



Mini-Report following the Roundtable Discussion on “Land Reform in Cambodia” With an Emphasis on the Topic of “Land Law 2001”

Held on 17 September 2012 in Phnom Penh at East & West Restaurant, Phnom Penh

Executive Summary

The goals of this mini-report are to provide both stakeholders and to relevant institutions information on the issues that were raised and addressed regarding land reform in Cambodia, and particularly the topic of “Land Law 2001” that was held by the Cambodian Center for Human Rights (CCHR) at East & West Cuisine Restaurant in Phnom Penh on 17 September 2012. The objectives of this event were to bring together representatives of groups affected by land conflicts and representatives from NGOs and from political parties, and to provide a forum in which general views of the Land Law 2001 could be presented, for a review and discussion of its meaning and application, and to provide recommendations as to its needed improvement and reform so that they can be considered for adoption and integration into the policies of the political parties in the running up to the general election in 2013.

Among the 27 participants that took part in the roundtable discussion were nine representatives from communities affected by land disputes, 16 representatives of partner non-governmental organizations (NGOs), one independent analyst, and one senator from the Sam Rainsy Party¹. This roundtable discussion session launched the first of a series of six roundtable discussions on Land Reform in Cambodia which were planned and organized to take place in Phnom Penh and in other provinces by CCHR’s Land Reform Project with the support of the European Union (EU). The overall objective of the project is to advocate for the reform of the legal, institutional and policy framework that facilitates the widespread transfer of land from vulnerable and marginalized groups to a wealthy and politically-connected elite, and as a result of such reform, to achieve land security and tenure for all Cambodians.

I. Introduction

The Kingdom of Cambodia is a country that acknowledges, recognizes and insures in its Constitution the human rights of Khmer Citizens, including their rights to land and housing. Article 44 of the Constitution and Article 5 of land law (2001) provides legislation insuring ownership, which includes land title and

¹ Parliamentarians were invited from the five political parties; Cambodian People’s Party (CPP), Sam Rainsy Party (SRP), Human Rights Party (HRP), FUNCINPEC and Nationalist Party, but CPP declined to participate on 14 Sept, HRP cancelled its confirmed participation on 15 Sept, and FUNCINPEC and the Nationalist Party cancelled their confirmed participation one hour before the second session of the roundtable began at 2:00pm on 17 September 2012.

housing rights for every Khmer citizen, and for protections from the arbitrary expropriation of property, requiring that property can only be seized if doing so is in the public interest, and only then with fair and just compensation provided. In addition, in order to provide more security in land titles and housing, the Cambodian Government accepted the recommendation of the Universal Periodic in 2009 in establishing the Land Reform Policy in its National Strategic Development Plan 2009-2013, largely focusing on insuring the use of land and of land ownership for the Cambodian People.

However, despite such assurances embodied in Cambodia's laws, in practice, its housing rights violations are the most prolific and prevalent forms of human rights abuses occurring in Cambodia today. In 2011, it was estimated that some 150,000 Cambodians across the country lived at risk of being forcibly evicted within both rural and urban communities.²

The speakers and participants of this first roundtable discussion exchanged ideas and debated in order to identify the positive and negative aspects of Land Law 2001, as well as how the law could be better implemented so that it could better meet its original purpose. In the panel discussion, the speakers and participants made their recommendations for reform of the law, as well as for the law's better implementation so that the political parties could consider integrating these recommendations into their policies in the running up to general election in 2013.

II. Morning session discussion concerning problems raised with Land Law 2001

1. General view of Land Law 2001

General views concerning land law 2001 were discussed by the speakers. Although comprehensive, the discussion focused primarily on specific aspects of land conflicts in Cambodia, particularly the manner in which the hierarchy of laws were not being observed in their implementation, and were thereby causing the illegal transferring of land resulting in land conflicts occurring throughout Cambodia. The speakers also raised their observations concerning the lack of respect for the hierarchy of law as follows:

- The notification letter that is currently used when a land conflict is at issue is improper as it is inconsistent with the laws, as well as with the hierarchy of laws. The only laws that can be recognized, and their hierarchy, are the Constitution, international law, national law, Royal decree, Sub-Decree, the declaration of the ministries, and circulars.
- In regard to land and state properties, the Constitution of the Kingdom of Cambodia is the highest law, and determines the principles of state properties. The land law manages the land, and within it, provides for the ability to change the character of state public property to state private property by reclassifying it. However, the Sub-Decree that was issued allowing for changing the character of land through its reclassification is currently being used to reclassify state public land to state private for the purpose of selling and renting it. Illustrating this problem is Boung kak Lake in Phnom Penh. Although Boung kak is a natural lake, was state public property, and was leased to Shukaku, Inc. in 2007, it was not until 2008 that its character was changed when it was reclassified state private land. As the law requires that state public land cannot be granted to a commercial interest unless its character has first been changed by reclassifying it from state public land to state private land, the awarding of the property to Shukaku, Inc. was illegal because it was contrary to the law.

² Housing Rights Task Force (HRTF), October 2011

- In Cambodia, there is the lack of a legal code that clearly defines the management of state public properties, and therefore, there has been resulting confusion regarding the differing management responsibilities that pertain to state public land and to state private land.
- Reclassification law: The Royal Decree allows for the reclassification of state public properties only when such properties are already registered in the state inventory. Consequently, any property that had not already been registered in the state inventory could not be reclassified. However, despite this requirement, properties that have been the subject of land concessions have been so reclassified whether or not they were registered in state inventory.
- Economic Land Concessions (“ELC”s) are at the root of land conflicts in Cambodia. ELCs have been granted under the Sub-decree, but have not conformed with the law requiring that they first be reclassified in accordance with the Constitution and the Land Law, and have also been granted without public announcement, public bidding or multiple bidders.
- In Cambodia today, there is no mechanism to follow-up on the implementation of law, despite this being the responsibility of its legislature. There is therefore no source that can advise as to whether laws are effective or not, or whether they are fully and properly implemented. This lack of oversight results in a tremendous gap between the issuance of laws and in assessing whether they have met their intended goals.

2. The positive and negative points of Land Law 2001

The speakers and the participants raised their concerns that, despite the Constitution of Kingdom of Cambodia and Land Law 2001 conferring on the Cambodian people rights and protections as to their land ownership, the main problem that existed was the absence of law implementation. This was viewed as being caused by the lack of will by the government, which was also noted to be prevalent with competent authorities, relevant institutions and the judicial system. The panel discussions showed that the lack of respect for the hierarchy of laws together with the absence of effective law implementation resulted in serious human rights violations involving land conflicts, and in particular, that such absence of the proper implementation of land law 2001 was demonstrated as follows:

- The main obstacle in the resolution of land conflicts cannot be solved as it involves the poor management of land registration. For example, the data shows that there are a total of six million plots of land, but only two million plots of land have received hard titles.
- The administration and issuance of hard titles for land is processed very slowly, and does not meet the needs of the free market system where the property owners need security of title and the ability to freely transfer their properties.
- Possession of land is insured by the Land Law 2001, but this right of possessors is not respected, even though their possession of the land began before the Land Law 2001 went into effect.
- Economic land concessions have been granted without the required research and study on their social and environmental impact.
- The failure to revoke ELCs in cases where a holding company has failed to meet the legal requirements in either obtaining the award of the ELC or for keeping it.
- Forced evictions have been epidemically used to move people from their land in many places without appropriate compensation, despite the Land Law 2001 requiring that when immovable property for the public interest is confiscated, appropriate compensation must be paid in advance. This can result in evictees being double victimized. For example, in one case,

a resident who was evicted from Borey Keyla was given a compensation payment of only US \$2,000 in order to purchase new land at Pursen Chey Khan, Phnom Penh. That same resident is now again facing eviction after the local authorities announced an expansion of the National Airport on the land on which the resident had moved.

- The failure of the government to observe its land conflict resolution policy. As in the case of Bounng kak Lake, the government retracted the third choice offer it had given residents in which it had agreed in allowing them to stay on their land while the development took place, instead forcing them to either accept their first choice offer of US \$8,000 plus two million riel as compensation, or their second choice offer to relocate to a building in Damnak Trayoueng, a distance of 25 kilometers from Phnom Penh.
- The use of armed forces and extreme violence to suppress land protesters.
- The use of forces that are not legitimate agents for the authorities in order to commit forced evictions and to suppress the protesters³.
- The arrest and imprisonment of land activists by arresting them and charging them with having committed crimes.
- Impunity protecting those involved in the suppression of land protesters⁴.
- Authorities failing to provide former evictees⁵ with the promised development of infrastructure in their place of relocation.
- Discrimination against former land evictees⁶, such as the local authorities' failure to issue them needed ID cards.

III. Recommendations raised in the afternoon session

In the afternoon panel discussion, all of the participants summarized their problems as listed above, and made recommendations which were responded to by the senator⁷ and the speakers. The senator and the other speakers agreed that the problems raised by the representatives from the groups affected by land conflicts, and those problems raised by the group of representatives from civil society, involved situations concerning actual land conflicts that have affected hundreds of thousands of people in Cambodia. The senator then announced the Land Policy of Sam Rainsy Party, having accepted all of the recommendations raised by the participants.

1. The recommendations raised by the participants

There were 19 recommendations raised by the participants, which are as follows:

- To pressure the investors who have exploited the affected peoples' lands by directing those investors to employ the affected people, and to provide appropriate wages sufficient to allow

³ In 18 January 2012, at Kratie province, TTY's security guards opened fire on land protesters, wounding six villagers, two of them seriously.

⁴ In 16 May 2012, a 14-girl was shot and killed by the military while firing their weapons in order to suppress land protesters at Pro Ma village, Kratie province.

⁵ The former evictees who were evicted from the SambokChab area to the relocation site at Andong village.

⁶ The former evictees who were evicted from the DeyKraham area to the relocation site at AnlongKangan village.

⁷ H.E Ho Vann, the senator from Sam Rainsy Party.

them to support themselves and their families, and to also provide the funds necessary for the construction of houses, hospitals and schools.

- To provide direct support to the poor who have been victimized by land conflicts.
- To conduct broad information dissemination sessions and training on the land law.
- To pressure those powerful people who commit unlawful acts concerning land conflicts. In particular, the donors who fund the government, and enable those in power to buy military assault weapons in order to repress land protesters must not only be stopped in providing these funds, but should also be prosecuted for their criminal mistreatment of the victims of their land grabbing.
- To terminate any contracts with any investor who commits an unlawful act involving a land conflict.
- The new government must conduct land registration for all land in Cambodia, and insure that all land is clearly classified.
- To provide hard land titles to all of the Cambodian people.
- To immediately stop evictions, and allow people to live on their land while planned developments are taking place.
- To reform the economic land concession (“ELC”) policy by reducing the number of ELCs and increasing the number of social land concessions.
- To prosecute any individual who engaged in the land-grabbing of state land.
- To first consult and negotiate with any people concerning their land rights in the event that there might be any development plans for the land on which they reside.
- The government must strongly consider the immediate need for housing shelters for evictees.
- The Royal Armed Forces should not be allowed to be based on the peoples’ land as a pretext for land-grabbing, or for its sale.
- Developments should first be performed on uninhabited land, and it must be a priority to avoid the need to relocate people in order to accommodate such development.
- To implement laws rather than orders.
- New laws should not be created that affect the land titles of the people, such as the recently proposed draft law on the Management and the Use of Agricultural Land.
- To eliminate the suppression of land activists.
- The National Assembly (NA) should establish an institution to monitor and enforce the implementation of the law. The NA should have the authority to summon the government to appear and account for its failure to implement laws, such as the absence of the implementation of land law.
- To stop the arrest, prosecution, conviction and imprisonment of land activists.

2.The announcement of the senator on Land Policy

In addition to his announcement to accept all of the recommendations made as noted above, in the last session of the roundtable discussion the senator publicly announced the Sam Rainsy Party’s policy regarding the land as follows:

- To review and to keep only the land concessions which benefit the country and its people.

- If a review of the purpose or implementation of any land concessions awarded to date finds them to be improper, their contracts will be terminated.
- There will be a requirement for any investment that affects the land that it should be one for construction of a factory that would process and transform the people's agricultural production. For example, because the people know how to grow cassava, there would be no need for any investments to be made in order to use the land to grow cassava. A company should, however, be encouraged to invest in the construction of a factory for the purpose of transforming cassava to cassava flour. This would then not affect the peoples' land, but instead would support them in providing a market for their agricultural product.
- To prosecute any individual who intimidates or threatens anyone for the purpose of grabbing their land.
- To remedy the corruption in the system from the top level to the bottom levels.

IV. Challenges

Although the roundtable discussion went as planned, there were some challenges in addressing some obstacles that are creating obstacles. The following are the challenges that were encountered:

- On 14 September 2012, in the course of CCHR confirming by telephone which parliamentarian from the Cambodian People Party (CPP) would attend the roundtable discussion, CPP's representatives firmly advised CCHR that because it had never previously assigned any of its representatives to attend any event which was organized by CCHR, there was therefore no need to confirm their attendance.
- The same day, on 14 September, in the course of CCHR confirming by telephone which representative from the Ministry of Land Management, Urban Planning and Construction would attend the roundtable discussion, H.E. Mrs. Ou Vuddy, Permanent General Secretary for Council for Land Policy, stated that since CCHR was merely an NGO, they were offended by CCHR having dared to invite an officer from the Ministry to join its workshop.
- On 17 September 2012, one hour before the afternoon second session of the roundtable discussion was scheduled to begin, two representatives, one from FUNCINPEC Party⁸ and another one from Nationalist Party⁹ called to cancel their participation.
- Four days after the roundtable discussion, on 21 September 2012, government leader Prime Minister Hun Sen, in the course of a ceremony in which he was issuing land certificates to people in Kratie province, made some noteworthy comments. The Prime Minister declared that the officers from Cambodian People's Party ("CPP") did not participate in a particular seminar, despite their having been invited to so participate by "an organization" because they were too busy to meet with these people. The Prime Minister added that while CPP representatives don't have enough time to attend a seminar in a restaurant or a hotel, he observed that they do have the time to have discussions directly with the people.

⁸ H.E Kuch Moly

⁹ H.E You HokKry

Even if the Prime Minister did not specifically mention the name of the organization to which he was referring, social observers and workers concluded that his comments concerning this “organization” were in reference to the Cambodian Center for Human Rights (“CCHR”). Indeed, on 17 September, 2012, CCHR had, in fact, organized a roundtable discussion on land policy reform in Cambodia which was attended by social analysts, representatives from political parties and observers.

The above reaction was broadcasted by the Voice of Democracy Radio (VOD) on 21 September 2012, and was entitled; **“Prime Minister Hun Sen Mocks A Civil Society Organization Without Mentioning its Name.”**

Annex 1: The following organizations attended the Round Table Discussion:

- ***Political Party***

Senator from Sam Rainsy Party

- ***Independent Analyst***

- ***NGOs:***

Star Kampuchea

Cambodian League for the Promotion and Defense for Human Rights (LICADHO)

The Cambodian Human Rights & Development Association (ADHOC)

Cambodian Peace Building Network (CPN)

Confederation of Cambodian Farmers Community (CCFC)

Housing Right Task Force (HRTF)

Sor Sor Troung Organization (SST)

Community Legal Education Center (CLEC)

NGO Forum

Cambodia- Equity

- ***Communities:***

Boung kak Community

BoreiKeila Community

AnDoung Community

PurSenchey Community

Former Dei Krorhom Community

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