a mechanism to mediate human rights disputes.³⁵⁸

173. In 2009, the Association of South East Asian Nations (‘ASEAN’) implemented the ASEAN Inter-Governmental Commission on Human Rights (‘AICHR’).³⁵⁹ Although they are not required to comply with the Paris Principles, regional human rights commissions are encouraged by the UN as a platform for human rights dialogue and as a vehicle for the implementation of NHRIs. There are currently four NHRIs in the region (Thailand, Philippines, Malaysia and Indonesia), although Cambodia is in the process of establishing the fifth.

4.2.2.2. Cambodian NHRI

³⁵⁴ Asian Legal Resource Centre ‘Land-grabbing, Corruption and the Absence of the Rule of Law in Cambodia’, submitted to the UN Human Rights Council (Fourth Session), (April 2007), pp. 1-5. Available at: www.alrc.net/doc/doc/hrc04/ALRC-SHRC-04-03-2007-Cambodia.doc. Accessed 20 May 2010.

³⁵⁵ CHRAC (2009), *Supra* note 116, p. 71.

³⁵⁶ *Ibid*, p. 71.

³⁵⁷ The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, and adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993. Available at:

<http://www.nhri.net/pdf/ParisPrinciples.english.pdf>. Accessed 21 May 2010; Application for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions Version 2 –May 2007. Available at:

<http://www.nhri.net/2007/Statement of Compliance May 2007 En.pdf>. Accessed 21 May 2005.

³⁵⁸ See: <http://www.nhri.net/pdf/ParisPrinciples.english.pdf>. and <http://www.nhri.net/2007/Statement of Compliance May 2007 En.pdf>. Accessed 21 May 2010.

³⁵⁹ AICHR Terms of Reference, pursuant to Article 14 of the ASEAN Charter, ratified October 2009. Available at: <http://www.aseansec.org/22769.htm>. Accessed 21 May 2010.

174. Since 2006, a number of collaborative bodies known collectively as the Cambodian Working Groups have been drafting the NHRI implementation legislation. Prime Minister Hun Sen has expressed commitment to the creation of an NHRI,³⁶⁰ and the RGC has an obligation to establish the NHRI before it takes the chair of ASEAN in 2012. The Cambodian Working Groups have completed the first draft legislation, which will undergo public consultation throughout 2010 and be submitted to the RGC in early 2011. Unfortunately, the draft legislation makes no reference to the role of the private sector in relation to human rights, although it is noteworthy that the AICHR undertook to conduct research into CSR in 2010.³⁶¹

4.2.3. OTHER STATE-BASED NON-JUDICIAL MECHANISMS

4.2.3.1. Cambodian Human Rights Committee

175. The Cambodian Human Rights Committee ('CHRC') is a governmental body with a mandate to promote human rights and the rule of law in Cambodia. The Committee's role is to investigate and remedy all complaints pertaining to human rights, research methods for the improvement of human rights performance, organize human rights training and prepare the human rights reports for the UN. According to the 2009 RGC submission to UN Human Rights Council Working Group on the Cambodia Universal Periodic Review, by 2007 the CHRC had received 810 complaints since its inception in 1998, of which 625 had been examined. According to the submission, in 2007, the CHRC examined 171 cases; issued 89 letters of intervention, and facilitated the settlement of 7 cases.³⁶² Despite these claims, the CHRC is seen as largely inactive: '[t]he Committee does not have regular meetings or a transparent operating process.'³⁶³ The Committee has failed to engage with numerous serious human rights violations, for example, it did not address the January 2004 assassination of the Free Trade Union of Workers of the Kingdom of Cambodia leader Chea Vichea.³⁶⁴ The impression persists that the CHRC exists so that the RGC can maintain an illusory adherence to human rights standards.

4.2.3.2. National Assembly Commission on Human Rights and Reception of Complaints

176. Established in 2006, the National Assembly Commission on Human Rights and Reception of Complaints ('NAC') is one of nine thematically divided National Assembly Commissions. It acts as a mechanism by which citizens can voice their concerns and complaints relating to human rights violations. The RGC claims that the NAC acts as a representative of the people, protecting human rights and investigating violations. In theory, the NAC also has the authority to advise the RGC on human rights issues, and has the mandate to raise awareness through the provision of human rights education. The 2009 RGC submission to UN Human Rights Council Working Group on the Cambodia Universal Periodic Review asserts that the Commission received 125 complaints in 2009, of which 87 involved land

³⁶⁰ Hun Sen committed to the establishment of a Cambodian NHRI in his keynote speech at the Regional Conference on the Establishment of a National Human Rights Institution in Cambodia, September 2006. Summary available at: <http://www.aseannhrforum.org/en/home/news/55-cambodian-joint-working-group-to-visit-chrp.html> Accessed 17 September 2010.

³⁶¹ See: <http://www.asiapacificforum.net/news/asean-rights-body-sets-out-priority-areas.html>. Accessed 21 May 2010.

³⁶² UN Human Rights Council (2009), *Supra* note 322, p. 6.

³⁶³ U.S. Department of State (Bureau of Democracy, Human Rights and Labor), 'Cambodia Country Report on Human Rights Practices 2004', February 2005. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2004/41638.htm#>. Accessed 21 May 2010.

³⁶⁴ See: <http://www.state.gov/g/drl/rls/hrrpt/2004/41638.htm#>.

disputes and 39 related to judicial rulings and other issues.³⁶⁵ However, the RGC have failed to promulgate clear rules for application to the NAC, it is procedurally opaque and there is little evidence of positive engagement in human rights disputes.

4.2.3.3. *Senate Commission on Human Rights, Reception of Complaints and Investigation*

177. The Senate is the upper house of Cambodia's bi-cameral legislature. The Senate Commission on Human Rights, Reception of Complaints and Investigation ('SC') is one of eight Senate Commissions with mandates to consider and report on particular thematic issues. The mandate and jurisdiction of the SC was established by the 2006 Decision on Role, Duty, and Competence of the Commission on Human Rights, Reception of Complaints and Investigation ('the 2006 Decision'). The roles of the SC are: first, to '[p]romote and protect every citizen's rights to live in dignity and equality, which is [the] foundation of freedom, justice and peace in [...] society, [the] region and the world as a whole'; and secondly, to '[f]ollow up and monitor the implementation of human rights in Cambodia in compliance with the Constitution of Cambodia, the Universal Declaration of Human rights and other international legal instruments related to human rights ratified by the Kingdom of Cambodia.'³⁶⁶

178. The SC has four categories of duties: 'complaints' (to receive complaints from groups or individuals, to resolve grievances, and to conduct research and reporting on human rights violations); 'legislative affairs' (drafting proposals for human rights legislation, reviewing bills relating to human rights, reporting on the implementation of laws relating to human rights); 'education and dissemination' (cooperating with civil society actors to implement human rights education programs and disseminate information on human rights); and 'investigation' (investigating complaints).³⁶⁷ The 2009 RGC submission to UN Human Rights Council Working Group on the Cambodia Universal Periodic Review asserts 'In 2009, the [SC] received 24 complaints [...] (6 cases against the verdicts of courts, 11 cases against the Provincial Authorities [and] 7 cases [...] between citizens)'.³⁶⁸ However, similarly to the NAC, despite the impressive aspirational language used by the RGC to describe the SC, there is little evidence to suggest that it is an effective remedial mechanism. Significantly, the 2006 Decision provides no clear procedure for filing a complaint with the SC.

4.2.4. *SUMMARY*

179. The problems that face the judicial system – corruption, a lack of transparency and professionalism, and over-arching political control – are also present in the CC and the NARLD. Political control also renders the other state-based non-judicial mechanisms ineffectual, and despite some progress, the Cambodian NHRI which was first promised in 2006 is yet to materialize. In practice, state-based non-judicial mechanisms appear to serve two purposes: first – like judicial mechanisms – they operate to reinforce the hegemony of the elite; and second, in the case of the CHRC, NAC and SC they allow the RGC to appear to be dedicated to the human rights of Cambodian citizens without recognizing or addressing the inherent injustice in the system.

4.3. NON-STATE NON-JUDICIAL MECHANISMS

³⁶⁵ UN Human Rights Council (2009), *Supra* note 322, p. 5.

³⁶⁶ Cambodian Senate 'Decision on Role, Duty, and Competence of the Commission on Human Rights, Reception of Complaints and Investigation' (2006). Senate #077/0606/SN/D. Article 2. Available at: http://www.senate.gov.kh/senator/english/Com_Eng1.htm. Accessed 21 May 2010.

³⁶⁷ *Ibid*, Article 3.

³⁶⁸ UN Human Rights Council (2009), *Supra* note 322, p. 5.

4.3.1. THE ARBITRATION COUNCIL

180. The second labor initiative to emerge from the UCTA³⁶⁹ was the LDR program, the main achievement of which was the AC; which aimed to ensure Cambodian compliance with the eight ILO Core Conventions. 'The ILO initiated a mediation and arbitration program to provide tripartite review of claims under collective bargaining agreements, and ensure compliance with pertinent Cambodian protective law and regulations. The AC was founded to hear all collective disputes of rights and interests.'³⁷⁰ The tripartite review process entails arbitrators representing each stakeholder group attempting initially to conciliate and, ultimately, to arbitrate in labor disputes. The Council mediates a diverse range of disputes, including issues pertaining to 'maternity rights, freedom of association, employment contracts, wages and benefits, overtime and workplace health and safety.'³⁷¹

181. The Labor Law 1997 initiated the process of the creation of remedial mechanisms for labor disputes, culminating in the implementation of the AC by Prakas No. 338 (2002). Like the CC, the AC is an alternative dispute resolution mechanism: the Council seeks to conciliate or arbitrate between the disparate stakeholder groups (trade unions, employers' associations and the Ministry of Labor), Council members are drawn from the various stakeholder groups, the Council is independent from state control and its judgments are only voluntarily binding.

182. If a dispute arises, the Labor Inspector must be notified and the Ministry of Labor is given 48 hours to take up the grievance. If after 15 days the Ministry have failed to conciliate the parties, it has 3 days to refer the dispute to the AC. These disputes are heard by a three-man panel: one selected by the union, a second selected by the employer and a third selected by the first two partisan arbitrators from a panel of neutral candidates. The Council will first make a last attempt at conciliation, and if that fails it will commence arbitration. Whether its judgment is binding or non-binding is established by the parties prior to arbitration: if both parties agree, the judgment is considered legally binding; however, in the absence of agreement the judgment is considered non-binding and both parties will have 8 days to appeal. Once this is established, the parties conduct an adversarial hearing and the AC has 15 days to deliver a judgment.³⁷² If the parties agree to a binding judgment, or if an appeal over a non-binding judgment fails, and the losing party fails to abide by the decision of the Council, the aggrieved party can seek recourse through the ordinary courts; '[b]efore the court, a party can only avoid the recognition and enforcement of a final and binding award by proving that the award was unjust on the basis of specific and limited legal requirements.'³⁷³ Thus, the AC can be seen to have clear procedural requirements and strict time limits.

183. Between 2003 and 2009 the AC heard 728 cases, of which approximately 70 percent have been successfully resolved. The AC constitutes the final stage of the much-improved pre-court system of labor dispute resolution:

72% of factory managers [...] resolved their last dispute with workers internally. Of those not resolved internally, 35% were resolved by mediation at the Ministry of Labor, 32% by the union federation, 20% by the Garment Manufacturers Association in Cambodia (GMAC), and 10% by the Arbitration Council.

³⁶⁹ See paragraphs 72-83 above for a discussion of the UCTA.

³⁷⁰ Zack, A.M. (2009), *Supra* note 329, p. 78.

³⁷¹ 'Arbitration Council Brochure', Cambodian Arbitration Council, (2008), p. 3. Available at: http://arbitrationcouncil.org/AC_Brochure_En.pdf. Accessed 21 May 2005.

³⁷² Zack, A.M. (2009), *Supra* note 329, pp 78-9; Shea, A. Nakayama, M. and Heymann, J. (2010), *Supra* note 167, pp 90-91.

³⁷³ UNDP Cambodia (2005), *Supra* note 329, p. 164.

Managers also reported a 96% decrease in strikes over the prior five years as well as a 97% decrease in time lost due to strikes.³⁷⁴

184. The AC has been praised as ‘the one bright light in the Cambodian dispute resolution landscape.’³⁷⁵ It has gained credibility because its ‘arbitrators are independent, have a high level of professional training and enjoy prestige among the legal community.’³⁷⁶ In addition, the process is politically-neutral, free from corruption, entirely transparent (because the courts never publish judgments, the AC is the first Cambodian judicial mechanism to develop jurisprudence) and based in both law and equity.³⁷⁷ The AC has gained the respect of employers and employees because – in contrast to the ordinary courts – it is a legitimate, effective dispute resolution mechanism which delivers justice with integrity. As a result, labor disputes, strikes and walk-outs have reduced dramatically since its inception.³⁷⁸

185. Nonetheless, the effectiveness of the AC suffers as a result of the lack of faith in the underlying judiciary:

[M]ost of the employers do not accept that the awards are binding. This reduces the intended result of the decision. Even when the award is binding, the employers do not implement the award. [...] There are no means to enforce the award directly when it is binding or has not been objected to. When the ILO finishes its project, it is not clear how the [AC] will continue to work. The [AC] is limited to Phnom Penh, and should be expanded.³⁷⁹

186. Notwithstanding these observations, however, the AC must be regarded as the Cambodian prototype of remedial mechanism which adheres to Ruggie’s criteria: it is legitimate, accessible, predictable, equitable, rights-compatible and transparent.

4.3.2. THE CCHR COMMUNITY HEARINGS PROGRAM

187. The CCHR Community Hearings Program (‘CHP’) is designed to empower marginalized Cambodians at the grassroots level, enabling them to understand principles of democracy and human rights; giving them a voice and the opportunity to air their concerns and advocate for change; and providing alternative mechanisms for conflict resolution. CHP Community Hearings provide disadvantaged rural and urban communities that have been affected by particular land conflicts and related human rights violations with an opportunity to have their concerns heard by local authorities, parliamentarians, representatives from the major political parties, NGO representatives, and other interested stakeholders, including businesses. Community Hearings are a form of alternative conflict resolution.

188. A CCHR CHP Community Hearing was held in 2010 relating to a land dispute over an agro-concession granted to Socfin-KCD in 2008 over 10,000 hectares of Bunong Indigenous land in the Busra Commune, Mondulkiri Province which affected 300 families in 7 villages.³⁸⁰ The Villagers alleged that Socfin-KCD had conducted illegal forced evictions without prior notification, made threats and exerted undue pressure to induce the villagers to sell their

³⁷⁴ Zack, A.M. (2009), Supra note 329, p. 79.

³⁷⁵ Ibid, p. 79, quoting, ‘Report on Commercial and Institutional Reform’, Booz Allen Hamilton, April 2007.

³⁷⁶ UNDP Cambodia (2005), Supra note 329, p. xi; 168.

³⁷⁷ UNDP Cambodia (2005), Supra note 329, p. xi; 168; Shea, A. Nakayama, M. and Heymann, J. (2010), Supra note 167, p. 102.

³⁷⁸ Zack, A.M. (2009), Supra note 329, p. 79; Shea, A. Nakayama, M. and Heymann, J. (2010), Supra note 167, pp. 90-91.

³⁷⁹ UNDP Cambodia (2005), Supra note 329, p. 169.

³⁸⁰ Indigenous Peoples NGO Network, (2010), Supra note 135, Appendix 3, p. 1.

land, in some instances taken land without any financial compensation, extended their concession beyond the limits of their contract, and failed to provide alternative plots of comparable quality. Two representatives of Socfin-KCD and five Members of Parliament attended the Hearing and answered questions from the villagers. Following this hearing, Socfin-KCD has re-opened negotiations with the villagers for the provision of alternative plots or appropriate financial compensation, and appears to be genuinely working to find acceptable solutions. Socfin-KCD is also cooperating with the CCHR Business and Human Rights Project, and have invited a third party representative to observe its compliance with agreements reached with the villagers.³⁸¹

189. While the Socfin KCD dispute demonstrates that CHP hearings can be an effective mechanism, it should be noted that in 2008, CCHR organized 48 Community Hearings, of which nine were disrupted and two banned.³⁸² If these sorts of alternative dispute resolution mechanisms are to flourish, it is essential that they are free from state interference.

4.3.3. SUMMARY

190. While the AC should be lauded as the leading example of an accessible rights-compliant mechanism in Cambodia, its effectiveness remains at least partially hampered by the underlying problems with the judiciary. In any event, it is limited to labor disputes and there are no remotely comparable mechanisms available for other important areas, particularly land disputes. With the exception of the AC, CCHR's CHP, the BSIC industry-based grievance mechanism (which has yet to be fully implemented) and a limited number of business-based internal grievance mechanisms which form part of CSR strategies³⁸³, non-state non-judicial mechanisms are underdeveloped in Cambodia. Nonetheless, given the chronic condition of the state based administration of justice, they may represent the best opportunity for the development of rights-compliant remedial mechanisms in the Cambodian context.

4.4. CCHR RECOMMENDATIONS

- **That the RGC engage in a thorough legislative overhaul of the judicial system, ending endemic politicization and corruption and ensuring adherence to international fair trials standards, by passing the new laws and following the recommendations of UN Special Rapporteur Surya Subedi in his recent report on the Cambodian judiciary;**
- **That the RGC immediately end the use of criminal charges in the suppression of the freedoms of expression, assembly and association.**
- **That the RGC ensure that all past victims of illegal forced evictions have access to an effective remedy and reform the Cadastral Commission and the National Authority for the Resolution of Land Disputes to clearly define their respective responsibilities**

³⁸¹ CCHR Internal report 'Investigation on human rights abuses by The Socfin-KCD Company on Indigenous Peoples' land', February, 2010

³⁸² Joint NGO Submission, Supra note 194, p. 8.

³⁸³ See for example: Coca Cola <http://www.thecoca-colacompany.com/citizenship/>, Acleda Bank; http://www.acledabank.com.kh/kh/eng/BP_sustainabilityReport.asp, and H&M in cooperation with Better Factories Cambodia; http://www.hm.com/filearea/corporate/fileobjects/pdf/en/CSR_REPORT_2006_PDF_1212066641918.pdf Accessed 15 August 2010.

and provide them with the independence, transparency and resources necessary to tackle high profile disputes and the backlog of cases.

- **That the RGC implement the draft legislation for the Cambodian NHRI without delay, and that the RGC give this institution a mandate to monitor judicial activity in the country with full autonomy and independence.**
- **That businesses recognize that disputes will arise (and that time and money will be saved if these disputes are resolved early) and undertake to implement grievance mechanisms capable of providing adequate remedies to victims.**

5. CONCLUSIONS

191. The picture of business and human rights in Cambodia sketched in this report reveals significant gaps and failures under all three of Ruggie's pillars. The RGC has repeatedly failed to discharge its duty to protect citizens from human rights abuses by businesses, a number of Cambodian businesses have shown a blatant lack of respect for human rights and most remedial mechanisms are underdeveloped, ineffective and/or corrupt. However, a detailed analysis of the situation also shows that substantive positive change is possible, and offers tantalizing prospects for improvement. Particularly for businesses' responsibility to respect, where the case to take substantive action is becoming more commercially persuasive and businesses themselves seem more ready to listen.
192. There are substantial reputational benefits for businesses that are known as socially responsible and there is growing evidence of the financial and reputational costs of complicity in rights violations. Productivity is also likely to increase as workers' standard of living rises, and improved conditions enable companies to recruit and retain the best employees. By ensuring that all suppliers and contractors respect human rights in their own operations, a company can ensure stability of production and avoid the financial and reputational risks of complicity in human rights violations throughout their wider sphere of influence. Finally, business and human rights is an area that is developing fast; today businesses only have a responsibility to respect human rights, yet in the future the area may become subject to stringent legal obligations. Adopting a human rights policy now will give businesses an invaluable early-mover advantage.³⁸⁴
193. Irrespective of the merits of the 'business case', it is undeniable that society now expects the private sector to conduct its operations without violating human rights: '[t]he increasing scrutiny of corporate behaviour by the media, consumer groups, community organisations, local and international non-government organisations, and the immediacy of global communication leave companies with little, if any, hiding place.'³⁸⁵
194. Yet, by the same token, NGO 'name and shame' tactics have stalled in recent years 'as a result of their being narrowly focused on a few industry leaders and neglecting to address the misdeeds of other companies in the sector.'³⁸⁶ The difficulty for civil society actors, then, is striking a balance between exposing miscreants and encouraging those prepared to take concrete action to discharge their responsibility to respect. Striking this balance means that efforts are also needed to work with (rather than always against) businesses to help them understand their responsibility to respect, the benefits of doing so and the practical steps they can take to do so. This is the approach CCHR has taken in the Project, and it has been well received by the business community. CCHR believes there is scope for more progress to be made on business and human rights in Cambodia through the combination of initiatives such as the Project with ongoing efforts to draw attention to business who fail to discharge their responsibility to respect.
195. Civil society actors and legal academics have recommended that an international instrument be developed to govern business and human rights, and to place binding legal obligations on states.³⁸⁷ Yet the fate of the Norms illustrates that this will not occur without

³⁸⁴ See generally: McCorquodale, R. (2009), *Supra* note 18, pp. 385-400; Nolan J. and Taylor, L. (2009), *Supra* note 103, pp. 433-451.

³⁸⁵ Markovic, N. (2004), *Supra* note 4, p. 36.

³⁸⁶ Haas, R.D. (2008), *Supra* note 5, p. 404.

³⁸⁷ Action Aid, Amnesty International, EarthRights International, et al., Joint NGO Statement on 2008 Report of the UN Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other

the support of states and businesses, and, in the short-term at least, this is an unrealistic goal. In most of the world, even domestic legislation creating corporate criminal responsibility is highly unlikely. Ultimately, morality should motivate Cambodian business to act: human rights are universal; they are to be guaranteed to all human beings. As such, all societal actors – including private enterprises – are obliged to respect and protect human rights. Quite simply, it is the right thing to do.

Business Enterprises (May 19, 2008). Available at <http://www.hrw.org/en/news/2008/05/19/joint-ngostatement-eighth-session-human-rights-council> Accessed 16 August 2010; Miseror 'Problematic Pragmatism: The Ruggie Report 2008' (June 2008). Nolan, J. and Taylor, L. (2009), Supra note 103, p. 446.

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