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Cambodian Center for Human Rights



Mini-Report following the Roundtable Discussion on “Investment Projects and Land Concessions” held on 29 March 2013 at Koh Kong City Hotel, Koh Kong Province

Executive Summary

The aim of this mini-report is to provide stakeholders and relevant institutions and organizations with information regarding the issues that were addressed during the Roundtable Discussion, “Investment Projects and Land Concessions”, held at the Koh Kong City Hotel, Krong Khemarak Phoumin, Koh Kong Province on 29 March 2013. The event was co-hosted by the Cambodian Center for Human Rights (“CCHR”), the Community Legal Education Center (“CLEC”) and the NGO Forum on Cambodia.

The aim of the event was to give community representatives the opportunity to raise their concerns regarding the impact of investment projects and land concessions on their livelihoods and communities. The event was also an opportunity for company representatives and representatives of political parties and local authorities to engage in a dialogue with communities and to allow them to explain their views and policies on investment projects and land concessions in the region.

The 36 participants at the event, 11 of whom were women, included representatives from NGOs, community representatives from Chi Khor Kroum and Chi Khor Leu communities, a local authority representative, representatives from Koh Kong Sugar Industry Co Ltd and a representative from the Sam Rainsy Party.

In total there were 14 representatives from seven NGOs¹, and 17 community representatives from Chi Khor Kroum and Chi Khor Leu Communes, Sre Ambel District. The Commune Deputy from Chi Khor Leu was in attendance, along with three representatives from the Koh Kong Sugar Industry Co Ltd (including the General Manager, Mr. Thanakorn Borintarachart), and one representative from the Sam Rainsy Party.²

H.E Mong Rithy, chief of the Third Committee Responsible for Planning, Investment, Agriculture, Water Resource, Meteorology, Rural Development and Environment of the Senate (the “Third Committee of

¹ Representatives came from CCHR, CLEC, the NGO Forum on Cambodia, the Community Managed Development Partners, the Mlup Promviheathor Center, the Morodok Organization and the Cambodian Human Rights and Development Association (“ADHOC”).

² Mr. Chin Sophall, the Sam Rainsy Party member of the Koh Kong Provincial Council.

the Senate”) was invited to the event as special speaker at the roundtable discussion. Despite confirming on 18 March 2013 that he was 80% certain that he would attend the event, his assistant contacted CCHR on 26 March 2013 and confirmed that he would not attend as he had an urgent meeting with the Third Committee of the Senate on the same day. Similarly, a significant number of the government representatives, parliamentarians and company representatives who had been invited to the event cancelled their attendance at short notice (see Annex 2 below).

CCHR’s co-hosting of the event was organized as part of the output of the Land Reform Project (“LRP”), which is generously supported by the European Union (“EU”).

Introduction

Land Concessions, specifically Economic Land Concessions (“ELCs”) are the long term leases granted by the Royal Government of Cambodia (“RGC”) to companies of State land, giving private parties the use and benefit of land owned by the State for a fixed term of fewer than 99 years in exchange for a fee.³ ELCs can be granted to allow the concessionaire to use the land for agricultural and industrial-agricultural use.⁴

The process for granting ELCs is set out in the Sub-Decree on Economic Land Concessions. This Sub-Decree stipulates that the process of granting an ELC must include environmental and social impact assessments, solutions for resettlement issues and public consultation. Cambodia’s rapid economic expansion has led to a significant increase in the number of ELCs being granted, although the legal framework and safeguards set out in the Sub-Decree are often ignored. ELCs – in some circumstances – play a crucial role in Cambodia’s continued economic development, but authorities and companies must honor their legal obligations if investment is to be conducted in a responsible way that mitigates the impact of investments on communities.

The Roundtable Discussion was an opportunity to bring various stakeholders together, allowing communities to express their concerns regarding the way in which ELCs are granted and their subsequent economic and social impacts on those who had previously inhabited the land subject to the concession and for company representatives to respond to those concerns, and to explain how the impact of ELCs can be properly mitigated. The event was also an opportunity for representatives of political parties to set out their policies in relation to land concessions and investments in advance of the forthcoming General Elections in July 2013.

Opening Remarks from Ou Virak and Plenary Discussion

CCHR President, Ou Virak, welcomed all participants and thanked the various representatives for attending. He also expressed regret that several government, company and political party representatives had declined to attend the event. Ou Virak stated that he was saddened to see the detrimental impact that irresponsible investment was having on Cambodia’s economy and international

³ Articles 50 and 51, Land Law 2001.

⁴ Article 49, Land Law 2001.

reputation; Koh Kong is a province rich in natural resources and natural beauty, but it is also home to widespread conflicts and suffering that have been brought about by a combination of the increased number of ELCs that have been granted and the failure of concessionaires to abide by their obligations. Ou Virak commented on the urgent need to find a solution to the problems created by investment projects in order to facilitate better development on the region and he highlighted the need for all stakeholders to respect each other and work together to find a resolution.

These opening comments were followed by a panel-led discussion. The panel was made up of Ou Virak, Mr. Chum Narin, Unit Head of CLEC's Land and Natural Resource Program, Mr. Sin Kheam (First Deputy Commune Chief of Chi Khor Leu), and Mr. Chin Sophall, the Koh Kong Council Member from the Sam Rainsy Party.

The aim of this panel discussion was for the panel members to give a general overview of the current situation regarding Investment Projects relating to Land Concession in Cambodia, with a specific focus on projects in Koh Kong Province.

Presentation by Mr. Chum Narin, Unit Head of CLEC's Land and Natural Resource Program:

- Land conflicts continue to be an important and complex issue that has had an increasing impact on communities in recent years. Cambodia's move to a free market economy and rapid economic growth have contributed to an increased demand for ELCs.
- Development is a positive thing for Cambodia but the land conflicts that have come about as a result of development and ELCs have showed that there can also be a negative impact – this is something that needs to be addressed.
- Chum Narin identified five main areas of development relevant to Cambodia and other developing countries: economic development, cultural development, environmental development, social development and political development.
- Investment is an integral part of economic development but the RGC must ensure that investments comply with the standards set out in the relevant legislation and that those involved in investment respect the rule of law.
- There are existing laws in place that are intended to ensure that investments are conducted in a responsible manner, including the Land Law 2001, the Law on Expropriation and the Sub-Decree on Economic Land Concessions; proper implementation of these laws is crucial to responsible investment.
- In reality, these laws are not adhered to. For instance, in relation to ELCs, many of the conditions set out in law – such as public consultations and environmental/ social impact assessments – are not followed. Companies are allowed to obtain ELCs without complying with the law because it is rarely enforced.

Response by Mr. Sin Kheam, First Deputy Commune Chief of Chi Khor Leu Community:

- Mr. Sin Kheam agreed that the issue is not with the laws themselves, but with the failure to implement the laws.

- Land conflicts arise because of the lack of any meaningful consultation process. There has been a land conflict in his community since 2005; at no point has there been any real dialogue between the community, the company and the authorities.
- Since 2005 the land in question had been controlled by Wild Aid Organization (a conservation organization); Mr. Sin Kheam stated that the Commune Authorities had no control over the land.
- He stated that he had held the position of Commune Chief from 2002 to 2007, but since 2008 he had held the position of First Deputy Commune Chief and as such the responsibility for trying to resolve the conflict rested not with him, but with the Commune Chief.

Response by Mr. Chin Sophall, the Koh Kong Provincial Council member from Sam Rainsy Party:

- Mr. Chin Sophall recognized that the land conflict in the communities of Chi Khor Leu and Chi Khor Khrom had been allowed to go on for very long time.
- He blamed the Commune Chief for the fact that members of the community had lost their land, stating that the company had had been able to seize the land – sometimes using threats and violence against members of the community – because they had paid large amounts of money to the Commune authorities.
- One of the reasons for development and investment is to provide employment to communities; in Chi Khor Leu and Chi Khor Kroum, investment projects have in fact led to a reduction in job opportunities in the area and as a result, individuals have had to look for work in other countries.

Participation from Community Representatives

The floor was then open to community representatives from Chi Khor Kroum and Chi Khor Leu to comment on how they have been affected by land concessions and the resulting forced evictions in their communities and to ask questions of panel members and participants. The main issues that were raised were:

- Companies are failing to respect the provisions of the Land Law 2001 and the Sub-Decree on Land Concessions.
- Companies have seized land from villagers and forcibly evicted them. No compensation or new plots of land have been distributed.
- Villagers are not being included in any consultations as should be the case under the procedure set out for the granting of ELCs.
- Company employees have used violence against villagers and in some instances have killed their livestock.
- Community representatives stated that the people of Cambodia need justice and need to be able to rely on independent institutions – this is currently not the case.
- Community representatives want to know why companies are failing to respect laws and why they are allowed to do this with impunity.

- The land concessions in Chi Khor Kroum commune had created an adverse economic impact and the people have become poorer as a result, with no legal redress.
- One female from Chi Khor Kroum community reported that Mr. Heng Huy, the owner of Heng Huy Agriculture Group Co Ltd had made comments to villagers that he 'is not afraid of people's complaints because nobody would dare to take action against him'.
- Villagers at Chi Khor Kroum community had previously made complaints to the court against Heng Huy Agriculture Group Co Ltd, alleging the destruction of their fence posts and property boundaries; to date the court has failed to take any action regarding these complaints.
- One female representative from Chi Khor Kroum community described how she had been arrested and imprisoned for two months simply for demanding her rights and protesting against the actions of Heng Huy Agriculture Group Co Ltd. She demanded to know whether the authorities had the right to do this to her and her family and what was the basis for their arrest.
- Participants commented on the widening gap between the rich and the poor and the fact that many of the affected individuals lacked the necessary capacity and information/ education to challenge the actions and conduct of the companies and authorities.
- Food security is also a problem as the land that people used to grow crops is taken from them and they are forced to take out loans to cover basic needs.
- Companies – including the Ly Yong Phat Group – have used violence towards villagers and threatened them with guns.
- One community representative demanded to know why people were losing their land and asked whether the laws were created for the rich or the poor. She described how communities were suffering and how children were being denied access to education as a consequence of forced evictions.

Response from Representative from Koh Kong Sugar Industry Co Ltd

- Mr. Thanakorn Borintarachart, the General Manager ("GM") of Koh Kong Sugar Industry Co Ltd ("the Company"), attended the event to express the views of the Company and to answer any concerns put forward by other participants. This Company was the only company to accept an invitation to participate in the event.
- He explained that he had just taken over the role of GM and was aware of the previous conflicts that had taken place between the Company and the community at Chi Khor Leu community. He added that his Company had already paid a substantial sum of money to the business tycoon Ly Yong Phat in an attempt to resolve the ongoing disputes between the Company and the community but that the problems had not been resolved. He stated that he has a strong commitment to resolve the land conflicts between the people and the Company.
- He stated that he would be personally responsible for resolving the ongoing conflicts and would settle all issues in accordance with the law. He vowed that the Company would not use threats or violence against communities and would engage in dialogue and consultation with them.
- Significantly, he stated that the Company would go so far as to return the land that had been seized from the communities as a result of previous land concessions. He asked for the help of the authorities in solving these problems and addressing these issues and stated that his

Company had paid large sums of money to the authorities in exchange for the concessions; he asked that the Ministry for Agriculture, Fisheries and Forests (“MAFF”) compensate his Company appropriately, given that he has promised to return the land to the communities and he called on the participating NGOs to pledge their cooperation in finding a solution to the current situation.

- He guaranteed that the Company was willing to return the land to people, but he also made it clear that he was calling on the MAFF to provide adequate compensation to the Company. He stated the Company would not use any land to cultivate sugar cane in instances where the land had been granted to the Company improperly or illegally.
- He stated that it was the hope of the Company – and his personal hope – that the Company, the relevant authorities and the affected communities could work together to find a mutually acceptable solution to the current disputes and disagreements.

Further Comments from Sam Rainsy Party Representative

- Mr. Chin Sophall stated that the policy of his party was to return all illegally transferred land to individuals who had been victims of illegally granted ELCs.
- If elected, his party would guarantee the rights of ownership set out in law and would aim to eradicate violations of these rights.

Further Comments from Deputy Commune Chief

- In response to the comments from the representative from Koh Kong Sugar Industry Co Ltd, Mr. Sin Kheam stated that the Company should communicate with the MAFF and the district and provincial authorities in relation to his promise to return the disputed land to the villagers and his request for compensation to the Company.

Conclusion and Recommendations

- Before any transfer of land and subsequent relocation of communities takes place, a consultation must be conducted and compensation should be agreed and provided in advance. Any disagreements must be settled in accordance with the law before the concessionaire takes possession of the land.
- Efforts should be made by authorities, companies and NGOs to engage in further dialogue before the General Elections take place in July 2013.
- Representatives of the authorities and NGOs should help to host and facilitate negotiations between companies and communities.
- The process of granting ELCs needs to be transparent and communities need to be informed of proposed investment projects in their area by both the companies themselves and by the authorities so that the consultation process can commence as early as possible.
- The promise made by Koh Kong Sugar Industries Co Ltd needs to be acted on and the commitment to compensate individuals and return their land must be honored.

- Koh Kong Sugar Industry Co Ltd should stop purchasing sugar cane from Heng Huy Agriculture Group Co Ltd as its sugar cane plantation has had a huge negative impact on the community of Chi Khor Kroum and has caused a lot of suffering to its residents.
- The local authority representative should report back to other relevant members of the authorities the content of this roundtable discussion and encourage their participation in future dialogues.
- The local authorities and the courts must take the complaints regarding Heng Huy Agriculture Group Co Ltd and the courts must ensure the thorough and impartial investigation of all complaints that are made. The company should cease operations in the area until these allegations are resolved.

Challenges:

- While there was some positive and constructive discussions at the event between all parties – particularly regarding the extremely positive comments from Mr. Thanakorn Borintarachart – it was also extremely disappointing that a significant number of the representatives that were invited cancelled their attendance at short notice.
- It is essential that representatives from companies who are engaged in investment projects are willing to participate in discussions with the authorities and communities if the ongoing disputes are to be resolved. Open and transparent debate on the issue is needed and this can only be meaningful if all relevant parties are committed to finding a solution. Other companies should follow the example of Koh Kong Sugar Industries Co Ltd in agreeing to participate in the event and to listen and respond to concerns raised by community representatives.
- It was surprising that, with General Elections looming, only one political party chose to send a representative to the event. The participation of all parties, and particularly the ruling Cambodian People's Party ("CPP"), is essential if voters are to have any confidence that their complaints are being taken seriously and that the CPP and opposition parties are willing to stand up for their rights and address their concerns.

Annex 1: Summary of Attendees:

- **Political Parties**
 - Koh Kong Provincial Council member from Sam Rainy Party
- **Local Authority**
 - The First Deputy Commune Chief of Chi Khor Leu commune
- **Company**
 - Koh Kong Sugar Industry Co Ltd
- **Communities people**
 - People from Chi Khor Leu commune, Sre Ambel district, Koh Kong Province
 - People from Chi Khor Kroum commune, Sre Abel district, Koh Kong Province
 - People from Kandoul commune, Botomsakor District, Koh Kong Province
- **Non-Governmental Organization**
 - NGO Forum on Cambodia
 - Community Legal Education Center
 - Cambodian Center for Human Rights
 - Community Managed Development Partners
 - Mlup Promviheathor Center
 - Morodok Organization
 - Cambodian Human Rights and Development Association (ADHOC)

Annex 2: Details of Representatives who Declined to Attend and Reasons Provided

- The Koh Kong provincial governor, H.E Bun Leut, contacted CCHR on 28 March 2013 and confirmed that he would not attend and nobody would attend on his behalf because he was very busy.
- Mr. Ros Viravuth, deputy of the Koh Kong Land Management, Urban Planning, Construction and Cadastral Office, made contact on 28 March 2013 confirming his absence as he was too busy.
- The Sre Ambel District Governor, Mr. Toun Seyla, made contact on 28 March 2013 confirming his absence and stating that he would only attend if he was officially assigned to do so by the provincial governor.
- Mr. Heng Huy, the owner of Heng Huy Agriculture Group Co Ltd, made contact on 19 March 2013 and declined to participate in the discussion, stating that it would be 'like putting him in the lion's den'; he did, however state that he would be willing to participate in informal negotiations with communities in the future, under the coordination of relevant NGOs.
- Mr. Eng Teav, the assistant of H.E. Say Chhum, Chairman of the Standing Committee of the CPP Politburo, made contact on 27 March 2012 to confirm that nobody from the CPP was available to attend the event.
- The administration office of the Human Rights Party called on 27 March 2013 to confirm that the Human Rights Party would be busy organizing its conference on 29 March and therefore could not send a representative.

- FUNCINPEC Party's officer, made contact on 27 March 2013 and confirmed that H.E. Kuch Moly, a FUNCINPEC parliamentarian would attend the event. However, he contacted CCHR again on 28 March 2013 to cancel his attendance, stating that H.E. Kuch Moly was busy and could no longer participate.
- A Nationalist Party officer made contact on 27 March 2013 to confirm that H.E. Koy Sokha Rith, Deputy General Secretary of the Nationalist Party and RGC Advisor would participate the discussion; at very short notice, on the morning of 29 March 2013, he made further contact to state that he would in fact not be able to attend the event.