

## FIDH and ADHOC

### Joint Submission to the Universal Periodic Review of Cambodia – June 2013 2<sup>nd</sup> Cycle

#### Land, Housing and Natural Resources Rights

1. This is a joint submission of International Federation for Human Rights (FIDH) and its member organization the Cambodian Human Rights and Development Association (ADHOC). This submission outlines the Royal Government of Cambodia's progress following the commitments it has made and recommendations it has adopted during the 2009 Universal Periodic Review in the areas of **land, housing and natural resources**. It is based on our observations on the ground and utilizes ADHOC's extensive countrywide presence with offices in 23 out of the 24 provinces in Cambodia.

#### Executive Summary

2. During its Universal Periodic Review (UPR) in 2009, the Government of Cambodia accepted 91 recommendations to improve the human rights situation in the country. Nine of these address land, housing and natural resources rights. Since the 2009 UPR, Cambodia has largely failed to implement these recommendations. A few forward steps were taken by granting of land titles and the passage of a moratorium on new Economic Land Concessions (ELCs) in 2012, although the implementation of these has been inconsistent. Land grabs and forced evictions continue and leave citizens and communities landless, vulnerable, and victim to further human rights violations.
3. The Cambodian Constitution and the 2001 Land Law, among others, protect land, housing, and natural resources. However, Cambodia's development policies on land are opaque and facilitate large-scale land grabbing in the form of leases under Economic Land Concessions (ELCs) and Social Land Concessions (SLCs). This unlawful land grabbing occurs nationwide – both small and large scale – with powerful members of society circumscribing or manipulating the law and policies at the expense of the poor. As a result, an ever-increasing percentage of the Cambodian population is landless.<sup>1</sup>
4. Cambodia has failed to uphold citizens' right to adequate standard of living and property, including security of tenure. Hundreds of thousands of land titles have been delivered in the last few years<sup>2</sup>; however, successive land titling programs have failed to address the needs of the people who are most in need of land tenure security, i.e., indigenous people and those who live in informal settlements and disputed areas. Indigenous communities face particularly tremendous obstacles in being recognized as legal entities and registering their land for collective ownership. As of ~~early June 2013~~, only ~~eightfive~~ such communities (~~in Rattanakiri and Mondulakiri provinces~~) had been granted collective land titles. Others are losing their lands.
5. When land, housing and natural resources rights are denied, a host of other rights and freedoms may be negatively impacted. This is particularly the case when those evicted are

<sup>1</sup> According to the World Bank, the percentage of landless people increased from 13% in 1997 to 25% in 2007.

<sup>2</sup> As of November 2011, the systematic land registration process had delivered 1,740,839 titles (LSSAP, *Land Is Life: Land Administration Sub-Sector Program Newsletter*, Issue 2 (November 2011)). See *NGO Position Papers on Cambodia's Development in 2010-2012: Monitoring the Implementation of the National Strategic Development Plan and the 2010 CDCF Joint Monitoring Indicators* (25 September 2012), p. 73.

left homeless, receive sub-standard compensation, and when, as usual, the resettlement sites are inadequate, remote or lack basic public services or facilities.<sup>3</sup>

6. The Government has been suppressing, often violently, peaceful protests and is increasingly harassing community representatives and land and housing rights activists. For example, in Phnom Penh, peaceful demonstrations for land and housing rights organized by the Boeung Kak, Borei Keila and other communities were systematically suppressed<sup>4</sup>.
7. Across the country, the Government has been harassing and physically abusing community members and advocates protesting against unlawful deprivation of their land rights or encroachment on the natural resources they depend upon for livelihood. The Government also has arrested and unduly prosecuted them. On several occasions, the Government disrupted and dismantled training sessions and community empowerment meetings organized by civil society organizations.

### **International Commitments of the Kingdom of Cambodia relating to Land, Housing and Natural Resources Rights.**

8. Cambodia is a state party to the ICESCR, which imposes the obligation to guarantee the right of individuals to adequate standard of living, which includes “adequate food, clothing and housing, and [...] the continuous improvement of living conditions”<sup>5</sup>. The right to adequate housing extends to the obligation to “confer legal security of tenure upon those persons and households currently lacking such protection”<sup>6</sup> and to adopt a national housing strategy that defines objectives, identifies available resources and sets out responsibilities and time-frames for its implementation.<sup>7</sup>
9. Under the right to adequate housing, forced eviction, i.e., the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal and other protection,” is unlawful.<sup>8</sup> This means that the Government must, at a minimum, consult individuals about proposed projects and resettlement solutions prior to implementation, and people have the right to meaningful judicial and administrative recourses. Feasible alternatives must be explored and, if evictions are ordered nevertheless, the Government must give adequate notice and observe general principles of reasonableness and proportionality.<sup>9</sup>

---

<sup>3</sup> For instance, children’s right to education may be violated if there are no schools near the resettlement areas. If relocation sites are squalid, there may be a decrease in life expectancy and an increase in diseases, affecting the right to health. Similarly, the right to work may be denied because of homelessness or relocation that is far from places where employment is available. The rights to privacy and personal security may also be affected. Last, cultural rights may be violated if housing is a significant part of people’s identities and traditions (this holds true, in particular, for indigenous people).

<sup>4</sup> For a detailed case study, please see ADHOC report *A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012 (Feb 2013)*

<sup>5</sup> Article 11(1), International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>6</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment no. 4: The Right to Adequate Housing (Art. 11(1))*, 13 December 1991, para. 8(a).

<sup>7</sup> *Ibid.*, para. 12.

<sup>8</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment no. 7: The Right to Adequate Housing (Art. 11(1)): Forced Evictions*, 20 May 1997, para. 3.

<sup>9</sup> *Ibid.*, paras. 13-15.

10. Livelihoods and natural resources are crucial to realization of the right to adequate food and the right to water, which are part of the right to an adequate standard of living.<sup>10</sup> The Government of Cambodia must refrain from actions, including business and development enterprises, when those might hinder access to adequate food and water and take positive steps to protect and strengthen food security.<sup>11</sup>

### **National Laws in Place Pertaining to Land, Housing and Natural Resources Rights**

11. The Constitution of the Kingdom of Cambodia guarantees to people under Article 31 all fundamental international human rights. Article 44 safeguards the right to private ownership and to ownership of land and stipulates that “[t]he right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation [paid] in advance.”
12. Article 30 of the Land Law 2001 stipulates that “any person who, for no less than five years prior to the promulgation of [the law], enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership.”<sup>12</sup>
13. The 2001 Land Law outlines two categories of state land—state public land and state private land—and a procedure for re-classification and a framework for land titling. It also authorizes the granting of Economic (ELCs) and Social Land Concessions (SLCs), setting out conditions and procedures that have been developed in specific sub-decrees, namely the 2005 Sub-Decree on Economic Land Concessions and the 2003 Sub-Decree on Social Land Concessions. These laws provide some due standards and [safeguards, safeguards](#); however, the Government frequently circumvents or fails to implement the standards and safeguards under these laws. Cambodia does not have a broader national housing or evictions policy, although draft laws have been under discussion.
14. Cambodia’s natural resources are protected by several laws. The 2008 Protected Areas Law defines several categories of protected areas—national parks, wildlife sanctuaries, protected landscapes, Ramsar (wetlands) sites, biosphere reserves, marine parks, natural heritage sites and “multiple use” areas—as well as a zoning system. The former two are wholly protected from encroachment, whereas the latter two may see some development or infrastructure building, subject to government approval. Modifications of protected areas, their zones or boundaries must follow legal and sub-decree procedures. The 2002 Forestry Law defines the framework for the management, harvesting, use, development and conservation of the forests.

<sup>10</sup> As the United Nations Special Rapporteur on the Right to Food put it, “rural poor suffer from hunger because they lack access to resources such as land, do not hold secure tenure, are bound by unjust sharecropping contracts [...]” (*Third Report of the UN Special Rapporteur on the Right to Food*, Jean Ziegler, UN Doc. E/CN.4/2003/54, 10 January 2003, para. 16).

<sup>11</sup> States must also make sure that activities of business enterprises do not prevent citizens from having access to adequate food or water. See *ibid.*, para. 27, and UN Committee on Economic, Social and Cultural Rights, *General Comment no. 15: The Right to Water (Arts. 11 and 12)*, 20 January 2003.

<sup>12</sup> The second paragraph reads as follows: “In case the granting of a definitive title to ownership is subject to an opposition, the claimant has to prove that he himself fulfills the conditions of peaceful, uncontested possession for no less than five years over the contested immovable property or to prove that he purchased the immovable property from the original possessor or his legal beneficiary or from the person to whom the ownership was transferred, or from their successors.”

## **Land Reform and Equitable Development:**

### Recommendations accepted by Cambodia

*60. Intensify its engagement with the international community to share its experiences in strengthening good governance and the land reform programme with a view to effectively fulfilling the Government's duties with accountability and pursuing equitable and efficient management of the distribution and utilization of land (Myanmar).*

*61. Intensify efforts to promote fair access to land ownership and good governance, and continue reforms undertaken with the assistance of the international community, in particular the High Commissioner for Human Rights, to reinforce institutional capacities and achieve the enjoyment of full human rights by the population (Algeria).*

*63. Consider fostering policies on land use and urban-rural inequality and continue efforts to combat poverty (Brazil).*

### In-Country Observations – On Economic and Social Land Concessions:

15. The Ministry of Agriculture, Forestry and Fisheries has the mandate to grant ELCs and SLCs. Thus far, it has refused to disclose comprehensive information on existing ELCs, and there is a lack of transparency on how the Ministry grants ELCs.
16. According to information collected by ADHOC, as of late 2012, the Government granted to or reserved for private companies at least 2,657,470 hectares of land. In 2012 alone, the Government issued 66 sub decrees reserving 381,121 hectares for ELCs. Thirty-three of these were granted in 2012 after the Government announced a moratorium on ELCs on 07 May 2012.
17. Almost all ELCs granted in 2012 are in protected areas and in areas where communities, including indigenous peoples, reside. (While a person or company, whether individually or through separate legal entities, is only allowed under law 10,000 hectares, many politically connected individuals register multiple concessions under different companies, which they manage directly or through their relatives. For instance, Senator Ly Yong Phat and his wife have been granted two sugarcane concessions in Kampong Speu province, ~~totalling~~totaling 20,000 hectares. The concessions are adjacent and actually make up only one ELC. The two companies (Phnom Penh Sugar Company and Kampong Speu Sugar Company) share the same offices. In addition, several ELCs physically exceed 10,000 hectares, notably the Pheapimex concession in Pursat and Kampong Chhnang provinces, which is as large as 315,000 hectares.
18. The Government rarely conducts or requires meaningful consultations with affected communities or undertakes Social and Environmental Impact Assessments, although those are required under law. In many instances, affected communities only find out about concessions when the bulldozers arrive at their doorsteps. Companies often begin clearing land before the ELCs are officially granted. The laws provide that the granting of ELCs must be done through open solicitation and competitive bidding, but, in reality, the process is often corrupt.
19. The SLC policy aims at alleviating poverty by providing land to poor, landless families and army veterans. This land can be used for residential or farming purposes. The Government is

increasing the number of SLCs granted annually – twice as many SLCs were granted in 2012 than in 2011. Corruption, mismanagement and nepotism have been reported. Procedures are not complied with and consultations rarely take place. Abuses that are reported go uninvestigated. For example, land has been granted to fake NGOs, which have then sold the land for profit. Land also has been confiscated from poor families by politically connected individuals or awarded to members of former soldiers' associations. Former residents have been evicted from SLC areas or pressured into becoming members of soldiers' associations.

### **Moratorium and Land Titling Scheme:**

#### Recommendations accepted by Cambodia

- 64 (a). Fully implement the 2001 land law and institute a moratorium on evictions until safeguards such as full compensation and access to basic services in resettlement areas can be guaranteed (Sweden);*
- (b) adopt a moratorium on eviction until measures are taken to guarantee effective implementation of the 2001 law on land property and to deal with this problem in a more humane and dignified manner (Switzerland);*
- (c) put an end to forced evictions, notably by improving the application of the land law of 2001, ensuring a better verification of land titles and guaranteeing strengthened protection of the population affected by the expropriations, which implies in particular prior consultations, a search for alternative solutions to expropriations, offers of re-housing and appropriate compensation of evicted persons (France).*

#### In-Country Observations:

20. On 7 May 2012, the Government issued Directive 001 establishing a moratorium on the granting of new ELCs. Directive 001 also called for a review of all existing concessions in order to verify compliance with relevant laws and regulations. All concessions that were found to violate the laws were to be revoked. No moratorium on evictions has been issued.
21. ELCs being processed as of 7 May 2012 were excluded from the moratorium. The data collected by ADHOC is that at least 33 ELCs were granted in 2012 following the 7 May 2012 moratorium. It is impossible to verify how many of these were indeed formally in process on 7 May 2012 because of the refusal of the Government to provide such information.
22. On 14 June 2012, the Prime Minister initiated the first round of a land titling program implemented by youth volunteers. This was seen as successful by many as hundreds of thousands of families were given titles and greater security of tenure. However, disputed areas were left outside of the scheme, and it did not address the situation of indigenous communities. Public authorities have obstructed independent NGOs and observers from monitoring implementation of the new scheme.

### **Forced Evictions, Lack of Compensation and Inadequate Relocation of Evictees:**

#### Recommendations accepted by Cambodia

- 65. Continue to prioritize the issue of land evictions and to work with the Special Rapporteur to ensure an end to forced evictions and fulfill its obligations to respect and protect the human rights of all Cambodians, including individuals belonging to indigenous groups (Ireland).*

66. (a) Undertake a transparent and fair process to determine the conditions and procedures of involuntary relocation (Canada);  
(b) halt relocations of families to uninhabitable sites and consider evictions as a last recourse, as was requested by the Secretary-General (Germany);  
(c) develop an effective, transparent and fair resettlement policy and process that is based on national consultations and international best practice and suspend all planned resettlements until this framework is in place (United Kingdom);  
(d) increase efforts to ensure that evictions occur in compliance with the land law and that greater attention is paid to ensuring that communities relocated to resettlement sites have access to appropriate facilities, especially in urban areas (Australia);  
(e) work to advance the legal and policy framework on evictions, expropriations and resettlements and to ensure that those resettled have access to the necessary facilities and support (New Zealand).

67. Adopt and implement a strict legislative framework on evictions and resettlement which ensures that evictions and relocations are legal, negotiated and fairly compensated (Austria).

#### In-Country Observations:

23. Provisions in the Land Law grant ownership based on proof of possession of land for five years prior to the law coming into force. Nevertheless, the Government favors business interests over the recognition of the people's legitimate claims to ownership under the Law. In the countryside, the Government often designates farmers who have occupied their land for years as "new comers" or "illegal squatters", and this development narrative is then used to evict the people without compensation.
24. While evictions are more frequent and effect greater numbers of people in the countryside, it also plagues urban settlements. In almost all cases, the Government failed to comply with aforementioned national and international legal standards. Due to these Government inadequacies and the failure to compensate former residents, protests and demonstrations were commonplace. However, the Government refused to apply Article 36 of the Land Law 2001, which permits it to delay an eviction if that eviction gives rise to instability or serious social repercussions.
25. In instances when communities are relocated pursuant to law, the Government often relocates them to areas where they have no access to clean water, sanitation and electricity. In some cases, many years later, despite requests and advocacy, the Government still has not yet provided access to those basic services. People are forced to buy water from private ponds and electricity from local suppliers. In addition, resettlement sites are often many dozens of kilometers from their original homes, and evictees thereby are deprived of access to jobs, education and income-generation activities. In the countryside, evictees and people whose activities have been disrupted because of ELCs or land grabbing often have no choice but to continue to work, often as day laborers, on their own land, from which they were evicted, for the concessionaire companies that now lease it. In the alternative, workers often have no choice but to migrate and are made vulnerable to trafficking abuses.
26. ELCs to agro-industrial and mining operations and large-scale infrastructure – such as dams and railways – have devastated farm and indigenous lands. The Government usually awards ELCs without Social and Environmental Impact assessments, which are required by law, but rarely done. These companies clear fields, grazing lands and forests that the people depend upon for their daily subsistence. Some set up checkpoints and prevent people from using

public roads or provide easements for right of access. People are obstructed from carrying out activities central to their economic well-being and their normal way of life.

27. Food security is threatened as a result of evictions and dispossessions. In rural areas, the destruction of farmlands and rice fields threatens food security at the local level. Farmers are sometimes appointed with new land, but those plots are frequently far away from their villages, smaller, and less fertile. As a result, their outputs decrease and their living standards deteriorate.
28. Land concessions also often encroach upon land of cultural and spiritual significance, including burial sites and sacred forests. As in all other instances, the Government failed to consult with those communities prior to the implementation of ELC projects and those communities had no recourse in face of the *fait accompli*.
29. Indigenous communities face additional obstacles. The Government often refuses to recognize them as legal entities that may register land for collective ownership. As of June 2013, only eight such communities have successfully been granted collective land titles. Others are forced to split up ancestral and communal lands and often lose their communal identities in the process.

#### **Effective Remedies:**

##### Recommendations accepted by Cambodia

68. *Enter into a dialogue with the civil society concerned with a view to addressing incidents of unlawful land-grabbing and evictions (Netherlands).*

##### In-Country Observations:

30. Cambodians have few meaningful avenues of recourse and remedy to evictions. Because of the wealth, power, political-connections, and/or the corrupt interests of those involved, individuals and communities have near impossible chances in seeking remedies for ELCs and forced evictions, particularly for city beautification or development projects. Evictees who seek remedies are often threatened, harassed or coerced to accept sub-standard compensation. In some ELC cases, people have received back a limited parcel of land (usually only few hectares) following mediation.
31. Official fees and bribes are required to get land registered or to file complaints with the courts and prevent many evictees from filing cases. The government has recently strengthened the mandate of the Cadastral Commission, which is mandated to investigate small-scale ELC disputes. The Commission has taken new initiatives to reduce the caseload; however it is ill-equipped to deal with the full extent of the problem, particularly when stolen land has been registered in another's name.
32. Evictees that exercise their rights to freedom of expression and assembly through advocacy, protest or other public displays of dissent are often subject to harassment, abuse and violence by the Government or private security. The Government violently suppresses peaceful protests. For example, in Phnom Penh, peaceful demonstrations for land and housing rights organized by Boeung Kak, Borei Keila and other communities were systematically suppressed. Across the country, community members that protest the land grabs, evictions and encroachment on natural resources against powerful interests are intimidated, physically abused, and arrested. On several occasions, the Government

disrupted or dismantled training sessions and community empowerment meetings organized by civil society organizations.

33. The Government also frequently prosecutes land and housing rights advocates through specious criminal charges, most typically criminal incitement, defamation and disinformation. In these cases, the Courts of Cambodia have categorically ordered pre-trial detention with the intention of breaking the advocate's will.

#### **Recommendations to the Royal Government of Cambodia:**

##### **Land Reform and Equitable Development:**

*In accordance with internationally accepted principles of freedom of information, the Royal Government of Cambodia:*

34. Should immediately disclose to the public all information on existing ELCs, including their exact location, size, boundaries, duration, ownership, intended use, any Social and Environmental Impact Assessments, consultation processes, and applicable compensation and relocation schemes.
35. Should disclose information on cancelled concessions, follow-up to cancellations, and state revenues derived from ELCs.
36. Should demarcate and publish information about protected areas and their internal zones and put an end to ELCs or other harmful activities in areas that fulfill the criteria of the "core" and "conservation" zones.

*In accordance with internationally accepted principles on the individual's rights to adequate standard of living and property and indigenous peoples' rights, the Royal Government of Cambodia:*

37. Should implement in a transparent manner an official land titling program and address all land disputes as a matter of priority.
38. Should consider and accelerate the registration of indigenous communities as legal entities and prioritize the registration of their lands in accordance with the Land Law.
39. Should recognize the possession rights of people living in informal settlements, giving special attention to informal urban settlements.

*In accordance with the internationally accepted principles on administration of justice and due process of law, the Royal Government of Cambodia:*

40. Should institute effective and meaningful procedures for contesting proposed land concessions and consider special measures for offsetting the frequent imbalance in political and financial power between the evictee and business interests.
41. Should closely monitor the process of granting ELCs and SLCs and investigate all allegations of abuse, corruption, mismanagement or lack of transparency.



42. Should systematically assess the environmental impact of large-scale development projects, such as dams and mining, prior to their implementation and re-assess their impacts once implementation has begun.

#### **Moratorium and Land Titling Scheme:**

*In accordance with internationally accepted principles on right to adequate standard of living and property, the Royal Government of Cambodia:*

43. Should extend the moratorium on the granting on new ELCs and publicly disclose how many ELCs were in process on 7 May 2012, the date the current moratorium was announced.
44. Should adopt a national housing policy in line with international human rights standards and, as requested by the UN Special Rapporteur on the Right to Adequate Housing, carry out a mapping of the housing needs of the country.

*In accordance with the Government's prior commitments to intensify engagements with the international community, the Royal Government of Cambodia:*

45. Should extend invitations to the UN Special Procedures thematic mandate holders who have requested visits to Cambodia, notably the Special Rapporteur on the Independence of Judges and Lawyers and the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, and extend a standing invitation to all other thematic Special Procedures.

#### **Forced Evictions, Lack of Compensation and Inadequate Relocation of Evictees:**

*In accordance with the individual's right to adequate standard of living, the Royal Government of Cambodia:*

46. Must ensure that all relocation sites for evictees have basic services including access to electricity, water, and sanitation, public education, health and security services.
47. Should adopt an act on evictions that is in line with international human rights standards and enforce a moratorium on evictions in urban and rural areas until the process of land titling has been completed.

#### **Effective Remedies:**

*In accordance with internationally accepted principles governing the right to remedy, the Royal Government of Cambodia:*

48. Must immediately provide effective remedies to people negatively affected by ELCs, SLCs and other development projects and revoke all concessions that do not comply with international and domestic laws.
49. Should prioritize the settlement of disputes over land and provide conflict resolution institutions and mechanisms with adequate financial, human and institutional resources.
50. Should strengthen the mandate and resources of the Cadastral Commission.

51. Should facilitate the work of land and housing advocates and civil society organizations to investigate land grabbing and concession cases.

*In accordance with internationally accepted principles governing the right to exercise one's rights to expression and assembly and to be free from state harassment and arbitrary state action, the Royal Government of Cambodia:*

52. Must cease all political and judicial harassment and violence against peaceful protests by communities, their representatives, and other advocates of land and housing issues.

53. Must immediately release all community representatives and housing and land rights advocates who are currently detained or imprisoned for exercise of their freedoms of expression and assembly.

54. Must expunge the record of all representatives and advocates that have been convicted of crimes because of their exercise of internationally and domestically protected rights.

1. —

2.

Formatted: No bullets or numbering

Formatted: Normal

Formatted: Left

Formatted: Normal

Formatted: Normal, No bullets or numbering