

## **Housing and Land Rights Issues in Cambodia**

**Annex to Parallel Report Submitted to  
the Committee on Economic, Social and Cultural Rights**

**Concerning Article 11 of the Covenant**

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## INTRODUCTION

This document is prepared as an Annex to the Parallel Report and focuses on land and housing rights issues. Violations of housing and land rights are widely viewed as the major human rights concern in Cambodia. This document is intended to assist the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in its review of Cambodia during its 42<sup>nd</sup> Session, 4 to 22 May 2009. The document was prepared for the purpose of providing recommendations to the State party and other actors as well as facilitating civil society input into this procedure.

A number of organisations were involved in the preparation of this Annex, including Borderlands, Bridges Across Borders Southeast Asia (BABSEA), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Centre on Housing Rights and Evictions (COHRE), Community Legal Education Center (CLEC), Housing Rights Task Force (HRTF), Sahmakum Teang Tnaut (STI) and the NGO Forum on Cambodia. In addition, the recommendations in this report were developed following consultations with broader civil society groups including networks of community activists.

The document focuses in particular on the right to adequate housing in Cambodia, as well as related human rights concerns. Matters addressed include (i) forced evictions; (ii) gaps in the legislative and policy framework on evictions, and a lack of implementation of existing laws and regulations; (iii) the absence of legal security of tenure for many households and obstacles to accessing title; (iv) concerns regarding the donor funded titling system: LMAP and LASSP; (v) land disputes and concerns regarding the efficacy, independence and transparency of dispute resolution bodies; (vi) displacement and other adverse impacts resulting from economic land concessions and mining; (vii) concerns regarding land rights of indigenous peoples; and (viii) the persecution of housing rights defenders.

## ISSUES OF CONCERN

### I. Forced Evictions

Forced evictions are a growing problem in Cambodia, with at least 150,000 Cambodians currently living under threat of forced eviction, including approximately 70,000 in Phnom Penh<sup>1</sup>. Forced and violent evictions are occurring in the context of rapid but unplanned economic growth, spiraling land prices, endemic corruption and an absence of secure land tenure for urban and rural low-income households. Land-grabbing and forced evictions are contributing to growing landlessness and inequality in landholdings, as well as to the transformation of Phnom Penh and other urban areas into exclusive cities for the rich, with poor households being displaced to peri-urban areas.

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<sup>1</sup> Amnesty International, *Rights Razed: Forced Evictions in Cambodia*, AI Index: ASA 23/002/2008, February 2008, page 7.

The rate and scale of land-grabbing and forced evictions has increased in recent years. According to local NGO, Sahnakum Teang Tnaut, in Phnom Penh, between 1990 and 1996, 3,100 families were displaced, between 1997 and 2003, 9,200 families were displaced, and between 2004 and 2008, 14,300 families were displaced. In total, at least 26,600 Phnom Penh families, approximately 133,000 residents or eleven percent of the city's population of 1.2 million, have been evicted since 1990.<sup>2</sup>

While precise nationwide figures are difficult to ascertain, the rate of forced evictions appear to have increased in conjunction with, inter alia, the granting of concessions over vast tracts of land to private investors. Rural landlessness, often also caused by forced evictions, rose from 13 percent in 1997 to between 20 and 25 percent in 2007.<sup>3</sup> This also has a compounding effect on right to food and increase food insecurity particularly for small-scale farmers and indigenous people evicted from agricultural lands.

The causes of evictions include the granting of Economic Land Concessions (ELCs), extractive industry licenses/concessions, infrastructure development, so-called "city beautification," private development projects, including tourist industry development, and land speculation.

The instigators of forced evictions throughout the country include well-connected private individuals, domestic and foreign companies, and government authorities including the Royal Cambodian Armed Forces (RCAF). A 2008 study reported that claimants to dispute resolution bodies accused the following main groups of having grabbed residential, farm and paddy land: government authorities (23.4 percent); the military (20.6 percent), and business (29.9 percent).<sup>4</sup> Authorities are not only failing in their obligations to protect against forced evictions but are often actively involved in or fail to act when private actors engage in illegal land-grabbing. Laws are applied selectively or by-passed altogether. Such collusion between authorities and powerful individuals who are laying claims to land, opens the door for the issuing of dubious land titles and eviction orders, and the misuse of the court system to prevent victims from acting to defend their rights.<sup>5</sup>

Cambodia is consistently failing to meet the international human rights law requirements as set out by the Committee in its General Comment No. 7 on forced evictions. Evictions are carried out in the absence of exceptional circumstances, and very often for private developments or land speculation for private profit. Feasible alternatives to eviction are not explored. Those affected by evictions have had no opportunity for genuine participation and consultation beforehand – rather, "take it or leave it" offers are made, in the form of monetary compensation or resettlement, which are consistently inadequate and well below the market value of people's house and/or land (see Case 3: Boeung Kak lake). In many instances where there has been the appearance of consultation with affected communities, decisions on eviction and relocation appear in reality to have been taken by the authorities prior to these consultations, frustrating the right of affected people to propose alternatives and for those to be duly considered.<sup>6</sup>

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<sup>2</sup> Sahnakum Teang Tnaut, Research prepared for the UNOHCHR (unpublished), 2008.

<sup>3</sup> *Cambodia, Halving Poverty by 2015? Poverty Assessment 2006*, page 85, prepared for the Consultative Group Meeting by the World Bank, Phnom Penh, February 2006; and *Sharing Growth: Equity and Development in Cambodia*, World Bank Equity Report, 2007.

<sup>4</sup> NGO Forum, *Statistical Analysis on Land Dispute Occurring in 2008 Cambodia* (unpublished)

<sup>5</sup> Amnesty International, *Rights Razed: Forced Evictions in Cambodia*, AI Index: ASA 23/002/2008, February 2008, page 44.

<sup>6</sup> Amnesty International, *Rights Razed: Forced Evictions in Cambodia*, AI Index: ASA 23/002/2008, February 2008, page 3.

Information about the eviction or the purpose for which the land will be used is generally scant or non-existent. While eviction notices are issued in some cases, these often do not correlate with the actual date that the eviction is carried out. In other cases, communities hear about the pending eviction through other sources such as media or NGOs. In many cases no concrete plan for the site appears to exist, and so various conflicting and erroneous information is given about what the site will be used for. In cases of private land disputes, eviction notices are frequently issued by local and provincial authorities on behalf of powerful parties to the dispute, despite a requirement in the Land Law (2001) that a court order be issued prior to an eviction in such cases.<sup>7</sup>

Evictions are often carried out violently by police, military police and with the use of private armed forces, despite prohibitions under the Land Law.<sup>8</sup> (See Case 1: Sambok Chap; Case 2: Mittapheap 4; and Case 4: Dey Krahorm). In cases in which government officials are present, their role does not appear to be to provide protection to the community and ensure the avoidance of violence. Forced evictions frequently begin in the middle of the night or the early hours of the morning.

Those affected by evictions are often made homeless and landless. In rural areas, families are deprived of farming land for livelihoods as well as shelter. In urban areas, people are either evicted without any form of compensation (see Case 2: Mittapheap 4), or are offered inadequate cash payments and/or inadequate resettlement on the outskirts of the city (see Case 1: Sambok Chap; Case 3: Boeung Kak Lake; and Case 4: Dey Krahorm).

More than forty relocation sites exist in and around Phnom Penh.<sup>9</sup> As of August 2007, 15,831 families (or approximately 80,000 people) had been moved to these sites. The conditions at relocation sites vary, with at least two positive examples in the late 1990s and 2000, including the establishment of the Akphitwat Meanchey site (also called Veng Sreng), following consultations and agreement of the community. These examples indicate that in cases in which the Government is willing, it can carry out resettlement in a participatory and positive manner.

Since that time, however, resettlement practices have consistently violated human rights. The vast majority of relocated families face further hardships and deeper impoverishment as a result of the forced resettlement. Many relocation sites, such as the notorious Andong relocation site, are barren fields in peri-urban areas, without proper housing, potable water or sanitation. Access to basic facilities such as schools and hospitals is hampered by the distance of these sites from inner-Phnom Penh. Perhaps most troubling is the diminished access to employment opportunities by the remoteness of the sites – the cost of traveling to jobs in the city often exceeds daily average earnings. As a result, many are forced to return to the city centre and rent or squat in order to continue their livelihoods. Often titles are not issued to households at the relocation sites, creating renewed situations of tenure insecurity and the possibility of further forced evictions as Phnom Penh continues to sprawl.

Existing evidence directly conflicts with the Government's claims in its State Party Report that forced evictions are carried out only when necessary in the public interest; that evictees are provided with fair and just compensation in advance;<sup>10</sup> and that those

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<sup>7</sup> Land Law 2001, Article 35.

<sup>8</sup> Land Law 2001, Articles 253 and 254.

<sup>9</sup> Sahmakum Teang Tnaut, *Relocation Sites in Phnom Penh*, August 2007.

<sup>10</sup> Cambodia State Party Report, 10 November 2008, paragraphs 513, 516, 518, 528, 529.

evicted are provided with financial support or re-housed in development areas with full access to necessary public services and amenities.<sup>11</sup>

The case studies below are examples of recent forced evictions. In all the examples below, many evicted families had possession rights to their land under the 2001 Land Law (see section III). Those affected by the forced evictions were not afforded legal recourse to demonstrate their legal claims to the land and challenge the unlawful eviction process.

Cambodian law provides for the criminal prosecution of various offenses relating to evictions and damage to homes and property. The intentional or attempted damage to property;<sup>12</sup> the infringement of ownership and other rights relating to immovable property;<sup>13</sup> the use of violence against a possessor in good faith;<sup>14</sup> the use of private force in order to protect title to property or to enforce a court order for eviction;<sup>15</sup> the use of pressure or physical measures of eviction to seize possession from a peaceful occupant;<sup>16</sup> and the permitting (or ignoring) by an authority of wrongful acts by private individuals against the rights of owners, possessors, or peaceful occupants<sup>17</sup> are all offenses punishable with a fine and/or imprisonment. The prohibitions apply not only to private individuals but also to authorities and those who give orders that the actions in question be carried out.

However, in none of the cases below have authorities or perpetrators been investigated or prosecuted for the abuses they committed during the forced evictions. Instead, instigators, collaborators and perpetrators of forced evictions act with impunity. Nor have investigations taken place into possible violations of law arising from the issuance of fraudulent titles to powerful private parties and wrongful eviction orders.

#### **Case 1: Sambok Chap community, Tonle Bassac, Phnom Penh**

More than 1,500 families were forcibly evicted from the Sambok Chap, Tonle Bassac settlement in central Phnom Penh during May and June 2006. Private company, Sour Srun claimed to own the Sambok Chap land, despite its failure to produce any evidence of ownership to the families who began to settle on the site in the early 1990s. The eviction took place without a court order, and without any prior meaningful consultations or efforts to negotiate or avoid the eviction. Security forces armed with guns and electric batons carried out the eviction, injuring several people.

Many families were relocated to a rice field in Andong relocation site, 22 kilometres from their previous homes. Families were not allocated plots or provided with even basic shelters. NGOs provided emergency tarpaulins and supplies.

As a result of the lack of access to basic facilities, residents are forced to use dirty water from ponds and wells and defecate in the perimeter of the site and in plastic bags. Poor drainage

<sup>11</sup> Cambodia State Party Report, 10 November 2008, paragraph 534.

<sup>12</sup> Provisions Relating to Judiciary & Criminal Law and Procedural Applicable in Cambodia during the Transitional Period, Article 52. (Punishable with a term of imprisonment up to three years.)

<sup>13</sup> Land Law 2001, Article 247. (Applies irrespective of whether formal title has been obtained to the property. An official or authority convicted of this offense is liable for an administrative penalty as well as a criminal penalty and civil damages.)

<sup>14</sup> Land Law 2001, Article 253. (Punishable with a fine of up to 25 million Riel and imprisonment up to two years. The person giving the order for the use of violence is subject to the same penalties.)

<sup>15</sup> Land Law 2001, Article 254. (Punishable with a fine of up to 25 million Riel and imprisonment up to two years.)

<sup>16</sup> Land Law 2001, Article 261. (An official or authority convicted of this offense shall be subject to a fine of up to 25 million Riel and additional administrative sanctions, with imprisonment up to two years if violence involved.)

<sup>17</sup> Land Law 2001, Article 263. (Punishable with a fine of up to 10 million Riel and administrative sanctions.)

means that the site is regularly flooded, contributing to severe health risks for the residents. Diarrhoea, dengue fever, malnutrition and skin disease are prevalent, especially amongst children.

In one dengue fever outbreak in 2007, more than 30 children died in Andong relocation site alone.<sup>18</sup> The evictees have no security of tenure at the relocation site, and rising land prices in the area have raised concerns that they will be evicted again.

As at April 2009, the Sambok Chap, Bassac land remains empty.

### **Case 2: Mittapheap 4 village, Sihanoukville**

More than 100 families were forcibly evicted from Mittapheap 4 village, known as “Spean Ches”, in Sihanoukville Municipality in 2007. Many of the families had been living in the village since the 1980s and 1990s. The basis of the eviction was an unsubstantiated claim of ownership of the land by Peng Ravy, the wife of a senior advisor to a high-ranking Government official. At her request, eviction notices were issued by district authorities and by Say Hak, Governor of Sihanoukville Municipality. On 19 January 2007, the villagers were ordered to vacate the area within one week.

The Senate Commission on Human Rights conducted an investigation into the case, after receiving a complaint from the villagers, and concluded that the land dispute was a civil matter and therefore to be settled by the courts. In spite of the Commission's findings, the Governor appointed a Joint Task Force to carry out the eviction.

The eviction, carried out on 20 April, was particularly violent and involved 50 members of the RCAF, 50 members of the Royal Gendarmerie and 50 policemen armed with AK-47s, electric batons, wooden sticks and shields. The Government forces arrived with three police trucks, an excavator and two water trucks filled with a mixture of water and gasoline. They fired their guns at the ground and above the heads of the villagers. People trying to salvage their property were beaten with sticks and electric batons. Five women were injured and 13 men were badly hurt, many of them knocked unconscious. A 77 year old man was hospitalised after receiving an electric baton shock to his head.

The police and military personnel confiscated valuables from the villagers, including 16 motorbikes. They then proceeded to burn down their homes, along with their clothes and those belongings not looted by the authorities.

The 13 wounded men were arrested and taken into custody. Eight of the men were subsequently tried and convicted for varying offences, including battery with injury and damaging property. Because of lengthy court delays and appeal processes, the eight convicted men served almost a year in prison, despite seven of them being sentenced to only 75 days, and one being sentenced to only eight months.

The Mittapheap 4 community continues to live under tattered tarpaulins supplied by NGOs, on the side of the road in front of where their homes once stood. They lack access to livelihoods, schools, and health care.

As of April 2009, the Mittapheap 4 land remains unused and fenced in.

### **Case 3: Boeung Kak Lake, Phnom Penh**

Boeung Kak is a large lake in north-central Phnom Penh. People began settling around the lake in the 1980s and by 2007, it was home to more than 4000 families. The lake is of crucial importance as it is used by many families to grow aquatic vegetables and to harvest snails and because it acts as a rainwater catchment for the city.

<sup>18</sup> ABC Radio, Warning of Dengue Outbreak, <http://www.abc.net.au/am/content/2007/s1995707.html> 3 August, 2007

In February 2007, the Municipality signed an agreement to lease Boeung Kak Lake and the surrounding land for 99 years to a private company for USD 79 million. This lease contract blatantly violates the Land Law which stipulates that State public property, including lakes which have inherent public value, cannot be leased for more than 15 years and cannot be destroyed by the beneficiary of the lease.<sup>19</sup> In direct contravention of this provision, the company began filling in the lake on 26 August 2008 and apparently plans to develop a new “satellite city” with private villas, stores and office buildings in the area. No precise development plan has ever been released, and no public meetings have been convened with the affected communities to discuss this major development project in the heart of Phnom Penh.

The Boeung Kak case is a clear example of the improper way the Government manages State land. Despite enjoying formal recognition by local and municipal authorities for more than 10 years, residents of the area are now told that they have no right to stay on the land because they are living on State public property. While this may be true for people who were living directly on the lake in boats or floating houses, it is false for the majority of residents living on land surrounding the lake, which should be properly classified as State private (or privately held) land.<sup>20</sup> On August 7, 2008, in an attempt to provide legal cover for the illicit lease agreement, a sub-decree was passed which transferred 133 hectares, including the lake and surrounding area, from State public to State private property. The re-classification of state land by executive decree has become a common abuse of the land management legal framework to suit the government’s plans to sell or lease land that should be used for the public benefit.

The Boeung Kak development is likely to lead to the forced eviction of more than 20,000 people. Affected families are presented with two options – a cash payment of USD 8,500, or a house in a distant relocation site and USD 500. These options are far below market value and will not provide affected families with adequate alternative housing or tenure security.

Since early 2008 residents of the lake area have become increasingly subject to threats and intimidation from police and company representatives. Houses in at least two of the nine villages surrounding the lake have been dismantled after families accepted compensation offers under duress. A number of houses on the lake recently collapsed because of the pressure of the sand build up. Residents are prevented from carrying out repairs on their homes. Parts of the lake close to the pumping station have effectively been made a closed zone, with company workers, gendarmerie and government authorities frequently preventing human rights workers and journalists from accessing these areas and speaking to residents.

#### **Case 4: Dey Krahorn, Tone Bassac, Phnom Penh**

In January 2009, more than 400 families of the Dey Krahorn community were forcibly evicted from their inner-city homes. The Dey Krahorn community was mentioned by Cambodia in its November 2008 State Report to the Committee, as a positive example of the Government’s commitment to upgrading urban poor settlements and ensuring their tenure security (see section II).

In 2003, the Government announced that Dey Krahorn was one of four Phnom Penh urban poor communities to be granted a social land concession over their land and receive assistance for onsite upgrading of their houses. However, in 2005, a few community residents, acting without authority of the rest of the community, signed a contract with a private company, 7NG, agreeing to swap the Dey Krahorn land in return for apartments at a relocation site 20km away. As soon as they were made aware of the contract with 7NG, the approximately 800 families of Dey Krahorn filed a complaint for the contract to be annulled. The contract was invalid under

<sup>19</sup> Land Law 2001, Articles 15, 16 and 17; Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public, Entities, No. 129 ANKr.BK . 27/11/06, Articles 16 and 18. Centre on Housing Rights and Evictions, Legal Analysis of the Boeung Kak Lake case, November 2008.

<sup>20</sup> Centre on Housing Rights and Evictions, Legal Analysis of the Boeung Kak Lake case, November 2008.

Cambodian law because third parties cannot sell someone else's land without legal authorization.<sup>21</sup>

While the complaint stalled in the courts, 7NG, backed by the Phnom Penh Municipality, mounted a campaign of violence and intimidation against residents in an effort to persuade them to leave their homes. Tactics included raising unsubstantiated criminal charges against a number of the new community representatives (see section VIII and Case 11).

Compensation offers made were inadequate: an apartment at a distant relocation site or a cash payment of less than the market value of their homes.

In January 2009, prior to the forced eviction, approximately 150 families with possession rights continued to refuse to give up their land without fair compensation. These families attempted to engage in negotiations with the company and municipality for an improved compensation offer.

However, on 24 January, the Municipality unilaterally broke off negotiations and forcibly evicted the community, including 335 renter and market vendor families who lived at the site<sup>22</sup>. In the early hours of the morning, approximately 300 armed police and military police, equipped with tear gas, rubber bullets, and a water cannon, moved into the community. An estimated 400 to 600 civilian 'breakers' hired by the company tore down residents' homes without allowing residents time to gather their belongings. At least 18 people, both residents and NGO workers, were injured in attacks by workers and police. Heavy machinery including bulldozers quickly demolished houses and property without regard for the safety of those present.

Most evicted families now live at or next to the Damnak Trayoung relocation site approximately 20km from their former homes. Approximately 115 households which could show proof of legal possession of their Dey Krahom homes were given single room apartments at the site. Access to water, sanitation and facilities such as schools is woefully inadequate at Damnak Trayoung. Many of the children have been forced to stop attending school altogether because of a lack of local schooling facilities and the remote location of the site from their former schools. The distance from former jobs and small businesses in central Phnom Penh has hampered livelihood opportunities of most, if not all, relocated families. Titles have not been issued to households at the relocation site. Approximately 350 other families have been made homeless, with most living in a makeshift camp beside the relocation site – without proper shelter, food, water, or basic sanitation.

## II. Legislative and Policy Framework on Evictions

Despite the Government's claims in the State Party Report, no comprehensive legal framework on evictions, compensation and resettlement exists to protect people in Cambodia from forced eviction.<sup>23</sup> The Cambodian Constitution and the 2001 Land Law both require fair and just compensation to be paid in advance for land expropriation which can only occur in the public interest.<sup>24</sup> The Land Law also requires the issuance of a court order prior to an eviction in the case of a private land dispute.<sup>25</sup> However, laws and regulations setting out the rules and procedures to govern land expropriation, the definition of 'public interest,' the valuation and payment of compensation and conditions of resettlement are absent. Cambodia urgently needs such a legal framework, which is compliant with the obligations to which it is legally bound under the Covenant.

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<sup>21</sup> Land Law 2001, Article 66.

<sup>22</sup> According to a humanitarian needs assessment conducted jointly by Caritas, Samaritans Purse, and LICADHO at the relocation site on 25 January 2009.

<sup>23</sup> Cambodia State Party Report, 10 November 2008, paragraph 513.

<sup>24</sup> The Constitution of the Kingdom of Cambodia 1993 (as amended on 8 March, 199), Article 44; Land Law 2001, Article 5.

<sup>25</sup> Land Law 2001, Article 35.

In December 2004, the Asia Development Bank (ADB) entered into an agreement with the Ministry of Economics and Finance (MEF) to provide technical assistance for the drafting of the Sub-Decree on Land and Property Acquisition and Addressing Socio-Economic Impacts Caused by State Development Projects.<sup>26</sup> The aim was to create a regulatory framework for resettlement caused by State development projects that met international standards.<sup>27</sup> The first two drafts of the sub decree were released in May and November 2007, respectively. Both of these drafts fall far short of international human rights standards, as well as the standards of the ADB's own Resettlement Policy.

Despite a commitment to proper consultation processes in the technical assistance agreement between the ADB and MEF, there have been significant obstacles to carrying out thorough consultations with civil society, in particular inadequate time periods for submissions to be made.

As of March 2009, the MEF had not yet released the third draft of the sub decree and has stated its intention not do so until it is sent to the Council of Ministers. It thus appears that further consultations on the sub decree have been ruled out by the MEF. The ADB has closed the project, despite the fact that the sub decree is not yet promulgated.

The MEF is also currently preparing a draft Law on Expropriation. It is unclear if any non-government stakeholders will be given the opportunity to provide comments on the law prior to adoption. In the event of any inconsistencies between the law and the sub decree, the law would override provisions of the sub decree.

Legal protections that do currently exist, such as those in the Land Law, are frequently ignored by authorities and courts alike. Therefore, in addition to the enactment of a comprehensive legal and regulatory framework on evictions, transparent monitoring mechanisms must be established or fortified to ensure implementation and accountability under the law.

A number of INGOs, including Amnesty International, COHRE, and FIDH, have called for a moratorium on evictions in Cambodia until the necessary legal and institutional mechanisms are in place to ensure that evictions are carried out in accordance with international human rights standards.

A moratorium on relocation and evictions was also recommended in the final draft National Housing Policy, which was developed through a consultative process by the Ministry of Land Management, Urban Planning and Construction in 2003. The draft policy recommended various options for ensuring medium and long-term tenure security and improving housing conditions for urban poor residents living in different categories of informal settlements. The moratorium on evictions was recommended to provide short-term security of tenure to the residents of all informal settlements, so that each could be classified according to the law and its suitability for upgrading, land-sharing and long-term tenure security options. At the time, the draft policy noted that the Municipality of Phnom Penh had indicated it had no plans to remove any existing settlements.

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<sup>26</sup> ADB, *Technical Assistance to the Kingdom of Cambodia for Enhancing the Resettlement Legal Framework and Institutional Capacity*, TAR; CAM 4490, December 2004.

<sup>27</sup> ADB, *Technical Assistance to the Kingdom of Cambodia for Enhancing the Resettlement Legal Framework and Institutional Capacity*, TAR; CAM 4490, December 2004, page 7.

However, the draft National Housing Policy has not been further acted upon, purportedly awaiting the completion of three pilot projects which have only just begun. The many positive recommendations and policy tools for protecting and fulfilling the right to adequate housing in Cambodia have not been adopted, and the result has been a severe deterioration in the tenure security situation of the urban poor and the forced eviction of tens of thousands of city-dwellers.

The Ministry of Land Management, Urban Planning and Construction has pledged to draft a new Housing Policy as one of the joint monitoring indicators (JMIs) agreed upon with development partners. However, Ministry staff have expressed an intention to ‘expand’ the 2003 draft so that the new policy would address issues faced by the middle and upper income households. Ministry staff also stated that they envisaged the new policy as focusing on microcredit and improving housing conditions for the poor rather than legal security of tenure.<sup>28</sup>

The Government’s 2003 commitment to upgrading urban poor settlements and ensuring their tenure security, referred to in the State Party Report<sup>29</sup> appears to have been abandoned in the face of rapid urban development spurred by an influx of foreign investment. In its report, the Government states that four sites have been chosen for land-sharing projects: Dey Krahom Area, Borei Keila Area, Train Station-A and Train Station-B. While these urban poor areas were indeed designated in 2003 as social land concessions, with plans to improve housing conditions through land-sharing projects, the Government failed to mention in its Report what has become of these projects since 2003.

Rather than providing on-site upgrading and tenure security, three out of four of the areas were sold or leased to private companies for commercial development with local residents forcibly evicted and/or resettled to peri-urban areas (see, for example, Case 4: Dey Krahom). As of April 2009, remaining residents of the Train Station A and B communities have received “final eviction notices.” As in the case of Dey Krahom, three community leaders have been convicted on spurious criminal charges because they have advocated for fair compensation.

Of the four urban poor communities which were supposed to benefit from onsite upgrading and tenure security through land-sharing in 2003, only the Borei Keila land-sharing project has gone forward. While this was a positive development in some respects, namely because long-term renters were among the beneficiaries, the Borei Keila land-sharing project was marred by corruption and poor planning. Scores of families have been left “off the list” to receive housing and hundreds of families live in deplorable temporary shelters on the site’s construction zone as they wait for their flats to be constructed.

### **III. Absence of Legal Security of Tenure: Obstacles to Accessing Title for Households with Possession Rights**

Possession rights are a key element of the 2001 Land Law and, in the absence of widespread titling, are the legal basis for land tenure security for the majority of households in Cambodia. According to the law, possession rights can be converted to

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<sup>28</sup> Comments by Ministry staff at the Technical Working Group on Land meeting, NGO Forum, 23 February 2009.

<sup>29</sup> Cambodia State Party Report, 10 November 2008, paragraph 537.

full ownership rights as they entitle households to submit an application for registration and title. However, the government has repeatedly refused to grant title to households and/or communities with valid possession rights, and has failed to provide any clear means by which to determine the validity of possession rights, thus effectively rendering these rights meaningless for many vulnerable households.

During the period of the Democratic Kampuchea (Khmer Rouge) regime (1975-1979), all private ownership of land was abolished and documentation was destroyed. From 1979, the Vietnamese-backed regime maintained collectivised land until the mid 1980s. In 1989, formal private ownership of land was introduced.<sup>30</sup>

Following the 1991 Paris Peace Agreements and the UN administered national elections, a free-market economy was introduced. The 1992 Land Law first introduced the concept of legal possession.<sup>31</sup> Legal recognition of possession rights was updated by the 2001 Land Law.<sup>32</sup> According to this law, anyone who settled on, or began using their land at any time before the 2001 Land Law was passed, is a legal possessor as long as they meet the five conditions set out in the Land Law. These five conditions are that the possession must be continuous, peaceful, in good faith, unambiguous and known to the public. In addition, at the time that the possession commenced, the land could not have been State public property, privately owned by someone else, indigenous land or monastery land.

Legal possessors have the right to request a title of ownership.<sup>33</sup> If these conditions are met, the possession constitutes a right *in rem* which means that while the possessor is waiting for the possession to be converted to ownership he/she has the right to live on and use the land, exclude others from the land, and transfer it to others.<sup>34</sup>

The procedure for issuing title to legitimate possessors is in theory straight forward. It can be done through systematic registration, initiated and conducted by the Government, or through sporadic registration initiated on the application of the land-holder (see section IV). Upon proving that they meet the conditions of legal possession, all legal possessors should be issued with titles.

However, there is repeated evidence of the Government denying land titles to those with valid possession rights. In many instances, households that have strong possession rights claims are unable to engage Government in any dialogue as to the legitimacy of those claims. Instead, households seeking to advance their possession rights claims and obtain title are simply told they have no rights, with no underlying explanation, no process of examining evidence or presenting a justification for the denial of title, or any other mechanism that might allow for a standardized and transparent process.

Possession rights were formalized by the Land Law in recognition of the fact that many millions of Cambodians do not have legal title to their land and as such should provide a means of tenure security to these households until formal titling is conducted in their

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<sup>30</sup> Rhodri Williams, *Title through Possession or Title through Position? Respect for Rights to Housing, Land and Property in the Wake of Cambodia's Transition*, Centre on Housing Rights and Evictions, 2006.

<sup>31</sup> Land Law 1992, Article 74.

<sup>32</sup> Land Law 2001, Chapter 4.

<sup>33</sup> Land Law 2001, Article 31.

<sup>34</sup> Land Law 2001, Article 39.

area. The arbitrary and non-transparent manner in which possession rights are recognized or denied renders this legislative attempt to provide security meaningless.

#### IV. The Titling System: LMAP and LASSP

The multi-donor supported Land Management and Administration Project (LMAP) commenced in June 2002, and is due to end in December 2009 when the majority of the LMAP components will become part of the Land Administration Sub-Sector Program (LASSP). The project was established in order to support the Ministry of Land Management, Urban Planning and Construction (MLMUPC) implement provisions of the 2001 Land Law to convert possession rights into full ownership through registration and the issuance of titles. LMAP's stated goals are to *"reduce poverty, promote social stability, and stimulate economic development."*<sup>35</sup> LMAP has had a number of successes, amongst them: increasing capacity of the MLMUPC, developing a legal framework for land administration, management and dispute resolution, and adjudicating 1.379 million titles<sup>36</sup>.

Despite the fact that this program committed to providing over USD 30 million to increasing tenure security, many observers suggest that the land crisis has actually worsened over the period of its implementation.<sup>37</sup>

It has become apparent to groups working with threatened communities, that LMAP is not providing tenure security to the most vulnerable members of Cambodian society.

LMAP was designed so that areas "likely to be disputed" would not be titled and "informal settlements" would not be titled without the approval of the Government. Communities living in these areas face the greatest risk of being evicted and becoming landless. This is particularly true for urban poor communities (see Cases 1 to 5).

Despite the fact that systematic titling is supposed to be implemented across all project provinces, titling of households in urban areas has been extremely slow, especially in Phnom Penh. For example, LMAP originally aimed to adjudicate 198,000 titles in Phnom Penh by the end of 2007. Figures obtained to the end of 2009 show that 83,655 titles were adjudicated, and less than half of these were actually issued to owners. In light of the fact that possession rights are not being consistently recognized by the Government, many urban communities face imminent forced eviction. It is foreseeable that the problem will be exacerbated in the near future, as the city continues to develop and expand.

For the most part, the beneficiaries of systematic titling have been those living in undisputed rural areas that generally have little appeal to those wishing to acquire the land for development.

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<sup>35</sup> World Bank, Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 million (US\$24.3 million equivalent) to the Kingdom of Cambodia for a Land Management and Administration Project, 29 January 2002, page 2.

<sup>36</sup> Royal Government of Cambodia (2008) Mid-Term Review 2008 on National Strategic Development Plan 2006-2010. 14<sup>th</sup> November 2008.

<sup>37</sup> See for example, UNDP Cambodia, *Land and Human Development in Cambodia*, 2007, page 11: "Land conflict is common, and there are signs that the number of land disputes is actually increasing; both the formal court system and the non-governmental organizations (NGOs) monitoring the land sector report an increase in land disputes since the late 1990s".

Parallel to the systematic registration is a process called sporadic registration, which aimed to fill the gaps left by systematic registration, allowing households with possession rights to apply for title on an ad hoc basis.<sup>38</sup> However, corruption within the sporadic registration system is rampant, and once official fees are accounted for, there have been reports of titles costing more than 25 percent of the value of the land.<sup>39</sup> In addition to the fact that this makes the system financially inaccessible to most Cambodians, several communities threatened with eviction have been turned away or ignored when applying for sporadic registration of their land (see Case 5: Group 78).

With few real incentives for the Government to title at-risk households, the donor-funded titling process is largely impotent in the face of illegal land-grabbing and the forced evictions throughout the country. Furthermore, the very existence of the titling system could be working against the most vulnerable households, who through no fault of their own are denied access to the titling system, while those wealthy enough can easily buy title to that land (see Case 1: Sambok Chap, Case 2: Mittapheap 4 and Case 4: Dey Krahom). Forced evictions are frequently justified by statements that the communities in question “do not have title”, are “illegal” or are “squatters.”<sup>40</sup> In this *dual system* of access, an absence of title is equated with illegal occupation, contrary to the provisions of the Land Law and the spirit of the titling system.

LMAP/LASSP is currently supported, either with funding or technical assistance, by the World Bank, GTZ, CIDA, Finland, Danida and DFID. If donors to this project cannot obtain solid commitments from the government that the issues highlighted will be acted upon and remedied, they should seriously reconsider their support to a project which is implemented in a corrupt manner that excludes the most vulnerable, making its original aims unsuccessful.

In Cases 1 to 4 above, many of the households that were forcibly evicted or are threatened with forced eviction had possession rights to their land and should have been able to access the LMAP titling system to gain title and secure their land tenure. Many households of the Dey Krahom community, for example, had submitted their application for title, shortly before the eviction took place. Case 5 below presents another example of LMAP’s titling system failing to provide security of tenure.

**Case 5: Group 78, Tonle Bassac, Phnom Penh**

Group 78 is a community which in 2006 consisted of 146 families located in the Tonle Bassac commune of Phnom Penh. The community began living in the area in 1983, and has since been recognised by the Phnom Penh Municipality through the issuing of house statistic receipts, property transfer documents, family record books, identity cards, and the witnessing of land sale contracts. Based on this strong case for possession rights, the community applied for land title in 2004, but local officials refused to even sign their applications and took no further action. Subsequently, the community filed a complaint to the Municipality of Phnom Penh which then issued a letter to the Municipal Department of Land Management, Urban Planning and Construction to investigate the situation. However, to date no investigation has occurred.

In June 2006, the community received the first of a series of five eviction notices, and has since been the target of intimidation, threats, and secret dealings designed to internally divide the community. In separate eviction notices, district and municipal authorities have made various claims that the community must be evicted because it is on State public property, it is located

<sup>38</sup> See, the Royal Government of Cambodia in its Interim Strategy of Land Policy Framework (2002), page 16.

<sup>39</sup> Anecdotal evidence from communities as reported to NGOs.

<sup>40</sup> See for example, Bethany Lindsay et al, ‘Experts Dispute Boeng Kak Impact Report,’ The Cambodia Daily, 26 March, 2009, page 1.

along the river, and that it is close to government industries. It further claims it needs the land for a bridge and a road, and for “beautification” of the city. It is now alleged that the land is owned by Sour Srun, a private Cambodian company. Evidence to support this claim has not been provided.

The community has been unable to engage any Government ministry or agency in a substantive discussion of its land rights. The community has offered proposals to the municipal authorities for settlement of the dispute and land sharing, but each of these has been dismissed without discussion.

At present, some 88 families have resisted the pressure and continue their struggle to assert their land rights. Municipal authorities remain determined to evict the community and relocate it to a resettlement site outside the city.

## V. Land Disputes and Dispute Resolution Mechanisms

In 2005, it was estimated that one in fifteen Cambodian households was involved in a land dispute.<sup>41</sup> In light of this high incidence of land disputes and the lack of tenure security set out above, the prompt and just resolution of land disputes is a central part of the realization of land and housing rights in Cambodia. Instead, the resolution of land disputes is marred by corruption, abuse of power and intimidation. There is, furthermore, a lack of clarity about the roles and jurisdiction of the three institutions dealing with land disputes – the courts, the Cadastral Commission, and the National Authority for Land Dispute Resolution (NALDR).

The 2007 Annual Progress Report of the Government states that the Cadastral Commission has resolved 1,246 land dispute cases, involving 6,641 households, relating to a land area of 2,394 hectares (ha).<sup>42</sup> The 2008 Mid-Term Review on the National Strategic Development Plan states that the Cadastral Commission has so far finalised 1,400 cases involving more than 7,500 households, relating to a land area of 2,500 ha.<sup>43</sup> There is no data available about the proportion of the total cases referred to the Cadastral Commission, which these cases represent. Nor is there any information publicly available about the number of land dispute cases currently filed with the court system, or those which have been referred to the NALDR.

Estimates from civil society organisations indicate that the number of disputes is in reality significantly higher. Poor households in the dispute are primarily subsistence farmers, dependent on agricultural production. Therefore, as land under dispute is frequently left idle, long-standing land disputes result in social and financial crises for the households involved.<sup>44</sup>

Data gathered by civil society groups across Cambodia shows that, of land disputes involving five households or more, reported during the first six months of 2008:

- 47% were disputes between grantees of economic land concessions and affected peoples, and 30% of disputes involved State land or large-scale development projects.

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<sup>41</sup> Oxfam GB, 2005.

<sup>42</sup> *National Strategic Development Plan 2006-2011: Annual Progress Report for 2006*, Royal Government of Cambodia, 2007.

<sup>43</sup> Royal Government of Cambodia (2008) Mid-Term Review 2008 on National Strategic Development Plan 2006-2010. 14<sup>th</sup> November 2008.

<sup>44</sup> *Impact of High Food Prices in Cambodia*, Cambodian Development Resource Institute Survey Report sponsored by World Food Programme, NGO Forum on Cambodia, Oxfam America, UNDP, World Bank and FAO, 2008.

- 35% involved irrigated agricultural fields, 22% involved farmlands (non-irrigated) and 25% involved residential land.
- 68% of land disputes involved local authorities, and in 76% of cases the defendant used a combination of corruption, power or deceit to acquire the land under dispute.
- Complainants in 65% of cases reported that the defendants had used threats, violence and intimidation towards them during the case's duration.<sup>45</sup>

In principle, the Cadastral Commission has jurisdiction over disputes over land that is not yet titled, whilst the courts have jurisdiction over titled land (as well as powers to invalidate illegal development contracts).<sup>46</sup> The NALDR purportedly has jurisdiction over cases which are “beyond the jurisdiction” of the Cadastral Commissions.<sup>47</sup> However, according to Cambodian law, there are no cases beyond the jurisdiction of the Cadastral Commissions or courts.<sup>48</sup> The practical result of the creation of the NALDR has been to strip the Cadastral Commissions of its proper jurisdiction, and to refer high profile or controversial cases to the NALDR, which is composed of and controlled by very senior officials. The NALDR operates as a blatantly political entity, and has no established rules or procedures. Meanwhile, courts will often refuse to act in cases relating to illegal developments and land concessions, on the basis that they do not have jurisdiction.

Moreover, there are serious problems with the efficacy and integrity of the courts and Cadastral Commissions. One study found that disputants avoided them because they were seen as “costly, time consuming and biased toward the rich.”<sup>49</sup> Parties to court proceedings are reported to make ‘informal payments’ in 68 to 100% of cases, and parties to cadastral commission proceedings make such payments in 22% of cases.<sup>50</sup> The Cadastral Commissions are reported to have low capacity to resolve cases in a timely manner, and difficulty resolving land cases involving powerful people.<sup>51</sup>

## VI. Displacement and other Adverse Impacts Resulting from Economic Land Concessions and Mining

In recent years Cambodia has experienced an increase in forced evictions, involuntary resettlement and alienation from land and forest resources, as a result of the increased granting of land concessions to private companies. While a lack of transparency makes credible data difficult to ascertain (see below), even official figures, show an upward trend in concessions granted in recent years, with economic land concessions (ELCs)

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<sup>45</sup> *Basic Information on the Situation of Land Disputes in Cambodia January to June 2008*, NGO Forum on Cambodia Land Information Centre, July 2008.

<sup>46</sup> Sub-decree 47, August 21, 2002, and *Prakas on the Guidelines and Procedures of the Cadastral Commission*, #112 DNS/BrK, Article 3.

<sup>47</sup> Royal Decree NS/RTK/0206/697, Article 3.

<sup>48</sup> Sub-decree 47, August 21, 2002, and *Prakas on the Guidelines and Procedures of the Cadastral Commission*, #112 DNS/BrK, Article 3.

<sup>49</sup> *Justice for the Poor? An Exploratory Study of Collective Grievances over Land Local Governance in Cambodia*, Centre for Advanced Study, World Bank Phnom Penh, October 2006.

<sup>50</sup> *Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution*, World Bank, October 2006.

<sup>51</sup> *Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution*, World Bank, October 2006.

granted over 6,100 ha in 2004, 76,960 ha in 2005 and 217,503 ha in 2006.<sup>52</sup> The increase in ELCs has occurred with inadequate implementation of existing regulations, particularly the sub decrees on State Land Management and Economic Land Concessions, both by Government and the concessionaires. Even in cases in which the Government and concessionaires/licensees have complied with the legal and regulatory framework, the framework itself has proven inadequate to address the social and environmental consequences, including the displacement of local communities from homes and farming land and the destruction of other local sources of food.

Cambodian law enables the Government to grant up to 10,000 ha of land to private individuals and companies through ELCs for agricultural and industrial-agricultural exploitation.<sup>53</sup> These concessions have been granted for a range of purposes including cultivation of crops, raising animals and construction of factory or processing plant for the processing of these materials. Mining licenses are not restricted to 10,000 ha but mining concessions may be.<sup>54</sup> Mining licences have been issued primarily for bauxite, iron, gold, and chromium extraction. Article 59 of the Land Law, restricts the granting of concession to 10,000ha and under for a single company, many concessions are however, reported to be significantly larger than 10,000 ha and in some cases two adjacent 10,000 ha ELCs are granted to the same individual or company.

Land concessions can only be granted over land classified as State private property.<sup>55</sup> However, the absence of a functioning system of State land management, including the transparent demarcation of State land, is allowing for the ad hoc granting of concessions affecting land that should be properly classified as State public property, privately-owned property or indigenous communal property. State land management is a key component of LMAP, but has seen very little progress (see Section IV). As long as this lack of implementation and transparency in State land management continues, this land is effectively unprotected from concession grants, as are its natural resources and the people living on the land.

There is also a lack of transparency in relation to the granting of concessions. The Ministry of Agriculture, Forestry and Fisheries (MAFF) has responsibility for monitoring compliance with the 2005 sub decree on ELCs. The MAFF public log-book states that 65 ELC companies have been allocated concessions totalling 895,176 ha (15% of Cambodia's arable land).<sup>56</sup> Provincial NGOs report the number of operational ELCs (those with and without contract documentation) to be in reality much higher. In Monduliri province, for example, documents released by local government agencies

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<sup>52</sup> Ministry of Agriculture, Forestry and Fisheries 31 December 2006, quoted in UNOHCHR, *Economic Land Concessions in Cambodia: a human rights perspective*. United Nations Cambodia Office of the High Commissioner for Human Rights, 2007.

<sup>53</sup> Land Law 2002, Article 59, and Sub-decree on Economic Land Concessions 2005, Article 2

<sup>54</sup> The Law on the Management and Exploitation of Mineral Resources 2001 governs mining licences. It is not clear what law governs mining concessions, or even if they are different to mining licences. The Council for the Development of Cambodia suggests they are two different things, stating that 'Use, Development and Exploitation concessions' include mining concessions to a maximum size of 10,000 ha. See Council for the Development of Cambodia, Cambodian Investment Board, [http://www.cambodiainvestment.gov.kh/?q=ii\\_land](http://www.cambodiainvestment.gov.kh/?q=ii_land), February 26<sup>th</sup>, 2009. On the other hand, Mr Yos Mony Rath, Director of Mineral Resources Department of the Ministry of Industry, Mine and Energy (MIME) is reported to have said they were the same in 2006 "A mining concession is just issuing the licenses to the large areas for conducting the exploration", see <http://www.twgfe.org/Docs/Minutes/Minutes%20of%20the%209th%20TWG-F&E%20Meeting.pdf> viewed on 13 March 2009.

<sup>55</sup> Sub-decree on Economic Land Concessions 2005, Article 4.

<sup>56</sup> <http://www.elc.maff.gov.kh/overview.html> 26 February, 2009.

state that 24 ELCs are pending or operational in a total of 126,700 ha, despite only two ELCs being listed on the MAFF public log-book – one of which has been cancelled.<sup>57</sup>

The Ministry of Industry, Mining and Energy (MIME) is responsible for regulating mining operations. Of key concern is the requirement in the Law on Management and Exploitation of Mineral Resources 2001 that all applications, reports, plans and notices concerning exploration and exploitation remain confidential.<sup>58</sup> As a result, almost no information relating to the number, size and status of mining licenses is publicly available. NGOs estimate the number of concessionaires with current mining licenses to range from 67 to 114, of which 21 were allocated in 2008 alone.<sup>59</sup>

Evidence of disregard for the legal and regulatory framework for ELCs and mining licenses/concessions by both responsible government agencies and the concessionaires includes the following:

- Concessions are issued before the land has been registered and classified as State private property therefore concessions frequently displace lawful possessors;<sup>60</sup>
- At least 9 ELCs are over the 10,000 ha legal limit; MAFF reported in October 2008 that three companies Pheaphimex (315,028 ha in Pursat and Kampong Chhnang Provinces), Greensea (100,852 ha in Stung Treng Province) and Cambodia Haining (23,000 ha in Kampong Speu Province) are refusing to negotiate a reduction in size.<sup>61</sup>
- Despite legal requirements, for the majority of ELCs, local communities are not consulted before the proposed ELC is granted, no Environmental and Social Impact Assessments are undertaken, nor have any solutions been agreed upon for compensation and resettlement issues.<sup>62</sup>
- The legal framework for the granting, use and administration of mining concessions is not clear, nor is the relationship between concessions and the parallel issuance of mining licenses. Mining concessions so far have been granted during or before the exploration stage, before extraction agreements have been signed and a significant number are larger than 10,000 ha.<sup>63</sup>
- Despite adoption of the Protected Area Law in January 2008, the Government recently stated that Protected Areas are not inviolable.<sup>64</sup> NGOs estimate that half of Cambodia's areas of special environmental protection<sup>65</sup> have had mining licenses granted within their boundaries and evidence suggests that the Ministry of

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<sup>57</sup> <http://www.elc.maff.gov.kh/overview.html> 26 February, 2009. <http://www.elc.maff.gov.kh/overview.html> 26 February, 2009. NGO Forum *NGO Position Papers on Cambodia's Development in 2007-2008: Monitoring the implementation of 2007 CDCF Joint Monitoring Indicators and the National Strategic Development Plan 2006-2010*. Phnom Penh: The NGO Forum on Cambodia, 2008

<sup>58</sup> Law on Management and Exploitation of Mineral Resources 2001, Article 20.

<sup>59</sup> NGO Forum *NGO Position Papers on Cambodia's Development in 2007-2008: Monitoring the implementation of 2007 CDCF Joint Monitoring Indicators and the National Strategic Development Plan 2006-2010*. Phnom Penh: The NGO Forum on Cambodia, 2008; Global Witness *Country for Sale: How Cambodia's elite has captured the country's extractive industries*. London: Global Witness, 2009. [http://www.globalwitness.org/media\\_library\\_detail.php/713/en/country\\_for\\_sale](http://www.globalwitness.org/media_library_detail.php/713/en/country_for_sale)

<sup>60</sup> Sub-decree on Economic Land Concessions 2005, Article 4.

<sup>61</sup> Technical Working Group on Forest and Environment *Joint Monitoring Indicator Reporting (2007-2008): summary of progress and remaining actions*. Phnom Penh: MAFF, October 2008.

<sup>62</sup> Sub-Decree on Economic Land Concessions 2005, Articles 4,13 and 35.

<sup>63</sup> NGO Forum, *NGO Position Papers on Cambodia's Development in 2007-2008: Monitoring the implementation of 2007 CDCF Joint Monitoring Indicators and the National Strategic Development Plan 2006-2010*. Phnom Penh: The NGO Forum on Cambodia, 2008.

<sup>64</sup> Douglas Gillison, "Conservation Areas not Inviolable, says Minister", *The Cambodia Daily*, 14 September 2007, p1-2.

<sup>65</sup> Both Protected Areas as defined by the Protected Area Law 2008 and Protected Forests as defined by the Forestry Law 2002.

Environment was not consulted prior to the granting of licenses in two Protected Areas.<sup>66</sup>

The social, economic and ecological impacts of ELCs and mining concessions have not been systematically researched country-wide. However, ad-hoc studies of ELCs and mining concessions and verbal reports from affected communities indicate extremely serious negative impacts on villages and eco-systems in and around the concession areas. In addition to displacement of communities from land subject to ELCs, verbal reports from directly affected communities point to an alarming erosion of the enjoyment of the right to food as a result of forced evictions, reduced access to food sources and destruction of conditions/factors needed to ensure food security. A Food Security Atlas launched in February 2008 by the World Food Programme shows high levels of hunger and malnutrition in the country, especially in areas plagued by land-grabbing, economic land concessions and extractive industry.<sup>67</sup>

In many areas, communities have been evicted to make way for plantations and companies have bulldozed the areas of natural resources on which communities depend for their livelihoods. Even where communities are permitted to remain in their villages, they have been forcibly deprived of access to agricultural and grazing lands, and forests that they have used for several years (if not generations) for collecting food and non-timber forest products. Communities adjacent to many concession areas also report that companies have expanded the areas claimed in their contracts and encroached on village lands and commons, further threatening their livelihood and food security.<sup>68</sup>

Case 6 below summarises studies carried out on the social and economic impacts of a 4,359 ha concession granted in 2001 in Kampong Thom province.<sup>69</sup>

**Case 6: Tumring Commune, Kampong Thom Province – Impact of a Concession**

In 2001, the Chup Rubber Company was granted a concession of 6,100 ha in Tumring Commune in Kampong Thom Province. 4,359 ha was for a rubber plantation, and 1,841 ha was for villagers to grow smallholder rubber. At the time of the concession, it was estimated that there were 2000 people living in the affected commune.<sup>70</sup>

Prior to the grant of the concession, villagers grew rice, tapped resin trees and collected other forest products. They practised shifting cultivation, moving their rice fields every three to seven years to allow land fertility to regenerate. As a result of the land concession, they were no longer able to practice shifting cultivation and their access to the forest was reduced.

In compensation for their land, villagers were supposed to receive a grant of 3 ha per household and monetary compensation. However, of 663 original families still registered in the commune in 2005,<sup>71</sup> around 20 to 30 families reported receiving no compensation<sup>72</sup> and around 56 families reported receiving no land.<sup>73</sup> Those who received land were not given land titles. Around 40% of

<sup>66</sup> NGO Forum, *NGO Position Papers on Cambodia's Development in 2007-2008: Monitoring the implementation of 2007 CDCF Joint Monitoring Indicators and the National Strategic Development Plan 2006-2010*. Phnom Penh: The NGO Forum on Cambodia, 2008; Global Witness *Country for Sale: How Cambodia's elite has captured the country's extractive industries*. London: Global Witness, 2009.

<sup>67</sup> <http://www.methodfinder.com/wfpAtlas/index.php?page=01&lang=e>, 16 March, 2009.

<sup>68</sup> Personal interviews by Shalmali Guttal with village residents in Stung Treng and Kratie provinces, November, 2005.

<sup>69</sup> NGO Forum 2005, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005; Cambodian Development Research Institute, forthcoming Annual Development Review article on Rubber Plantations 2009.

<sup>70</sup> NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005, Section 1.1.

<sup>71</sup> The NGO Forum reports that there were 722 families registered in the Tumring Commune in 2005, but 59 were outsiders who had migrated to work on the rubber plantation. NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005.

<sup>72</sup> NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005, Section 3.2.1

<sup>73</sup> NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005, Section 3.2.2.

families were reported to have sold their land because of declining land fertility, poverty, or pressure from the rubber company.<sup>74</sup>

Prior to the creation of the rubber plantation, villagers reported being able to grow enough rice for the whole year. By 2005, NGO Forum found that they were suffering significant annual rice-gaps. Additionally, villagers had sold their livestock because of the risk of a high fine from the company if the livestock strayed onto the rubber company's land.

In follow-up research in 2007, CDRI<sup>75</sup> found that people's main source of household income changed significantly as a result of the concession. As the main source of income, rice production dropped from 31% to 19%, and forest products dropped from 28% to 3%. Instead reliance on wage labour went from 8% to 26%.<sup>76</sup> 77% of surveyed people stated they had insufficient income after the creation of the concession.<sup>77</sup> People were generally unable to generate income from smallholder rubber as planned because most people needed to grow food for consumption and could not wait six to seven years for the rubber trees to start producing an income source.

Some families moved into the commune to seek employment at the rubber plantation, and some families moved out in search of new land or livelihoods.

The NGO Forum report concluded that the concession affected food security, undermined people's traditional livelihoods, and increased displacement of people.<sup>78</sup>

## VII. Land rights of Indigenous Peoples

**Please refer to the separate annex on The Rights of the Indigenous Peoples in Cambodia for more details.**

According to the 1998 census, indigenous peoples are estimated to constitute 0.9% of the Cambodian population or 102 000 people,<sup>79</sup> and to constitute many diverse groups, including the Jarai, Brao, Kreung, Phnong and Poar peoples. Approximately half of the indigenous population is estimated to reside in the north-eastern provinces of Monduliri and Ratanakiri. As in the rest of Cambodia, the Government has promoted industrial models of development and extensive natural resource extraction in these areas, rather than the preservation of indigenous communities' way of life and use of their lands. Within this context, coupled with the lack of a comprehensive legal framework to protect indigenous land rights, and a lack of implementation of protections that do exist, indigenous communities are facing severe tenure insecurity and displacement from their homes and land.

The Land Law 2001 recognises collective ownership rights of indigenous communities over their land, including all of the rights and protections of ownership enjoyed by private owners.<sup>80</sup> The Land Law also envisages the development of a comprehensive legal framework to govern relevant processes, rights and protections. However, the

<sup>74</sup> NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005, Section 3.2.3.

<sup>75</sup> Cambodian Development Research Institute, forthcoming Annual Development Review article on Rubber Plantations 2009.

<sup>76</sup> Cambodian Development Research Institute, forthcoming Annual Development Review article on Rubber Plantations 2009.

<sup>77</sup> Cambodian Development Research Institute, forthcoming Annual Development Review article on Rubber Plantations 2009.

<sup>78</sup> NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005, Section 3.1.2

<sup>79</sup> Cambodian Population Census 1998, quoted in NGO Forum, *Indigenous Peoples in Cambodia*, 2006, [http://www.ngoforum.org.kh/Land/Docs/Indigenous/INDIGENOUS%20PEOPLES%20IN%20CAMBODIA\\_fin al\(3\).pdf](http://www.ngoforum.org.kh/Land/Docs/Indigenous/INDIGENOUS%20PEOPLES%20IN%20CAMBODIA_fin al(3).pdf), accessed on 6/3/09.

<sup>80</sup> Land Law 2001, Article 26

following points exemplify the lack of implementation of existing protections and the absence of necessary laws and regulations:

- Article 23 of the Land Law refers to a law on communities to determine communities' 'legal status', but such a law is yet to be enacted.
- The legal and policy framework for the registration of collective titles for indigenous communities is yet to be finalised. Moreover, the draft Sub-Decree on Procedures of Registration of Land of Indigenous Communities is inadequate. For example, rather than the community deciding whether an individual can excise a piece of individual land from the collective holding, the draft sub decree in article 11 gives the individual the right to excise a portion of land, potentially allowing for the rapid disintegration of collective holdings of land.
- Article 23 and Title VI of the Land Law state that the boundaries of indigenous land will be determined over time through a process of systematic land mapping and land registration.<sup>81</sup> NGOs could only find evidence of this process occurring in three indigenous villages so far.<sup>82</sup>
- Article 23 of the Land Law states that indigenous communities shall continue to manage their land. As such, indigenous land should not be expropriated prior to cadastral titling and mapping.<sup>83</sup> However, there have been multiple examples of indigenous land being granted to other parties as economic land concessions, mining concessions or otherwise expropriated.
- The Government has failed to provide adequate interim protection for indigenous land prior to the creation of a comprehensive legal framework.<sup>84</sup> Expropriation of indigenous land has continued despite ad hoc steps such as a letter issued by Mondulhiri Provincial Governor on 7th March 2008 and a deikas issued by the Ratanakiri Governor in March 2005 and January 2006, stating that village, commune and district officials must not endorse land sales in indigenous community areas.<sup>85</sup>

It is estimated that 21% (282,700 ha) of six areas under environmental protection in Mondulhiri and Ratanakiri has been allocated to mining concessions and since 2007, a further 7% (98,239 ha) has been allocated as ELCs.<sup>86</sup> In addition to the land alienation and displacement these have caused, concessions have been reported to have desecrated and destroyed burial grounds and spirit forests of indigenous peoples.<sup>87</sup> Numerous indigenous people who have attempted to protect their rights have been harassed and

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<sup>81</sup> Land Law 2001, Article 25 and Title VI

<sup>82</sup> *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2*, NGO Forum on Cambodia, November 2008

<sup>83</sup> Land Law 2001, Article 23 states that prior to being registered as indigenous communities, groups shall continue to manage their property according to their traditional customs. This is interpreted to mean that indigenous land cannot be expropriated prior to registration, NGO Forum, *The Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2*, November 2008.

<sup>84</sup> NGO Forum, *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2*, November 2008.

<sup>85</sup> NGO Forum, *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2*, November 2008.

<sup>86</sup> NGO Forum, *NGO Position Papers on Cambodia's Development in 2007-2008: Monitoring the implementation of 2007 CDCE Joint Monitoring Indicators and the National Strategic Development Plan 2006-2010*. Phnom Penh, 2008.

<sup>87</sup> UNOHCHR, *Economic Land Concessions in Cambodia: a human rights perspective*. United Nations Cambodia Office of the High Commissioner for Human Rights, 2007.

intimidated. A number of people have also been arrested, in some instances accused of trespassing their own lands, illegally acquired by companies and powerful individuals.

**Case 7: Economic Land Concession in Snoul District, Kratie Province**

On 27 May 2008, an ELC was given in Snoul District, Kratie Province over indigenous peoples' land. This ELC was granted without meaningful public consultation and is therefore in breach of the sub decree on ELCs. On 5<sup>th</sup> September community members staged a protest to halt the clearing of their lands. A week later community representatives involved in the protest were summoned to court by the prosecutor after the company filed dubious criminal complaints against the representatives for infringements against private ownership, destruction of private property and robbery.

The Land Law 2001 provides for the disciplining of government officials if they are involved in improper land seizures, or if an infringement against the land rights of an indigenous community occurs in the government officials' area of operation.<sup>88</sup> Moreover the Organic Law 2008 provides that a government official or elected counselor can be disciplined when they illegally confiscate private assets or natural resources or fail to prevent others from doing so.<sup>89</sup> These provisions have not been activated to protect indigenous communities' lands.

In cases in which negotiations over land are carried out with indigenous communities, they are not carried out in an atmosphere of 'trust and honesty' as required by Contract Law.<sup>90</sup> Communities are frequently uninformed or misinformed and then intimidated and pressured into selling their land because they fear that if they do not sell, they will be forcibly evicted. Land deals are often done with individuals within communities, violating the communal nature of the land ownership.

**Case 8: Kong Yu and Kong Thom in Ratanakiri Province**

Since 2004 businesswoman Keat Kolney (sister of Minister of Finance and Economics, Keat Chhon and wife of Ministry of Land Management Secretary of State, Chhan Saphan) has been involved in a dispute over purported land sale contracts for 450 ha of land with Jarai villagers in Kong Yu and Kong Thom. Lawyers for Community Legal Education Centre (CLEC) and Legal Aid Cambodia (LAC) argue that the villagers had been tricked and pressured into signing land sale contracts, and in any case the disputed land is indigenous community land under the Land Law and thus cannot be sold before it is registered as such.

A complaint by the villagers' was lodged in the Ratanakiri Provincial Court on 23 January 2007. However, since the dispute began no government or judicial authority has recognized that Kong Yu villagers are an "indigenous community."<sup>91</sup> This refusal of recognition is a common method used by authorities to avoid the legal protections provided to indigenous communities.

According to a Provincial Order, the disputed land contains shifting agricultural land, multi-usage forest, guardian forest and protected forest, evidencing that this is indigenous community land.<sup>92</sup> However no governmental or judicial authority has since recognized or tried to enforce this Provincial Order. Indigenous communities are entitled to manage their community land before

<sup>88</sup> Land Law 2001, Articles 261-266

<sup>89</sup> Organic Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans 2008, Articles 47-49

<sup>90</sup> Decree 38D Referring to Contract and Other Liabilities 1988, Article 2.

<sup>91</sup> The Kong Yu and Kong Thom villagers are an indigenous community according to the independent report Dr. Meas Nee, *Cultural Expert Opinion Report On Kong Yu and Kong Thom Villages, Pate Commune, O Ya Dav District, Ratanakiri Province*, filed in Court by CLEC and LAC lawyers on 15 January 2008.

<sup>92</sup> The Pate Commune Natural Resources Management map was produced by the Provincial Department of Environment and is contained in the Provincial Order on Community Based Natural Resources Management, Pate Commune, O'Yadau District, Ratanakiri dated 13 December 2004.

its registration in accordance with traditional custom under Article 23 of the Land Law and this includes State public land such as forests. However, there has been no State land classification in the disputed area.

On 23 October 2008, Keat Kolney's employees began clearing villagers' farms and a burial forest located on the disputed land, in breach of her promise to the Court not to clear further land until the dispute had been resolved by the Court. On 28 October the Provincial Judge issued an injunction halting the clearing. Keat Kolney ignored the order and continued to clear the land.

Many indigenous communities traditionally own and use forest areas. Although the Land Law declares that all forests are State public property,<sup>93</sup> it protects the rights of indigenous communities to those parts that were used for traditional agriculture, including cultivated and fallow fields within shifting cultivation systems.<sup>94</sup> Moreover, the Law on Forestry 2002 provides that a grant of a forestry concession or the creation of a protected forest should not interfere with customary user rights.<sup>95</sup> However, in practice indigenous people have found their access blocked to forests that they traditionally use as sources for food and other basic needs.

### VIII. Land and Housing Rights Defenders

In its State Report, the Government claims that it has supported all NGOs and Associations in respecting the 'rights and freedom of the people' and 'there is no reason for the Royal Government to compress and constrain the citizens' rights and freedom'.<sup>96</sup>

In stark contradiction to this claim, in recent years there has been a reduction in the democratic space available to oppose land-grabbing and forced evictions. While attacks and threats against human rights defenders in Cambodia are generally increasing, intimidation and persecution of land and housing rights activists now constitutes the largest category of such attacks documented by civil society organisations.

The attacks documented range from verbal threats and intimidation, to unlawful imprisonment and physical assault. One of the most serious recent examples is detailed in Case Study 10: Kratie Province.

#### **Case 9: Kratie Province - Intimidation of community forestry leaders**

Two indigenous community forestry leaders in Kratie Province were victims of death threats and attempted murder in March 2008 after confiscating logging equipment being used illegally on communal land. One was struck with a bamboo pole as he rode a motorcycle after meeting with NGOs in the provincial town. He was knocked unconscious and sustained injuries that are still affecting him a year later. The other leader was the subject of three separate attacks: he was assaulted with a knife as he walked to the bathroom in the middle of the night, a sword was thrust up through the floor of his family home as they slept, and the working house he maintained in the field was burnt down. Both men had previously received verbal threats from known individuals not to continue their land rights activism. To this day, however, police have failed to conduct serious investigations in these cases, or to identify suspects or make arrests.<sup>97</sup>

Representatives of communities that have fallen victim to land-grabbing in rural Cambodia are increasingly travelling to Phnom Penh in an attempt to raise their concerns

<sup>93</sup> Land Law 2001, Article 15

<sup>94</sup> Land Law 2001, Articles 25 and 26.

<sup>95</sup> Law on Forestry 2002, Articles 15 and 40; Sub-Decree on Community Forestry Management 2003, Article 11.

<sup>96</sup> Cambodia State Party Report, 10 November 2008, paragraph 187.

<sup>97</sup> LICADHO monitoring report (Unpublished).

with the national government – yet instead find themselves confronted by violence and intimidation. For example:

- In March 2007 a group of villagers from Koh Kong Province walked to the capital to publicise the loss of their land to a wealthy businessman, only to be encircled by trucks and threatened over loudspeakers by municipal authorities that their security “could not be guaranteed.”<sup>98</sup>
- Later in 2007, a group from Svay Rieng Province travelled to Phnom Penh to protest the grabbing of their land by a state-owned rubber company, only to be surrounded by police and gendarmerie officers, violently forced onto buses and sent back to their province. Several activists were beaten, and two taken unconscious to hospital.<sup>99</sup>

One of the most worrying emerging trends involves the abuse of the Cambodian court system to press unwarranted criminal charges against land and housing rights defenders.

#### **Case 10: Dey Krahom, Phnom Penh**

As described in Case 4, the Dey Krahom community fought to protect its land from threats of eviction by the Municipality of Phnom Penh and private company 7NG, from early 2005, until the forced eviction was carried out in January 2009.

In an apparent attempt to put pressure on community activists, 7NG – in concert with local authorities – filed a series of unwarranted criminal complaints against representatives and other members of the community between 2005 and the eviction.

Despite a lack of evidence to support these complaints, and numerous breaches of Cambodian criminal procedure, 21 individuals from Dey Krahom – including ten community representatives – were charged by the Phnom Penh municipal court with various crimes. Two community leaders have been imprisoned.

In the most recent development, three activists who were amongst the last to hold out against 7NG were sentenced at the Phnom Penh court in February 2009 to 18 months in prison, suspended, on unsubstantiated charges of assault and destruction of the company’s property. They were released on a five year probation and ordered to pay collectively a total of two million riel (around USD 500). The convictions relied on statements from three witnesses linked to 7NG which were exposed under cross-examination as having been fabricated, and disregarded consistent and credible evidence from seven witnesses who appeared for the defense.

Similar tactics are commonly used to attack land rights defenders throughout Cambodia. The numerous recent examples include:

- In May 2007, four representatives of 30 families were arrested and charged with violation of private property in Kep municipality, during a violent eviction that had taken place in 2004.
- The same month, two representatives of 50 families in a Prey Veng province land dispute were arrested on unwarranted charges of rice robbery.<sup>100</sup>

<sup>98</sup> LICADHO, *Attacks & Threats Against Human Rights Defenders in Cambodia 2007*, Briefing Paper, August 2008.

<sup>99</sup> LICADHO, *Unlawful Abuse Of Land Protesters In Phnom Penh, Attacks & Threats Against Human Rights Defenders in Cambodia 2007*, Media Statement, October 17, 2007 Briefing Paper, August 2008.

<sup>100</sup> LICADHO, *Unlawful Abuse Of Land Protesters In Phnom Penh, Attacks & Threats Against Human Rights Defenders in Cambodia 2007*, Media Statement, October 17, 2007 Briefing Paper, August 2008..

- Also in May 2007, a representative of 3,170 families engaged in a land dispute in Battambang province was sentenced to nine months imprisonment for property destruction. Despite having already served the term in pre-trial detention, he remained in prison pending another trial in August that year, where he was sentenced to a further three months imprisonment on similar charges. Despite already having served this new sentence, he was kept in prison after the prosecutor appealed the verdict.<sup>101</sup>
- Between March and May 2008, four representatives of a community in Kampot province involved in a land dispute with the Cambodian Khaou Chuly group were arrested and detained in the provincial prison, charged with assault and property offences. Three of their family members were also arrested, and other activists fled the area in fear.<sup>102</sup>
- In October 2008, two representatives of a community in Svay Rieng province involved in a land dispute with the son of a commune chief were arrested after willingly presenting themselves at the provincial court for questioning. The two were charged with damaging private property and placed in pre-trial detention.<sup>103</sup>
- Also in October 2008, four representatives of a community in Siem Reap province involved in a land dispute with the deputy provincial military commander were arrested, again after presenting themselves for questioning at court. All four were charged with damaging private property and placed in pre-trial detention, despite an absence of evidence against them or any proof that the disputed land belongs to the deputy provincial military commander.<sup>104</sup>

Such attacks and threats have not been limited to community representatives, but extended to the lawyers representing them, as discussed in Case 12: Kong Yu and Kong Thom.

#### **Case 11: Kong Yu and Kong Thom, Ratanakiri Province**

As described in Case 8, the indigenous Kong Yu and Kong Thom communities have been engaged in a land dispute with businesswoman Keat Kolney, since 2004.

Ten legal aid lawyers who were acting for the indigenous communities facing eviction were threatened with disbarment and possible criminal charges.

In June 2007, Keat Kolney made a formal complaint to the Cambodian Bar Association naming each of the lawyers and accusing them of inciting the villagers to file wrongful complaints and defame her. The Bar opened an investigation into the conduct of the lawyers, requiring each of them to respond to the accusations.

Two days later, Keat Kolney filed a criminal complaint against the Kong Yu villagers, which also accused their lawyers of incitement - stopping short of directly naming them as suspects in the case, but allowing for the provincial prosecutor to take action as he saw fit. Some of the lawyers were reportedly also the target of personal intimidation, including veiled death threats. By the end of the year, all but two of the lawyers had resigned from their organizations and stopped working on the case.<sup>105</sup>

<sup>101</sup> LICADHO, *Unlawful Abuse Of Land Protesters In Phnom Penh, Attacks & Threats Against Human Rights Defenders in Cambodia 2007*, Media Statement, October 17, 2007 Briefing Paper, August 2008..

<sup>102</sup> Unpublished LICADHO monitoring report

<sup>103</sup> LICADHO, *Courts used as weapon against community representatives*, Media Statement, 29 October 2008

<sup>104</sup> LICADHO, *Courts used as weapon against community representatives*, Media Statement, 29 October 2008

<sup>105</sup> LICADHO, *Attacks & Threats Against Human Rights Defenders in Cambodia 2007*, Briefing Paper, August 2008.

In recent years, civil society organisations have documented numerous cases where a land or housing rights defender was attacked for their activism. In none of these cases have persecutors been prosecuted, impunity remains the norm for the perpetrators of such violations.