

Joint NGO Submission to the 2nd Cycle of the Universal Periodic Review of Cambodia — June 2013; focus on *Land and Housing Rights*

This joint submission has been prepared in consultation with a number of key Cambodian NGOs.¹ It has been endorsed, in whole or part, by the 22 organizations listed in Attachment A.

Having read and considered the Royal Government of Cambodia's (RGC) Mid-term Report of Cambodia on the Implementation of the 91-point Recommendations of the 1st Cycle, NGOs comments are as following:

1. Legislative framework and reforms

While the adoption of several laws and policies on strengthening land tenure is appreciated, these remain fruitless where the RGC fails to abide by and apply these regulations consistently. **The RGC should take measures to fully implement existing laws to register and protect land tenure rights and to ensure the compliance of private sector involved.**

Since the last UPR in 2009, the number of evictions has increased, leading to the impoverishment of thousands of communities in Cambodia. This situation certainly raises questions about the RGC's commitment to international human rights treaties and its own 2001 Land Law. The Land Law, which has the potential to provide protection for citizens' land rights and is regarded as a positive legal instrument by most independent actors, is not applied accurately or consistently. This is especially true regarding the granting of economic land concessions and other concessions to land without first determining the ownership of the land. Evictions are not considered a last resort option and safeguard procedures to prevent violence and hardship described in the Land Law are often not acknowledged. In most cases, no consultations take place with affected communities, no social and environmental impact assessments (required by other laws) are conducted and claims of ownership and rights to fair and just compensation are often summarily dismissed. **When the RGC makes state land available to for private development, the RGC should ensure the implementation of laws to strengthen land tenure protections and should allow forced eviction for large private developments only as a last resort. In the event of an eviction of government land made available for private developers, the government should ensure that developers provide appropriate financial assistance and adequate housing including accessible infrastructure development for people displaced by the development. The RGC should adopt an Evictions Act to ensure due process in carrying out evictions, and should develop a National Housing Policy that addresses the problems of homelessness, particularly in urban areas.**

One of the most recognized cases of forced evictions involves the Boeung Kak Lake community, in which the RGC and Shukaku Inc. displaced thousands of residents from 2008 onwards. The World Bank undertook investigation of the human rights abuses claimed by community leaders and civil society in a joint advocacy campaign, and froze all World Bank loans to Cambodia as a result of its findings. As a result, the RGC issued a sub-decree to grant 12.44 hectares to more than 600 residents. Yet the delineation of these 12.44 hectares is not clear and 61 families were excluded from this text. **The RGC should clarify the sub -decree to help the residents properly identify their land and provide an adequate solution for the excluded families.**

In 2010, the Parliament enacted the Law on Expropriation, to implement the state's Constitutional

¹ This submission to the Universal Periodic Review of Cambodia has been prepared by a coalition of non-government organizations (NGOs) from across Cambodia. The principal authors of this submission are the Housing Rights Taskforce (HRTF), World Vision Cambodia (WVC), Urban Poor Women Development (UPWD), Development Partners in Action (DPA), Equitable Cambodia and the NGO Forum on Cambodia (NGOF).

power to take land and other immovable properties for public development and infrastructure purposes, where doing so serves a general public interest or national interest need., and where “fair and just compensation” is paid in advance of the taking. While this law does provide basic procedures that must be followed and protections and rights of affected persons to complain about processes as well as levels of compensation, there are many weaknesses in the law. These weaknesses could lead to serious problems in implementation, particularly in determining whether the taking is in the public interest or national interest and whether the compensation is fair and just. The Law on Expropriation, like the Land Law and the Constitution, only extends compensation protections to legal owners and other persons holding rights to the land recognized by law. Often the most vulnerable people affected by development projects do not have legal rights to the land, because authorities consider that the land is as State Public Property under the Land Law and relevant regulations. However, very little work has been done to identify and register state public and private land. A sub decree on State Land Management, promulgated in 2005, has the potential of identifying vacant state public and private land and providing information about what land is classified as State Public Land. However, this sub decree has not been implemented on a broad scale, and affected people have few practical ways to challenge the public state land classification and the denial of compensation for taking the land. While often viewed as “professional squatters,” many people evicted from state land are in fact the most vulnerable homeless and landless people in the country and risk becoming subject to serial evictions. **The RGC should carry out a mapping of the housing needs of the country and disseminate information about what land is classified State Public Property, with the view of addressing the increasing needs of the most vulnerable people, particularly those who are at risk of serial eviction.**

In 2010, the RGC adopted a circular concerning temporary settlement on state land, as opposed to permanent ownership or possession with the intent of ownership, which is illegal. The circular is meant to protect illegal settlers by giving them temporary occupation rights and compensation entitlements. While the adoption of the circular is welcomed, the RGC has failed to implement it in practice on a larger scale. **The RGC should implement Circular N^o. 3 on Resolution on Temporary Settlement on Land, which has been illegally occupied in the capital, municipal and urban areas.**

Consultation with Civil Society on draft legal framework is not always conducted and the timeframe given to comment on is insufficient. **The RGC should provide sufficient time to Civil Society to analyze any draft and provide comments to allow meaningful consultation.**

2. Systematic Land Registration

While the RGC is implementing systematic land registration in 15 of Cambodia’s 24 provinces and the capital, especially urban areas inhabited by the poor have been excluded from being titled. Areas have been excised from adjudication areas prior to or during the process of survey and demarcation, and land parcels have been left unregistered due to having “unclear status”.² As a consequence, residents of these areas are prone to eviction. **The RGC should avoid further exclusions: If it is found during the adjudication process that there are overlaps with state land or lands involving dispute, these should be dealt with according to the existing legal process. The decision to grant or withhold land titles should be based on the legal status of the occupant, i.e. whether or not they meet the legal requirements of possession as set out in the Land Law.**

The RGC should conduct research into full extent of exclusions: in order to assess how many areas have been excluded from SLR across the country. A database/matrix of all excluded areas should be developed and an analysis conducted of why exclusions occurred, at what stage in the process this happened, and on what grounds. The results of such a study should be made public. The RGC

² See also Grimsditch et al. (2012). “Access to Land Title in Cambodia. A Study of Systematic land Registration in three Cambodian Provinces and the Capital”, The NGO Forum on Cambodia

should develop an operational plan for dealing with exclusions: A plan could be put in place to return at the soonest possible time to conduct adjudication in those areas where exclusions were not legally justified. In order to ensure transparency and maintain public confidence in the system, this process should be open to scrutiny and efforts should be made to ensure that excluded areas are not once again omitted from SLR without clear legal justifications. The RGC should clarify under what circumstances the term ‘unclear status’ can be applied. In cases where land is claimed both by a private individual and by the state or a public authority it should be clarified whether the land should be recorded as being of ‘unclear status’ or ‘disputed’. The RGC should increase transparency in the selection of adjudication areas: The process of identifying adjudication areas should be clarified and made more transparent. If an area is deemed not to be suitable for adjudication, this should be recorded and the reason made public in order to ensure that areas are not passed over without good reason.

3. Indigenous Peoples Rights

a. Communal Land Registration

The Land Law 2001 provides for communal land registration of indigenous community properties. Studies and identification of indigenous people across the country has not been fully completed yet. There is a lack of awareness-raising on the process of self-identification and registration of collective land, in particular, with indigenous communities in areas where self-identification has not been conducted. Participation and awareness from local authorities on identification of indigenous people is limited. The process of provision of indigenous identity by the Royal Government is slow. The priority of collective land registration is determined after registration of private land. The overall process of communal land registration is slow. The procedures for communal land registration are complicated and require good cooperation amongst all involved Ministries such as MoI, MoRD and MLMUPC. However, up to June 2013, 8 indigenous communities have received a communal land title. Due to the lengthy process in communal land registration, more measures are required to protect indigenous lands prior to registration. In this regard, we welcome the issuance of the inter-ministerial Circular N^o 001-N^o 004, 31 May 2011 banning land transactions on indigenous lands as an interim protection measure. However the circular excludes areas “that the Royal Government has agreed in principle for investment or development – prior to [these] measures com[ing] into effect”. Investment or development in these areas potentially negatively affects indigenous peoples’ rights and livelihoods. In addition, the circular aims at interim protection only of indigenous communities who have already requested collective titling. Interim protection for indigenous land can only be achieved by interim protection of indigenous peoples’ land for all communities that are predominantly indigenous, regardless of whether or not they are registered. Applying interim protection only to registered communities disregards international standards of respect for self-determination, which is a cornerstone of the UN International Declaration on the Rights of Indigenous Peoples. Based on the Directive 01³, the RGC also implemented a “new titling scheme’ to grant individual land titles to 470000 households on 1.8 million ha, living in ELC and forest concession areas as well as on state public land. The new titling scheme has been implemented until June 2013 and it is expected that it will resume after the general election on July 28, 2013. It has also been implemented in areas inhabited by indigenous people (IPs), and reports from the ground⁴ reveal the new titling schemes negative impacts to indigenous peoples. Villagers reported of being pressured to accept private titles and of being forced to decide whether to accept them without adequate time for consideration, thus creating division within communities. Villagers were reportedly told that if they do not accept private titles they will receive nothing at all, and authorities declared that in such case

³ Directive 01 on Measure to Strengthen and Foster Effectiveness of ELC Management, dated 07 May 2012 (Khmer version), available at <http://mlmupc.gov.kh/?page=detail&menu1=118&ctype=article&id=118&lg=kh>

⁴ Rabe, Alison (2013). Directive 01BB in Ratanakiri Province, Cambodia, Issues and impacts of private land titling in indigenous communities.

any disputes would not be resolved for villagers. Overall, the new titling scheme appears to undermine indigenous communities' right to communal land titles. The RGCs Instruction 15⁵ states that the volunteers should demarcate the IPs communal land and that only the regulations of communal land titling should apply to IPs who successfully achieved -or are in the process of doing so- the registration as a legal entity with the Ministry of Interior (Mol), which is a prerequisite for receiving a communal land title. However, Instruction N^o 15 had been overruled by Instruction N^o 20 which postponed communal land titling. Furthermore, it does not include IP communities who have not entered the CLT process yet. **The RGC should establish a General Secretariat as one-window service body both provincial and national level to expedite collective land registration for indigenous communities in full respect of indigenous tradition and culture with regard to customary land use, concept to land and territory, sustainability of the right to use land and natural resources, and to maintain indigenous people's traditions and customs. The RGC should enforce existing provisions to protect indigenous peoples land in the interim. The Royal Government needs to ensure that the implementation officials, youth, and local authorities of Directive 01 does not jeopardize the right of IP communities to receive a communal land title, regardless of having achieved any prerequisite steps in the Communal land titling process.**

b. Livelihoods, Tradition and Culture

Indigenous people are especially vulnerable to the impacts of infrastructure developments, land and mining concessions and hydropower dam construction. The Lower Sesan 2 Hydropower Dam Development Project has been considered by the government as a project that can generate a lot of power among other hydropower dams in Cambodia. At the same time, it is expected that the project, if carried out, yields negative impact the livelihoods, occupations, farmland, crops, properties, education, religion, health tradition, of the people in the project area, especially indigenous people. Village infrastructures and natural resources will be destroyed.⁶ **The RGC should consult process with indigenous peoples based on the principles of "Free, Prior and Informed Consent" before implementing any infrastructure or development project on indigenous peoples' lands. The RGC needs to ensure that Environmental and Social Impact Assessments are conducted based on international standards prior implementing development projects. The monitoring of land transactions in areas inhabited by indigenous peoples needs to be enhanced, and a moratorium on land sales in those areas should be installed. The RGC should adopt the Law on Access to Information in order to enhance participation and the right to decision making on national development. The RGC should respect and recognize the traditions and culture which assures indigenous people's rights and maintains their traditions and customs. The RGC should ratify the ILO convention 169. The RGC should protect, respect and fulfill the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).**

4. Forced Evictions:

Forced evictions are a longstanding and serious problem in Cambodia, occurring in both in rural and urban areas. This problem is exacerbated by the RGC's failure to respect both international and national law on forced evictions. Opaque long-term land leases and economic land concessions to private companies, in combination with the RGC's taking of land for large-scale, development project, have resulted in an increasing number of forced evictions. In 2011 alone, at least 60,000

⁵ Instruction N^o 15 on the implementation of the Royal Government's Directive N^o. 01 BorBor, dated 07 May 2012 on the strengthening and increasing the effective management of Economic land concession in areas of indigenous communities; evergreen forest, semi-evergreen forest, dense forest; and in areas of national defense bases and historical and cultural heritage sites, Supreme Council of State Reform, Council for Land Policy, Phnom Penh, 04 July 2012 (unofficial UNOCHCR translation)

⁶ The NGO Forum on Cambodia (2012), Lower Sesan 2 Hydropower Dam: Current Livelihoods of Local Communities (A Baseline Study). Available at <http://www.ngoforum.org.kh/eng/enallpublication.php>

people were evicted from 127 communities. The RGC seems to favour private companies over its citizens, leaving Cambodian people without adequate legal protection. For example, in January 2012, 300 homes were demolished by private security guards and police in the Borei Keila community contrary to a 2004 agreement with the Phan Imex Company to develop ten buildings for the affected residents. These evictees were not even given an opportunity to save their belongings. Unfortunately, the experience of the Borei Keila community does not represent an isolated incident, but is rather reflective of the eviction experience of many communities across Cambodia. Especially problematic is the RGC's tendency to justify forced evictions in terms of a public interest in using regional and international aid for infrastructure development. Airport expansion and upgrading,⁷ dam construction, and railway rehabilitation⁸ and construction⁹ are just some of the infrastructure projects endorsed by the RGC in the name of development, which adversely affect Cambodia's poor. **The RGC must protect its citizens from forced evictions until mechanisms are in place, which ensure that the companies and development organizations involved in infrastructure projects respect citizens' proprietary claims and human rights. The RGC must ensure that forced evictions are no longer practiced and that the Companies respects the citizens' land rights.**

Communities are often not fully aware of their rights; the eviction process or the compensation they should be awarded, in spite of the 2001 Land Law's guarantee of a fair market price upon eviction, only where eviction is necessary for the betterment of the public interest. The continuation of the use of forced eviction in Cambodia is a clear failure and disrespect of the commitment taken at the UPR session in 2009. **The RGC should inform and educate the communities on their land rights.**

In May 2012, Prime Minister Hun Sen announced a moratorium on controversial economic land concessions (ELCs) (also called Directive 01)¹⁰, and stated that those ELCs which do not "*comply with applicable procedures and contracts, by logging without developing the ELC, [...] encroaching on lands of citizens or communities*" and thus contributing to human rights violations could result in the concession being cancelled. However, after the moratorium a number of additional ELCs have been granted by the RGC¹¹ and only from beginning of 2013 the granting of ELCs has seized. No public information is available on how many ELCs have been cancelled¹² and the effect of this order has not yet been seen, economic land concessions are still a root cause of forced evictions and land disputes in Cambodia. In 2011, 25.7% or 73 cases of ongoing recorded 284 land disputes were attributable to ELCs and 62.2% of all disputes have occurred over agricultural land.¹³ Moreover there was no clear moratorium on evictions. **The RGC should cease all forced evictions and introduce a moratorium on**

⁷ Société Concessionnaire de l'Aéroport (SCA), a joint venture between Vinci Airports and Muhibbah Masteron Cambodia is implementing a mass redevelopment of Phnom Penh International Airport, financed by the World Bank Group's International Finance Corporation. Approximately 387 households living on the 6.3 hectares around the airport in the Thmor Korl, Prey Chisak and Kok Chambork villages have received eviction notices. 194 households of this total affected population filed a complaint with the SCA's Compliance Advisor Ombudsman mechanism, claiming possessory rights to the land, and demanding fair and just compensation should eviction be necessary.

⁸ The ADB and AusAID are working in partnership with the RGC to rehabilitate Cambodia's railway line. At least 4164 families live alongside the dilapidated tracks and over 1200 families will be relocated by the project's conclusion. Australia's Toll Holdings and Cambodia's Royal Group have been granted a 30-year concession to operate the refurbished railways. Affected households in the provinces of Sihanoukville, Phnom Penh, Battambang and Poipet have filed a complaint with the ADB's Compliance Review Panel (CRP) regarding the serious harms they have suffered, including impoverishment.

⁹ Cambodia's valuable iron-ore deposits in the northern district of Rovieng are slated for a USD 11.2 billion railway construction project by the Cambodia Iron & Steel Mining Industry Group and China Major Bridge Engineering, itself a subsidiary of the Chinese state-owned China Railway Group. The proposed north-south railway will stretch for almost 405 km, linking the planned steel works in Preah Vihear to a newly constructed sea port in Koh Kong on the southwest coast. Based on the human rights track record in Cambodia resulting from large-scale development projects, the RGC should release the full details of the project and promote open consultation with the thousands of potentially affected households.

¹⁰ Directive 01 on Measure to Strengthen and Foster Effectiveness of ELC Management, dated 07 May 2012 (Khmer version), available at <http://mlmupc.gov.kh/?page=detail&menu1=118&ctype=article&id=118&lg=kh>

¹¹ According to ADHOC (ADHOC. (2013). A turning Point? Land, Housing and Natural Resources - Rights in Cambodia in 2012) 33 ELCs have been approved since the moratorium. Page 34, the royal gazette reports the granting of 15 new ELCs.

¹² However, according to the royal gazette, 105 sub decrees were issued until the end of January 2013, excising land from ELCs, logging concessions, forest covered areas, protected and other areas

¹³ NGO Forum on Cambodia, Statistical Analyses of Land Disputes in Cambodia, 2011, Pg.18, 23 (forthcoming)

forced evictions in Cambodia until a transparent and accountable legal framework, and relevant policies are in place to ensure that evictions are conducted only in accordance with Cambodia's obligations under international human rights law.

Ample evidence exists that ELCs do not benefit of poor and vulnerable people and the overall Cambodian population. Instead, ELCs “are found to be a source of widespread, systematic human rights violations such as forced evictions and deprivation from right to adequate housing, access to land and right to food, contributing to environmental destruction”.¹⁴ **The RGC should ensure that the moratorium is converted into a permanent ban of ELCs in Cambodia.**

5. Resettlement:

In case of relocation, HRTF finds that most relocation sites fail to meet the international standards regarding adequate housing and resettlement sites infrastructure development. Authorities often relocate evicted communities to remote areas (for example, Borei Keila evictees were relocated at 50 km from Phnom Penh), limiting access to employment opportunities, schools and health care facilities. In addition, relocation areas often fail to provide access to clean water supplies and electricity. The housing itself is typically substandard and does not amount to proper shelter. **In relocation sites for evictees, the RGC should build basic electricity and water/sanitation infrastructure and provide public education, health and security services. Renowned international development consultant Michael Cernea gave the ADB recommendations on better resettlement strategies, which supports the HRTF's opinion that current practices are insufficient. The RGC should take steps to implement these recommendations, which target the elimination of risk of land-plot loss, the improvement of access to jobs for resettled citizens, the resolution of economic legacy issues and the restructuring of independent and internal monitoring mechanisms.**¹⁵ **The RGC should provide public education, health and security services at relocation sites.**

6. Land Dispute Resolution Mechanism

Between 2007 and 2011, the number of unsolved land disputes has continued to increase.¹⁶ Based on the available data for 2011, out of a total number of 284 ongoing land disputes¹⁷, 87 land dispute cases, or 31%, have gone through the resolution process and have either been fully resolved or partly resolved or the resolution process is on-going. Of the remaining 162 cases (57% of the total), have never been through any formal resolution process, despite complaints being raised to the authorities

¹⁴ Surja P. Subedi, A human rights analysis of economic and other land concessions in Cambodia (2012), Report of the Special Rapporteur on the situation of human rights in Cambodia, A/HRC/21/63/Add.1, Rev. 1, pp 46-53

¹⁵ The ADB has not disclosed Cernea's Report to the public, presumably due to its unfavourable evaluation of the railway project. The recommendations from this report, however, detail how a combination of legal, financial, educational and governmental changes are essential to rectifying the current human rights abuses. He places particular emphasis on the importance of census-taking among resettled peoples to reduce risk of land-plot loss to moneylenders and other institutions by preempting unlawful evictions. With regards to income recovery, Cernea recommends that the ADB complete an empirical evaluation of the real income effect of resettlement, that the Inter-ministerial Resettlement Committee (IRC) offer incentives to small or mid-size entrepreneurs to install enterprises in surplus land around new sites, and that the RGC strategize a substantive shift to training for higher-level professional skills. The report highlights that a mid-term Resettlement Audit should be completed during the project's life to remedy economic legacy issues. Lastly, to improve the organization of independent and internal monitoring, Cernea recommends that: conflicts of interests should be eliminated; a small Independent Monitoring Panel be appointed with expertise in different areas; a monitoring unit within the IRC be created; the ADB streamline all four stages of its Grievance Redress Mechanism into a single avenue; the ADB and AusAID increase funding for training of domestic resettlement staff; family budgets of affected residents be conducted; and a study tour to China be undertaken to learn about planning, designing, resourcing and evaluating resettlement.

¹⁶ The NGO Forum on Cambodia. (in press). Statistical Analysis of Land Disputes in Cambodia, 2011. Phnom Penh: The NGO Forum on Cambodia (NGOF).

¹⁷ -The NGO Forums database only records land dispute cases that involve 5 households or more

or courts. Out of the 87 land dispute cases which entered a dispute resolution, only 40 cases recorded as fully resolved by November 2011.

The RGC should conduct a comprehensive assessment of the dispute resolution mechanisms. The RGC should strengthen the existing dispute resolution mechanisms such the Cadastral Commission, the National Authority for Land Dispute Resolution and the judiciary.

7. Work with Special Rapporteur

During the period between 2009 and 2013, the RGC generally responded well to requests for country visits from the United Nations Special Rapporteur for Human Rights, Mr. Surya Subedi. Several countries reports could have been produced from these visits regarding human rights abuses related to land and housing; however the RGC will not accept such findings. The relationship between the RGC and the special rapporteur seems to deteriorating rather than improving, with Prime Minister Hun Sen refusing to meet Mr. Subedi during his visit in 2012. **The RGC should accept the recommendations of the special rapporteur and work closely and openly with him.**

Attachment A – List of Supporting Organisations

This report is endorsed, either in part or in whole, by the following organisations:

- 1- ActionAid Cambodia (AAC)
- 2- Cambodian Community Development (CCD-Kratie)
- 3- Christians for Development Kampuchea (CDK-Battambang)
- 4- Community Empowerment Development Team (CEDT)
- 5- Cambodian Human Rights Action Committee (CHRAC)
- 6- Cambodia Indigenous Youth Association (CIYA)
- 7- Community Legal Education Centre (CLEC)
- 8- Development Partners in Action (DPA)
- 9- Equitable Cambodia (EC)
- 10- Highlander Association (HA-Rattanakiri)
- 11- Housing Rights Taskforce (HRTF)
- 12- International Bridges Justice (IBJ)
- 13- Indigenous Community Support Organization (ICSO)
- 14- Kunathor (Battambang)
- 15- Mlup Baitong
- 16- My Village (MVI-Mondulkiri)
- 17- The NGO Forum on Cambodia (NGOF)
- 18- Ponlok khmer (PKH-Preah Vihear)
- 19- Save Vulnerable Cambodians (SVC)
- 20- Trocaire
- 21- Urban Poor Women Development (UPWD)
- 22- World Vision Cambodia (WVC)