

Human Rights Now, Fact Finding Report for Cambodia

In Cambodia, People are Deprived of Land



Situation of children after forced eviction
(June 2012, Phnom Penh)

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Table of Contents

I. Introduction

1. Interest and Concern
2. Activity of the Fact Finding Team

II. The Background and Overview of Land Conflicts in Cambodia

1. Overview
2. Cambodia's Legal Obligations under International Human Rights Law
3. Domestic Legal Issues
4. The Current Situation

III. Overview of Human Rights Violations in Kratié, Borei Keila and Boeung Kak Lake

1. Conflicts over Economic Land Concessions in Broma Village in Kratié Province and the Incident of the Killing of a 14-year-old Girl
2. Land Conflicts between Residents in Three Villages in Snoul District, Kratié Province and the CIV Development Company
3. Land Conflicts between Borei Keila's Residents and Phan Imex Company
- 4 The Boeung Kak Lake Case

IV. Results of the Field Investigation

1. Conflicts over Economic Land Concessions in Broma Village in Kratié Province and the Incident of the Killing of a 14-year-old Girl
2. Field Survey of the Conflict Areas in Kratié Province
3. An Interview with the Governor of Kratié Province
4. An Interview with the Chief Justice of the Kratié Province Judicial Court
5. Land Conflicts between Residents in Three Villages in Snoul District, Kratié Province and the CIV Development Company
6. Land Conflict between the Borei Keila's Residents and Phan Imex Company
7. The Boeung Kak Lake Case
8. The Reaction from the Cambodian Human Rights NGOs

V. Ongoing Suppression of Human Rights Defenders

VI. Findings

1. Conflicts over Economic Land Concessions in Broma Village in Kratié Province and the Incident of the Killing of a 14-year-old Girl
2. Land Conflicts between Residents in Three Villages in Snoul District, Kratié Province and the CIV Development Company
3. Land Conflicts between Borei Keila's Residents and Phan Imex Company
4. The Boeung Kak Lake Case
5. General findings

V. Recommendations

I. Introduction

1. Interest and Concern

Human Rights Now, a Tokyo-based international human rights NGO, conducted a fact finding mission in Cambodia on June 26- 30^t 2012 to investigate the current situation surrounding land disputes and related human rights violations in Cambodia.

While the country's land sales and long-term leases increase, there are people who are forcibly removed from their residence and farmlands that are located inside the leased areas. The number of cases like this is increasing each year, leaving people in growing frustration so deep that some of the victims of forcible removal are starting to take actions. However, in reality, the government and other authorities too often resort to unjust measures such as illegal arrest, imprisonment, and even extrajudicial killing of the protesters. Moreover, the situation is worsening every day.

As an international human rights NGO aiming to protect and promote human rights worldwide with special focus in Asia, Human Rights Now is deeply concerned over the grave situation, and decided to conduct a fact finding mission in Cambodia.

2. Activity of the Fact Finding Team

Human Rights Now (HRN) conducted a fact finding mission in Kratié Province and Phnom Penh in cooperation with the Cambodian Human Rights and Development Association (ADHOC).

In order to investigate the details about a killing of a fourteen-year-old girl which happened during a land conflict in Kratié Province, we conducted interviews with the family members of the victim as well as the chief of the provincial court. We were also able to interview the victims who were arrested and brutally tortured for taking part in land conflicts.

Additionally, we also conducted interviews with the residents who were forced to move out from the Boeung Kak Lake and Borei Keila areas within Phnom Penh.

At the same time, we also received valuable advice from the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) as well as from an officer of the United Nations Office of the High Commissioner for Human Rights (OHCHR).

HRN expresses its sincere gratitude for those who supported us to make this project possible.

| Date | Location | |
|-------------|-----------------|---|
| June 26 | Phnom Penh | • Visit to the OHCHR office. |
| June 27 | Kratié Province | • Interviews with the victims and the people living in the area where the killing of a teenage girl took place. (The Kratié Provincial Court issued an order related to the land conflict this day). |
| June 28 | Kratié Province | • Interviews with the Governor of Kratié Province and the Court President of the Kratié Provincial Court. • Interviews with the victims of unjust imprisonment and torture in Kratié Province. |
| June 29 | Phnom Penh | • Interviews with Borei Keila residents. • Interviews with Boeung Kak Lake residents. • Conference with ADHOC. |
| June 30 | Phnom Penh | • Interview with LICADHO |

II. The Background and Overview of Land Conflicts in Cambodia

1. Overview

In Cambodia, as a result of the economic development, it has been pointed out that residents have been deprived of their land, and the situation, has become aggravated recently.

The Land Law of Cambodia allows the government to lease state private land properties to private enterprises for the purpose of industrial agriculture through the Economic Land Concession (ELC) program with a maximum duration of 99 years.

In Cambodia, land for which the ownership right is unclear generally falls within the property of the state. The Land Law, however, provides for ownership rights based on continuous possession prior to 2001. The Law also defines state public land, which cannot be subject to concession.. Since the process of land registration is slow, legitimate land ownership rights are not registered often even though the residents have been living there for a long period of time, and residents are thus forced to be in a weak position regarding the right to land.

Currently, ELCs are awarded without the transparency of extensive process required under the Sub Decree on ELCs, and without recognizing the residents who are living or farming there. The private corporations who have been issued a concession often force residents off their land in cooperation with the military and police.

2. Cambodia's Legal Obligations under International Human Rights Law

Cambodia has recognized human rights established in the Universal Declaration of Human Rights and core human rights treaties. Forced evictions violate these rights, most notably the right to adequate housing.

(1) Forced eviction and the right to adequate housing

The right to adequate housing has been defined as “the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity.”¹ Thus,

¹ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr.

“adequate housing” means not only a physical shelter, but also various other material and non-material elements necessary to create a living environment of security, peace and dignity.² The table below highlights relevant provisions.

| <i>Treaty or Declaration</i> | <i>Cambodia Status</i> | <i>Relevant Provision</i> |
|--|---|--|
| Universal Declaration of Human Rights, Article 25(1) | N/A ³ | Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. |
| International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 11(1) | Signed October 17, 1980. Acceded May 26, 1992. | The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. |
| International Covenant on Civil and Political Rights (ICCPR), Article 17 | Signed October 17, 1980. Acceded May 26, 1992. | 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks. |

Miloon Kothari, submitted pursuant to Commission resolution 2000/9, U.N. Doc. E/CN.4/2001/51 (Jan. 25, 2001).

² Office of the United Nations High Commissioner for Human Rights, Cambodia Country Office, United Nations Commentary and Guidelines on Eviction and Resettlement, 6 (Dec. 2009) [hereinafter OHCHR Cambodia Commentary and Guidelines].

³ The Universal Declaration of Human Rights is a declaration, not a binding treaty signed by States. Nevertheless, the Cambodian Constitution incorporates it into domestic law.

| | | |
|--|---------------------------|--|
| Convention on the Rights of the Child (CRC), Article 27(3) | Acceded October 15, 1992. | States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. |
|--|---------------------------|--|

The right to adequate housing includes protection against forced eviction.⁴ The international community, including major UN human rights bodies, has denounced forced eviction as a gross violation of human rights.⁵ Evictions should occur only in exceptional circumstances.⁶ Evictions by force are permissible only when they are “carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.”⁷ Cambodia’s obligation is not only to refrain from forced evictions, but also to ensure that the law is enforced against its agents or third parties who carry out forced evictions.⁸

In its **General Comment No. 7**, the Committee on Economic, Social and Cultural Rights (CESCR) establishes the principles regarding forced eviction in general. It outlines types of protection required to ensure respect for ICESCR.⁹ These are notably: legislation,¹⁰ procedural safeguards,¹¹ outcomes of eviction,¹² and monitoring.¹³

Furthermore, the SR on Adequate Housing’s Basic Principles and Guidelines on Development-based Evictions and Displacement (“**Guidelines on Development-based Evictions**”)¹⁴ focus on eviction and displacement linked to development, describing specific steps that states such as Cambodia should take prior to (Part III), during (Part IV), and after (Part V) eviction and displacement

⁴ OHCHR Cambodia Commentary and Guidelines, 6.
⁵ See, e.g., U.N. Commission on Human Rights, C.H.R. Res. 1993/77, U.N. Doc. E/CN.4/RES/1993/77, para. 1 (Mar. 10, 1993).
⁶ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Basic Principles and Guidelines on Development-based Evictions and Displacement, U.N. Doc. A/HRC/4/18, para. 6 (Feb. 5, 2007) [hereinafter Guidelines on Development-based Evictions]; U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (Art. 11(1)), U.N. Doc. E/1992/23, para. 18 (Dec. 13, 1991) [hereinafter General Comment No. 4].
⁷ General Comment No. 7, para. 14. See also Guidelines on Development-based Evictions, para. 6; General Comment No. 4, para. 18.
⁸ General Comment No. 7, para. 8. See also Guidelines on Development-based Evictions, para. 12.
⁹ See the detail in the General Comment No. 7, <http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50>
¹⁰ General Comment No. 7, para. 9.
¹¹ General Comment No. 7, para. 15.
¹² General Comment No. 7, para. 16.
¹³ General Comment No. 7, paras. 19-21.
¹⁴ See generally Guidelines on Development-based Evictions, Part II.

(2) Other rights

Although the right to adequate housing is the right most relevant to forced eviction, other human rights can also be implicated.¹⁵ Some are briefly highlighted below.

Among civil and political rights, the rights to participation and effective remedy are of particular concern. The right to take part in government or in the conduct of public affairs, including the right to participate in the formulation and implementation of policy, is recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR).¹⁶ To ensure respect for this right, forced evictions must not be conducted without protective measures including providing affected people with relevant information and opportunities for genuine consultation.¹⁷ The right to effective remedy, established in the Universal Declaration of Human Rights, ICCPR and ICESCR, encompasses full and fair legal procedures to prevent forced evictions before they happen and to address any rights violations that occur through adequate compensation, restitution and return, resettlement and rehabilitation.¹⁸

In the planning, execution and remedy of forced eviction, special attention must be given to the particular rights and needs of indigenous people and other minority groups, persons with disabilities, women, children and the elderly.¹⁹

Forced eviction may place people in situations where additional rights violations occur. For example, if people are resettled in a remote area with limited access to basic facilities, there may be violations of the rights to adequate food²⁰ and to not be deprived of one's means of subsistence,²¹ among other rights.

3 Domestic Legal Issues

(1) Private ownership over immovable property

¹⁵ See generally Amnesty International, *Rights Razed: Forced Evictions in Cambodia*, 17-23 (Feb. 11, 2008).

¹⁶ See International Covenant on Civil and Political Rights, art. 25, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Universal Declaration of Human Rights, art. 21, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (Dec. 10, 1948) [hereinafter Universal Declaration of Human Rights]; U.N. Human Rights Committee, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25), U.N. Doc. CCPR/C/21/Rev.1/Add.7, para. 5 (July 12, 1996).

¹⁷ See Guidelines on Development-based Evictions, paras. 35, 38-39, 41, 56; General Comment No. 7, para. 15.

¹⁸ See ICCPR, art. 2(3); Universal Declaration of Human Rights, art. 8; Guidelines on Development-based Evictions, paras. 59-68; General Comment No. 7, para. 15.

¹⁹ See, e.g., Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

²⁰ International Covenant on Economic, Social and Cultural Rights, art. 11, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

²¹ ICESCR, art. (1)(2).

In 1993, the Constitution of Cambodia was adopted. This Constitution entitles all Cambodian people the right to own property, including immovable property (Article 44 (1)).

The new Land Law of August 2001 (hereinafter “The 2001 Land Law”) was drafted since 1996 by the Asian Development Bank(ADB) as one of the projects under its technical assistance project Supporting Policy and Institutional Reforms in the Agriculture sector (Agriculture Sector Reform Support). In conformity with the Constitution, the 2001 Land Law recognizes citizens’ possessory rights and ownership rights over land.²² According to the 2001 Land Law, any possessor who meets the five criteria of land possession (notorious to the public, peaceful, uncontested, continuous, and in good faith) for at least five years prior to the publication of the 2001 Land Law, has a right to request a definitive title of ownership(Article 30 (1)).

Under the support of the World Bank and other international organizations, the land ownership registration systems were established, and the procedures on issuing possession/ownership land titles started in 2002 and have continued since then. Nevertheless, due to a lack of political will, the process of the land registration based on the 2001 Land Law has been slow and ineffective in areas where there are land disputes. Many with legitimate ownership rights have not had those rights formally recognized yet.²³

Also, an immovable property without an owner belongs to the state(the Civil Code of Cambodia, Article 161).

(2) Protection of the right to possession

(i) Concerning possessory rights, on the other hand, the previous 1992 Land Law divided the possession into two categories: (1) possessory rights without title and (2) the possessory rights with title or complete registration. Under the 2001 Land Law, either of them are recognized as real rights. Article 42 of the 2001 Land Law stipulated that any person who, due to ignorance or negligence, failed to register his or her possession are also protected under Articles 29, 30, and 31of the Land Law.

Article 29 recognizes that the possession of immovable property since 1989 may constitute a right in rem over immovable property and may lead to the acquisition of the right to ownership. However,

²² [http://www.gocambodia.com/laws/data%20pdf/Law%20on%20Land/Law%20on%20Land,%202001\(EN\).pdf](http://www.gocambodia.com/laws/data%20pdf/Law%20on%20Land/Law%20on%20Land,%202001(EN).pdf)

²³ According to the statistics of the Ministry of Land Management, Urban Planning and Construction, regarding the process of recognition of the ownership, up to the midyear 2010, there were 1300 thousands parcels that have been registered completely and the ownership titles have been issued.

any new occupation later than the publication of the 2001 Land Law is not recognized (Article 29 (2)).

As mentioned above, Article 30 of the 2001 Land Law states that “any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership”.

Moreover, even if the possession period prior to the publication of the 2001 Land Law were less than five years, if the person fulfilled the above-mentioned criteria, he or she could extend the possession, and would be able to obtain definitive title of ownership when the duration reached five years. (Article 31 of the 2001 Land Law).

(ii) The Civil Code of 2011 includes almost all of the substantive provisions of the 2001 Land Law. Firstly, according to Article 14 of the *Law on Implementation of the Civil Code*, the possessory rights with a certificate of possession or occupancy shall be deemed as ownership in the application of the provision of the Civil Code unless such provision is contradictory with the characteristics of the possession.

At the same time, it is clear that the possessory rights without the above certificate are also recognized as a real property right and entitled to / protection in pursuant to the Civil Code.

First, Article 227 (1) of the Civil Code states that “‘possession’ refers to the holding of a thing,” and paragraph 2 of the same article provides that “‘Holding’ means the state of controlling a thing as a matter of fact.”

Second, Article 134 (1) of the Civil Code stipulates that “except for a right of possession, [...] the creation, assignment and alteration of a real right pertaining to an immovable cannot be asserted against a third party unless the right is registered in accordance with the provisions of the laws and ordinances regarding registration.”

Consequently, in accordance with the Cambodian Civil Code, the establishment of possession is not based on registration but the state of de facto control over a property, which can be a perfection against a third-party.

Then, regarding the infringement of the right to possession, the rights to demand protection of possession based on the possessory right are recognized (Articles 236~241 of the Civil Code). For instance, the right to demand protection of the possession (Article 236), the right to demand return of the thing in possession (Article 237), the right to demand removal of a disturbance (Article 238), the right to claim damages (Article 239), and the right to demand the prevention of a disturbance to a possession (Article 240) are recognized. All of these rights must be permitted if the de fact possession is verified. The exercise of the right is for one year.

Additionally, the relationships between the ownership rights on the same immovable subject are stated in Article 241 of the Civil Code. Even when confronting allegations of the ownership rights exist, the possessory rights shall be protected until either of the rights is settled by litigation and either of the claims is recognized.²⁴

Further, the Civil Code guarantees the protection of the possessor who has possessed the property prior to the promulgation of the 2001 Land Law (Protection of Special Occupants of Immovable).

Firstly, Article 242 (1) of the Civil Code states that “a person who has been continuously using and profiting a piece of immovable for which a certificate of occupancy has been issued, but over which the registration required for the acquisition of complete ownership has not been effected because the cadastral survey and register have not yet been prepared shall be the owner in respect of claims based on real rights.”

Secondly, Article 243 (1) of the Civil Code states that “a person who despite being in continuous, peaceful and undisputed occupancy of an immovable that is legally capable of being occupied by a private person for at least a period of five years prior to the coming into force of the Land Law, has neglected to register such occupancy based on the Land Law, is permitted to exercise a right to demand protection of possession against a third party who infringes occupancy.” In this case, the

²⁴ Article 241 of Civil Code states that

(1) Ownership, perpetual lease, usufruct, pledge, lease, and other rights that legally justify the holding of a thing are referred to as “title”.(2) The defendant to an action for protection of possession is not permitted to assert a defense based on title against the exercise of a right to demand protection of possession.

(3) Actions for possession and actions based on title shall not be mutually exclusive. The defendant to an action for possession may bring a counter-action based on title.

(4) Actions for possession shall not be adjudicated upon grounds relating to title.

one-year-period clause as set forth in Articles 237 through 240 shall be replaced with a period of three years.

Above all, based on the Civil Code, legally speaking, it is clear that the legitimate protection should be given to the possessory rights.

At the same time, there is not any obvious provision in terms of the priority of implementation between the possessory rights provision under the Civil Code and Article 29 (2) of the 2001 Land Law. However, it is reasonable to conclude that even regarding occupation after the publication of the 2001 Land Law; the occupation should be protected by the provisions of the Civil Code because the Civil Code sets up the provisions of the protection of occupants of the immovable in addition to the special possessory right.

(iii) However, in reality, the provisions of the Civil Code are completely ignored, and possessory rights have been violated by the government and private companies.

(3) Land Concession

Under Article 49 of the 2001 Land Law, land concessions of state private land are admitted.

In detail, social and economic land concessions are recognized, with social land concessions having a social purpose including the construction of residence for people, and economic land concessions having an economic propose including leasing land to the business sector for industrial or agricultural exploitation.²⁵

Article 58 of the 2001 Land Law states that the subject of land concessions must be state private land²⁶ Under Article 59 (1), the area of land concessions should not be more than 10,000 hectares, and Article 59 (3) states that “the issuance of land concession title on several places relating to surface areas that are greater than [10,000 hectares] in favour of one specific person or several legal entities is prohibited.”

²⁵ Article 2 of the Sub Decree on Economic Land Concessions defines an economic land concession as “a mechanism to grant private state land through a specific Economic Land Concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation.” *Id.*, No.146 ANK/BK/December 27, 2005, available at <<https://docs.google.com/gview?url=www.opendevelopmentcambodia.net/law/en/ANK-146-05-Concession-Land-E.pdf&pli=1>>.

²⁶ Article 58-1, “A land concession can only be granted on lands that are part of the private property of the state”

In addition, under Article 4 of the Sub Decree on Economic Land Concessions, (No.146 ANK/BK/December 27, 2005), it is stated that an economic land concession may be granted only on land that meets all of the following five criteria:

- (a) The land has been registered and classified as state private land
- (b) Land use plan for the land has been adopted by the Provincial-Municipal State Land Management Committee and the land use is consistent with the plan.
- (c) Environmental and social impact assessments have been completed.
- (d) Land has solutions for resettlement issues, in accordance with the existing legal framework and procedures.²⁷ The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected.
- (e) There have been public consultations, with territorial authorities and residents of the locality.

Also, the provisions of the 2001 Land Law regarding land concessions were readopted into the Civil Code (which entered into force in 2011) and the system remains the same. .

However, in reality, land concessions are granted without meeting these and other extensive requirements in the Sub Decree. Prior consultations with affected landholders, environmental impact reports, consent, and fair and adequate compensation, are among the requirements that are routinely ignored or violated.

Problems also happen such as the grant of Economic Land Concession for a vast area of farmland which exceeds the limit, by granting 10,000 hectare plots to affiliated companies to circumvent the size limitations in violation of laws..

As a result, it is often observed that lands where residents have been continuously living and cultivating, and where their ownership rights are supposed to be protected, are subjected to improper concessions over their land and are then forced to leave.

²⁷ In other words, resettlement must be accompanied by fair and just compensation, and resettlement sites must provide relocated persons with an adequate standard of living.

4. The Current Situation

The forced eviction of residents by land concessions is getting more serious year by year.

According to ADHOC, a Cambodian human rights NGO, up to 2011, the Cambodian government had granted the Economic Land Concessions for 2,276,349 hectares of land in total to 225 private companies.²⁸

Similarly, LICADHO, another Cambodian human rights NGO, has documentation providing that over 2 million hectares were granted under the Economic Land Concession scheme in all the area of Cambodia. The NGO also states that “in all years [LICADHO] has been keeping track of new [concessions], we have never seen such a high number of new concessions granted as we documented during year 2011.”²⁹

In such situations, the number of residents who have been deprived of their lands has dramatically increased, and the protests against the forced eviction have grown.

According to the monitoring conducted by NGOs, the Government of Cambodia does not seek solutions to respect the people’s right to housing in accordance with international human right law, but it tends to use the force of the army and police to suppress residents’ protests.

ADHOC reported that in 2011, at least one person was killed due to a land dispute, and 427 people were prosecuted because of their peaceful protests. 95 people among them were arrested.

In the first half of 2012, this conflict became more serious.

III. Overview of Human Rights Violations in Kratié, Borei Keila and Boeung Kak Lake

As mentioned above, HRN focused an investigation in Kratié province and Phnom Penh. In Kratié province, HRN investigated an incident of the killing of a 14-year- old girl that occurred as a result of a land conflict, and the case of a farmer who was arrested and allegedly tortured.

²⁸ <http://adhoc-cambodia.org/wp-content/uploads/2012/05/ADHOC-Report-on-Land-and-Housing-Rights-in-2011-English-version.pdf>

²⁹ http://www.camnet.com.kh/cambodia.daily/selected_features/Carving%20Up%20Cambodia.pdf

In Phnom Penh, HRN interviewed residents from the Boeung Kak Lake and Borei Keila forced evictions, which are currently hot issues. The details of all the facts regarding each case are as given below.

1. Conflicts over Economic Land Concessions in Broma Village in Kratié Province and the Incident of a killing of a 14-year-old Girl

(1) Dispute Site

Broma village, Kampong Domrei commune, Chhloung district, Kratié province

(2) Parties to the conflict

The Casotim (Kastim) Company and 1,000 residents in Broma village

(3) Outline of the Case

Villagers, who were forcibly evicted, were drawn into a long-term conflict with the Casotim Company, which was given a 15,000 hectare concession for a rubber plantation.

According to the website of the Forestry Administration (FA), a government authority under the Ministry of Agriculture Forestry and Fisheries (MAFF), the Casotim Company received 131,380 hectares of Forest Land Concession in Kratié province in 1996.³⁰

The Casotim Company asserted its right to plan to develop a rubber plantation but a conflict occurred between villagers who lived and cultivated there.³¹

There is a view that Casotim is a subsidiary company of Kastin LLC a Russian capital,³² but it is not certain, and the details of the company are not clear yet.

Community representative Bun Ratha³³ has worked to protect the villagers' lands and organized demonstrations.

³⁰ <http://www.forestry.gov.kh/Statistic/Forestcover.htm>

³¹ "Mourning Villagers Flee Kratié after Bloody Eviction," *The Phnom Penh Post*, May 18, 2012,

<http://www.phnompenhpost.com/index.php/2012051856248/National-news/mourning-villagers-flee.html>

³² CCHR Press release, <http://khmerization.blogspot.jp/2012/05/cchr-press-release-land-greed-causes.html>

³³ <http://www.rfa.org/english/news/cambodia/claims-08202012181938.html>

According to a report by a human rights organization, on May 15, 2012, hundreds of heavily-armed police and armed forces blocked the village. On the next early morning, 300 to 400 villagers deliberated and started to migrate at around 8 am, thinking that they could do nothing but to leave.

At around 8:30 am, the police and armed forces started to shoot villagers who were trying to leave the area.³⁴ According to the broadcast, the police and armed forces, aided by helicopters, attacked against hundreds of villagers with live ammunition.

It is reported that the order of eviction was made by the joint commission of the Minister of Interior Sar Kheng, the National Police Chief Neth Savoem, and the Kratié Provincial Governor Sar Chem Rong.³⁵

Around 9 am, a 14-year-old girl Heng Chantha was shot and killed by the police and armed forces.³⁶ It is reported that eight people were arrested and two others were injured by the use of force. As a result of the use of force, villagers were forcibly evicted.

After this incident, the police and armed force continued to block the village, and human rights workers and journalists were refused access to the incident site.³⁷ On May 31, five people were released among eight people who had been arrested.

Although villagers insisted that “the attack was motivated by an ongoing land dispute with

³⁴ Press Release: LICADHO Calls for Investigation into Deadly Kratié Shooting,” May 17, 2012,

<http://www.licadho-cambodia.org/pressrelease.php?perm=277>

³⁵ “Teenage Girl Gunned down by Security Forces in Eviction,” *The Phnom Penh Post*, May 17, 2012,

<http://www.phnompenhpost.com/index.php/2012051756224/National-news/girl-killed-in-eviction.html>, and “Teenage

Girl Gunned down by Security Forces in Eviction,” *The Phnom Penh Post*, May 17, 2012,

<http://www.phnompenhpost.com/index.php/2012051756224/National-news/girl-killed-in-eviction.html>

³⁶ The Phnom Penh Post (n 1~3), LICADHO, “Press Release: LICADHO Calls for Investigation into Deadly Kratié Shooting,” May 17, 2012, <http://www.licadho-cambodia.org/pressrelease.php?perm=277>, and Housing and Land Rights Network, “As Soldiers Leave Kratié Village, Problems Remain,” May 21, 2012,

<http://www.hlrn.org/news.php?id=pHBpZg>

³⁷ LICADHO, “Press Release: LICADHO Calls for Investigation into Deadly Kratié Shooting,” May 17, 2012

<http://www.licadho-cambodia.org/pressrelease.php?perm=277>

Casotim,”³⁸ the brutal and excessive operation was justified by the Cambodian government who claimed that the evictees were attempting to secede from Cambodia and create a self-governing zone in Kratié through a group called “Democratic Association (DA),” a non-governmental organization founded by independent radio station owner Mam Sonando (See Annex 3). Bun Ratha happened to have a membership card from the DA in his wallet. The DA seeks to promote democracy and fair elections, primarily through the issuance of nation-wide voter ID cards, and is not acting with regards to the land dispute in Broma in particular.

(4) Reaction from NGOs and International Society

(i) ADHOC, a Cambodian NGO, made a statement, “Cambodian Authorities Must Put an End to the Cycle of Violence Related to Land and Natural Resources Rights,”³⁹ on May 17, 2012, and strongly condemned the shooting death of a 14-year old girl, related to a long-standing land dispute in Kratié province.

ADHOC appealed that even if a protest turned to be violent, it does not become an excuse for the use of such disproportionate force against civilians. ADHOC also emphasized that, in a functioning democracy it should not be possible that children are killed easily and the perpetrators are not punished. ADHOC asks the Cambodian authorities to investigate the chain of command involved in this incident. ADHOC also appealed that all perpetrators who were involved in the killing must be held accountable.

(ii) Cambodian NGO CHRAC (the Cambodian Human Rights Action Committee) and NGOCRC (NGO Coalition on the Rights of the Child) published a press statement on May 18, 2012, “Civil Society Condemns the Deadly Shooting in Kratié Province,”⁴⁰ and urged the authorities to conduct an immediate and independent investigations into the shooting incident and to bring the military soldiers as well as the responsible commander into justice. At the same time, it is claimed that

³⁸ Ibid.

³⁹ ADHOC, “Statement: Cambodian Authorities Must Put an End to the cycle of Violence Related to Land and Natural Resources Rights,” May 17, 2012, <http://adhoc-cambodia.org/?p=1602>

⁴⁰ CHRAC and NGOCRC, “Press Release: Civil Society Condemns the Deadly Shooting in Kratié Province,” May 18, 2012,

http://www.chrac.org/eng/CHRAC%20Statement%20in%202012/05_18_2012_Press%20Release%20on%20Killing%20of%20Heng%20Chantha%20in%20Kratie_En.pdf

impunity cannot prevail and the persons responsible for the death of the young girl must be put on trial.

They were concerned that the competent authorities' statement that Heng Chantha was "accidentally shot" implies that no one will be held responsible. They stated that the forced eviction and the use of automatic gunfire were ordered by persons in the chain of command, therefore, these persons must be identified and a comprehensive investigation must be carried out immediately, including the questioning of witnesses and perpetrators about the incidents.

(iii) The embassy of the United States made a "Statement on the Death of Heng Chantha"⁴¹ in which it urged Cambodian authorities to undertake a thorough, transparent, and credible investigation into the matter and to hold accountable anyone criminally responsible for the killing.

2. Land Conflicts between Residents in Three Villages in Snoul District, Kratié Province and CIV Development Company

(1) Place

Kratié province, Snoul district, Thmar Hal Dey Kraham village of Pi Tnou commune, and Mean Chey village and Krabei Chol Rong village of Sre Char commune

(2) Parties to the conflict

CIV Development Company and 270 families

(3) Overview of the conflict

On May 27, 2008, a Cambodian company named CIV gained a 769 hectare Economic Land Concession in Snoul district, Kratié province for a rubber plantation. Stieng indigenous people have lived in the region for generations.⁴²

According to a 2009 LICADHO report, the company sent in bulldozers to destroy the villagers' farmland. On October 5, 2008, 300 residents held a peaceful demonstration. Although there was no

⁴¹ Embassy of the United States, "Statement on the Death of Heng Chantha" May 17 2012, <http://cambodia.usembassy.gov/051712_pr.html>

⁴² Sithi.org, "Land Conflict between CIV Development Company with 270 Families," http://www.sithi.org/temp.php?url=land_view.php&land_id=99

evidence, the company insisted that its property had been robbed and destroyed during the protest, and four community members were called to Kratié provincial court. The case remains pending.⁴³

Moreover, according to a 2012 ADHOC report, CIV used tractors to clear the land and destroy the 769 hectares of farmland for the purpose of planting rubber trees, in January 2011. 329 families were affected by this. The company safeguarded the land by using guards with fire arms. Although residents filed complaints to the local authorities, no resolution was achieved.

CIV filed lawsuits against the villagers, and as a result, the court issued a warrant ordering people to stop protesting. Mr. Kang Horn was arrested and detained. His family was forced to accept a new plot of land allocated by the company, but he refused to obey.

The company also threatened human rights defenders when they were trying to investigate the incident.⁴⁴

In Snuol district, a Vietnamese developer called Dau Tieng Rubber Development also gained a 7,656 hectare land concession in Svay Chreag commune. 984 families lived there and were affected by the Economical Land Concession. The dispute materialized when the company began marking the concession boundary, which allegedly encroached upon the villagers' farmland.⁴⁵ According to the report, this company used bulldozers to grab the lands violently without any notice.⁴⁶ The local media reported that villagers protested by blocking the National Road 7, or the main road to Kratié. Approximately 500 villagers blocked the road for the 18th times in September 18, 2011.⁴⁷

⁴³ LICADHO, "Land Grabbing and Poverty in Cambodia: the Myth of Development," May 2009,

<http://www.licadho-cambodia.org/reports/files/134LICADHOREportMythofDevelopment2009Eng.pdf>

⁴⁴ ADHOC, "The Report of Land and Housing Rights 2011," March 2012,

http://www.sithi.org/admin/upload/media/%5B2012-05-22%5DThe%20reprot%20of%20land%20and%20housing%20rights%202011/2012_05_22_ADHOC_The%20reprot%20of%20land%20and%20housing%20rights%202011_%28ENG%29.pdf

⁴⁵ Sithi.org, "Conflict between 984 Families and Dau Tieng Rubber Company in Kratie's Snuol District,"

http://www.sithi.org/temp.php?url=land_view.php&land_id=113

⁴⁶ Khuon Narim, "Kratie Villagers Claim Rubber Firm Clearing Land," The Cambodia Daily, April 29, 2011,

<http://bcv-cambodia.org/readacti.php?type=eccbc87e4b5ce2fe28308fd9f2a7baf3&actid=MTI=>

⁴⁷ May Thitthara, "Road Block Jams link to Kratie," The Phnom Penh Post, September 19, 2011, (available at SAHRIKA, <http://sahrika.wordpress.com/2011/09/19/road-block-jams-link-to-kratie/>)

(4) Reaction from NGOs and the International Community

An international human rights NGO, the World Organisation Against Torture (OMCT), in its Action File, “CAMBODIA: Forced Eviction of Indigenous Families from Their Ancestral Lands- Fear for Violence and Harassment Against Activists Opposing Economic Land Concessions in Srey Char Commune, Snoul District, Kratié Province, Cambodia”⁴⁸ called upon the Royal Government of Cambodia to obey the international standards on forced evictions, to respect the international and national law on indigenous peoples and to dismiss ungrounded charges against community leaders struggling for their economic, social and cultural rights.

In addition, OMCT called upon the CIV Company (i) to respect the land rights, resources and livelihood of all local communities and to provide fair and adequate compensation whenever appropriate (ii) to take all necessary measures to minimize the environmental impacts of any activity, and (iii) to comply fully with national laws and international human rights standards in all aspects of its activities, in particular as regards the adverse effects of these activities on indigenous and local communities.

3. Land Conflicts between Borei Keila’s Residents and Phan Imex Company

(1) Place

Borei Keila Village, Veal Vong commune, Prampi Makara district, Phnom Penh

(2) Parties to the conflict

Phan Imex Company, a major construction company, and 1776 families in Borei Keila

(3) Overview of the case

In June 2003, the Prime Minister Hun Sen granted a Social Land Concession of around 4.6 hectares (30 % out of a total of 14.12 hectares) of Borei Keila.

Under the agreement, Phan Imex was contracted to build 10 residential buildings on 2 hectares to house the residents of Borei Keila. In exchange, it received the development rights for the remaining 2.6 hectares of the concession area. In April 2010, after having built only eight of the 10 residential

⁴⁸ OMCT, “CAMBODIA: Forced Eviction of Indigenous Families from Their Ancestral Lands- Fear for Violence and Harassment Against Activists Opposing Economic Land Concessions in Srey Cha Commune, Snoul District, Kratie Province, Cambodia,” http://www.omct.org/files/2010/02/6103/action_file_khm_230210_desc.pdf

buildings, Phan Imex announced in a letter to the government that it would forego the construction of the 2 remaining buildings, claiming a lack of funds to build them.⁴⁹

According to the ADHOC report, on January 3, 2012, 387 families still residing in Borei Keila waiting for a move to the 9th and 10th building were forcibly evicted from their homes by combined forces of over 100 police officials, military police, company employees and security guards. More than 200 homes were demolished. At that time, live ammunition was used indiscriminately.⁵⁰ The combined forces crashed violently with the residents. According to a public letter jointly sent to the Prime Minister by several NGOs, injuries of police and residents were reported while 15 people were arrested and eight of them were sent to the Prey Sar prison.

These eight were held in pre-trial detention under Article 218 (acts of violence) and Article 504 (obstruction of public officials) of the Cambodian penal code.⁵¹

The clash between police and residents continued. On January 11, 2012, police and Daun Penh district security guards arrested 22 women and six children who were peacefully protesting with other residents in front of the Phnom Penh Municipality building in order to demand a halt to the evictions and the release of the protestors arrested on January 3.⁵² Furthermore, Amnesty International reports that on February 2, police violently removed 150 women who were protesting. Six of them were arrested and detained by this incident.⁵³

⁴⁹ ADHOC (n 23)

⁵⁰ Ibid.

⁵¹ FIDH, AI et al. “Re: Borei Keila Forced Eviction and Arbitrary Detention of 22 Women and 6 Children,” <http://amnesty.org/en/library/asset/ASA23/003/2012/en/64ba4389-800d-4e6f-a4d0-177028291da3/asa230032012en.pdf> [hereinafter “Borei Keila Statement”]

(One person was bailed out on January 18, 2012, and the rest 7 people including 17 years old boy were bailed out on February 17 and 18, 2012.)

AI, “Urgent Action: Detained Victims of Forced Eviction Escape,” February 23, 2012, <http://www.amnesty.org/fr/library/asset/ASA23/004/2012/fr/81fbce90-747b-4b43-b4ad-a969193f44f8/asa230042012en.pdf>

⁵² Borei Keila Statement, “Detained Borei Keila Residents Must Be Released from Prey Speu Center”

注：According to the LICADHO press release, 24 women and 6 children were arrested.

<http://www.licadho-cambodia.org/pressrelease.php?perm=268>

⁵³ AI (n 30)

Residents who were forcibly evicted were moved to two separate resettlement areas (67 families and 181 families respectively).⁵⁴ The situation of the resettlement sites are tragic, and evictees are living in makeshift tents, without access to electricity, sanitation, drinking water, hospitals, schools or employment opportunities.⁵⁵

On May 7, 2012, in responding to the land dispute in Borei Keila, the Council of Ministers issued a letter to the Municipal officers requesting them to take measures to deal with the dispute.⁵⁶ In response, the Borei Keila residents gathered in front of the Phnom Penh Municipality seeking for Phnom Penh Municipality to quickly enforce the order.

The Phnom Penh Municipality issued a press release on June 20, 2012,⁵⁷ stating that the authority had already handed over homes to people who had proper documents as well as compensation if needed. Furthermore, the press release criticized that the remaining protesters did not intend to achieve to a peaceful solution. Also, it is stated that some of them were not qualified to receive homes at all, or were asking for the properties just to rent to others, or had already received compensation but were still joining the illegal protests.

(4) Reaction from NGOs and the international community

Several NGOs including FIDH and Amnesty International published a Joint Open Letter “Re: Cambodia: Borei Keila Forced Eviction and Arbitrary Detention of 22 Women and 6 Children”⁵⁸ to the Cambodian Authorities calling on the Cambodian government : to(a) cease and refrain from all forms of intimidation, including arbitrary detention, against those forcibly evicted from the Borei Keila community, (b) initiate a full and independent investigation, and(c) ensure that Phan Imex company is held to its contract in which it agreed to construct ten buildings- the minimum sufficient

⁵⁴ 1) Tuol Sambo in Prey Veng commune, 25 kilometers away from Phnom Penh (3m x 6m plot), and 2) Srah Po (known as Phnom Bat) in Punhea Leu district, Kandal province, 40 kilometers away from Phnom Penh (5m x 12m plot)

⁵⁵ CCHR, “The Continuing Borei Keila Tragedy,” CCHR Case Study Series, Vol. 5, May 2012, http://www.sithi.org/admin/upload/media/%5B2012-05-25%5DThe%20Continuing%20Borei%20Keila%20Tragedy%2005_25_CCHR_The%20continuing%20Borei%20Keila%20Tragedy_%28ENG%29.pdf

⁵⁶ RFA radio <http://www.rfa.org/khmer/indepth/landdispute-05072012074848.html?searchterm=landdispute>

⁵⁷ Phnom Penh Capital Hall, “Press Release: Borey Keila Residence Who Could Legitimately Received [Sic.] Homes,” Jun 20, 2012,

<http://www.phnompenh.gov.kh/news-borey-keila-residence-who-could-legitimately-received-homes-3033.html>

⁵⁸Borei Keila Statement

to provide housing for all persons evicted from the Borei Keila community

4. The Boeung Kak Lake Case

(1) Place

Boeung Kak Lake, Phnom Penh

(2) Parties to the conflict

The private company Shukaku Inc and 4,012 families around the lake

(3) Overview of the conflict

Boeung Kak was a large lake located in north-central Phnom Penh. More than 4,000 families reportedly lived in the residential, commercial, and agricultural areas around the lake. In February 2007, the government announced that it had signed an agreement to grant a 99-year lease to Shukaku Inc., a private company, for the Boeung Kak Lake area for US \$79 million. The agreement ignored the fact that a lake is unequivocally state public land under the Land Law and thus nor permissibly subject to such a lease. Nevertheless, according to the contract, Shukaku Inku would be allowed to fill 80 hectares out of the 90 hectares lake.⁵⁹ In August 2008, Shukaku Inc. started filling in the lake,⁶⁰ and the residents were forced to move out.⁶¹

Ironically, although a private lease of this nature could only be granted over state private land, the government told the residents that they had no right to stay since they were living on state public property. Those to be evicted were proposed with two options: a cash payment of US \$8,500 or a house in a distant relocation site and US \$500. These options were both far below the market value, and it was difficult for the residents to continue their work at the relocation site.⁶²

Among around 4,000 families, 779 families refused to move out and stayed around the Boeung Kak Lake. Those families have since, been continuously harassed and threatened by the municipal authorities seeking to force them into accepting the relocation provisions.

On August 2009, the World Bank c announced that it would freeze all funding to Cambodia until the agreement could be reached between the residents remaining in the Boeung Kak Lake area and the government.⁶³ Accordingly, Prime Minister Hun Sen published a Sub-Decree⁶⁴ almost immediately, which recognized the legitimate property rights of the remaining 779 families around the Boeung Kak Lake of around 12.44 hectares of the land.⁶⁵

⁵⁹ Cambodia Development Watch, "Boeung Kak Lake Lease Agreement," <http://www.cambodia.org/downloads/pdf/DPP_CambodiaDevelopmentWatchJune07Final_English.pdf>

⁶⁰ "Boeung Kak Developer Starts Filling in the Lake," *The Phnom Penh Post*, August 27, 2008, <http://www.phnompenhpost.com/Assets/pdf+zip/080827.pdf>

⁶¹ <http://www.youtube.com/watch?v=xh-qxNZgibs>

⁶² Land and Housing Working Group, "Land and Housing Rights in Cambodia, Parallel Report 2009," page 17, case 3. http://www2.ohchr.org/english/bodies/cescr/docs/ngos/CHRE_Cambodia_CESCR42.pdf

⁶³ <http://www.bbc.co.uk/news/world-asia-pacific-14457573>

⁶⁴ <http://www.phnompenh.gov.kh/news-sub-decree-183-1715.html>

⁶⁵ <http://www.guardian.co.uk/global-development/poverty-matters/2011/sep/14/cambodia-phnom-penh-residents-victory>

However, the Phnom Penh Municipality did not recognize the property rights of 96 families by claiming that they were living outside the boundary of the 12.44 hectares.⁶⁶ The authorities have also continued to refuse to demarcate the 12.44 hectares despite numerous requests from the community. This uncertainty remains untenable for the remaining residents.

On September 16, 2011, over 100 security force and police conducted forced eviction of the excluded 96 families. The forces destroyed part of the families' buildings and shops without any notice.⁶⁷

The residents have been asking for their rights to be granted including for the 96 families as well as for a land survey and for the settlement of the boundary. However, the government and the Municipality have not responded. Therefore, the residents have been continuing legal and peaceful protests.

On May 22, 2012, the residents protested peacefully on the site of the former lake (by singing and giving speeches), claiming their rights to land, labor and natural resources. Immediately, armed forces and police arrived and used overwhelming force. Before noon, 13 women present at the peaceful demonstration had been arrested.

According to the press report and the statements of NGOs including LICADHO, the authorities used force and heavy violence (including the use of deadly force) against them.⁶⁸

The arrested women were prosecuted on May 24 (48 hours later) on charge under Articles 34 and 259 of the 2001 Land Law ("illegal occupants" are subject to imprisonment and fines), and Article 504 of the penal code (the crime of obstruction of public officials with aggravating circumstances).⁶⁹

That same afternoon, they were convicted and sentenced to prison terms two and a half year length. Two more persons were arrested in front of the court while attempting to serve as witnesses for the thirteen women inside. They eventually faced the same charges as the women.⁷⁰

⁶⁶ On August 17, 2011, in order to implement the Sub-Decree, the Phnom Penh Municipality concluded the "Implementation Guideline of Sub-Decree No.183 ANK BK." See:

<http://www.phnompenh.gov.kh/news-implementation-guideline-of-sub-decree-no183-ankbk-1708.html>

⁶⁷ <http://www.amnesty.org/en/news-and-updates/cambodia-urged-halt-boeung-kak-lake-forced-evictions-phnom-penh-2011-09-19>

⁶⁸ LICADHO et al., "Media Statement," May 22, 2012,

http://www.equitablecambodia.org/media/docs/BK_statement_Final_EN.pdf

⁶⁹ Asian Human Rights Commission, "Cambodia: Joint Statement Condemning Baseless Convictions and Violence Against Human Rights Defenders," May 29, 2012,

<http://www.humanrights.asia/news/forwarded-news/AHRC-FST-034-2012>

⁷⁰ ADHOC, "Statement: Failures of Law Implementation Lead to Injustice towards Boeung Kak Lake Residents," June 14, 2012, <http://website.informer.com/visit?domain=adhoc-cambodia.org>

<http://www.phnompenhpost.com/index.php/2012060156538/National-news/boeung-kak-childrens-tearful-plea.html>

(4) Reaction from NGOs and the international community

(i) On May 30 2012, a joint document was published, mainly produced by the human rights NGO Asia Human Rights Commission, and also signed by 139 civil society organizations, called “Joint Statement: The Culture of Impunity and Violence Must Stop”.⁷¹

The statement claimed that (i) “violence against citizens is never acceptable and the government should cease immediately”, and (ii) “the government should continue to monitor individual cases related to land, labor and natural resources rights.” In addition, the statement required that (iii) the “government should strengthen the rule of law and to break the current cycle of violence and impunity.”

(ii) On June 14, 2012, ADHOC released a statement “Failures of Law Implementation Lead to Injustice towards Boeung Kak Lake Residents.”⁷² In the statement, it required the Cambodian government to (i) drop the charges and free the Boeung Kak Lake residents (innocent women and protestors), (ii) provide a fair resolution to the land conflict necessary in terms of the Social Land Concession scheme and (iii) stop considering peaceful land protests as illegal, and stop arresting peaceful protestors.

(iii) On June 22, 2012, various human rights NGOs including the Human Rights Watch and Amnesty International made a “Request for a joint statement by UN Special Procedures Mandate Holders concerning the Boeung Kak Lake human rights defenders” to the UN Special Rapporteur.⁷³

The request denounced the situation of arbitrary arrests and detentions over the Boeung Kak Lake land conflict, and it asked the Special Rapporteur to send a clear message that international community is supporting the human rights defenders and monitoring the case.

In addition, it referred to the continuous human rights violations (“the right to fair trial; substantive equality and non-discrimination; adequate housing; good and water security; adequate healthcare; education; decent work; security; freedom from cruel, inhuman and degrading treatment; freedom of expression; freedom of movement; and freedom of association and peaceful assembly”) and requested the Special Rapporteur to produce a joint statement.

⁷¹ AHRC, “Cambodia: The Culture of Impunity and Violence Must Stop,” May 31, 2012, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-116-2012/?searchterm=Joint%20Statement:%20The%20Culture%20of%20Impunity%20and%20Violence%20Must%20Stop>

⁷² ADHOC (n 49)

⁷³ HRW, AI et al. “Re: Request for a Joint Statement by UN Special Procedures Mandate Holders Concerning the Boeung Kak Lake Human Rights Defenders,” June 22, 2012, <http://www.freedomhouse.org/sites/default/files/CAMB-joint%20request-UN%20SR.pdf>

IV. Results of the Field Investigation

The following is the details about the field investigation that HRN conducted between June 26 and 30, 2012.

1. The Conflicts over Economic Land Concessions in Broma Village in Kratié Province and the Incident of a Killing of a 14-year-old Girl

14-year-old Heng Chentha was shot and killed in her residence around 9 o'clock in the morning on May 16, 2012 when the Cambodian military and police force intentionally fired arms at civilians' houses.

The targets of the shootings were houses in Chhloung District, Kampong Domrei commune, and in Broma village located within the Kratié province.

This was part of the land conflict between the police and military force and the residents in the area, which reportedly resulted in injuries and arrests.

In order to investigate the details about this tragedy, HRN fact finding team conducted interviews with the family members of Heng Chentha.

Date: June 27, 2012

Interviewees: Teng Lim Heng (father), Huy Layhin (mother)

Location: Veal Konsaen Village Kampong Damrei Commune Chhloung District



The following is the script of the interviews:

(1) We are a family of eleven including our daughter who just passed away.

Kampong Cham Province used to be our home, but there was not enough arable land where we could grow vegetables and support ourselves, so my uncle and my family moved here in 2006.

When we lived in Kampong Cham Province, we were able to send our children to school, but they have not been able to do the same since we moved here because there is no school nearby, and we do not have any money for it.

(2) My relative allocated to us this patch of land where they used to reside, so we could farm it and support ourselves. They never officially owned this land, but they lived here while growing vegetables and rice, and let other relatives use a part of it as well.

I am not aware of how my relative came to live on this land, but I heard that they decided to settle down here ten years ago because they liked how it was vast and open.

(3) The land that is fought over right now started to get populated between 2007 and 2008.

Casotim (or Kastin LLC), the company which claims the right over this area, had never done anything in the past, but they are now starting to forcibly evict the residents since this year.

Our land, which is 1.5hectares, has not been a target of Casotim's forcible eviction yet, but we never know when they are going to take some action.

(4) I heard that an individual by the name Bun Ratha started a protest to make more land available for the citizens. His associates are his father Bun Chorn, who lived in Kampong Cham Province along with Bun Ratha, and Sok Tong, whose origins I do not know. But none of them come from my town.

The Cambodian government tried to stop them from committing anti-governmental activities because they were disobedient.

We are about 4km away from where the land conflict is taking place, so we have never engaged in the protesting.

We have never met Bun Ratha personally, but I heard a rumor that he is rather a rambunctious person. From what I heard, the organization that they belong to, the Democratic Association (DA), has been asking people with abundant property to hand over their lands.

(5) The incident happened by unfortunate coincidence.

Bun Ratha and the people from the village under conflict were all running toward a bridge located just ahead of our house in order to escape from the conflict, only to be caught up by the military force right in front of our house. As a result, we were stuck in between Bun Ratha and the village people, and the military force.

I recall there were about 1,000 military personnel, and about the same number of people on the other side with Bun Ratha who were all on motorcycles with arms like axes but no guns.

(6) Around 8 am, we heard them clash. The shooting probably lasted for about 30 minutes. We had no idea what was happening.

We were hiding in the house as we heard bullets shot into the building.

I think some of Bun Ratha's people were hiding behind our house.

At first, the daughter killed by this incident and I (mother) were hiding beneath one of the beds, but I saw other daughters a little off in the distance from me, so I crawled toward them asking if they were alright. She was, too, trying to come closer to me, and this is when I heard her saying that she was shot.

Bun Ratha and his people scattered away when I cried for help, and no-one was arrested.

I heard that some of them got injured, but no death.

Later on I heard a military helicopter hovering around and making an announcement not to hurt the civilians because it was Bun Ratha and his associates that the military was after.

But it was too late for my daughter.

Since this incident, Bun Ratha and other protesters have been inactive. All the houses on the land that the conflict took place are still there but all empty now.

The farmers who used to live there were part of DA, but they all left, too, with Bun Ratha.

(7) A military personnel attended my daughter's funeral as a representative from the government, and they gave us 300 dollars and ten bales of rice as compensation.

The Governor of the Kratié Province attended the funeral as well.

We would like to hold a memorial service commemorating the hundredth day since her death, but we cannot afford it.

(8) We are feeling strong resentment toward the government, but we know it will not bring our daughter back (Huy Layhin, the mother, is sobbing).

She was a very kind child who had never been in a fight of any sort.

She would help us with our work at home, and used to tell us that she would like to attend school in the future.

It is so unfair that our daughter had to be killed when she was in her own home far away from the conflict. We are still struggling to overcome this tragedy. We do not have a word to say.

2. Field Survey in the Conflict Areas in Kratié Province

The HRN fact finding team attempted to get closer to the area where the land conflict was taking place; however, the group was told by the ADHOC members that access to this particular area is

strictly limited, as the border was fortified by military force, restricting cars from entering this land. Unfortunately, the survey group had no other choice but to search for other means to continue the research. The conflict area is ahead of this road.



Date: June 27, 2012, Place: Mean Chey Village, Srae Char Commune, Snoul District

The HRN fact finding team conducted an interview with a woman (her name is unknown, and she is supposedly in her fifties) in order to discover more details about the conflict. The following is the script of the interview.

My husband joined Bun Ratha in the protest. We always have lived around here and have never been to the land that is being fought over, but Bun Ratha told us that we could receive more land if we joined him.

So we have been taking part in the protest for half a year since last November. My husband was rather spontaneous about joining the force.

I remember the day that the fourteen-year-old girl was killed. I witnessed the army of a thousand pass through this road. It was an enormous number of people. There were also helicopters in the sky. It did not look very hopeful for the protesters as the military force was armed with guns while the protesters only had axes to protect themselves.

My husband was safe because he came home the night before and did not go out there when the conflict took place.

The people who used to live there were all evicted after this conflict. The military force is watching the border and restricting access, and I have no idea what happened to Bun Ratha either.

3. An Interview with the Governor of Kratié Province

Date: June 28, 2012

Location: Kratié Province government office

Attendants: Mr. Sar Chamrong (Kratié Province Governor),
Deputy Secretary General and other officer

The HRN fact finding team has met with the Governor of Kratié Province along with members of ADHOC.

The following is the conversation with the Governor.

(Kratié Province Governor) I would like to thank the members of Human Rights Now for conducting this research.

Kratié Province has 30,000 residents, and is consisted of six districts⁷⁴ and forty-six communes with abundant land and forests.

We have been able to grant Economic Land Concessions to 45 companies because of our vast land. The forests and the farming communities are managed by the Ministry of Environment and the Ministry of Agriculture, Forestry and Fisheries.

Also, there are three separate committees that are responsible for various aspects of the land. There are a Committee for Land Policies and the Committee for Economic Land Concessions under the supervision of the Ministry of Agriculture. Also, there is a Committee for Social Land Concessions, which is under the supervision of the Ministry of Land Management, Urban Planning and Construction.

The primary reason behind the on-going land conflicts in our province is the continuing influx of people from the neighbouring provinces. Approximately 5,000 households and 20,000 individuals have moved into our province. These people are becoming an issue as they settle down on land that is granted to another party with an Economic Land Concession, but we have been trying to respect them as citizens.

For instance, Prey Veng Province government will grant a Social Land Concession to an individual, which allows them to enter our province, when they claim that they do not own any land.

The issue is, though, that there are people who enter our province and settle down on the land that is granted to someone else with an Economic Land Concession without taking any legal procedures.

In Snuol District, there are 4,000 households who moved from other provinces, 3,200 more than

⁷⁴ Technically speaking, it is five districts and one city.

<http://www.ncdd.gov.kh/en/resources/documents/district-and-provincial-data-books?start=3>

what it used to be in 2008. They settled down on the land with an economic concession, causing the conflicts.

For example, there was a company which received 10k hectares of land with an Economic Land Concession. Due to the vastness of this land that they were granted, they could only develop 500 to 600 hectares of land each year. As a result, people settled down and occupied some portion of the land that has yet to be developed by the company. Nonetheless, we have been trying to resolve the conflicts and settle things down with these people as well.

Due to the President Hun Sen's policy change, the government no longer issues Economic Land Concessions. Instead, they are adding new programs to the already existing concessions.

More precisely, they are planning on dividing Kratié Province into ten districts, and dispatching a dozen students from the Royal University of Agriculture in order to conduct a survey on these lands.

The plan is to grant legal rights over the land to these people who are illegitimately occupying the land which are under economic concessions at the moment.

In other words, the government is thinking to survey the range of the land where illegal occupants are currently living and grant them a property right. This procedure can take up to six months.

When the procedure is completed, we will implement administration and make more communes and villages.

On the other hand, there are 3,000 NGOs registered in Cambodia, half of which are opposed to the national government, and the rest aimed to play a role as a bridge between the civilians and the government.

There is no regulation on NGOs in Cambodia as many of these groups are opposed to such an idea. There is one NGO that started to take an action against the national government with growing support from the citizens.

Regarding the case of the fourteen-year-old girl, DA was illegally attempting to allocate the land around the area where the incident took place.

What we found out was that the DA was self-governing 4,000 households located in Chhloung County and Kampong Damrei Commune, establishing checkpoints around the area as well as its own government body. DA even went further and started arresting police and military personnel who attempted to enter the self-governed area. Such action not only violates the Cambodian Constitution, the 2001 Land Law as well as the Law on Forestry, but is also considered to be rather anarchic. Therefore, local government bodies have been making an effort to arrest the members of this particular organization. The members and associates of DA were also witnessed armed with axes and guns.

Then the tragedy happened when the members of DA and the national military force clashed. Things have gone back to normal, and the residents are glad to see DA leave as they described that it was as if they were brought back to the rule under the infamous Pol Pot regime. The Cambodian People's Party saw an increased support during the commune-level elections held last month.

Many saw this tragic incident as a violation of human rights, but I would like everybody to understand that there are complicated issues in the background. In order to resolve land conflicts, the President Hun Sen is planning on dispatching approximately 300 staff across the country in order to conduct surveys and distribute land to the citizens. This project should be completed within six months.

(HRN) By distributing land, do you mean granting the legal rights to own land to the citizens?

(Kratie Province Governor) We will issue a tentative certificate of ownership after taking measurements of the land. It is not the official certificate of ownership that will be distributed, but it will have the same effect, and an individual will also be able to apply for a mortgage.

(HRN) Is it going to be a long process before an individual receives a certificate of ownership?

(Kratie Province Governor) The registration of certificates of ownership should be completed in six months. This project covers not only Kratie Province, but the entire country. Around 1,000 staff in total are currently being trained to collect and input data to create maps. The certificates will be issued according to the law.

(HRN) We understand that Cambodia allows both individual and collective ownerships. At which level are the certificates going to be issued in this project?

(Kratie Province Governor) It will be individual ownerships.

(HRN) What is going to happen to the land under Economic Land Concessions?

(Kratie Province Governor) For instance, if a company is granted 5,000 hectares of land with an Economic Land Concession, and if more than 1,000 hectares of the land becomes a subject of conflicts, then the concession will be cancelled.

(HRN) So the government is giving priority to the citizens over Economic Land Concessions in the areas with conflicts, correct?

(Kratie Province Governor) Yes, but only in the areas where there are conflicts taking place, and if there are people living in such areas.

(HRN) What happens to those who have already been evicted?

(Kratie Province Governor) Those who have already been evicted will not be allowed to return to their land as we do not tolerate any anarchic actions. For those who do not own any land, they can appeal to the government, then we can issue them a Social Land Concession.

(HRN) But there are people who were forcibly evicted despite the fact that they never committed any crimes.

(Kratie Province Governor) As a province government, we have not seen such a case, and we will never evict people for no reason. They certainly can appeal to the court, but I do not recall any case like that.

(HRN) When was this new project implemented?

(Kratie Province Governor) It was implemented on June 14, 2012. For Kratie Province, the national government had been preparing for the project two months prior to the day of the delivery. There is also a Sub-Decree to back it up as well.

(HRN) We heard that not only police force, but also the military force was dispatched on the day that the fourteen-year-old girl was killed. Is the province responsible for the military's involvement in this incident?

(Kratie Province Governor) Yes, the province government dispatched military personnel and helicopters. There were 600 military personnel dispatched that day, and the helicopters were to warn people to be cautious not to be deceived by the members of DA. Our sole purpose of this search was to arrest the three masterminds behind DA in 20,000 hectares of land. When the military force was trying to arrest the DA members, there were 300 to 400 civilians with them, and only 30 military personnel at that moment. So we had to send in more in addition.

(HRN) Is it commonplace to dispatch military force when trying to arrest someone in Cambodia?

(Kratie Province Governor) No, this was an exception. It is usually the police force that is responsible for arrest upon warrant by a judicial court.

(HRN) Our interviewees that we talked with yesterday told us that there was open fire amongst civilian houses. Do you and the province recognize that the fourteen-year-old girl was shot and killed by national military personnel?

(Kratie Province Governor) We have yet to conduct an investigation to see what really happened that day. But we do recognize the fact that the girl was killed as a result of the fight between Bun Ratha and his 300 protesters and the military force.

The Ministry of Land Management employees wear uniforms that are very similar to the national military uniforms. It might be the case that some of the witnesses mistook a ministry employee for military personnel.

(HRN) Does the province have the authority to dispatch the national military force?

(Kratie Province Governor) We did dispatch province military force in this case.

(HRN) It is very unfortunate that the national military force opened fire at civilians, killing one person as a result. Military attacks on civilians are a breach of the Geneva Conventions, and we certainly hope that the government will seek for a peaceful means to reconcile conflicts.

(Kratie Province Governor) We of course do not wish to see any casualties, either. The measures that we took to arrest the dissidents in this incident were all in accordance with the law. The killing was not intentionally.

As the Governor of Kratie Province, however, I will ensure to make my best effort to gain approval from the public, and I certainly agree that nobody should be harmed or killed in such a tragic way.

4. An Interview with the Chief Justice of the Kratié Province Judicial Court

Date: June 28, 2012

Location: Provincial Government Office

Attendants: Mr. DIN SIVUTHY, Court President of the Kratié Provincial Court,
and Kratié Province prosecutor

Human Rights Now conducted an interview with the Court President of the Kratié Provincial Court in cooperation with the members of ADHOC. The interview was accompanied by a Kratié Province prosecutor. The following is the script of the interview.

(HRN) We are here to conduct research on the current situation regarding land conflicts and people becoming victims of forced eviction due to the Economic Land Concession program. Moreover, there was a tragic incident where a fourteen-year-old girl was shot and killed during one of the conflicts. We firmly believe, as your fellow neighbor in Asia who has been supporting your country in developing civil law and civil procedure code, that these land conflicts should be reconciled by lawful measures as well.

(Court President) We appreciate the efforts that Human Rights Now and ADHOC are making to conduct this research.

We also would like to thank the government of Japan for their assistance especially on developing our educational system and civil law codes.

All the recommendations made by your country are embodied in our civil law and civil procedure code.

As the Chief Justice, I am allowed to speak freely of legal aspects on this incident, but nothing that has to do with politics.

The national government implemented a new strategy on the Economic Land Concessions program. This new strategy allows the government to allocate land and issue certificates of ownership to the citizens.

Regarding the incident of the fourteen-year-old girl, the military never goes out of their way to harm civilians without due cause. In Cambodia, no-one is allowed to kill others like that. Furthermore, the victim was a child. I am not allowed to speak of this incident any further than this.

(HRN) Regarding this incident, did Kratié Province Judicial Court issue the arrest warrant to Bun Ratha?

(Court President) That is correct. However, President Hun Sein had been making an announcement on radio broadcast that the national government would not press charges against Bun Ratha if he turned himself in. I do not have any further information.

(HRN) What were the charges that were on the arrest warrant?

(Court President) Bun Ratha and his group of people established a self-governing body without any authorization. For movement across the area, the approval from Bun Ratha was necessary. They put up four checkpoints to control access to the self-governed area, and they resorted to violence when anyone did not conform. They denied the national Constitution.

(HRN) What is the charged offence exactly?

(Court President) They are charged for many: committing strikes, assaults, threats, and inciting sedition to name a few.

They denied the national government's authority power and established their own commune that they ruled. They were also inventing new weapons including poisonous arrows. I could not believe that they went so far and committed such felonies.

Additionally, they are also accused of cutting down trees on the land that belonged to the country without approval.

It is a violation of the Forest Law Article 97 Clause 6, but I did not put this charge on the arrest warrant because it would make many other civilians a subject of the arrest. There were 300 people protesting with Bun Ratha that day, and we believe that they are still working together.

(HRN) We understand that there were military force and military helicopters dispatched to arrest Bun Ratha and his associates. Is the court involved in this decision?

(Court President) I am not informed about the details about the decision. The military force was dispatched according to the order of the national government.

In any case, there cannot be two governing bodies in one country. Bun Ratha and his associates claimed authority and enforced it without any approval. They do not even belong to this province. The government does not allow such action.

What would the government of Japan do if anything like this happened in your country?

(HRN) Our defense army is meant to protect the citizens from attacks from outside, and they do not have any authority to exercise any legal power over the citizens. They are not allowed to point their guns at civilians for any reason.

(Court President) But for what kind of charges would the government of Japan press against Bun Ratha and his associates if they were in your country?

(HRN) We have not completed our research to investigate all the details about this incident, thus we

are not capable of discussing what kind of crimes Bun Ratha and his associates are responsible for at this point. We do not believe that it is quite appropriate for you, as the Chief Justice, to state or talk about for which Bun Ratha and his associates might be responsible when you do not even have any evidence, either.

(Court President) If Bun Ratha and his associates would not accept the government authority, would that not be a violation of the constitution?

(HRN) In Japan, our leaders are elected by the public. But citizens are not to be prosecuted for not conforming in such a hurried manner.

(Court President) We are very saddened by the death of the girl. But the military force did not have any intention to harm her.

(HRN) What are your opinions about the incident, that the military force was dispatched to arrest people and a young girl was shot and killed as a result? In the future, if the military will be dispatched based on the arrest warrant, would the court support or oppose that policy?

(Court President) I am not allowed to express my opinions.

(HRN) The freedom of expression and political activity are protected in Cambodia. The judicial court follows the principle “innocent until proven guilty.” Even if Bun Ratha and his associates are prosecuted, we would like the judicial court to make a well-informed decision.

(Court President) I am making my best effort to answer your questions, but if I cannot answer it, then I cannot answer it.

(HRN) We were informed that there were citizens who had been forcibly evicted from their homes, and that military force is sometimes involved in the procedure. However, according to the civil procedure law which is established with the support from the government of Japan, such measures should not be taken until the court orders the occupants to leave. What are your opinions on this?

(Court President) People came to occupy lands illegally. They moved to Kratié Province as migrating workers. There were about 1,000 households at first.

The government allocated land to the citizens as long as they held census registration. We have been doing our best to solve this issue. I cannot make any comments about the government. I am to follow the rules.

(HRN) Our understanding of the law is the action of occupying land itself should be protected. Is it the same in Cambodia?

(Court President) The court can intervene only when the disputed land has been registered. When a conflict is taking place on land that is not registered, then it is dealt with by the Ministry of Land Management.

Economic Land Concessions are issued by the province, and not by the court.⁷⁵

(HRN) We just would like to confirm this; is not it against the law to forcibly exercise legal power over the citizens?

(Court President) In Kratié province, since many people began living in a land with Economic Land Concession, the government asked to evict.

(ADHOC) Is there a plan to release the five individuals who were arrested recently?

(Court President) I cannot make any comment.

⁷⁵ In fact, the court has a jurisdiction on Economic Land Concessions. According to the 2001 Land Law Article 55 (2), the court has to cancel an Economic Land Concession when the special conditions are not followed.

5. Land Conflicts between Residents in Three Villages in Snoul District, Kratié Province and the CIV Development Company

There have been land conflicts in three villages located within Kratié Province Snoul District between residents and CIV Development. HRN fact finding team conducted an interview with an individual who was arrested in one of the conflicts as well as his family members.

Date: June 28, 2012

Location: Mean Chey Village, Snoul District, Kratié Province



The following is the script of the interview.

(1) Background

Mean Chey, the village that I live in, and Chul Rong village have 350 hectares of land with about 120 households. This land is granted to CIV Development with an Economic Land Concession, and it is causing a problem between them and the residents. We are all the victims of this trouble.

I have 5 hectares of land where I grow rice and potatoes to support my family. We have lived here since 1979 when the Pol Pot regime collapsed. This land is something that I inherited from my mother-in-law.

CIV Development started to show up around here in 2008. CIV Development owns a patch of land just ahead of this village in the forest.

They kept telling us to give up our fields and stop growing rice and potatoes, but we did not listen to them.

CIV Development had been planting rubber trees, but after seeing us growing potatoes, they seemed to start doing the same.

What they did was stealing potatoes from our fields to transplant it to their land and digging up all our rice crops only to harass us. We have never done anything to harm them, but they kept violating our right over this land.

We appealed to the head of the village, the district and the province to take action when CIV stole our potatoes and our ruined rice crops, but they did not do anything about it.

(2) About the fire

On February 2, 2012, there was a fire in the rubber tree field that belonged to CIV Development. I had nothing to do with this incident. The cause was probably the fact that they did not clean up the field properly, and that it was particularly a hot day. It was the lack of careful management.

When I saw the fire, I yelled out to some of the children who happened to be there to go and take a look together. When we arrived, we saw about eight CIV Development employees there at the field.

Then, out of blue, these employees started shooting at us. We tried to run away as they shot at me and the other five young children. A person from the CIV tried to shoot my feet, however, I ran away quickly and I did not get any injuries. They thought I started the fire. The fire was put out fairly quickly.

A representative from the district was called in to investigate the fire case. I told him that it was probably the heat that caused the fire, which he agreed to.

(3) Arrest

However, I was arrested on February 3, 2012, the day after the incident. It was when I was on my way to visit my child, about 20 meters away from my home, that the CIV Development employees showed up and took me to the police station. I had been imprisoned for four months until June 5, 2012.

My neighbors heard the news and gathered in front of the police station to demand them to release me, but it only urged them to send me further away to the police headquarter in my province. My neighbors all followed me to the headquarters, but the police did not do anything but took me into the court, and put me in a jail afterwards.

A trial was held on February 5 where I was accused for setting national property on fire, and the court found me guilty. I was forced to serve six months in a jail in Kratié Province.

(4) Torture and Unjust Treatment

They kept torturing me with electrical shocks soon after I was arrested until I was brought into a trial.

I would rather not talk about this experience. They gave me an electrical shock on my hip, and I went unconscious. I could not understand what was going on when I regained my consciousness. I asked the police what was happening when I woke up, but they did not answer to me. I received electrical shocks on three different occasions.

They never coerced me into making a false confession, but they wanted the names of ten individuals who had allegedly been obstructing CIV Development. I told them that I had no idea, and they had to conduct an investigation on their own. Some of them tortured me by kicking me.

In the prison they did not give me enough food, and even the little food I got did not have any taste. It was a nightmare, but I survived.

(5) Release and Thereafter

I was released after selling my cows for 1,500 dollars and handing the money to an acquaintance of mine. I cannot disclose the name of the person.

While I was in the jail, my family could not take care of the crops, or even get anywhere near our land because there were armed men in front of it. I think those men are CIV Development employees.

After I was released, we were able to freely enter the land, but every once in a while I received threats from CIV Development, saying “As soon as you start working on your land again, we will come dig it all up. The Cambodia People’s Party won the election the other day, so we have their approval. There is no use in trying to work on your land.” I talked to the head of the village and he went to talk to CIV Development employees. He questioned them for mentioning the political party, and from then, they have not harassed us.

But since we cannot go back to our land and grow crops and vegetables, we have not been able to support ourselves. Right now, I am working for someone for 10,000 riel per day.

(6) The Prospects

The Governor visited us later on and promised us that the government will give us the right over this land. But unfortunately he passed away before that came true. I heard President Hun Sen make a statement that the national government will allocate land to the citizens, and that they put priority over us than private companies. I felt relieved to hear that.

The local government came around to tell us the same thing. They are going to come and take measurements of my land tomorrow, and they should give me the ownership thereafter. I am planning to go back to growing crops and vegetables as soon as the procedure is completed.

(HRN) Have you been able to work on your land?

They returned my land after I was released from the prison, but they kept coming back to harass me. Currently I am not growing anything on my land. I have to wait and see if I officially get the land back.

6. Land Conflict between the Borei Keila's Residents and Phan Imex Company

Date: June 29, 2012

Interviewees: Borei Keila residents (SOU EM • CHOM NGAN • YIN SRIN • SENG KUNTHEA • SORN TOUCH • LENG TOUCH • SOM NGIM • OUCH KORNG PINTH)

Location: Borei Keila region, outside of a set of eight buildings that were constructed with a Social Land Concession.



(Borei Keila residents who were forcibly evicted. They were denied of their right to enter the buildings that were constructed with a social land concession. As a result, they have been forced to live under a staircase.)

(1) There were 117 households which moved into Borei Keila between 1995 and 1998. Some of them had census registrations and certificates of residence, but none of them could prove that they legally own their lands. In Borei Keila, many women supported themselves by selling candies, exchanging recyclables for change, and helping out around the house for someone while men worked as pork meat couriers, and factory workers. Since 2000, communes and villages with police departments have been established, and the residents gained certificates of ownership.

(2) President Hun Sein made a statement in 2003 that the national government was planning on developing Borei Keila. We had 18 hectares of land, 4.6 hectares of which (where 1776 households resided) was given a Social Land Concession.

After receiving the land, we searched for a construction company that would build houses on that

land.

The representatives of the residents found this company called Phan Imex, and ten of the representatives signed a contract with this company. (See Annex 4)

The contract says that we will hand over 2.6 hectares out of the 4.6 hectares of our land to Phan Imex, and they will build ten six-story high buildings on the rest of 2 hectares of the land. The company was supposed to pay us ten million riel if the company failed to complete the construction of these ten buildings within 30 months.

| |
|---|
| 2 hectares 8 buildings |
| 2.6 hectares Original residential area |

(3) By 2012, they had only built eight buildings. But they have not paid us money even though they were not able to complete all ten buildings.

We moved into these new buildings because they demolished our old houses on January 3. Police and military force came over and took our houses down with trucks.

There was no death caused by this, but they attacked us by kicking and punching, and there were some pregnant mothers who had miscarriages and others who got head injuries as a result. (See the photos of Annex 5 for detailed reports about the violence by police in this incident).



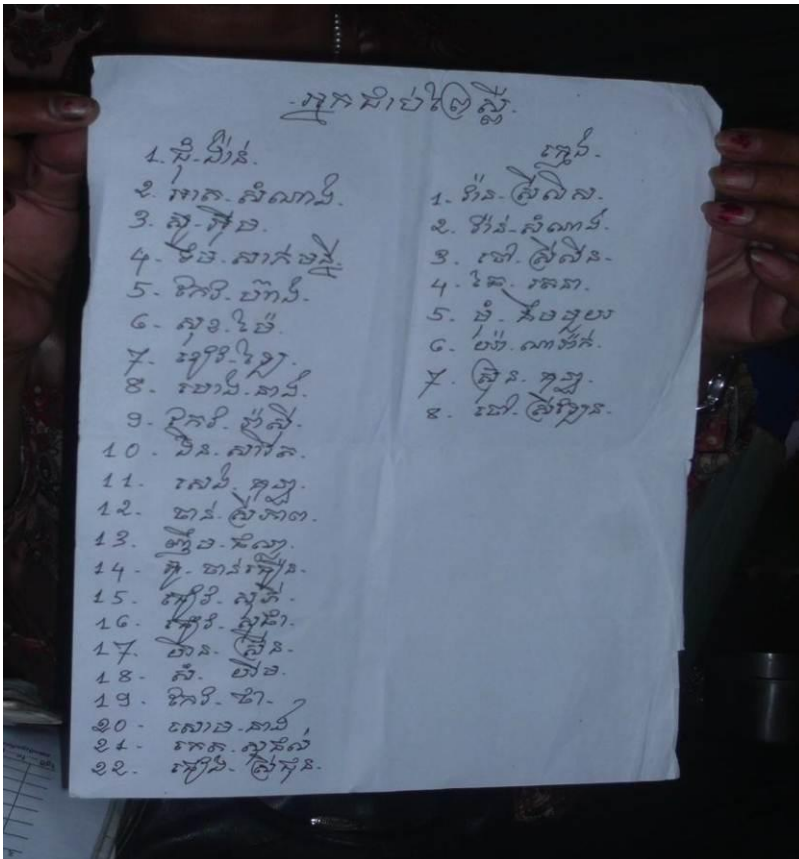
(Residents holding a sign with pictures of the forced eviction. The building site equipment shown in the pictures is Japanese-made).

Moreover, there were eight people including one woman who were sent to the Prey Sar Prison as

well. The woman was released soon after, but the rest were kept captivated for another one month and 14 days.

When we protested in front of the city hall, 30 people including eight young children were brought into a detention center in Phnom Penh. I escaped a week after we had been arrested. There were guards everywhere and the food was not sanitary.

We were only trying to get the company to follow the contract with peaceful measures, but we were treated in such a ferocious way.



(The list of people who were arrested)

(4) According to the contract, Phan Imex was supposed to be responsible for the cost of construction. We also heard that the company sold the 2.6 hectares of the land to a third party.

There was supposed to be a raffle to decide who gets which room in the apartments, but in reality, as soon as the buildings were completed, the representatives started telling us different things like that only those who have money can move in, or that they needed more time before we could move in.

Right now, the representatives are letting people from outside of the province take up the apartments as long as they give them money.

Also, when the eighth building was completed, Phan Imex told us that they had gone bankrupt, and that they could no longer continue with the project. We are not sure if they really went bankrupt or not.

Currently, we are asking them to complete the two remaining buildings. We are living under staircases in the seventh building at the moment, and the police and local authorities are trying to

chase us away from this place as well.

(5) We still continued demonstrating. When we went to the city hall on June 26, they told us to provide proof to show that we are residents of Borei Keila, so we went home that day.

Later on, we saw an announcement made by the head of the city online.⁷⁶ (See Annex 6)

It stated that we were anarchists who were protesting against Phan Imex, and that we did not have rights to live in the buildings that they completed. They also said that we probably would not listen to them under the influence of NGOs even if they held explanatory meetings, which also would be against the law. It also stated that the land had already been allocated to those who legally possess ownership. According to this statement, there were supposedly some 31 police personnel households, and six civilian households who had yet to be relocated to the apartment.

It also stated that whoever believed that they had a right to move into the apartment should bring relevant paperwork, and they should be able to work things out.

So we brought our documents to the city hall, only to find out that there was no-one who would listen to us.

(6) We went to talk to ambassadors at the Japan, U.S. and France embassies because there are four NGOs that claim that we do not have the rights to move into the apartment because we are not Borei Keila residents, but we have not heard back from them yet.

Currently, there are 117 households that are yet to be able to move into the apartment, and we are forced to live under staircases and the surrounding area of the buildings.

Our living situation is awful – many children are getting sick, and the elderly are having a hard time as we sometimes do not even have rice to support ourselves. Some residents in the apartment harass us by dropping garbage at us from upstairs. But we are not afraid of because we have documents that prove our rights.

The Municipal officers criticize us, but we just want them to recognize our rights to live on this land.

⁷⁶<http://www.phnompenh.gov.kh/news-borey-keila-residence-who-could-legitimately-received-homes-3033.html>



(The place people are living. The unsanitary barracks located near the eighth building (right side) that some residents are forced to live in.)

(Proof of residency) We can prove that we have been the residents on this land. We have census registrations, voter registrations and housing leases.



(The residents showing their proofs of residency).

7. The Boeung Kak Lake Case

(1) Interviews with the Boueng Kak residents.

We conducted interviews with the Boueng Kak Lake residents in a residential building in the area. Thirteen community leaders in Boueng Kak were arrested on May 22, and found guilty on May 24. The high court, however, change the sentences and the leaders were released.⁷⁷

The HRN fact finding team interviewed with these community leaders who were recently released.

Date: June 29^t, 2012 (afternoon)

Interviewees: the Boueng Kak Lake residents

Location Boueng Kak Lake residence



Boueng Kok Lake Residents including 13 women who has just released from the jail on 27 June 2012

(Life in Boueng Kok Lake)

We moved to Boeung Kok Lake soon after the Pol pot regime collapsed. We have been supporting ourselves by catching fish, growing vegetables, and renting rooms to others. The lake is 90 hectares and the surrounding area is 43 hectares. There were 4,250 households and ten communes. 10% of the residents were living on the water, and the rest resided on the surrounding land.

⁷⁷ 15 victims (including 13 women) of governmental suppression. See the following link to read the profiles of these victims. <http://www.licadho-cambodia.org/reports.php?perm=167>

In 2006, the city mayor suggested to us a shared ownership over our land. Since the implementation of the 2001 Land law, we have been able to satisfy the five conditions and legally living on this land since then.



(Ms. Tep Vanny (middle), a main speaker at the interview)

(Land Conflict)

However, the city mayor leased this land to Shukaku Inc. in 2007. We had already turned in our documents to claim a shared ownership in 2006, but the local government started claiming that we were illegally occupying the land. It was very shocking at first, but then the city announced that they would not take away our land from us in 2007, so we thought we could go back to our normal lives. But they started putting sand in the lake, and by New Year's Day this year, the lake was all gone.

On September 16, 2012, the local authority suddenly came to the lake and started demolishing the houses on the lake. Our villages were buried in sand. It was so sudden that nobody was able to bring out anything at all.

All the books for children were gone, and there is no compensation. So we collected money to build new houses for those people.

Even after the incidence, the people around the lake thought they were going to be alright. Although their incomes decreased, they still could support themselves by selling candies and snacks.

However, the city authority called us this year to give us three choices: The first choice was to move out within seven days, and the second was to accept 8,000 dollar compensation and move out to a land that is 250 km away from here with no infrastructure, schools nor hospitals. The last choice was to stay here while they continued with the development.

Later on, people armed with guns came over to our houses and said “move out, or accept the

compensation.” They did not resort to violence, but we were threatened. It was like the days during the Pol Pot regime.

We believe that a company which was issued an Economic Land Concession hired military personnel to threaten us. There are some of us who gave up their land because of such threats. Approximately 3,000 families moved out for 8,000 dollar compensation.

President Hun Sen promised us that 794 households will receive 12.44 hectares of land, but it has not happened yet. 631 households obtained a certificate of ownership, but there are 94 families that were denied their ownership. We will protect these 94 families, and will not let a single person be evicted from our land.

(Suppression on Demonstrations)

Some of us have been illegally arrested as a result of the demonstrations, but they only had to stay in a prison overnight. But this time, the leaders including 13 women were arrested on May 22, and had to stay in the prison until June 27.

We held a press conference to demonstrate that we want to build our houses again on this land and the lake that is buried under sand. There were about 30 people there along with the Phnom Penh Post, Cambodia Daily and Free Asia there.

However, sometime after the press meeting, we suddenly arrested at the filled lake.

We notified the city authority prior to the demonstration, but they sent in a large group of military force and arrested us. Many including this elderly person were beaten up and arrested.



Ms. Nget Khun (72-year-old at the time of the arrest. She was forcibly taken away and found guilty)

(First Trial)

Thirteen of us were arrested on May 22, and the first trial was held two days later.

A lawyer from LICADHO worked for us. The lawyers went to appeal to request that the judges give them more time to prepare, but I heard that they declined it. We were not allowed to contact our lawyers nor take a look at documents.

Our lawyers wanted to invite witness, but the court did not approve of this. As a result, our lawyers had to leave the court because it would have meant that they accepted an unlawful trial otherwise. The trial was carried on without the lawyers on our side.

The witness from the company who exercised violence against us made statements, but they all lied. There was only one judge, and it was a closed trial. There were a lot of police personnel surrounding the court thus no-one from my village could attend the trial.

There were two witnesses from our side, but I was told that they could not enter the court because it was all blocked by the police. They were arrested in front of the court.

We told the judge about the situation, but the judge did not give us any chance to speak about the things that were inconvenient to the company.

They were showing a picture of a person whose eyes were hidden with a hammer and holding a measure in his hands. They said the person in the picture was me, but there is no way that was me.

I told them that it is not me. The person was hiding her face, and there was simply no way that it could be me. But they used this picture as a proof that shows my guilt. I believe that they made it up to make me look guilty.

At the end of the trial, the court handed us a piece of blank paper and told us to sign on it. We rejected since we were innocent. They told us that it was just to prove what we spoke at the court that day, but there was nothing on the paper, so we did not sign.

Then they immediately proceeded to the pronouncement, and we were told that we were guilty and had to serve two and a half years in prison. The trial for all 13 of us only took three hours.

We believe that the trial was all planned beforehand because they already had paperwork for our sentences.

(Prison)

We were placed in a women's prison immediately. There were 60 to 100 prisoners put in a 15m by 6m prison cell along with those who were convicted for drug use and murders. We were unable to sleep because the prison was so small, and the shower was unsanitary. We were afraid of catching epidemics, and still are worried about it.

As soon as we were put in the prison, we were forced to make a confession. In Cambodia, they take a picture of you with a sign hanging from your neck to show what kind of crime you have committed.

We did not conform to it because we never did anything wrong. There were so many prisoners who were locked up for false convictions. We were shocked to see how widespread it is. We were able to come out, but there are so many of them who are still struggling in the prison. They asked us to let the public know about this terrible situation when they learned that we were going to be released.



(Ms. Bov Sophea told us that there are a countless number of prisoners who are suffering from false convictions.)

She told us that her sister suffered from a miscarriage after having been kicked in her stomach by police when she came to attend the trial.

(High Court Decision)

The high court trial was open to the public, and was attended by many people including from the U.S., Europe, and the United Nations. The judges told us that they would lessen sentences against us if we made a confession, but we did not say anything because we never did anything wrong. There was one witness who was allowed to speak at the court. The trial was held during the morning, and the court decided moratorium sentences on us and we were released.

They never pronounced us innocent, though. We strongly believe that this false decision should be overturned in the end, and that the judges who got involved in this wrongful conviction should be punished. The military personnel who attacked us should be arrested and compensate us accordingly.



(Issues on Economic Land Concessions)

Economic Land Concessions are only applicable on the state private land according to the law.

This land originally was state public land, but the city mayor changed it into state private land in 2008. However, since a concession was issued in 2007, we believe it is not legitimate.

(Reconciliation)

We are asking them to implement the Sub-Decree ordered by Prime Minister Hun Sen, in which 12.44 hectares of the land was decided to be given to the residents. The problem is that it does not seem to be happening soon. We would like the government to come take measurements of the land and promise that the remaining 94 families will never be evicted.

(2) Field Research (June 29)

The current situation of Boueng Kak Lake. The lake is buried with sand, and the natural environment is completely ruined.



(3) An Interview with a LICADHO Staff Member

(Arrest)

On May 21, the 18 households who were denied their right to receive 12.44 hectares of land turned in a petition to the city hall. On May 22, they also held a press conference. The 13 leaders who were arrested in this incident are not from these 18 households. The leaders have been working hard for the village.

Around half past 7 am on May 22, many community members stood on the lake buried with sand, and told the press that they wanted to build houses again on that land. A security force was watching nearby, and took away their poles that the leaders put up to show where their houses used to stand. As a result, they had to cancel the event, and everything was back to normal by 8 o'clock. There were some people that remained, but there were only some community members who stayed and sang protest songs at the end. Police force came and attempted to push them down with their shields,

to which the remaining women reacted by pushing them back only to be beaten up and arrested. Several of those arrested had not even been taking part in the protests, but were observers nearby. They were, however, all well-known community representatives. One, a 78-year-old woman, was dragged away by limbs.

(Prosecution and Trial)

On May 22, the city filed a complaint against the 15 leaders. I am not sure what happened to the other two. On May 24, the 13 women were brought into the court at 5 in the morning, and interrogated by prosecutors and an investigative judge for three hours. Their trial was then held at 2 pm after a lunch break. A request from the defenders' lawyers to postpone the trial was denied for no reason even though the Criminal Procedure Law Article 48 expressly guarantees this right, with no room for judicial discretion. The lawyers also asked for the case files or evidence, but this was not allowed until the trial was over. Moreover, no witness was allowed to speak for the defendants. The police and military force was surrounding the court, and the two witnesses that the defenders' lawyers invited were denied access to the court, and arrested afterwards. (These witnesses were released on June 15, but there is no official trial planned at this moment).

There were three security personnel in charge who spoke at the court.

Then, the trial was over at 5pm, and the 13 women were sentenced to two and a half years in prison. The lawyers were allowed to look at the record of the trial for the first time after the trial. The person hiding her face with a hammer and holding a measure in a picture is a housing demolition professional, and has nothing to do with any of the arrested leaders. The leaders were convicted for illegally occupying land and breaching orders.

(Filing the Suit)

We attended the trial and were appalled. The judge was asking the defenders "Why you would be arrested if you were not guilty?" showing that they had no knowledge about the basics of criminal trials. The defendants' convictions were upheld. The sentence was never taken back, but only suspended. The suit was attended by officials from many countries, and attracted international attention. It is unfortunate that no one from the Japanese embassy attended the trial despite our request.

(Legal Issues)

An Economic Land Concessions are only applicable on state private land, but not state public land. There are definitions for public lands, and lakes expressly fall under state public land. The Municipality changed the Boeung Kak Lake area into a state private land in 2008 in order to justify the lease to Shukaku, but as the concession was issued in 2007, we believe the procedure was not legitimate. As a matter of fact, even the judge was confused on this issue. The judges repeatedly alternated between referring to the lake area as private and public land, showing no appreciation of

the legal significance of the two classifications.

8. The Reaction from the Cambodian Human Rights NGOs

(1) Meeting with ADHOC

Date: June 29, 2012

Attendees: The secretary-general and other persons in charge of ADHOC

(HRN) How do you think about the recent policy change of Prime Minister Hun Sen?

(ADHOC) In Cambodia, land which becomes a subject of the Economic Land Concession is increasing. Accordingly, the land conflicts with the residents are also becoming severe. We think that the government shifted its policy because of the strong protest by the citizens.

It is a positive shift if the government is seriously considering recognizing residents rights to ownership; however, it is not certain at this moment whether the new policy will be properly implemented.

The government claims that the implementation will be completed in 6 months in cooperation with students from the agricultural collage and the university of law, but we are not sure if this plan is all right. Moreover, there is a risk that ethnic minorities will lose their identity because the land which they have possessed commonly will be divided based on individual ownership.

We are concerned that the people who will conduct the land survey might get a bribe and give lands to those who do not possess the rights. As a result, things like land for 70 families being divided into 90 sections and the land per family decreasing can occur.

(HRN) We heard that the measurement will start in Kratié province, but the same is not the case in Phnom Penh. Why do you think?

(ADHOC) It is probably because the land in Phnom Penh is small and expensive, and also because many persons of influence are involved in the development projects, therefore, it is difficult to give easily the land under development to the residents.

Regarding Kratié province, since the land is vast, the negative influence of granting the land to some farmers is not significant. In addition, the Economic Land Concession of the province needs some time to make a profit. In such a case, the government is probably not so conscious about keeping the land.

(HRN) Regarding the corporations obtaining the Economic Land Concession in Phnom Penh

(ADHOC) In the Boeung Kak Lake case, the company called Shukaku got an Economic Land Concession. This is a huge Chinese company, but there are a lot of Cambodians including the members of the National Assembly who are the executives and stockholders of the company. How large the percentage of Cambodians is not clear. There was financial support from the World Bank, but since it requested the return of the aid money, we heard that many investors were furious. It is said that there are persons of influence behind the company who were responsible for the building construction of Borei Keila.

(HRN) Did the company in the Borei Keila case which contracted to build the residences go bankrupt?

(ADHOC) It is not clear. However, we cannot think that the company went bankrupt. The residents handed over more than half of their land. The price of the land is expensive, so the company cannot go bankrupt that easily.

(HRN) Is not it possible to check the situation of the company by the certificate copy of the commercial registration?

(ADHOC) In Cambodia, the accuracy of the document is not guaranteed. In some cases, information is not disclosed.

(2) Meeting with LICADHO

Date: June 30, 2012

Attendees: The secretary-general and other persons in charge of LICADHO

(HRN) Every time we came to Cambodia, we were asked to work on the land rights issues, but this is the first time for HRN to conduct an investigation on the issues of Cambodian land conflict. HRN considers the situation serious, especially because the violent suppression by the army is increasing as resulted in the killing of a 14-year-old girl, in addition to the issue of forced eviction. Why do you think the issues of the use of force and the human rights violations by the police and army are attracting more attention?

(LICADHO) LICADHO has been recording Economic Land Concession, and the total amount of the concession was 2,000,000 hectares. However, in the last year, the concessions increased rapidly and reached to 700,000 hectares. Naturally, the number of residents who cannot endure anymore and

start protesting has increased as well. Therefore, the government suppressed these demonstrations by force.

On May 7, the new policy was presented. According to it, the Economic Land Concessions will be halted and the land will be given to those who are living on the land. However, we are really skeptical about this. This is because the seven new Economic Land Concessions were granted on May 7, five of which are Forest Concession.

A few days ago, a large scale workshop for university students about the land survey was held. From now on, the students will wear a uniform like the military and will conduct a survey nationwide. It is not certain if the residents will be able to gain the ownership rights and register the land as a result of the survey. It might be a sole issue of certificate. Also, there are lots of issues. For example, we heard that the land is limited to 5 hectares. In addition, the ethnic minorities have possessed the land commonly, however, under the new policy; they will be given 5 hectares of the land individually; which may cause the loss of indigenous culture.

What is problematic currently is the *Draft Law on the Management and Use of Agricultural Land*. The law is being drafted with the support of FAO. There are clauses about the lease of farmland. However, all requirements and regulations decided in the Economic Land Concession were abolished regarding the lease of farmland. Even after the halt of the Economic Land Concessions, the new Draft Law will make it possible to arbitrarily lease land which farmers have been cultivating for a long time to companies for projects such as plantations. We are not sure at what stage the new law is, since the information is not disclosed. The Ministry of Agriculture Forestry and Fisheries is in charge. However, it is difficult to revise or reject the law after it is submitted to the Council of Ministers and the overview of the law is unveiled. Therefore, it is necessary to express opinions at this stage.

Japan is a main donor to Cambodia next to China and the EU, but the government of Japan does not often express its opinions about human rights issues. In addition, the Japanese embassy does not try to have a dialogue with Cambodian civil society even though it sometimes talks with the Japanese NGOs. We expect Japan to play an important role to solve the human rights issues by using its influence.

V. Ongoing Suppression of Human Rights Defenders

During our field investigation, HRN team was told that Prime Minister Hun Sein announces a new political plan regarding Economic Land Concession from time to time. However, serious doubts remain about whether or not the Cambodian government changed their authoritarian ways. An alarming lack of transparency remains.

Especially regarding the killing of a young girl in Kratié Province, the Cambodian government is suppressing the human rights activists and social activists rather than conducting a thorough investigation to prevent similar misdeeds.

On July 15, 2012, Mr. Man Sonado, founder of the Democratic Association and the owner and director of independent radio station Beehive Radio was arrested and accused of inciting a so-called “secessionist movement” in Kratie. Several co-defendants were charged with organizing the movement on the ground.

As described, the villagers in Kratie were involved in an ongoing and escalating land dispute with the company Casotim, which controls a 15,000-hectare land concession nearby and hundreds of armed government forces used forces against these villagers, and such action resulted the killing of 14th years old girl. In the case, the government claimed the villagers were involved in the secession movement.

On October 1, Mr. Sonado was convinced and sentenced to twenty years in prison, despite uniform reports from observers that no credible evidence of his guilt was presented at his trial.⁷⁸

Moreover, according to the statement made by ADHOC on August 14 2012, Mr. Chan Soveth, a high ranking investigator at ADHOC and a Deputy Head of the human rights monitoring section, was asked to be presented at a district court on suspicion of “providing assistance to the perpetrator” of a “crime” under Article 544 of the Cambodian Criminal Code. . Mr. Soveth is accused of inciting a separatist movement in Kratié Province; however, it is a serious issue that the human rights NGO’s support for the citizens facing land rights abuses is considered as an assistance of the crime, and it becomes a subject of criminal prosecution.

ADHOC has been working closely with the government and making peaceful efforts to protest the rights of people throughout the organization’s history.

NGOs in Cambodia are expressing their serious concern on such suppression as the most serious form of assault towards human rights activists.⁷⁹

Further, the prominent female land housing rights activists Ms. Yorm Bopha was arrested on September 4, and Ms. Tim Sakmony was arrested on September 5, respectively on the basis of

⁷⁸ CCHR, Briefing Note, http://www.ifex.org/cambodia/2012/08/03/cambodia_cchr_mamsonando.pdf

⁷⁹ <http://www.licadho-cambodia.org/pressrelease.php?perm=289>

questionable allegations.

Ms. Yorm Bopha, a pivotal figure in the protests against forced evictions in the Boeung Kak area of Phnom Penh, was detained for allegedly assaulting a person suspected of theft. Human Rights Groups in Cambodia believe the evidence for this is at best distorted and may be fabricated.

Ms. Tim Sakmony, a leader in protests against forced evictions from the Borei Keila area of the capital, was arrested after the owner of land developer Phan Imex lodged a complaint alleging that she had made a “false declaration” in a suit accusing Phan Imex of inadequate compensation for persons evicted from land.⁸⁰

Ms. Tim Sakmony was the leading speaker during the HRN fact finding team interview with Borei Keila residents.

⁸⁰ <http://www.licadho-cambodia.org/pressrelease.php?perm=290>

VI. Findings

1. The Conflicts over Economic Land Concessions in Broma Village in Kratié Province and the Incident of a Killing of a 14-year-old Girl

(1) Attack on civilians and the killing of a young girl

First of all, based on the interview, it has become clear that

- 1) A military force faced off with protestors across from civilian houses, and opened fire indiscriminately without avoiding these houses.
- 2) The victim was shot and killed despite the fact that she was not taking part in the conflict, and she was staying in her own home at the time of the incident.

The evidence provided by the family members is highly reliable, as there seems to be no reason to make false statements. Firing guns and killing an innocent child is a breach of Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

To begin with, shooting at civilians is banned under the Geneva Conventions even during a conflict, and such violence should not be tolerated. The provincial government claims that they had warned the residents beforehand that the sole intention of this action was to arrest Bun Ratha, and not to harm civilians. However, according to the evidence provided by the family members of the victim, there was no cautionary notice until after the girl was shot and killed.

The province's actions of attacking the civilians' property without prior notice is an illegal action, and the provincial government should be responsible for the killing of the girl.

(2) Shooting at the Residents

Secondly, it became evident in the statements provided by the family members of the victim that the military force opened fire at the civilians affiliated with DA. The province claims that the intention of the shooting was to arrest Bun Ratha and his associates; however, if the purpose was arresting these individuals, dispatching the military force is not justifiable or necessary. Moreover, shooting at civilians indiscriminately when there were houses in between is an absolute deviation from reasoning and necessity.

According to the evidence, the residents were armed with archaic weapons to protect themselves, but there is no information to prove that they were armed with modern weapons.

Under such a situation, using guns that can cause civilians' casualties is a clear excess of force.

Again, there was no warning notice issued before they started shooting at civilians as well.

(3) Legitimacy of Forced Eviction

Thirdly, due to the use of power by the military and police force, the residents were forcibly evicted from their land. Their residential area is now occupied by the military force, and the residents are restricted from entering the property. Such action is a violation of the International Covenant on

Economic, Social, and Cultural Rights (ICESCR) implemented by the United Nations, and it deprives the citizens of their land and natural resources rights.⁸¹

(4) Fourth, the legitimacy of the Economic Land Concession is doubtful.

The 2001 Land Law Article 58 designates that only state private land is applicable to Economic Land Concessions, and Article 59 states that the granted land should not exceed 10,000 hectares.

Additionally, Article 4 of the Sub Decree on Economic Land Concession (December 27, 2005) states that the following five conditions must be fulfilled in order to issue an Economic Land Concession:

- (a) A land must be registered as state private land.
- (b) A land-use plan must be passed in advance, and the plan must be followed.
- (c) An assessment to determine possible social and environmental impacts must be conducted and completed beforehand.
- (d) An accommodation arrangement must be made following a legal procedure for the original residents.⁸² Forced eviction is banned, and the rights to enter the land must be respected.
- (e) Public meetings must be held between the residents and the local authorities.

Despite these conditions, lands that exceed 15,000hectares were granted as Economic Land Concessions. Also, there is no evidence of preliminary assessments or public meetings. As a result, it is clear that the Economic Land Concession was granted without following the related laws, and therefore, there is no legal basis to conduct the residents' eviction.

2. Land Conflicts between Residents in Three Villages in Snoul District, Kratié Province and the CIV Development Company

(1) Torture

HRN found that one of the victims of the land conflict was given electric shocks on three different occasions along with extended beatings. This is obviously a breach of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment implemented by the United Nations, and it must be recognized as a serious problem.

(2) Right to a Fair Trial

Secondly, the victim was arrested and imprisoned based solely on claims made by the CIV Development, which lacked clear evidence of offence. The first trial was held just two days after the arrest, and the victim was found guilty on the same day. The victim barely had time to prepare to defend himself in court, which violates the right to fair trial defined in Article 14 under the ICCPR.

⁸¹ ADHOC "STATEMENT: Cambodian Authorities Must Put an End to the Cycle of Violence Related to Land and Natural Resources Rights," May 17, 2012, <<http://adhoc-cambodia.org/?p=1602>>

⁸² In other words, resettlement must be accompanied by fair and just compensation, and resettlement sites must provide relocated persons with an adequate standard of living.

(3) Issues with the Economic Land Concession

Thirdly, in this conflict, the land, which the residents had been occupying and living on for a long time, became the subject of an Economic Land Concession without assessment or consultation with the residents. Even if the residents have not been evicted forcibly yet, their rights to housing and privacy are seriously violated.

3. Land Conflicts between Borei Keila's Residents and Phan Imex Company

(1) The Illegality of the Forced Eviction

First of all, it is evident from the interviews and pictures that the police and military force were sent in without prior notice to forcibly evict the Boreil Keila residents. Beatings of the residents and the demolition of houses also took place. Such violence is clearly a breach of the ICESCR, and it violates the residents' rights to land and privacy.

In this case, the government committed gross violations of human rights by forcibly evicting the residents suddenly without warning beforehand, destroying houses by tractors, and beating and arresting the disobedient civilians. Additionally, the military and police force evidently attacked these residents by kicking and beating them, causing miscarriages and head injuries.

Such action is an illegal use of power, and a serious violation of human rights.

(2) Breach of the Contract Regarding the Social Land Concession

Secondly, it became evident from the interviews and the contract provided by the residents that Phan Imex is obviously violating the contract.

The residents were waiting for the company to complete the construction of the buildings according to the Social Land Concession. However, the company did not complete the number of buildings that was promised, and the residents were forced to wait without having any place to accommodate themselves. It is the company that breached the contract, and there is no legitimate reason to evict the residents.

(3) Lack of Legitimate Procedure

The court never issued an eviction order. Forcible eviction is banned in Cambodia, and an official order from a court is crucial for such action to be taken. However, no eviction order was granted as all appeals were dismissed during the procedure.

In reality, the military and police force were found to be engaging in forcible eviction and violence against the residents.

The Phnom Penh Municipal Court has also failed to act on a civil lawsuit filed by the residents seeking to enforce the contract.

(4) Violation of the Possessory Right

Fourth, the forced eviction completely ignores the possessory rights of the residents.

The residents showed various documents to the HRN investigation team which show their possession. Based on these documents and evidence provided by the residents, the possession right should be recognized because they have been living in Borei Keila for a long period of time.

Nonetheless, when they went to the Phnom Penh city hall with these documents to claim their rights to go back to Borei Keila, the city authorities unilaterally decided without careful debate that these residents did not possess such rights. This is a violation of the possessory rights protected under the Cambodian Constitution, and it deprives the residents of their rights to land.

(5) Extrajudicial Arrests and Detention

Fifth, there were extrajudicial arrests and imprisonments on the day of the forced eviction as well as when the residents were protesting in front of the city hall. These were non-resistant citizens who were peacefully protesting, but the police force arrested them, including young children. There were no legitimate procedures followed by the arrest, which is obviously an arbitrary detention.

(6) Violation of the Right to Land

Phan Imex did not provide alternative lands to the residents. As a result, the residents are forced to live in barracks in the surrounding areas or in small spaces under staircases. They are living in awful conditions, which do not meet the international standards.

4. The Boeung Kak Lake Case

(1) Violation of the Right to Land and Forced Eviction

The residents in the Boeung Kak Lake have been living in the area for a long time, and their rights to this land must be protected.

However, these residents were forcibly removed from their land without any public meetings or temporary housings. Many of them did not even have time to take any belongings when being evicted from their houses, and any compensation has yet to be provided. The city offered some level of compensation in exchange for the eviction, however, it is in no way near sufficient. The eviction was clearly not followed by any adequate negotiation, as the residents were threatened by guns. Such action is a breach of the ICESCR, and it deprives the residents of their right to land.

(2) Long-term land lease

The land lease in this case cannot be said as legitimate. According to the 2001 Land Law Article 15, natural lakes are defined as state public land. The 2001 Land Law also states that land concessions are only to be issued for state private lands.

Additionally, Articles 16 and 18 of Chapter 3 (“Lease on State Property”) of the *Rules and Procedures on Reclassification of State Public Properties and Public Entities* define that a lease on state public land should not (a) exceed 15 years, and (b) be damaged or change its nature by using it

to provide services.

Therefore, firstly, the Boeung Kak Lake, which falls under the definition of state public land, should not be leased for over 15 years. Moreover, it is obvious that the lake would be damaged and its function would change if 90 hectares out of 80 hectares of the lake is buried with sand. Additionally, there is no evidence that a preliminary assessment or public meeting was held. Therefore, the long-term lease granted to Shukaku Inc. does not meet the criteria stated in the 2001 Land Law, and it is unlawful.

(3) Violation of the Government Sub Decree

In 2011, Prime Minister Hun Sen issued a sub decree to state that the citizens possess a right over the 12.44 hectares of land surrounding the Boeung Kak Lake. However, neither the national government nor city authority has defined which part of the land falls under the 12.44 hectares despite requests from the residents, which is a clear violation of the sub decree.

(4) Extrajudicial Arrests on May 22, 2012 and the Violence Afterwards

On May 2012, the armed military force used excessive power against a non-resistant group of citizens, which largely consisted of women, when they were singing protest songs. Video evidence shows that there was an elderly woman dragged by her arms and legs by security or police personnel. These women were arrested and accused of violating the 2001 Land Law Articles 34 and 259 (“illegal occupation of land”), as well as the Cambodia’s Penal Code Article 504 (“obstruction of public officials”). A woman who attempted to attend the appeal hearing of these women was kicked in the stomach, and subsequently suffered a miscarriage.

The residents were arrested as they were peacefully protesting, which is a violation of the ICCPR which bans arbitrary detention. Moreover, suppressing the residents’ freedom of expression by using violence grossly violates the Cambodian Constitution Article 41 as well as the ICCPR. There is no justifiable reason behind using power against the civilians, and such action should not be tolerated.

(5) Violation of the Right to Fair Trial

Thirteen residents who were arrested in this incident were prosecuted and found guilty immediately.

- 1) The trial was held within 48 hours after the arrest,
- 2) Access to evidence or a trial record was denied despite a request from the defenders’ lawyer,
- 3) An appeal made by the defendants’ lawyer to postpone the trial for the trial preparation was dismissed, violating the rights of the lawyer to hold meetings and prepare for the trial with the defendants which are protected under Articles 48 and 304 of Cambodia’s Code of Criminal Procedure,⁸³

⁸³ “Joint Statement Condemning Baseless Convictions and Violence Against Human Rights Defenders” (May 24, 2012)

- 4) The defendants' lawyer's requests to call witnesses were declined, again in violation of Cambodia law,
 - 5) Community members were not allowed to observe the trial, despite the guarantee of a public trial,
 - 6) The defendants' lawyers left the court in protest of the unlawful procedure taken at the court; however, the trial was carried on without the lawyer,
 - 7) The decision was delivered on the same day, which resulted in convictions of a long-imprisonment
 - 8) The appeal court only suspended the sentence, and never mentioned the unlawful procedure that was taken during the first trial. Such action clearly violates Article 14 of the ICCPR and Cambodia's Code of Criminal Procedure which guarantee the rights to fair trial, to appoint a counsel, and the protection of the due process.
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5. General Findings

(1) Vulnerability of the Right of the Residents to the Land

As already written, the Constitution of Cambodia entitles all Cambodian people to have the right to own property. According to the 2001 Land Law enforced in 2001, any possessor who possesses an immovable property for at least five years (Article 30 (1)) prior to the enforcement of the 2001 Land Law (Article 30 (2)) and who meets the five conditions -notorious to the public, peaceful, uncontested, continuous and in good faith (Article 38 (1)) - , has the right to request a definitive title of ownership .

Nevertheless, since the process of land registration works very slowly, the original ownership rights of the residents that should have been recognized have not been registered, and the residents are put in a vulnerable position.⁸⁴

In this way, the registration procedure of the country has been delayed, the ownership rights of the residents that should be registered cannot be registered, and they have become a target of eviction.

It is necessary for a country to take measures immediately to secure the right of inhabitants for the land and also to take urgent measures to increase land tenure security, as requested by United Nations bodies.

(2) Protection of the Right of Possession

- (a) As stated above, the right of possession is one of the real rights in the Civil Code of Cambodia enforced in 2011; the right of possession itself is a subject of the protection.

⁸⁴ Article 135 of the Civil Code decides that "transfer of title by agreement pertaining to an immovable, shall come into effect only when the transfer of right is registered in accordance with the provisions of the laws and ordinances regarding registration," however, since the acquisition of the complete ownership rights based on the special ownerships not a transfer of a ownership by an agreement, Article 135 is not applicable.

However, throughout the land disputes that we inspected this time in Cambodia, it was overlooked that the right of possession itself should be protected.

(b) Article 227 (1) of the Civil Code states that “‘possession’ refers to the holding of a thing,” and paragraph 2 of the same article provides that “‘Holding’ means the state of controlling a thing as a matter of fact.”

Then, against the infringement of the right to possession, the right to demand protection of possession based on possessory rights is recognized by law (Articles 236~241 of the Civil Code).

Therefore, based on the Civil Code, it is legally clear that fair protection should be given to the right of possession (See 2-2 about the relationship with Article 29 (2) of the Land Law).

However, such rules of the Civil Code have been ignored entirely, and the right of possession was completely infringed upon by the state and private enterprises.

(c) Particularly, in Cambodia, the special right of possession and special protection for it are recognized. Many citizens we interviewed during the fact-finding mission claimed that they started their occupation much earlier than the Land Law enforcement, however, it was never established that their occupation would be protected as a special right of possession, and they have not obtained the relief measures based on the special right of possession system. The system of protection by a special right of possession has not been implemented well enough yet, and the rights of owners who should be protected by it were violated. .

(d) In addition to the above-mentioned legal rights, there is the particularity in Cambodia that the rights regarding the land possession have once collapsed completely.

During the Pol Pot regime, citizens were forcibly moved and lost the land on which they had been living. Many residents moved to their current land after the Pol Pot regime.

In the first place, residents were put in a situation where they could not obtain land-ownership because of the historic background such as the Pol Pot regime and they could only obtain the right of possession.

Due to a delay in the legislation and the registration systems, a shift from the right of possession to the right to property has not been realized well enough. In addition, systems such as the provision of certificates and the registration of the right to possession have not spread enough either.

It is unreasonable to hold residents responsible, impose disadvantages on them, or punish them as “illegal occupants,” when they have not been able to secure their land rights due to the historical background or because of the government’s failure to implement its own the land policies.

We need to consider the particular situation in Cambodia, and respect residents' right of possession.

(3) Problems of the Execution Procedure

In constitutional states, rights-related decisions should depend on legal means such as trials, and self-enforcement actions, such as forced evictions, are not permitted until the rights relations are settled. In addition, things should be conducted by a predetermined legal procedure even after right relations are settled.

Article 35 of the 2001 Land Law states that “only the competent authorities may, on behalf of the state and public legal entities, force occupants [...] to vacate the immovable property,” “individuals [...] are not competent to remove forcibly a peaceful occupant” and “removal can only be made by court's order.”

However, in all of the concerned cases, such procedures were totally ignored, and a final and conclusive judgment does not exist. The police and the military assisted in the illegal self-enforcement by private persons, and violent forced evictions were conducted.

(4) Problems with the Economic Land Concessions

The conditions for safeguards for economic concessions are determined under the 2001 Land Law and Sub-Decree. However, such laws are ignored in practice, and it was found that Economic Land Concessions were authorized by the government even when the requirements were not met, without any prior assessment or consultation with the residents. .

Based on the May 7, 2012 order issued by Prime Minister Hun Sen, the Economic Land Concessions were temporarily stopped, and a policy was implemented to give priority to the right of inhabitants over economic concessions, However, it is apparent that such a policy has not been carried out in the field, at least with the case of the Boeung Kak Lake. Moreover, it appears that the moratorium itself is being ignored- there are reports of at least 12 new ELCs, totaling over 80,000 hectares, which have been issued since the order.

On the other hand, the government has been drafting the Cambodian Draft Law on the Management and Use of Agricultural Land.

NGOs criticize that this draft law includes numerous problematic provisions. In particular with respect to the ELC issue, the law includes a chapter that would overrule the requirements in the Sub Decree on ELCs and replace that scheme with an entirely unregulated agricultural land lease scheme with no size limitation, prior consultation and consent requirements or environmental or social

impact assessments.⁸⁵ The draft law also includes a chapter establishing “Agricultural Development Areas” which farmers should be forced to implement against their will over their own private land. Even though the Economic land Concessions are regulated, the land conflicts cannot be solved and could even worsen if a Sub-Decree would be produced based on this new law that legitimizes the deprivation of residents’ farmland.

(5) Forced Eviction and the Use of Force towards Residents

What has become commonly clear among the cases for which we conducted interviews is that extremely violent forced evictions by the military and the police, including house destruction and infringements of property, are performed very suddenly without any discussion with residents or prior assessment, or even prior notice and without residents being appropriately compensated.

The right of housing guaranteed under the ICESCR prohibits forced evictions in principle, and the requirements for forced evictions when they are conducted are: 1) prior consultation with the affected inhabitants and pursuit of an alternative plan for the eviction, 2) the guarantee of rationality and proportionality of the eviction, as well as the right to appropriate compensation, 3) the implementation of legal procedures such as warrants of a court, 4) guarantees of due process of prior consultation with the residents and prior notice of eviction, 5) the provision of alternative housing and land to prevent residents being vulnerable since they were evicted and lost their houses. . (General Comments 4,7 of the ICESCR). However, none of these requirements has been respected in the concerned cases.

Moreover, regarding such forced evictions, residents who peacefully protested were oppressed, harassed and often arrested. It is clearly a violation of the right to freedom of expression and association (protected under such as Article 19 of the ICCPR), to arrest or use force against residents who are peacefully protesting. .

(6) Serious Concern over Judicial Independence

In the Kratié case, the state dispatched the military to carry out the warrant of the court. According to the investigation, it was said that the province decided to dispatch the police and armed forces for the enforcement of the arrest warrant. However, the fact that the army was dispatched, force was used, and as a result casualties were caused, was all out of the scope of the execution of the warrant.

There is no record that the court protested against this incident. In addition, although HRN asked the Kratié court opinion about the forced execution without final and conclusive judgment, as well as

⁸⁵ http://www.licadho-cambodia.org/collection/14/agricultural_land_management_law

about the dispatch of the military for the arrest warrant, the only answer was, "nothing can be answered" and "we follow the government."

Judicial independence is lacking and the judicial system is hardly playing its role to control the illegal acts of administration. .

(7) Violation of the Right to Criminal Procedures, and the Right to a Fair Criminal Trial

The court of Kratié displayed to the investigating group their clear impression of guilt of the people including Bun Ratha, who were the subject of the arrest warrant. The principle of the presumption of innocence should be maintained even when the warrant is issued, however, this point of view was completely ignored. Therefore, it is impossible to conclude that a fair trial is guaranteed.

In the case of CIV Company, the conviction was ruled in a short period of time after the defendant had been tortured by electric shocks, and in the case of Borei Keila, extrajudicial detention was conducted.

In the trial of Boeung Kak Lake, the convictions occurred without considering many due process requirements under domestic law and the international human rights laws. At the same time, it can be observed that serious international human rights law violations (e.g., the ICCPR, Articles 7,9, and 14) including the violations of the prohibitions of arbitrary detention, as well as the right to fair trial are constantly happening.

(8) Attacks against Human Rights Activists

In all of the investigated cases, residents who continued participating in peaceful protests in order to protect their land, as well as the human rights groups and social activists who act to protect the residents are targeted by direct violence by the state and are arrested, detained and prosecuted.

After the HRN investigation, Mr. Chan Soveth of ADHOC was summoned before the criminal court in Phnom Penh. Mr. Chan Soveth is currently abroad, and the case against him is pending.

Moreover, on July 15, 2012, Mr. Man Sonado, founder of the Democratic Association and the owner and director of independent radio station Beehive Radio was arrested and accused of inciting a so-called "secessionist movement" in Kratie. On October 1, Mr. Sonado was convinced and sentenced to twenty years in prison

Further, the prominent female land housing rights activists Yorm Bopha and Tim Sakmony were arrested on September 4 and 5, respectively on the basis of questionable allegations.

Such illegitimate arrests, prosecutions and convictions are the worst form of threat and attack towards human rights and social activists, who are working on the front-lines to protect the rights of citizens to land.

The Cambodian government has often been criticized for using such measures, but the attacks on human rights activists are getting worse along with the recent increase in the active protest movements of citizens regarding the land.⁸⁶

V. Recommendations

On the basis of the facts investigated in the field research, Human Rights Now suggests the following recommendations

1. To the government of Cambodia, provincial governments and local authorities

1. The government of Cambodia, the provincial governments and the local authorities must not conduct any forced eviction.

1) Comply with the international human rights laws, and meet the following criteria when conducting evictions.

1. Provide an opportunity for consultations and negotiations, as well as alternative plans to the eviction to those who are affected by the evictions.
2. Ensure that an eviction is a reasonable and fair solution, and protect the rights of the residents to receive appropriate compensation.
3. Strictly follow the existing laws and sub decrees, and requirements for judicial proceedings including court orders.
4. Ensure due process including public meetings and preliminary notices in advance of evictions.
5. Provide alternative land to those who are deprived of their land to meet the criteria stated in the ICESCR General Comments 4 and 7. Otherwise evictions should not be practiced.

2) Prohibit the dispatch of military troops and armed police, as well as the use of physical force when conducting evictions.

3) When an eviction is conducted, strictly follow the judicial proceedings such as final decisions and administrative orders of the courts. Prohibit self-enforcement by private persons, and avoid the army and the police from taking part in it.

2. When any illegal actions are taken by the armed military or police force, investigate the incident thoroughly, punish the responsible individuals, and compensate victims of the violence.

3. Provide appropriate compensation to those who were deprived of their land, had their houses destroyed, or for lost properties. Additionally, provide alternative land that is compatible with an

⁸⁶<http://hrn.or.jp/activity/area/cat17/20061210/>

<http://hrn.or.jp/activity/area/cat17/post-84/>

international standard to those who were deprived of their residence.

4. Ensure that the human rights of citizens are not threatened due to the consequences of Economic Land Concessions. Strictly follow the new policy that promises to halt the Economic Land Concession program and transparently review the legality of all existing concessions. Ensure that this policy is put into practice nationwide without any exceptions, and disclose the progress to the international society in a timely manner.

5. Cease immediately unjust oppression and arrests in relation to the freedom of expression, assembly and association including the residents' peaceful protests regarding their right to land.

6. For all arrest cases involving land rights, investigate possible cases of violations of the international human rights laws such as torture and arbitrary detention, and compensate victims.

7. Based on the 2001 Land Law, register ownership in a timely manner for those who hold a long-term possession of the land in an open, non-violent, unambiguous, continuous, and good faith way, and respect the citizens' legitimate rights to land.

8. Refrain from implementing new laws that can infringe on the rights of citizens so long as the current situation remains unimproved. In particular, revise the draft Law on the Management and Use of Agricultural Land in consultation with affected stakeholders, in order to secure the land rights of citizens.

9. Promptly implement the order giving 12.44 hectares to the remaining residents of the Boeung Kak Lake area, and guarantee the right to land and housing for the people around Boeung Kak Lake who were deprived of their land. .

10. Immediately provide alternative land based on an assessment of the previous living environment to the Borei Keira residents who are forced to live in abominable conditions to protect the rights to housing of these residents.

11. Cease every unjust arrest and prosecution towards human rights defenders and social activists who are acting for land rights.

2. To the judicial authorities in Cambodia

1. Respect international human rights law regarding the accused and defendants including the principle of the presumption of innocence, open court, the guarantee of the right to appoint a counsel, the right to examination of a witness, access to the judicial record and evidence, and the guarantee of a preparatory period; and respect the right to a fair criminal trial.

2. Ensure the independence of the judiciary, and actively play a role to control illegal actions by the government.

3. Prohibit illegal arrests and prosecutions of human rights defenders and social activists who are acting for land rights.

3. To business sectors and the international business community

1. Regarding the violation of the citizens' land rights caused by land developments, ensure that a

preliminary assessment is conducted and investigate the usage situation of land when administering a land development plan. Refrain from conducting a development project if there is any evidence of residency or farming on the land.

2. Respect the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31, 21 March 2011), and pay adequate due diligence not to violate human rights.

4. To the international society, especially donor countries

1. Regarding the violation of the citizens’ land rights caused by land developments, conduct an investigation to ensure that there is no forcible eviction or other violence subjected on residents due to the land development project that a country is funding. Prevent evictions of the residents by providing opportunities to make preliminary arrangements with the residents to protect their right to housing. Make an opportunity to negotiate with civil society working on land conflict issues when programing the aid policy.

2. Comply with international human rights, and meet the following criteria when conducting evictions.

1. Provide an opportunity for negotiations, as well as alternative plan to those who are affected by the evictions.
2. Ensure that an eviction is a reasonable and fair solution, and protect the rights of the residents to receive appropriate compensation.
3. Strictly follow judicial proceedings including court orders.
4. Ensure that public meetings are held and preliminary notices are issued in advance of evictions.
5. Provide alternative land to those who are deprived of their land to meet the criteria stated in the ICESCR General Comments 4 and 7. Otherwise evictions should not be practiced.

3. Utilizing influence as a member of international society and as a donor country, encourage the government of Cambodia to take measures to protect citizens’ rights to housing and land. Take appropriate measures including the halt of related financial support as long as unjust developments continue to take place.

4. Regarding illegal land developments, visit sites to closely investigate the current situation, and hold meetings with the residents suffering from land conflicts.

5. From the standpoint of protecting human rights activists, promptly protest against illegitimate suppression and threats towards them, and provide measures of protection and relief.

6. Promptly protest against the dispatch of troops, forced evictions, and the use of physical force and illegal arrests, conducted by the government of Cambodia in relation to land rights.

5. To the government of Japan

1. Realize its responsibilities as one of the leading donors, and play its proper role in protecting the rights of citizens in land issues in Cambodia.
2. Follow 1 and 5 stated above, as well as conduct an investigation regarding the worsening human rights issues due to land conflicts, and appoint a duty office to handle the situation.
3. Given the fact that the civil law and civil procedure law in Cambodia, both of which the government of Japan provided assistance in establishing, are not being practiced as intended, and that the judicial court is not fulfilling its role to resolve the conflicts in Cambodia, provide legal assistance and education to the judges in Cambodia in order to help establish and deepen proper understanding of the civil procedure law as well as judicial independence and the role of judicial authorities.

6. To the United Nations special rapporteurs

Continue monitoring and investigation on the land conflict issues and the related human rights violations including the infringement of the freedom of expression, the use of physical force towards civilians, arbitrary arrests, illegal prosecutions, and the threat to human rights defenders.

Utilizing its authority, make an appropriate recommendation to the government of Cambodia to solve these issues as soon as possible.

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