



2016 Cambodia Land Disputes Monitoring

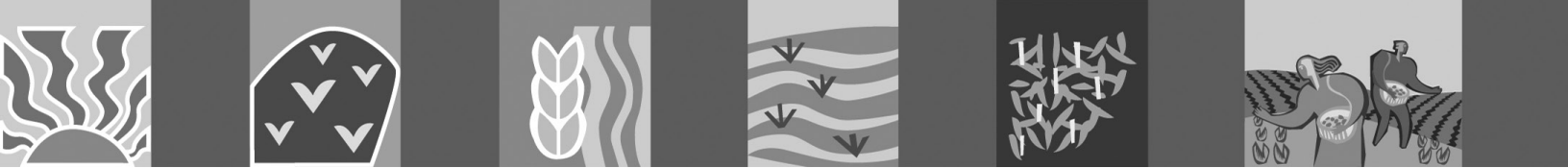
Cham Soeun, Research Fellow, Analyzing Development Issues Centre (ADIC)

Land has played an important role for the majority of Cambodians. With approximately 80 percent of the population living in rural areas and depending on agriculture, land tenure security is critically important. The world crop boom in the late 2000s caused land values to increase rapidly, which attracted international corporations and wealthy people to invest in Cambodian land. As a result, land disputes intensified and affected the livelihood of small-scale landholders, specially those who have no land titles to maintain their resource (CCHR, 2013).

According to Thiel (2010), problems with Cambodian land management became apparent during the 1990s when free market economy was introduced after the 1993 national elections. The research found that the lack of property rights, absence of strong civil society, challenges in land reform, and property patterns were the

root causes of land management problems in the country. It recommended for improving property rights and implementing a taxation system based on land values; to generate revenue to fund titling and land management operations in the country. It further suggested building up community-based environmental governance systems to buttress future land management models.

The legal bidding related to land was set up in the late 1980s, enacted as the Land Law in 1992, and again updated and formally approved for enforcement in 2001. The Land Law 2001 stated the types of land registration, such as Sporadic Land Registration, Systematic Land Title, Social Land Concession and Communal Land Title (ADIC, 2015). Economic Land Concession (ELC) was also included in the Land Law, with procedural guidelines on how it will be granted. The government issued a sub-decree on ELC in



2005 to improve on and ensure the practice of granting such. The stated purpose of ELCs was for agro-industrial development that will improve the livelihood of local communities, as well as contribute to national economic growth. The sub-decree provided concrete information and criteria in applying for ELCs.

But ELCs were already being granted since 1995, even before specific laws and regulations were put in place. A total of six ELCs were granted before Land Law 2001 and 11 ELCs before the sub-decree of 2005; which was quite unusual and too arbitrary given that there was no legal bidding support and clear guidelines. Immediately after the sub-decree, the number of ELCs increased to 14 in 2006 then to 43 in 2011. Furthermore, ELCs were granted by various government agencies

that are not coordinating with each other; such as the Council for Development of Cambodia (CDC), the Ministry of Environment (MOE), the Ministry of Agriculture, Forestry and Fishery (MAFF), Provincial Committees and the other public bodies. It was a severely problematic process and showed the weaknesses and challenges of the system. There was no consistency of law enforcement or the application of the law. There was no systematic or unified monitoring and evaluation procedures, although the sub-decree clearly mentioned that only MAFF is authorized to grant ELCs. The result was a loss of valuable natural resources and the marginalization of vulnerable populations (RACC, 2016). That is the reason that land disputes overlapped with residential, plantation and agriculture lands of local residents. There were many complaints



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submitted by affected people and communities to many agencies – local, international, public and non-state actors – for intervention and resolution.

Land disputes in Cambodia have been raised and espoused by affected communities and covered by local and international media. It has emerged as a major issue that is difficult to resolve. The nature of said disputes is not only between affected communities and companies that have been granted ELCs, but has expanded to communities against rich land speculators, conniving local authorities, and even between local communities. The resolution of these disputes take much time and effort, against multiple parties, and with different measures and approaches. The record of the number of land disputes in Cambodia varies since different institutions claim different figures brought about by different monitoring methods. Most disputes are solved out of the legal and juridical system set by the existing laws and regulations of Cambodia (Hean, 2015).

The objectives of this report were to follow up and monitor the land situation in Cambodia in 2016; to identify progress made, as well as challenges, and to recommend solutions specifically for the

government. As a supplement of this report, findings from previous case studies and research conducted by other parties have been highlighted.

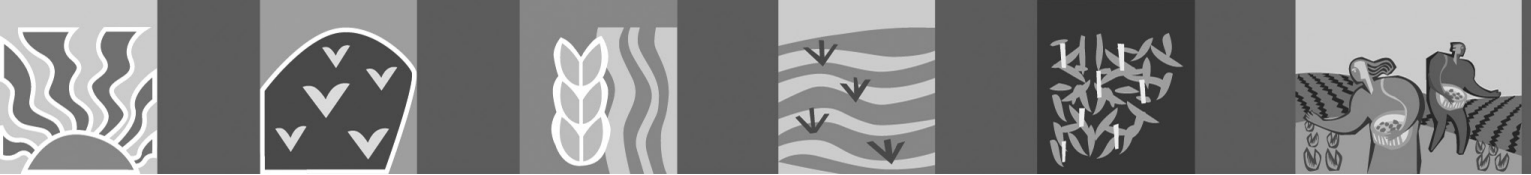
Land Governance and Mechanisms

Land Law

The Land Law of 2001 was enacted to determine the regime of ownership for immovable property in the Kingdom of Cambodia; for the purpose of guaranteeing ownership rights related to such, according to the provisions of Cambodia’s 1993 Constitution (RGC, 2001). Some articles in the Land Law also regulates the practice of Economic Land Concessions (ELCs). Article 59 of said law stipulates that the size of ELCs should not exceed 10,000 hectares. Article 62 requires the concessionaries to develop their economic activities on ELC land within 12 months after the grant, otherwise it will be cancelled (ADIC, 2015). Article 30 states that any person who for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property, can lawfully possess it privately and has the right to request a definitive title of ownership.

Furthermore, Article 33 states that if the immovable property is taken violently or by abuse of power of authorities, the property shall revert to the State, and cannot be the subject of any new possession if there is no claim from the dispossessed lawful owner. The claim is barred at the end of three years from the date of proclamation of dispossession by the State.

However, following the report by ADHOC in 2011, up to 81 communities in Phnom Penh have been evicted from their settlement without warning and notification from authorities, even if many of them have certificates of possession issued by



local authorities and/or were longtime residents of the land (some for more than two decades). Where the Land Law states clearly that claimants in such cases would automatically be able to claim official entitlement, their claim was repeatedly ignored and rejected by authorities. Eventually, they were forced to leave their homes without or with insufficient compensation. Furthermore, as often happens in rural areas, local people were forcibly evicted without compensation.

The judicial system was used to enforce unfair treatment of victims of eviction. Its rulings showed biased toward authorities and rich investors, rather than with the affected communities. Many land disputes raised by rich claimants to the courts resulted in local people being arrested and jailed. Worse, those arrested were even denied of bail without reasonable argument (ADHOC, 2013).

Economic Land Concessions (ELCs)

The Sub-Decree on Economic Land Concession, No. 146 ANK/BK, is the basic reference for Economic Land Concessions (ELC). It sets the objectives and provides the criteria, procedures, mechanisms and institutional arrangements for initiating and granting new ELCs; monitoring the performance of all economic land concession contracts; and reviewing ELCs entered into prior to the effectivity of the sub-decree. Article 4 of the sub-decree highlights the criteria and conditions of granting ELCs, including: (i) that the land is registered and classified as State private land in accordance with the Sub-Decree on State Land Management and the Sub-Decree on Procedures for Establishing Cadastral Maps and Land Register or the Sub-Decree on Sporadic Registration; (ii) a land-use plan of the ELCs is consistent with the plan for the land adopted by the Sub-National Level Land Management Committee and the

Land Use Committee; (iii) environmental and social impact assessments (ESIA) were completed with respect to land use and development plan for ELC projects; (iv) the ELCs should resolve any resettlement issues in accordance with the existing legal framework and procedure; and, (v) the ELCs land claim should have undergone public consultations – with regard to ELCs projects or proposals, with territorial authorities and residents of the locality (RGC, 2005). The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful landholders and that access to private land shall be respected.

In the case of ELCs in Sre Chhouk Commune, Keo Seima District of Monduliri Province, it had been found that the basic criteria and procedures were not followed. The land was not categorized as private State land; no environmental and social impact assessment was conducted; and, no public consultation was held with both local authorities and affected local people (NGO Forum on Cambodia, et al., 2015). It completely contravenes what is stated by the Land Law and Sub-decree of ELCs. There was no smooth communication between the ELC-grantee and the affected communities; individual interests and bias by local authorities for the ELC led to misinterpretation and lack of application of the binding law (NGO Forum on Cambodia, et al., 2015).

Social Land Concessions (SLCs)

The law on Social Land Concession was adopted through the government's sub-decree No. 19 ANK/BK, March 19, 2003 ("Social land concession is a legal mechanism to transfer private State land for social purposes to the poor who lack land for residential and/or family farming purposes"). This sub-decree has the objective to define the criteria,



procedures and mechanism for the granting of SLCs for residential use, family farming, or both. Article 3 of the law on SLCs stipulates that “the Social Land Concessions may be granted for the following purposes: (i) provide land to poor homeless families for residential purposes; (ii) provide land to poor families for family farming; (iii) provide land to resettle families who have been displaced as a result of public infrastructure development; (iv) provide land to victims of natural disasters; (v) provide land to repatriated families; (vi) provide land to demobilized soldiers and families of soldiers who were disabled or died in the line of duty; (vii) facilitate economic development; (viii) facilitate economic land concessions by providing land to workers of large plantations (*Chamkar*) for residential purposes or family farming; and, (ix) develop areas that have not been appropriately developed” (ADIC, 2015a).

SLC was promoted through the donor supported project called Land Allocation for Social and Economic Development (LASED), from 2008 to 2013. The project received financial support from the World Bank (11.5 Million USD) and the Government of Germany (1.2 Million USD) with technical assistance from GIZ. The main purpose of this project was to provide land to landless Cambodians. The quantitative aim was to allocate 10,000 hectares of land to 3,000 poor households, accompanied by community development as well as livelihood and agricultural support services in the provinces of Kratie, Kampong Cham, and Kampong Thom.

Research conducted by LICADHO on LASED and SLCs in the four provinces show that LASED failed to improve livelihoods land tenure security. The reasons behind the failure was the: (i) inability of the responsible institutions to strictly monitor the process of the SLCs; (ii) the project was

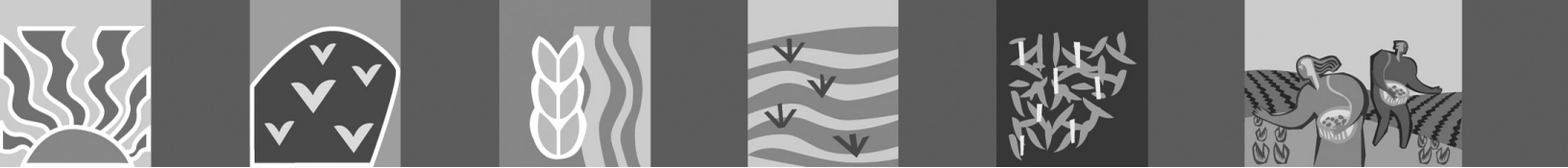
not prioritized by the government; and, (iii) government track-record in implementing SLCs, as past attempts have also met similar failures (LICADHO, 2015).

Sub-decree 83 on Communal Land Titling

In the context of Indigenous Peoples (IPs), the RGC adopted sub-decree No. 83 in June 09, 2009 – “Procedures of Registration of Land of Indigenous Communities” – in order to support the rights and culture of IPs. Its objectives were to provide indigenous communities with legal rights over land, to ensure land tenure security, and to protect collective ownership by preserving the identity, culture, and customs and traditions of each indigenous community (RGC, 2009).

Within this law and sub-decree, the Communal Land Titling (CLT) process was adopted specifically for the registration of land within the IP areas. However, CLT did not apply to all IPs in Cambodia. It should be noted that some IP communities also availed of private land registration, like mainstream Khmers. Furthermore, the CLT was a voluntarily process, where the communal identity must be agreed to by all people in the community. As result, only 13 indigenous communities have been successfully granted communal land titles by the government (ADIC, 2015).

It has been argued that the CLT process was complicated and very time consuming for IPs (AUSAID, 2016). In addition, internal struggles exist within the community which led to social fragmentation and tensions. There was duplication and overlap of land granted to ELCs and communities due to the lack of proper cadastral mapping prior to the launch of D-01. In some cases where CLT has already been granted, communities remain under threat from in-migration and companies that hold ELCs.



These threats are more severe for IP areas where registration is still ongoing and where land titles have not been formally issued.

New opportunities for private land ownership were thought to have opened through D-01, thus the CLT process in some villages has been halted or abandoned (ADIC, 2015). The coverage of an ELC in Otdar Meanchey province, a joint venture for sugar production, seriously overlapped with villagers' lands and led to land grabbing and dispossession of over 9,430 hectares of agricultural, plantation (*chamkar*) and residential land in 26 villages. In O'Bat Moan/Boss Village in Koun Kriel Commune in Samrong district, 214 families were forcibly evicted and displaced. (Depika, 2015).

Key Government Ministries

Ministry of Land Management, Urban Planning and Construction (MLMUPC)

The MLMUPC was established by the Royal Kram No NS/RKM/0699/09 of June 23, 1999. Its main functions were guided by a sub-decree on the organization and functions of MLMUP No. 62ANKR.BK. The Ministry's functions are: (i) to carry out policies of land management to ensure the balance of urban and rural development and distribution of growth; (ii) to act as headquarters in the collection of physical, economic, social, and demographic data; (iii) to implement policies on land management which are favorable toward rural areas and prioritized areas of the RGC; (iv) to conduct research, prepare analyses and compile statistics related to the framework of land, urbanization and construction; (v) to define rules and regulations related to land tenure, urbanization, construction, expropriation, and land reserve; (vi) to set out urbanization; (vii) to manage and disseminate maps; to administer,



control, and designate technical professionals and issue business permits to persons and legal entities who do business related to housing, land use, construction, and architectural design; (viii) to direct, provide advise, monitor and control all aspects of land management, urban planning, construction, cadastre, and geography; and, (ix) to disseminate and educate on the laws, provisions, and technical skills related to land management, urban planning, construction, cadastre, and geography.

The Cambodia Land Management and Administration Project (LMAP) was approved by the World Bank Group's Board of Executive Directors on February 26, 2002. The World Bank committed \$24.3 million in loans to the project from IDA, the Bank's public sector lending arm for low-income countries. However, only \$19.23 million was disbursed before the project was cancelled in 2009. The LMAP was established with the stated aim of improving security of tenure for the poor and reducing land conflicts in



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Cambodia by systematically registering land and issuing titles across the country. To pursue and address issues related to land management, the government’s Land Administration Sub-Sector Program (LASSP) was designed and implemented by MLMUPC from October 15, 2011. This expanded Cambodia’s 15-year strategy – the Land Administration, Management and Distribution Program (LAMDP).

The LASSP provided technical assistance, training, and program coordination, along with moderate project management and financial management services. The project strengthened the technical and administrative capacity of provincial and district cadastral commissions and improved provincial land registries by extending robust registration and processing systems, thereby increasing the total number of land titles issued in targeted provinces. It contributed to the creation of a framework that ensured land sales were conducted openly and transactions registered regularly, established procedures and the human resource base for land valuation, and incorporated environmental sustainability and gender sensitivity into land administration.

Ministry of Environment (MOE)

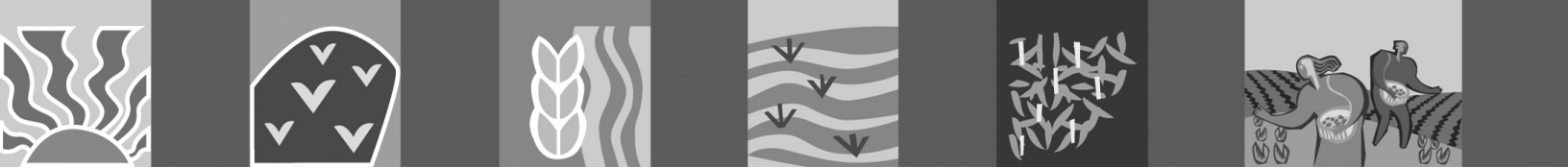
The main functions of the MOE focus on environmental protection, biodiversity

development and managing and using natural resources appropriately and in a sustainable manner (MOE, 2015). After the sub-decree No. 34 ANKR.BK on March 4, 2016 had taken effect, MOE was made to oversee all types of conservation and protected areas nationwide. Practically, the MOE had granted ELCs and took a lead role in re-evaluating all granted ELCs since it was partially managing lands in conservation areas.

The roles and responsibilities on land management and dispute resolution were made clearer after the issuance of Sub-Decree No. 34 ANKR.BK on March 4, 2016, where MOE was to take the lead in the re-evaluation of ELCs and was made responsible for the issuance of legal bidding documents, as well as coordinating with other national government institutions.

Ministry of Agriculture, Forestry and Fishery (MAFF)

The MAFF was mandated to mainly oversee agriculture, forestry and fishery areas. The Sub-Decree of ELCs in 2005 also defined that MAFF was the sole government agency to authorize the issuance of ELCs (excluding conservation areas which fell under MOE jurisdiction). Practically, the MAFF and MOE have to work together to authorize and grant ELCs. However, Sub-Decree No. 34 ANKR.BK, issued on March 4, 2016,



redefined that the MAFF was solely to manage all ELC lands across the country, specifically on the land development perspective (RGC, 2016).

Key non-State Actors

There are a number of NGOs existing in Cambodia that are actively working on land issues across the country. These NGOs work in coalition or partnership with local communities and regularly interact with government authorities at all levels in order to promote and improve land rights. Among these NGOs are STAR Kampuchea (SK), Community Legal Education Centre (CLEC), NGO Forum, ADHOC, LICADHO, and Cambodian Center for Human Rights (CCHR).

The NGO Forum on Cambodia (NGO Forum) began to work on a broader range of issues, such as an international ban on land mines, the creation of a permanent tribunal for crimes against humanity, and concerns about the impact of development aid. An international Steering Committee was retained until 1996, after which a local Management Committee became the chief decision-making body. From 1997, Cambodians were actively involved in NGO Forum, with meetings held predominantly in Khmer and with Cambodians playing the dominant role in its activities. It has had full Cambodian leadership since 2006.

The NGO Forum Land Information Centre (LIC) was established in 2006 to provide evidence-based advocacy for land and livelihood programs. It was renamed the Resource and Information Centre (RIC) in 2011. The Land and Livelihoods Program was established in 2004 and mainly focused on indigenous minority land rights.

ADHOC was considered the prime advocate on human rights in Cambodia. It has worked closely

with both the public and with communities to investigate and collect related cases on human rights, including land disputes. The NGO has provided legal assistance and advice to victims, especially people who were detained and/or threatened by land disputes.

It has also been interpreting laws, regulations and the administration of the law within the juridical system and in compliance with universally accepted protocols, especially those signed by the Cambodian government, to ensure just and fair treatment of people under such laws. Furthermore, it has also provided lawyers for legal disputes and court hearings in order to ensure that the people's voice and rights are respected and for the, to get justice.

Key Findings and Analysis

Data Collection Method

The research team conducted substantial desk research of relevant literature while designing the research methodology. Both qualitative and quantitative approaches were employed as methodology for this study through secondary data and previous research findings. The main data and information sources were from both government and NGO reports and publications.

The main findings and information in this report came from annual land dispute reports in Cambodia published by NGO Forum from 2012 to 2015¹ and Land Disputes in Four Provinces of Cambodia: Mapping, Impacts, and Possible Solutions².

¹ For example, http://ticambodia.org/library/wp-content/files_mf/1436865397statisticalanalysisoflanddisputeinCambodia2013.pdf

² http://ticambodia.org/library/wp-content/files_mf/1448264925AStudyonLandDisputesinFourProvincesofCambodia.pdf



It was supported by other reports and publications from ADIC, CCHR, ADHOC and other sources to provide more evidence and make the study more comprehensive. To ensure diversity of findings and more reflection, statistics from MLMUPC were included and put forward for comparison.

Number of Land Disputes and Resolutions

The number of land disputes in Cambodia trended on stand-off, no improvement or tendency to improve, or significantly positively response to the existing challenges happened in communities across the country during the period 2012-2015. More specifically, in terms of cases reported and

resolved, cases that were resolved was at 51 percent (203 cases) in 2013 among a total of 405 cases reported; 53 percent (195 cases) in 2014 among a total of 352 cases; and 58 percent (92 cases) in 2015 among a total of 158 cases.

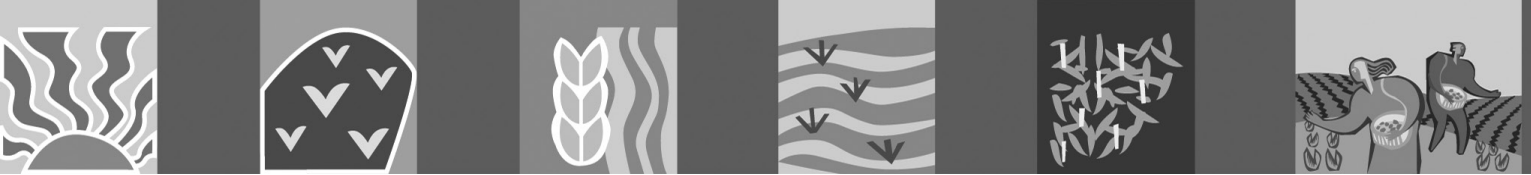
However, the trend of cases that were fully resolved positively improved during the same period, from 10 percent (38 cases) in 2013, to 17 percent in 2014 (61 cases), and 23 percent (42 cases) in 2015. Within the three-year period, the number of fully resolved cases tripled and the trend of disputes declined from year-on-year (RIC, 2014; RACC, 2015 & 2016).

The report by ADHOC (2016) also recorded a substantial increase in cases of land grabbing, or a total of 139 cases covering at least 18,793 hectares and affecting 8,745 families. Of this, 83 were disputes that erupted in 2015, covering 9,550 hectares and affecting 656 families in comparison. The year before that (2014), only a total of 75 cases were reported, covering 1,165 hectares and affecting 3,661 families. As of February 2016, ADHOC had already received 18 cases of land grabbing; thus, a decrease in this land rights violation and in land disputes in general could not be expected.

Even if the above-stated statistics look different, the trend and the reality happening in the communities are basically aligned. Since

No.	Province	# of Land Disputes	Partly Resolved	Resolved	Unresolved	Unknown
1	Bantey Meanchey	1	–	1	–	–
2	Battambang	2	2	–	–	–
3	Kampong Cham	8	3	4	1	–
4	Kampong Speu	12	6	–	6	–
5	Kampong Thom	21	–	15	2	4
6	Kampot	1	1	–	–	–
7	Koh Kong	7	4	–	2	1
8	Kratie	19	7	5	2	5
9	Monduliri	20	9	3	7	1
10	Oddar Meanchey	12	2	9	1	–
11	Preah Sihanouk	1	–	–	–	1
12	Preah Vihear	13	1	1	11	–
13	Pursat	4	4	–	–	–
14	Ratanakiri	22	3	–	19	–
15	Siem Reap	6	3	2	1	–
16	Steung Treng	4	1	1	1	1
17	Svay Rieng	4	2	1	1	–
18	Thbong Khmom	1	1	–	–	–
Total		158	49	42	54	13

(Source: RACC, Statistical Analysis of Economic Land Concessions in Cambodia, 2015, published by the NGO Forum on Cambodia in 2016, pp. 16 & 17)



NGO Forum records are from media articles and its field investigations for further verification, while ADHOC relied on reports by its offices across the country and its extensive network.

However, the report of the MLMUPC Annual Congress in 2015 on land dispute resolutions through three levels of the Cadastral Committee showed a dramatic achievement – ended resolutions for a total of 637 cases: successful resolutions in 376 cases, rejections in 192 cases and withdrawal in 69 cases. The majority of cases were handled by mobile teams (499 cases or about 78 percent).

In order to address and emphasize on the effect of ELCs to IPs, it was very important to see some details and trends in land disputes concerning the indigenous peoples. Specifically 49 of the total cases, or 18.14 percent, affected IPs and can be categorized as CLT cases. Most of the cases occurred in Ratanakiri (22 cases), next is Mondulkiri (12 cases), and the rest in Kampong Speu, Kampong Thom, Koh Kong, Kratie, Preah Vihear and Pursat. A total of 7,867 households (24,558 people) were affected (RACC, 2015).

It was quite a similar situation in 2015, with 51 cases or 17.8 percent of on-going disputes affecting IPs in nine provinces. Of this, 39 land disputes were caused by ELCs. Rattanakiri accounted for 23 cases, while Mondulkiri had 13 cases, of which 10 are ELCs (RACC, 2016).

Specifically on number of affected households and people by land disputes, based on data of NGO Forum, a total of 311 cases affected a total of 65,867 households. Based on the official demographic statistics for Cambodia, which pegs the average family size at 4.7 people, it can be inferred that up to 309,575 people were

affected, which is equivalent to 2.34 percent of the country's total households. Phnom Penh and Kampong Cham had the highest number of affected households, at 15,246 and 5,953 respectively in 2013 (RIC, 2014). For 2014, of the 270 land disputes that were processed, 23 cases occurred in 2014, the rest were holdovers from previous years which remain unresolved. The 270 cases affected a total of 55,795 households, or 256,657 people (equivalent to 1.74 percent of total households throughout the country). Phnom Penh and Prey Veng had the highest numbers of affected HHs in 2014, at 13,181 and 4,587 respectively (RACC, 2015).

The reasons for the stagnant or downward trend of land disputes for the last couple of years may be due to several reasons, namely: a more active intervention by the government and the decrease in the number of ELCs. Several existing ELCs were voluntarily returned to the government and the remaining ones were given a timeframe for them to apply and follow all rules and procedures. Some ELCs were downsized in terms of area of coverage and the duration of the concession was also decreased. Furthermore, both MOE and MAFF kept actively involved in their mandated roles. Government offices announced and followed through the Inter-Ministerial Proclamation/*Prakas* on Strengthening ELCs Management of MOE and MAFF on May 9, 2014. As result of these interventions, some ELCs and land concessions (LCs) were cancelled or had their land area reduced in some provinces. For example: 23 ELCs/LCs covering 90,682 hectares were fully cancelled; three ELCs/LCs covering 25,855 hectares were voluntarily given back to the State; and, two other ELCs/LCs had their land reduced by the MOE. Furthermore, 12 ELCs/LCs covering around 24,000 hectares were cancelled by the MAFF.



These positive actions resulted to a reduction of the number of land disputes caused by granted ELCs/LCs (RACC, 2016, p. 18; Ngin, 2016). Of the 162 companies placed under the inter-ministerial evaluation, 138 companies evaluated by the MOE and MAFF were allowed to continue with their activities. However, they were given a specific timeline to resume their operations based on a submitted master plan that arranged a new contract with the government. A total of 78 ELC companies in 15 provinces had their land areas decreased. Although the intervention was a bit late, at the least land was handed back to the people. In some cases, the government had authorized the provincial authorities to redistribute the returned land to local people or returned some parcels to affected households.

Reasons for Land Disputes

According to RACC (2015 & 2016), there are various reasons for land disputes; but what could be emphasized was that the ELCs and authorities did not follow the law or had contravening interventions of the law. Most of the recorded disputes were due to disregard of the law: 11 percent in 2013 and 7 percent in 2014 on residential lands; 20 percent in 2013 and 11 percent in 2014 on plantation and farm lands; and 26 percent in 2013 and 32 percent in 2014 on ELCs.

The reports also mentioned the types of land impacted by land disputes, mainly agriculture land, residential and state land and community forest, which accounted for 94 percent in 2013 and 55 percent in 2014. These disputes remain a major concern and pose severe challenges to the legal system of Cambodia. It can be argued that the resolution of these disputes has not yet been very effective and that standardized practices are not yet fully applied by stakeholders nationwide.

The issues of questionable implementation, lack of functional mechanisms and fragmented governmental systems that weaken the effective application of the rule of law remain.

Monitoring Land Policies and Advocacy

MLMUPC and NGO Forum organized quarterly meetings related to land disputes where they share information, update each other and propose solutions. NGO Forum, with its broad network of member NGOs, gathers and updates information related to land disputes and reports this to MLMUPC for further support and endorsement. On the other hand, it maintains updated information and data related to legal bidding, actions taken, as well as providing some solutions for resolving existing land issues.

The MOE has a similar partnership with NGOs that actively update and share related information on land issues. For example, delegates from MOE share the National Policy on Green Development and the National Strategic Plan on Green Development 2013-2030, especially on relevant provisions on “access to sustainable land use.” This enables the NGO sector to understand the direction and roadmap of the MOE on its work related to the land sector. Annual and quarterly fora serve to inform NGOs about the government’s initiatives and priorities, which they can share to the people in the communities that they assist (NGO Forum on Cambodia, 2013a).

The quarterly meetings among NGOs serve to provide feedback to the RGC on land-related policies. For example, the NGOs’ channel to contribute to the National Strategic Development Plan 2014-2018 could be through development partners and/or Technical Working Group. NGO Forum organized the Development Issues Forum for collectively providing important perspectives

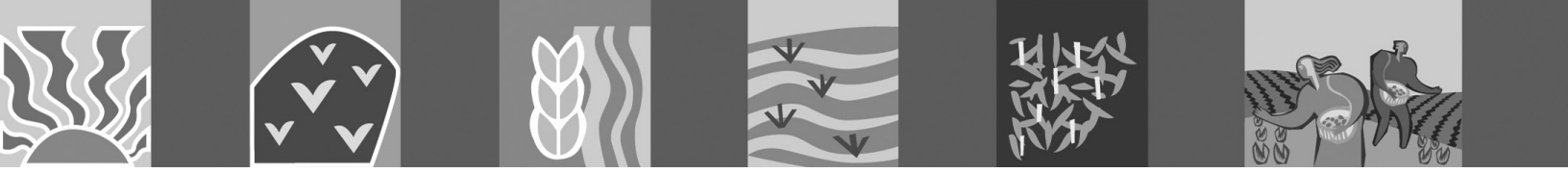


Table 2. Types of Land Impacted by Land Disputes in 2014 and 2013

Types of Land Impacted by Land Disputes	2014 (%)	2013 (%)
Agriculture Land	32	48
Forest Land (State Land and Community Forest)	17	17
Multi-Purpose Land	44	–
Residential Land	6	29
Wetland	1	–
Others and Unknown	–	6
Reasons for Land Dispute	2014 (%)	2013 (%)
Residency	7	11
Plantation/Farming	11	20
ELC	32	26
SLC	2	3
Military Purpose	5	4
State land	5	5
State development area	2	3
Other	34	26
No data	2	2

(Sources: RIC & RACC, Statistical Analysis of Land Disputes in Cambodia, 2013 & 2014, published by The NGO Forum on Cambodia in 2014 & 2015)

to the RGC for consideration before further decisions were made, along with some recommendations to land management. These are: (i) undertake a comprehensive and transparent demarcation of all State land; (ii) ensure effective supervision of ELCs and make information publicly available on the review of existing ELCs; (iii) ensure participative consultation and decision-making with involvement of citizens, and provision of Environmental Impact Assessment (EIA) reports two weeks in advance of hearing dates; and, (iv) adopt international best practices to compensate communities negatively affected by hydropower dams and ensure a monitoring mechanism with clear indicators for social and human development (NGO Forum on Cambodia, 2013 & 2013a).

A good example of an NGO initiative to highlight people’s land advocacy to the government and the general public was the media’s support of local people with land disputes. The Cambodian Center for Independent Media (CCIM) has a program, “Citizen Journalism Gives a Voice to Victims of Land Grab.” The CCIM conducted training to citizens for them to report about local land disputes. In one case that adversely affected 253 families in Tbeng Mean in Chey District, local media were prevented access to the area. The trained citizens videotaped and posted on social media their issue and ensured that their problems were heard. The story gained the attention of audiences nationwide and government authorities were pressed to intervene. After that, government at the sub-national level started to be involved by halting the land development and allowing the affected people to farm their land until the dispute was settled. Even if the dispute remains unsettled, it provided a reprieve for the people and made them realize their rights, their freedom of expression and the need to interact with local authorities to resolve issues (CCIM, 2014).

Discussion on the Recent Trend of Land Disputes

The MLMUPC is responsible for governing land use, urban planning and the resolution of land use conflicts.

Directive 01 (D-01), launched on July 1, 2012 by the Prime Minister, aims to increase the efficiency of land management; with an emphasis on reducing land conflicts and providing titles to incumbent landholders. The policy aims to offer systematic issuance of private land titles for 1.2 million hectares of land, covering 350,000 families living within ELCs, forest concessions or state-owned land. To implement this initiative,



thousands of student volunteers were recruited and provided with basic training before being sent to the provinces to assist land titling offices and departments. The volunteers were tasked to assist in measuring disputed land between communities and companies and to assist in the issuance of private land titles. Eventually, students were given subsequent instructions to avoid lands under dispute, but in actuality, the instructions were not fully followed due to external influences and empowerment issues. Clearly, the MLMUPC should have given more support and clearer guidelines to the volunteer groups. The steps for applying for land titles were much the same with the existing mechanism of the MLMUPC – the Sporadic Land Registration process. Unfortunately, D-01 intensified the already contentious area of land use, especially for indigenous communities.

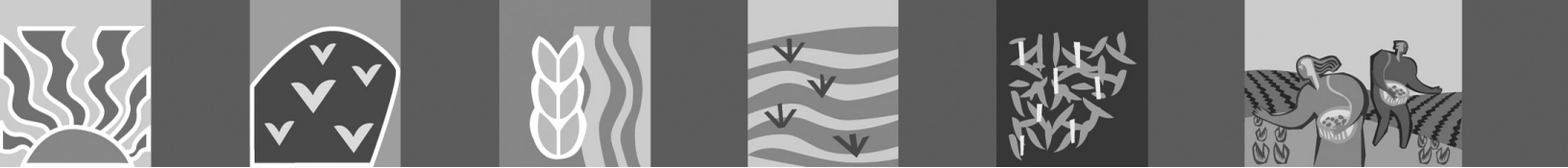
The general findings of an NGO Forum study on the implementation of Order 01 cited that a total of 610,000 titles were issued, a total of 1.2 million hectares of land were reclassified from June 2012 and December 2014, and a number of ELCs were cancelled outright. The survey process largely followed the main steps of the systematic land registration process but at a much faster pace, and deviations were observed. But a high number of people (75%) did not receive titles for all the land surveyed and half of household lots were not surveyed at all. The reasons given for denial of titles were applied inconsistently, including an existent dispute, overlap with ELCs and overlap with protected areas. Order 01 had mixed results in areas with a history of land conflict. The implementation of Order 01 in indigenous people's land raises significant concerns, such as requiring them to sign a declaration giving up rights to traditional lands, and the survey of land in some Community Forest areas which was not permitted under Order 01 guidelines. Satisfaction

levels were relatively high, but inevitably polarized those who received titles and those who did not (Grimsditch & Schoenberger, 2015).

The national government and the MLMUPC were clearly pleased with the progress of the D-01 campaign as it aims to award large number of titles at a very short time; but it was questionable about transparency and identification of beneficiaries. Critical issues remained, especially the approach of the campaign and its transparency and fairness. The period of implementation of Order 1 was also suspect as it was shortly ahead of the general election; its pace was surprising and not well planned. Thus, the initiative may be motivated by hidden agenda rather than the purpose of resolving land disputes (Grimsditch & Schoenberger, 2015). Overall, D-01 was widely accepted as beneficial for farmers who seek tenurial security for their existing land, yet D-01 also provided the legal basis for companies to control large parcels of state and forest lands (ADIC, 2015).

The RGC gradually decreased the granting of ELCs, with only one ELC granted from 2014 to 2015, compared to a total of 43 ELCs in 2011. The lesser number was also a result of the close coordination of public and non-state actors, especially the affected people and NGOs working on land issues, which have established good connections and communications. Also, the RGC realized the challenges and issues of land disputes and is now more careful and cognizant of legal procedures. If this trend will continue, land dispute resolutions will become sustainable and disputes will eventually disappear.

NGOs are working in groups or alliances on land disputes and closely working with related public institutions to ensure that issues on land disputes are shared and discussion and resolutions are



brought about. An example of a specific case is that of CHRAC with ADHOC who closely work with the public, with the participation of the UN Office of the High Commissioner for Human Rights (OHCHR) and the Samreth Law Group. This group reports to a variety of public institutions, including the Senate, the National Assembly and the Anti-Corruption Unit (ADHOC, 2013). This initiative may have proceeded well: public institutions were willing to jointly cooperate with non-state actors on land disputes and resolutions; some resolutions were beneficial to affected local people; interaction of related actors was strong; and, participation is inclusive. However, there were a limited number of cases pursued into resolution within the timeframe. Nonetheless, it could be built into a formal system and practiced with concrete plans and directions.

ADHOC's reflection on the effectiveness of pursuing dispute resolutions through the courts was less enthusiastic and forthright:

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

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



violence against, community representatives, rights workers and activists are not only illegal and unfair; they are ineffective. The authorities cannot expect to resolve the land crisis this way" (ADHOC 2013).

However, the RGC is still preoccupied with economic development and pushing large-scale, land-based and commercial agriculture and mammoth infrastructure projects. Its grant of public areas still lacks a clear mechanism and rationale backed by requisite studies – feasibility, social-economic, social impact and environmental impact and the necessary mitigation of adverse effects to the affected local households, as well as overall benefit of the projects. Government needs to balance people's interests and needs for land against the narrower interest of commercial investors. There is clearly a public need for expanding energy sources, a lowering of tariff on imported energy and the strengthening of institutional mechanisms for effective energy management capacity. The objective of expanding energy supply and connecting all villages to the



power grid by 2020 is worthwhile. Yet, this should not be undertaken at the expense of land disputes with adverse effects on people living within the proposed energy-source (RGC, 2013; MOP, 2014).

Good Practices and New Initiatives

An improvement in the initiatives for dispute resolution coincided with the new leadership in the MOE and the MLMUPC. The two ministries became more serious in ensuring that land management would be more effective and that it would benefit locally affected households. The better pace in dispute resolutions exemplifies the political will and clearer direction. The MLMUPC has a tougher policy and more appropriate actions to ensure that land disputes will be solved peacefully and comprehensively. Since May 2016, the new MLMUPC Minister, after a review of land conflict-related complaints, set up a blacklist. The Ministry will request blacklisted companies to come forward and resolve conflicts in compliance with the law. The companies under the “blacklist” were duly submitted to the RGC for further actions and interventions.

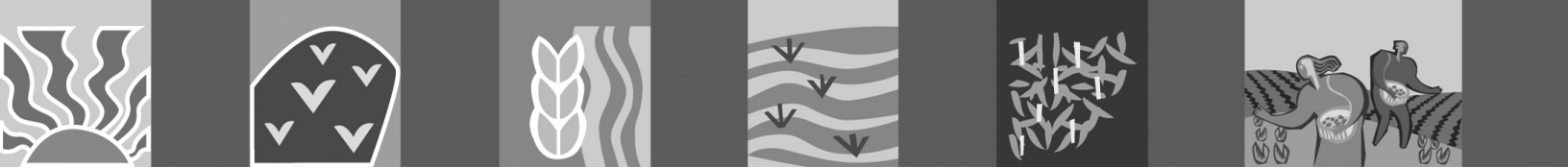
To cite an example, a tycoon in Kandal province, who was first in the blacklist and involved in many complaints by local people, was issued by the MLMUPC with a decision and instruction on three specific complaints and ordered to pursue means of resolution that is peaceful and respectful of local people and relevant authorities. The Council Ministers backed the MLMUPC position with a letter on May 27, 2016. The tycoon has to follow the procedures for peaceful resolution before he is removed from the blacklist. This may be a small step compared to the number of land dispute cases throughout Cambodia, but it projects a positive image of the government acting to benefit affected local people and put pressure on investors to respect the rule of law, to soften their

aggression and allow projects only if accepted by the local people.

In addition, the MLMUPC also created 36 groups (task-forces) to conduct investigation and produce reports for the Minister on land conflicts submitted to the Ministry. Each group is composed of four people led by a senior officer of the Ministry (secretary of state, undersecretary of state, or the advisor to the ministry). Each group receives three cases at a time to investigate and propose solutions. The Ministry also created 18 mobile teams to solve land conflicts outside the court system.

The MOE initially requested the RGC to redefine roles and responsibilities of the MOE and the MAFF. The result was a sub-decree that delineated the roles of the two agencies, to wit: the MOE will mostly handle conservation areas, while the MAFF will manage mainly lands withdrawn from ELCs and will be the principal national institution to handle upcoming ELCs and developmental land areas. This clearer division of functions among the two line ministries will largely reduce overlap and confusion of roles. ELCs already granted were subjected to re-evaluation, with possible downsizing, and have to provide a specific time line for resuming procedures based on a company master plan. In addition, they will be required to negotiate a new contract with the Government (RACC, 2016; MOE, 2015).

The MOE conducted a review and assessment of all ELCs located in Protected Areas. A number of ELCs were cancelled due to disrespecting procedures laid out by the RGC. They were given additional time to fulfill the requirements and given 12 months to prepare their plans; the duration of their concession was reduced to 50 years (Ngin, 2016).



Another good practice was a result of evidences from four case studies (Ngo & Chan, 2012). It was found out that two out of four cases saw good resolutions acceptable to local affected people: the first case was solved through mutual agreement between the company and the villagers; and, the second case was through shifting the ELC site and cash payment to the villagers. The other two ELCs acted against the interests of local residents and no agreed resolution was made between the companies and the villagers. The study found that the conflicts resulted from overlapping due to the ELC's non-compliance with the procedure outlined in the Sub-decree on ELCs, the non-participatory site identification or lack of public consultation and poor quality of the ESIA. It emphasized the willingness of all related actors, especially companies who have

been granted ELCs, to be more actively involved in order to solve existing problems and challenges with the local people for their mutual benefit and common interests.

Conclusion and Recommendations

Up to 2015, there were 267 ELCs in 18 provinces of Cambodia covering a total land area of 1,532,782.65 hectares. Four main institutions granted ELCs, including the CDC with 2 ELCs, MAFF with 141 ELCs and MOE with 66 ELCs. Provincial committees provided 18 ELCs, while 40 other ELCs have no information on the authorizing body. There are 158 out of 267 ELCs that caused land disputes. Of these, 42 cases or 26.58 percent were completely resolved; 50 cases or 31.84 percent were partly resolved; and 54 cases or 43.39 percent have not been resolved³.

It was observed that land disputes in the first semester of 2016 were likely stable and/or on-hold due to the new initiatives on ELCs from both the MAFF and MOE. Several dozens of ELCs were cancelled and hundreds more are under review and were given time to improve their operations. However, the situation only slightly improved since there are still many cases that remains to be solved. More effort is needed from authorized agencies to speed up their efforts and find resolutions for the remaining land disputes.

However, there were some new initiatives put in place by the RGC. First, the MOE took the lead role in the re-evaluation of ELCs, resulting to dozens of ELCs to be cancelled or voluntary returned to the RGC while the remainder were downsized, reduced in duration and instructed to fulfill required documents, or else be subjected

HLH Agriculture (Cambodia) Co., Ltd. was granted a 70-year lease agreement (land concession) of 9,985 hectares by the RGC in March 2009 for the production of corn and other crops within the sustainable development zone of the Aoral wildlife sanctuary. The concession substantially affected both indigenous and non-indigenous people in 15 villages. The total affected land is about 6,500 hectares, which is approximately 65 percent of the granted ELC. The affected lands involve two Community Protected Areas and homestead lands, paddy lands, cash-crop lands, spirit forests, reserved lands, and pathways.

In response to negative reaction from the community, the company commissioned an ESIA in July 2010 and then, by accepting the fact of overlapping on the community's lands, the company together with the government authorities, tried to solve the problem peacefully with the community by shifting the area of the concession, including land exchange. The company also agreed with the MOE to use only half of the original area granted by the RGC, which did not overlap with Community Protected Areas, give cash compensation to the community, based on the Land Law of 2001; and adopt a co-existence scheme with the community – keeping the spirit forests inside the concession and allowing community people to have access to their traditions.

(Source: Ngo & Chan, Economic Land Concessions and Local Communities, The NGO Forum on Cambodia in 2012)

³ NGO Forum on Cambodia Report Launching Workshop on Statistical Analysis of Economic Land Concession in Cambodia, 2015

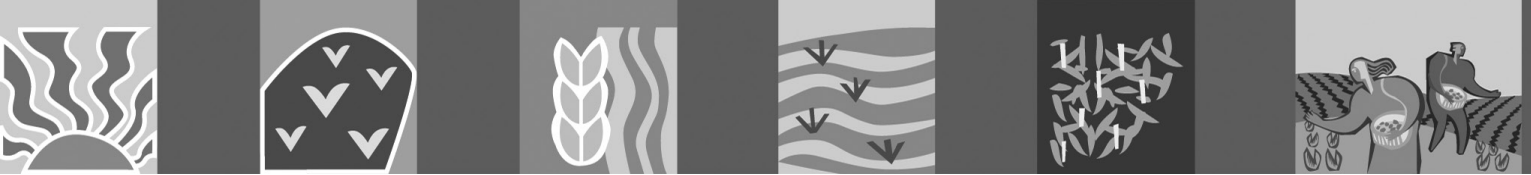


to cancellation. Second, there was a redefined division of functions between the MOE and the MAFF pertaining to land management and ELCs. Thirdly, the MLMUPC has formed 36 groups to respond to all complaints related to land disputes and propose new actions. An MLMUPC “black list” has been set for companies involved in land conflicts, which are instructed to pursue intervention through peaceful means and mutual dialogue with all stakeholders.

There was likely a right direction and on-track achievement of new initiatives. But this does not mean stable, systematic and sustainable measures as yet. There is a possibility of returning to previous ill-managed actions and wrong situations. Therefore, it would be important that both government and non-state actions support land dispute resolutions and integrate practical new initiatives and good practices into the formal system, as well as applying these systematically and promoting these nationwide.

This report proposes several recommendations, as follows:

- The current phenomenon is likely considered as weak enforcement with the powerful and powerful enforcement with the weak, and it is the State obligation to respect, protect and fulfill. Weak law enforcement is a major obstacle, thus, the RGC should provide more support to effective initiatives such as those implemented by the MOE and MLMUPC. Accessing information widely and broadly with transparency should also be strengthened and strongly considered, i.e. ESIA sharing. Furthermore, related institutions responsible for the land management sector can be made more effective, including reinforcing mechanisms in land disputes resolutions
- made more effectively and land law practices and implementation reinforced.
- The RGC should regularly conduct thorough and impartial investigations into land disputes, and allegations of land grabbing, abuse, corruption and mismanagement of land; and improve tenure security for land occupants in accordance with the Land Law of 2001. Legitimate, legal claims of ownership must be acknowledged. For more practically and for prevention, the RGC should firstly make sure that EIAs should be done appropriately and compliance to framework agreed upon.
- Investors and companies, particularly land concession companies, should be aligned to the intent and requirement of the laws and legal framework of Cambodia. Investments should be able to provide benefits to local people and communities to minimize land disputes and disagreements. There should be transparency in the process of mapping State land to reduce conflict between investors and local communities. All development projects must conduct environmental and social impact assessments with transparency and participation by local communities.
- Donors and Development Partners should work closely with the RGC, directly with communities and through NGO partners to make the process of dispute-resolution inclusive and with transparent lines of information and communication so that issues will be discussed locally at the affected households’ level. The working partnership between government and non-state actors, including affected communities, should continue to monitor and evaluate the remaining ELCs. All 162 ELCs, which have been evaluated in the year of 2015, must be monitored according to their implementation according to law and the substance demanded per their development plans.



- More importantly, dispute-resolution measures should be aligned with the RGC’s policies and priorities, following the Cambodia context rather than focused on international contexts and standards. This assures the balance between social protection and economic development.
- Civil society should take a clear role in helping local communities to submit their petitions to the appropriate State agencies and continue to build local capacity on land issues.
- Local communities should consolidate efforts and actively follow-up and monitor land concessions and land disputes, and take action promptly. Information and communication technologies (ICTs) should be optimized in sharing information on land conflicts and approaches in land dispute resolution to the broader public. ■

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