
Cambodia

Land Conflict Monitoring Report¹

By STAR Kampuchea (SK)

BACKGROUND

Rationale and objectives

This study was undertaken by STAR Kampuchea, with the support of the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) and the International Land Coalition (ILC) as part of a larger advocacy campaign in six Asian countries to engage public authorities on the issue of the land rights of the rural poor.

This research aims to:

- identify the causes of land conflicts in Cambodia, as well as the outcomes and impacts to local communities;
- examine the nature, history and dynamics of land and natural resources disputes; and,
- assess the effectiveness of conflict resolution mechanisms.

Methodology and data sources

The research process consisted of online surveys, group discussions, and interviews with victims of land disputes. Reports and data from the Ministry

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of Land Management, Urban Planning and Construction (MLMUPC) and Ministry of Agriculture, Forestry and Fisheries (MAFF), and other relevant government ministries were also collated and analyzed. Research papers and other reference materials on the land issue were also reviewed. Finally, expert interviews were conducted to provide additional depth. The study focused in the province of Kampong Chhnang, where SK has an existing project.

CONTEMPORARY LAND ISSUES AND CONFLICTS

Although there are some figures on land dispute cases submitted to the Cadastral Commission or the Courts, the Royal Government of Cambodia (RGC) does not disclose reliable data through website about land disputes. Thus, the research relies primarily on local NGOs and the media to get an idea of the real size of the problem. NGOs working on land issues note that land disputes have continued to increase since the 2000s to the present.

Violations and abuses over land rights are among the most prevalent human rights violations in Cambodia today. Despite the legal protections governing land rights provided in Cambodia's Constitution, national laws and international law, vulnerable communities continue to have their land illegally and unfairly taken away.

Land is typically transferred to powerful individuals or companies for business or commercial development, often in clear violation of Cambodia's legal framework and international human rights obligations. Agribusiness companies are often behind land grabs and forced evictions of rural communities to make way for rubber or sugar plantations. Land has also been appropriated for the construction of hydroelectric dams, which in addition to displacing communities, have devastating long-term environmental and economic impacts on the affected areas.

Economic land concessions

An economic land concession (ELC) is a legal right established by an official document granted by the RGC to an individual, group of individuals, or legal entity to occupy and develop State or private land. The right to an ELC is subject to a number of restrictions imposed by the Land Law of 2001 ("Land Law"), relevant sub-decrees, and the terms of the specific concession contract.

There are 97 economic land concessions that have been granted from 1992 to 31 December 2006 by the RGC. Of this number, nine concessions have been agreed to in principle by the Council of Ministers, covering an area of 64,208 hectares. However, contracts for these have not yet been signed. The Ministry

stated also that the contracts of 30 companies had been cancelled, covering an area of 265,230 hectares. However, only five of these companies had in fact signed contracts with the Ministry, and others had merely received letters agreeing in principle to the grant of concessions. As of 31 December 2006, 59 concessions remained, covering an area of 943,069 hectares in 15 provinces. This constitutes approximately 5.2 percent of the total land area in Cambodia, and 14.5 percent of all arable land in Cambodia. A list of all economic land concessions, with their full names and localities, is set out in the 2017 Report of the Special Representative of the Secretary-General for Human Rights in Cambodia.

The 2007 to 2017 report listed 190² economic land concessions that had been granted, or for which approval had been sought. Of this number, 190 concessions had been agreed to in principle by the Council of Ministers, covering an area of 2,139,552 hectares, under the MAFF. Economic mine concessions agreed to by the Ministry of Mine and Energy covered an area of 2,318,585 hectares (Open Development Cambodia, 2016).

OVERVIEW OF LAND AND RESOURCE CONFLICTS³

Nature of the land conflicts

85 percent of the population of Cambodia lives in rural areas, cultivating agricultural land without the proper recognition of land ownership (MLMUPC, n.d.). The land use of local communities is not legally recognized, as Cambodia has a number of laws managing land and forestry management, such as the forest law and natural resource protection law.

Evictions can be brutal. In 2012, a 14-year-old girl was shot to death by government security forces as they cleared a village in the northeast. The NGO Cambodian Center for Human Rights (CCHR) likens evictions to “battlefields.” Protests are often crushed with force. Villagers who dare to oppose the security forces risk arrest, detention, and prosecution. The courts are not considered independent. People believe that they act on behalf of the government.

The Cambodian Human Rights and Development Association (ADHOC), another NGO, points out that the government has typically failed to assess the situation on the ground properly before granting ELCs. Moreover, the environmental impacts of ELCs were not assessed either. Land disputes have hurt the government’s reputation. The ruling party’s share of the vote dropped

² This data includes ELCs signed by government, ELCs in-process, and ELCs cancelled.

³ Land dispute monitoring will include judicial cases, administrative cases, and those under mediation.

by nine percentage points to slightly below 49 percent in the general election of 2013. It still has the majority of legislative seats.

Even before the election, Prime Minister Hun Sen acknowledged land-related problems. He decided to stop granting new ELCs in 2012 and limited the duration of future leases to 50 years. He insisted that local people deserve protection and promised to redistribute one million hectares of land to poor and dispossessed families.

Serious efforts were made to resolve ongoing land conflicts by MLMUPC through different mechanisms. National and provincial committees have been established to consider these matters. However, the conflicting parties' interests tend to be hard to reconcile, especially as the rights of ELC companies are defined in their contracts.

ADHOC says that the situation has generally been improving and no new conflicts have emerged since the government stopped granting ELCs. The unresolved conflicts are tough, however, and in the long run, it is expected that new conflicts will arise.

Government officers argue that the land law is good and will work out well in the long run. They admit that not everything is in place yet, but insist that the problems are being dealt with.

To some extent the government is blaming problems on opposition forces. It has stated that "political parties have manipulated the current land issue shamelessly for their own political gain". In the eyes of human-rights defenders, however, the successful resolution of land issues depends on "the political will of the government" (Sun, 2017).

Distribution and size of land conflicts

Legal activists point out that powerful elites, including high-ranking government officials, are involved in most land conflicts. On the other hand, some 400,000 to 1 million people have been personally affected by land disputes, according to estimates. ADHOC reckons that 60,000 people have been forcibly evicted from their homes.

The data for this study was collected from official social media (Radio Free Asia) and official reports from MLMUPC between 2016 and 2018. The Radio Free Asia (RFA) report covers the period January 2016 until 20 November 2018, and the MLMUPC report is from January 2016 to June 2018.

Land conflict report from RFA 2016-2018

In the period 2016 to 2018, Cambodia's land conflicts were caused by the following: State-sponsored land-grabbing, private land-grabbing, land tenure, economic land concessions or hydroelectric development, evictions, urban development, government development projects, and finally the encroachment on community land.

According to the data, State-owned private land-grabbing ranks most frequent cause, with 197 cases in 2016 and down to 59 cases in 2018.

Private land-grabbing by powerful people is the second most frequent cause of conflict, with 125 cases in 2016 and 17 cases in 2018.

Economic land concession investment is third, with 89 cases in 2016 and 76 cases in 2018. Most of the cases were caused by a failure to fully implement the law. Eviction from city development, mostly by private sectors in Phnom Penh and the Special Economic Zones, is fourth, with 22 cases in 2016, with only one case in 2018.

The government's railway development project caused conflicts only in 2016 and 2017, with 14 cases in each year. The disputes regarding community land accounted for 15 cases in 2017 and four more cases in 2018. The decreased number of cases in 2017 and 2018 can be traced to two factors. One, there were commune council elections in 2017 and national elections in 2018, and powerful people desisted from seizing land from the people for fear of electoral repercussions. But the main reason for the decrease in cases is that RFA has been suspended from collecting information in the targeted provinces.

Land conflict report from the Ministry of Land Management, Urban Planning and Construction, 2016-2018

This portion describes the conflict resolution performance of the Cadastral Commission of the Ministry of Land Management. It is based on reports from the land department from 2016 to 2018, and on the report of MLMUPC Minister H.E Mr. Chea Sophara, delivered during the Ministry's 2017 annual meeting. The Minister reported that the total number of land disputes and related protests declined in 2017, and he claimed that this was because of the Ministry's tireless efforts to manage land use with fairness and transparency. However, some NGOs claimed that activists were too afraid of arrests to raise their concerns.

In 2017, according to a report from the land department in the province, the cadastral survey commission resolved 85 land dispute cases for 326 families, which amounted to 44.5 hectares. It found 37 cases to have been wrongly authorized and withdrew another 11 complaints.

The report added that from the start of its work on land disputes until the end of 2017, the Ministry has successfully solved 3,655 cases for 19,374 families, covering 6,068.2 hectares. It found 2,542 cases had been wrongly authorized and withdrew another 829 complaints. The Ministry's working group on land dispute resolution in 2017 received 511 complaints, 123 of which were resolved. Twenty-five cases were completely solved while 98 cases were transferred.

ANALYSIS OF LAND CONFLICTS

Underlying historical causes

Legal activists say that land conflicts started in 1999, one year after the very last Khmer Rouge fighters were beaten along the Thai border. The land situation definitely became worse however, after the government passed the new Land Law of 2001.

Among other things, the law was designed to attract foreign investors. It introduced a system of land registration. In principle, it entitles people to land that they have been using continuously for at least five years. The registration process is still going on. By 2016 land titles had been officially recognized for about 60 percent of all relevant plots. The government expects to conclude registration by 2021.

Another provision of the 2001 Land Law is economic land concessions (ELCs). An ELC means that the government may lease out State-owned land of up to 10,000 hectares to private investors for a maximum of 99 years. The problem is that many ELCs were granted while title registration was still going on. This policy resulted in forced evictions and violent protests all over the country. Responding to the unrest, the government has been going slow on ELCs in the past few years.

Current drivers of conflict

Analysis of the land conflict data indicates that the following are the drivers of conflict:

- Large scale land acquisition by private companies for agribusiness and mining concessions;

- Lack of consultation and Free, Prior, and Informed Consent (FPIC), leading to overlapping claims on land where the indigenous peoples and local communities have no legal or written documents to prove their ownership;
- Irregularities in granting land concessions in the name of development for poverty reduction;
- Land use of local communities not legally recognized by government;
- Poor law enforcement;
- Corporations do not apply UNGP BHR principles;
- Overlaps among ministries managing land issues in Cambodia (Ministry of Land Management, Ministry of Agriculture, Forestry and Fishery, and Ministry of Environment, etc.);
- Unfair, inequitable and non-transparent land conflict resolution;
- External pressure and limited access information on the part of rural communities, making them unsuccessful in claiming their rights; and,
- Increasing number of land title applications, causing overlapping claims between the rich/military and poor/communities.

Policies on land, and investments

- ***On ELCs and indigenous peoples' rights.*** Articles 23 to 28 of the 2001 Land Law grants indigenous' peoples the right to collective ownership. Article 23 defines an indigenous community as "a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social and cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possessions according to customary rules of collective use." In addition, international human rights law regards self-identification as an important criterion (ILO Convention No. 169).

Other than residential land, Article 25 of the 2001 Land Law explicitly specifies that lands actually cultivated and as well as land reserved for shifting cultivation required by agricultural methods practiced by indigenous people and recognized by the administrative authorities. This is also confirmed by Article 6 of the Sub-Decree on Procedures of Registration of Land of Indigenous Communities, which also recognizes indigenous rights to collective ownership of spiritual forest land and burial ground forest land (cemeteries)⁴, located on State Public Land.

- ***Land use.*** The 2002 Forestry Law is relevant to indigenous peoples in terms of user and tenure rights of communities. In addition to indicating rules for shifting cultivation areas (Article 37, Forestry Law), this law

⁴ One or more plots for each community with a limit of seven hectares in total size.

requires concessionaires to make sure their operations do not interfere with “customary user rights taking place on land property of an indigenous community that is registered with the State consistent with the Land Law; and customary access and user rights practiced by communities residing within, or adjacent to forest concessions” (Article 15, Forestry Law).

Furthermore, Article 2 of the Sub-Decree on Forest Concession Management (2000) requests a “regular consultation with, and participation by, local communities and other relevant stakeholders in the development of concession management.”

Immediate outcomes

Land disputes have become a serious and persistent issue in Cambodia. In response to unrest, the government stopped leasing large plots to private-sector investors a few years ago. Earlier land deals, however, are still causing tensions.

Cambodia is one of the least developed countries in Southeast Asia. According to the Asian Development Bank (ADB), 14 percent of the people live below the poverty line today. They have a purchasing power of equals less than \$ 1.25 per head, per day.

Affected communities have staged many rallies in Phnom Penh, hoping that the government would solve their problems. Villagers have also invited policymakers from the National Assembly, the Senate and relevant ministries to intervene (Sun, 2017).

MECHANISMS TO ADDRESS CONFLICT AND VIOLENCE

Available formal and informal land conflict resolution and management mechanisms

- **Legal, administrative, and judicial mechanisms.** There are five dispute resolution mechanisms to address land-related conflicts stemming from land-grabs and ELCs: 1) the Commune Councils; 2) the Administrative Committees; 3) the Cadastral Commission; 4) the National Authority for Land Dispute Resolution (NARLD); and, 5) the court system.
- **Commune Councils.** The Commune Councils “reconcile differences of opinion” among citizens of communes, but do not have power to make decisions (Sub-Decree No. 22 ANK/BK). While not a prerequisite, in practice most cases are heard before Commune Councils before going on to higher levels. Although the Administrative Committees lack power to

issue binding decisions, they may assist the conflicting parties in resolving their disputes.

- **Administration Commission.** The 2001 Land Law established the Administration Commission under the supervision of the Ministry of Land, which has the competence to identify properties, hear possession claims, and to register people's land. The Commission can resolve conflicts on possession claims only.
- **Cadastral Commission.** The 2001 Land Law established the Cadastral Commission under the supervision of the Ministry of Land, which has the competence to identify properties, establish cadastral index maps, issue ownership titles, register land and inform people about the status of each parcel of land. The Cadastral Commission does not focus on "possession claims" but on "registration claims," i.e., land that has not yet been formally registered with the Ministry, as legally required.
- **Courts system.** The courts in Cambodia have jurisdiction involving disputes over registered or titled land (Sub-Decree No. 47). If the parties are not satisfied, the case can be filed with the Court of Appeal. Parties who are not satisfied with the decision of the National Cadastral Commission may also file an appeal with the Court of Appeal (Article 23, Land Law). Courts also have jurisdiction over cases relating to forced evictions as well as contract and inheritance disputes, regardless of whether the land is registered or not (Ministry of Justice and MLMUPC, Joint Prakas No. 3). If the dispute is related to unregistered land, the parties must first go through the Cadastral Commission.
- **National Authority for the Resolution of Land Disputes (NARLD).** The Government has also set up a "National Authority for the Resolution of Land Disputes" which is composed of 17 high-ranking officials of various ministries. However, the members have largely delegated their tasks to others and this body is ineffective in practice (Royal Decree on the Establishment of National Authority for Solving Land Disputes).

LESSONS LEARNED FROM THE CASES

Informal dispute settlements are traditional in rural areas, and facilitated by village chiefs. Some 90 percent of respondents agree that this mechanism is easy to access, reducing the incidence of unnecessary violence within the population. Under this mode, people do not have to prepare a lot of complex documents or endure long procedures. Monitor the non-systemic dispute: local authority is monitoring with village as they are responsible for resolving disputes and preparing documents relating to their local disputes.

Court cases. The case is located at the provincial court, which has nothing to do with the authority of the commune, district or department.

NARLD. There are a number of shortcomings associated in lodging a complaint with the NARLD. Complainants must file a written complaint in person at the NARLD office in Phnom Penh. Such a requirement has made access to this dispute resolution mechanism difficult in comparison to local authorities, Cadastral Commissions and the Courts. While the complaint is not required to be in any specific form, it must be submitted along with supporting documents, such as ID cards and family books.

Measures to protect land rights defenders

Protection mechanisms

Cambodia has ratified six out of the nine international human rights treaties, one of the best ratification records in South-east Asia. However, this record does not reflect the situation of human rights defenders (HRDs) on the ground. In recent years, Cambodian government has increased its policy of repression of HRDs. The authorities use legislation and the judicial system, and the threats of arrest or legal action, to restrict free speech, jail government critics, disperse workers, trade union representatives and farmers engaging in peaceful assemblies (Front Line Defenders, 2018).

HRDs who work to promote and protect economic, social, and cultural rights are particularly targeted by the authorities. Trade union leaders have been subjected to arrest, physical violence, and judicial harassment. Community activists defending the right to housing and protesting against land grabs and forced evictions have faced fabricated charges and jail terms. Most of them are charged with offences such as damage to private property, incitement, robbery, assault and drug smuggling. Physical violence, including killing, is also used to silence HRDs.

According to ADHOC, 232 people – including land activists, community representatives and those resisting forced eviction – were arrested in 2012 in relation to land and housing issues. This is a 144 percent increase over 2011, when 95 people were arrested and 48 were detained. HRDs have repeatedly found themselves threatened and intimidated by the authorities, often at the bequest of well-connected business figures. In 2012, 238 HRDs faced judicial harassment. Those threatened have not had any protection offered from the authorities. Rather, threats and intimidation have come from officials, including local, provincial and judicial authorities.

The Law on Association and NGOs, which was signed by the Council of Ministers in 2016 without proper consultation with civil society and taking recommendations from CSO inputs, is expected to further tighten restrictions

on freedom of association. It introduces compulsory registration for all NGOs before they are allowed to “operate any activity” and imposes burdensome, overly bureaucratic registration requirements. The law also includes vague provisions which may provide for arbitrary and selective denial of registration and, thus, the criminalization and/or closure of NGOs and associations.

Reform measures

In order to enhance protection for HRDs, the following are proposed:

- Adopt appropriate measures to disseminate widely and ensure full observance of the Declaration on Human Rights Defenders;
- Develop a national policy to protect human rights defenders;
- Effectively investigate and prosecute crimes and violations against human rights defenders and punish those responsible;
- In line with the previous recommendation made by the Committee on Economic, Social and Cultural Rights, adopt effective measure to combat the culture of violence and impunity and to better protect human rights defenders, including indigenous leaders and peasant activists;
- Investigate and prosecute any attacks on – or false allegations in relation to – human rights defenders, in particular those working with communities to protect land, houses and access to natural resources and prevent forced displacement. This issue has been reported on by the Special Rapporteur and the Committee on Economic, Social and Cultural Rights; and,
- Strengthen efforts to protect freedom of expression and the right of all human rights defenders, including those working on land rights issues, to conduct their work without hindrance or intimidation, including safeguarding freedom of assembly and association.

RECOMMENDATIONS

Recommendations to the Government of Cambodia

- Government should adopt the BHR scorecard standard to assess private sector agricultural investments;
- Conduct capacity building for government officers on land laws and dispute resolution mechanisms;
- Government should expedite land title registration;
- A land use plan must be adopted by the Provincial-Municipal State Land Management Committee and land use should be consistent with the plan;
- Accelerate indigenous communal land registration by simplifying the process and increase political will to support the indigenous people’s communities;
- Restore democratic space and support the human and land right defenders;

- Apply an immediate moratorium on all ELCs due to widespread human rights violations;
- When registration as legal entities or collective titling has not been secured, provide preliminary recognition and grant interim protection measures to indigenous communities which may be potentially affected by economic projects, as per Article 23 of the 2001 Land Law; the Inter-ministerial Circular on Interim Measures should be reviewed so as to ensure full compliance with the land law as well as with international law;
- Ensure adequate and meaningful consultation and participation of communities affected by ELCs, including the free, prior and informed consent of affected indigenous people;
- Facilitate rapid registration of the concerned communities as indigenous people, in collaboration with actors already involved such as the local NGOs and community-based organizations; in case registration is not completed, provide documentary evidence to communities whose registration is pending so that they have some legal back up;
- Undertake a contractual compliance review of all concessions, and as per Article 37 of the Sub-decree on ELC, and suspend those found to be operating unlawfully until they comply with national and international law;
- Establish an independent, multi-sectoral monitoring mechanism on large scale agribusiness to guarantee the respect for human rights standards and responsible agro-investment;
- Explore alternatives to large scale investment and monoculture plantations to protect the right to food, ensure sustainable development and reduce poverty; and,
- Ensure the independence of the judiciary so it can provide an effective remedy in case of rights violations.

Recommendations to the private sector

- Corporate investments in Cambodia should apply BHR and government laws in all stages of operations;
- Suspend operations of all companies with ongoing disputes with communities (relating to fallow land, compensation, resettlement, labor, etc.) until these are resolved to the documented satisfaction of the community members involved;
- Disclose to the public all master plans, ESIA's, and other relevant documents relating to the ELC concessions;
- Ensure regular communication with affected communities on the progress of investment projects and the implementation of compensation and redress measures;
- Effectively implement measures recommended by the 2010 *Guide on by-law development and issues related to indigenous peoples in Cambodia*, including particular measures to protect the traditions of the IP

community and to ensure the sustainability of their livelihoods, as well as recommendations to ensure the adoption of a gender-sensitive approach;

- Assist the IP communities to gain legal registration and subsequently, collective ownership, giving the local people the unused portion of the concessions;
- Ensure sub-contractors act with due diligence in order to avoid, to the greatest extent possible, any adverse impact. In particular, an ELC should ensure sub-contractors operating bulldozers are aware of the location of spiritual and burial ground sites; and,
- Review compensation provided to all affected families to ensure compliance with national and international standards on adequate and fair compensation.

Recommendations to NGOs and the donor community

- NGOs should facilitate conflict resolution for affected communities;
- Public consultations between the government and communities should be conducted regularly; and,
- Donors should support CSOs working on land dispute resolution.

Recommendations to local communities

- Local people should cooperate closely with local authorities and government agencies in the conduct of conflict resolution activities at the grassroots level;
- Local people should improve their awareness and understanding on the legal framework on land rights; and,
- Local people should optimize existing conflict-resolution mechanism. ○

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LIST OF ACRONYMS

ADHOC	Cambodian Human Rights and Development Association
ANGOC	Asia NGO Coalition for Agrarian Reform and Rural Development
BHR	Business and Human Rights
CSO	civil society organization
CCHR	Cambodian Center for Human Rights
ELC	Economic Land Concession
ESIA	Environment and Social Impact Assessment
FPIC	Free, Prior, and Informed Consent
HRD	Human Rights Defender
MAFF	Ministry of Agriculture, Forestry and Fishery
MLMUPC	Ministry of Land Management, Urban Planning, and Construction
NARLD	National Authority for the Resolution of Land Disputes
NGO	non-governmental organization
RFA	Radio Free Asia
RGC	The Royal Government of Cambodia
SK	STAR Kampuchea
UNGP BHR	United Nations Guiding Principles on Business and Human Rights

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