

# National Updates on Agribusiness Large Scale Land Acquisitions in Southeast Asia

## Brief #6 of 8: Kingdom of Cambodia

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### Country profile

Cambodia covers a total area of 181,035 km<sup>2</sup> (of which water represents 2.5%) and its population was of 14,805,358 in 2009.<sup>1</sup> The country shares borders with Vietnam to the east, Laos to the north, Thailand to the west, and the ocean coast to the southwest. The official language is Khmer, spoken by 95% of the population. English is the second language in towns and cities where Vietnamese, Thai, Chinese and French are also spoken.

The tropical climate of Cambodia makes it a prime location for intensive agricultural cultivation, compounded with the availability of highly fertile land and abundant monsoon rains. Around 71% of Cambodia is agricultural land and about 82% of Cambodians live in rural areas. The majority of these communities' livelihoods are dependent on agriculture, further supported by small businesses, livestock-raising and use and trade of Non-Timber Forest Products (NTFP).

Rice cultivation is the most widespread agricultural activity in Cambodia, followed

by that of cassava, eucalyptus, acacia, maize, sugarcane, soya bean, oil palm, rubber and other crops.

### National trends in Large Scale Land Acquisitions

The National Strategic Development Plan (NSDP) is a strategic directive of the Royal Government of Cambodia (RGC) towards national development. Agriculture and agribusiness are highly prioritised in this directive and feature prominently in national development plans. Large-scale land investments by both national and foreign investors via the granting of Economic Land Concessions (ELCs) are widespread. ELCs are conceived by the RGC as key to increasing national income and budget, generating employment opportunities for local communities and developing infrastructure systems in rural areas. The solicitation of investments has led to a rapid increase in the number of agribusiness companies operating in Cambodia over the last few years.<sup>2</sup>

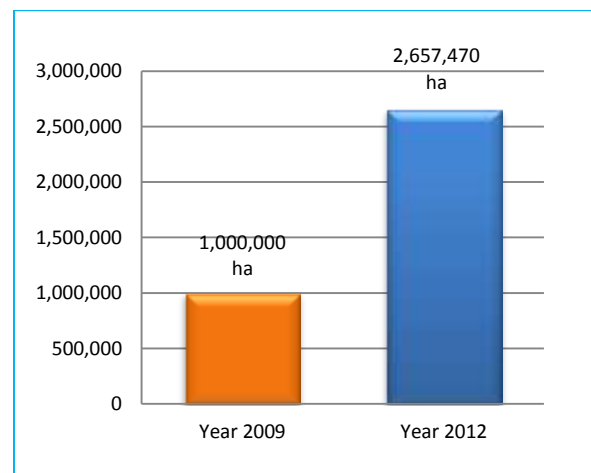
In parallel to this acceleration in Large Scale Agribusiness Land acquisitions, urban development has boomed, testified to by the towering skyscrapers in towns and cities and the purchase of luxury and costly vehicles by wealthy urbanites. However, behind the scenes, human rights defenders have pointed to a vast and growing gap between the living standards of the rich and the poor resulting from inequitable development, and accompanied by frequent human rights violations and neglect in remote rural areas.

World Bank data suggests that around one million ha of land were transferred to private sector investors from 2004 to 2009. By late 2012, national NGOs working on land tenure security and land reform reported that the government had designated at least 2,657,470 ha as Economic Land Concessions to private companies.<sup>3</sup> This represents a 16.7%

growth in private sector land investments since 2011.

In 2012 alone, the government of Cambodia issued 66 sub-decrees reserving 381,121 ha of land (including 108,524 ha transferred from State public property to State private property) for ELCs, and most of the newly granted concessions and land-reclassifications also affect protected areas.<sup>4</sup> Furthermore, independent research indicates that about 3.9 million ha (representing more than 22% of the country's total surface area) are currently controlled by private sector firms.<sup>5</sup>

Figure 1 Trends in land transfers (2009-2012)



As shown in the diagram above, more than one and a half million ha of land were transferred by the RGC to companies between 2009 and 2012. However, questions remain as to whether the unprecedented scale and pace of these investments is being accompanied by enforceable rule of law, democracy, transparency and accountability. Questions also remain as to whether current social and environmental requirements and policies for investments support responsible investors to achieve real accountability and sustainability in their operations.

*Government policies and targets for agribusiness expansion*

In line with the NSDP 2009-2013, the expansion of agribusiness is a top priority and one of the four pillars of the government's strategy for growth and development (the others being infrastructure, private sector development and human resource development). Both national and foreign investments are encouraged under the NSDP. The RGC has publicly disclosed proposal solicitation for agribusiness investors and supports private agencies and institutions in guiding companies seeking to invest in Cambodia.

In November 2010, Cambodia ratified a multi-lateral free trade agreement with New Zealand, Australia and ASEAN, with the aim of facilitating trade in goods and services through preferential treatment and requirements.<sup>6</sup>

In February 2013, the MAFF developed a six-point agreement with the Head of the National Assembly of the Republic of Belarus relating to the expansion of agricultural investments by Cambodia and Belarus. The agreement features capacity-building support to this end from Belarus, as well as the import of machinery and agreements for trade in specific agricultural products.

In the same month, the MAFF held a meeting with relevant government officials of the Ministry to reflect on the achievements of 2012 and strategic directions for 2013 in terms of effective management and use of pesticides and fertilisers. 20 points of recommendations resulted from this meeting towards the strengthening and capacity-building of pesticide and fertiliser use in agriculture and agribusiness operations.

However, a number of large-scale land investments in recent years appear to have taken place with little regard for existing national legal frameworks,<sup>7</sup> social and

environmental corporate accountability, or the State's obligation to protect and respect the human rights of Cambodian citizens and to provide remedy where these have been violated.

For instance, in line with Article 59 of Cambodia's Land Law of 2001, the maximum size of ELCs is of 10,000 ha, but some ELCs have been granted over up to twice or thrice this amount.<sup>8</sup> Article 59 also prohibits the granting of different ELCs to the same concessionaire. However, one domestic company, L.Y.P, has been allowed to operate seven<sup>9</sup> different ELCs in three different locations over a land area of over 60,000 ha for its sugarcane investments.<sup>10</sup> Another domestic company, M.R.T, is currently operating four<sup>11</sup> different ELCs in four different locations over a land area of 220,852 ha for its palm oil investments.<sup>12</sup>

Some foreign investors have also been granted land well over the legal limit. These include Chinese company Pheapimex,<sup>13</sup> which holds 315,028 ha of land for cassava, acacia, rubber and eucalyptus plantations, and Chinese company Wuzhishan LS Group<sup>14</sup>, which holds 199,999 ha in Mondulhiri for its pine tree plantations.

*Gross areas allocated to agribusiness in last three years*

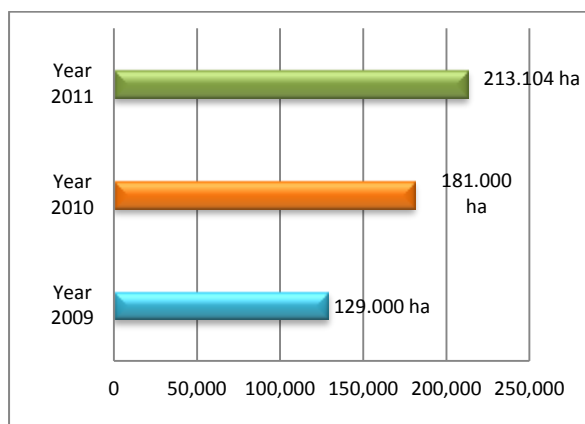
The highlands and red soils of east and north Cambodia make them prime locations for the development of rubber, cashew, acacia and pine tree plantations, while investments in central and western Cambodia are primarily for cassava, sugarcane, banana and soya-bean plantations, and rice paddies.

Provincial spatial plans for plantations in Cambodia are largely determined by export trends and access. For instance, cassava, banana and soya-bean are exported to Thailand, and therefore plantations for these crops are to be found

in provinces bordering Thailand, such as Battambang, Bantey Meanchey, Oddar Meachey and Koh Kong. Rubber and acacia, which are primarily exported to Vietnam and China, are planted in Kratie, Stung Treng, Rattanakiri and MondulKiri provinces, which border with these two countries.

According to the 2010 annual report of the Ministry of Agriculture, Forestry and Fisheries (MAFF), the total area of land that has been planted with rubber is of 181,000 ha, representing a 39% increase since the year before (129,000 ha). In 2011, rubber plantations occupied up to 213,104 ha, representing a further 17.5% increase since 2010. Family-held plantations are reported to have increased to 81,000 ha in the same year. In its progress report, the MAFF notes that it expects to reach its goal of 300,000 ha of rubber plantations by 2020.

Figure 2: Rubber plantation trends



No information is available related to the baselines and expansion of sugarcane, cassava, acacia, eucalyptus and soya-bean plantations on the MAFF's website, or in other available sources.

275,637 ha of land were granted to 39 different investment companies<sup>15</sup> in 2010 and 2011 for rubber plantations. Most of these plantations are located in provinces inhabited by indigenous peoples, and where protected forests and areas of high biodiversity are to be found. 42,422 ha of

this area are held by five investment companies under the same concessionaire, all of which bear similar names, locations, plantation types (sugarcane and acacia) and concession approval dates.<sup>16</sup>

According to records in the ELC database of the NGO-Forum on Cambodia, the last two years have seen an acceleration in the granting of ELCs by the RGC, including concessions which overlap with national parks, wildlife sanctuaries and conservation areas (see section below on 'Environmental Impacts').

On 1<sup>st</sup> November 1993, His Majesty King Norodom Sihanouk signed a Royal Decree on natural protected areas, the protection of ecosystems, the environment and biodiversity wildlife, and climate change. Today, Cambodia has seven national parks<sup>17</sup> covering a total area of 871,250 ha, and ten different wildlife sanctuaries<sup>18</sup> covering a total area of 1,568,750 ha.

However, in the course of 2011, 63,653 ha within the Vireak Chey national park were reportedly granted by the RGC to seven different companies for agribusiness and rubber plantations. 124,414 ha of forest in Botum Sakor national park, Koh Kong province, were also converted to private State land and granted to six different companies, the latest being Paradise Investment Co., Ltd, which holds an area of 9,137 ha for agribusiness development, as approved in April 2011. Another company, Virtus Green Plantation Cambodia, holds 6,718 ha within Boukkor national park, as granted in February 2011. Furthermore, 38,035 ha of forest land in the Oral mountain wildlife sanctuary were converted and granted to eight companies, three of which obtained the land in question as ELCs in 2011 and one in 2012.

Figure 3: Proposed ELCs within the Boeng Pae wildlife sanctuary



Figure 4: ELC overlap with National Park



### Main export markets

China, Vietnam and Thailand are the main export markets of Cambodia. In February 2013, Deputy Prime Minister and Chairman of the Council for Agricultural and Rural Development, H.E Yim Chhay Ly, reported that Cambodia earned around \$50 million a year from exports of dried cassava to China. Chhay Ly added that Cambodia's agricultural exports to Vietnam and Thailand amounted to between 7,000 and 8,000 tonnes a year.

Most foreign firms operating in Cambodia are run by Chinese, South Korean and Japanese companies. Such firms are predominant in the agriculture and agribusiness sectors, but also in the garment and textile, footwear, tourism, construction and real estate sectors.

Rubber produced in Cambodia is primarily sold to Malaysia, Singapore, China, Japan and some European countries, according to Mok Kim Hong, General Director of rubber plantation company Chub and President of the Cambodia Rubber Association. Since export to Europe began, the price of rubber has doubled, fetching around USD \$5,400 per tonne in Ho Chi Minh City, compared to \$2,500 per tonne in 2012. Vietnam imports rubber from Cambodia to supply their factories and also to resell to other countries.

Meanwhile, figures from the Ministry of Commerce suggest that total rubber exports increased by 65.8% to 11,822 tonnes in the first quarter compared to the same period in 2012. In terms of US dollars, exports soared 205% at a cumulative rate of USD \$55 million per year, representing an increase of USD \$18 million per year since 2012.<sup>19</sup>

Oil palm<sup>20</sup> seeds are imported by Cambodia from Malaysia and Costa Rica, and Cambodia exports its own Crude Palm Oil (CPO) products to markets including Malaysia, Switzerland, Holland, India and France.

### Key companies or conglomerates

The main agribusiness investment companies operating in Cambodia are from Vietnam, Thailand, China, Indonesia and Singapore. Some domestic investors are now also forming conglomerates with operations in several sectors of investment, including agribusiness.

As mentioned earlier, New Zealand has signed a bilateral trade agreement with

Cambodia - by December 2011, New Zealand exports to Cambodia totalled NZ \$5.6 million, while imports from Cambodia totalled NZ\$4.6 million.

L.Y.P Group, set up in 1999 with its head office located in Phnom Penh, is engaged in trade and business distribution with neighbouring countries and Cambodia. The Group is the one of the leading business and industrial conglomerates in Cambodia, and continues to diversify its investments in numerous sectors, from hospitality, restaurants and real estate development to plantation and infrastructure development. Currently, L.Y.P operates the biggest area of plantations in the country, as well as massive satellite city development projects, prominent hotel and casino resorts, power plants both in and out of Cambodia, and the largest safari theme park in the world. More than 10,000 people are employed by L.Y.P in its various operations across Cambodia.<sup>21</sup>

Another leading pioneer in the agricultural and agro-industrial sectors in Cambodia is Mong Reththy Group (M.R.G), established in Phnom Penh in 1989 and operating in trade, business and investments in the commercial, construction, transport, import and export, food chain, agricultural and agro-industrial sectors. M.R.G employs over 3,000 office staff, local employees and workers in its nine different investments. The objectives of the Group are to expand Cambodia's agricultural and agro-industrial sectors, to promote production and export, to develop human resources and labour markets, and to ensure prosperity and sustainability of national development and economic growth in Cambodia's rural areas.<sup>22</sup>

Another important company operating in Cambodia is Men Sarun, established in 1994 in Phnom Penh, whose operations involve rice and wheat production and processing, as well as rubber and coffee plantations. The company holds three rice-

processing factories which supply the Ministry of National Defence and the Ministry of the Interior, as well as the domestic market. M.S also holds two ELCs<sup>23</sup> over 1,724 ha of land for its plantations of rubber, coffee and other crops.<sup>24</sup>

Charoen Pokphand (CP), a Thai conglomerate, is the one of the largest importers of seeds to Cambodia and holds a dominant position in the maize industry, where it also provides technological support and contract farming schemes, and operates a commercial mill.

Bridgestone tire-maker, a Japanese company, purchases the largest amount of Cambodian rubber, with a 66% increase in the first quarter of 2013. Demand for Cambodian rubber in Vietnam is also on the rise, particularly in Ho Chi Minh City. Nguon, president of Kong Nuon Import-Export, is the exclusive importer of Bridgestone tires to Cambodia.

#### *Basic information about investment trends and/or key financiers*

The Cambodian Ministry of Commerce's annual report documents investment trends and import-export trade in Cambodia. This includes the top ten countries in export-import relations with Cambodia as well as the top ten products traded.<sup>25</sup> However, no information is available on agricultural investment and key financiers specifically.<sup>26</sup>

Many projects in Cambodia are financed by donors and development partners, namely USAID, UNDP, UNICEF, OXFAM, GIZ, the World Bank and the Asian Development Bank (ADB). For instance, USAID supports a broad range of programmes designed to improve health, education, economic growth, poverty alleviation, agriculture, natural resource management, democracy, governance, human rights and anti-trafficking in persons. USAID Cambodia provided over

USD \$65 million in assistance in 2012 alone. Oxfam, GIZ, JICA, UNICEF, UNDP and other UN agencies are also playing significant roles in both granting and providing capacity building aid as well as technical support to the RGC.

Private sector support and participation is promoted by the RGC to help address and resolve existing obstacles and limitations to the development of the agricultural sector, such as in terms of technical services, infrastructure development, information and communication technology (ICT) for rural development, training and skills development, marketing and rural finance.

Basic information on investment trends is not available on any government institution websites. However, some information can be accessed from civil society organisations<sup>27</sup> working to monitor development projects, research reports of freelance consultants and independent academic research.<sup>28</sup>

One sector where investment trends have been notable is in the sugarcane and rubber sector from 2009 to 2013. By 2010, nine sugarcane companies were operating on 60,899 ha in four different locations: Koh Kong, Kampong Speu, Oddar Meanchey and Stung Treng province. Seven of these companies are operated by L.Y.P Group and hold more than 60,000 ha in total, which is in violation of the legal limitation of the area of ELCs in accordance with Cambodia's Land Law. As of November 2011, a further five Vietnamese companies were granted land to develop sugarcane plantations of a total area of 33,407 ha.

Rubber plantations are also expanding rapidly, notably in those provinces bordering Vietnam. Companies in operation include Hong Anh, Jing Zhong Tai, Fu Sheng Hai and Try Pheap.<sup>29</sup> Five of these companies hold 38,570 ha of land in total, and appear to belong to the same

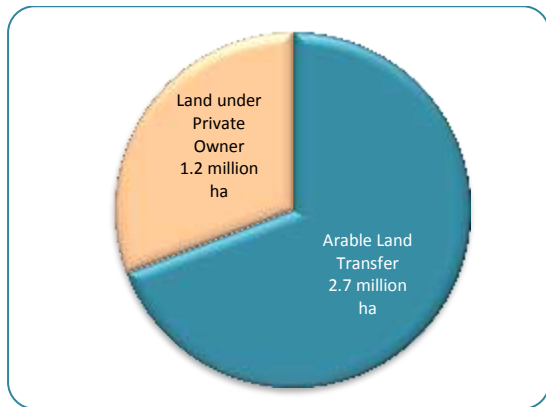
concessionaire, as they are under the same name and were approved on the same date in the same district of Koh Nhaek, Mondulhiri province.<sup>30</sup>

### Problems in land acquisition

It is estimated that 3.9 million ha of arable land in Cambodia (equivalent to 22.1% of the country's total land area) have been handed over to private investment. In recent years, thousands of hectares of ELCs have been granted for industrial-scale agriculture, with many of these reportedly being in violation of existing residents' land rights. Local NGOs report that by the end of 2012 more than 2 million ha of land have been granted and transferred to private companies as ELCs and Special Economic Zones (SEZs). Records also note that ELCs have led to the expropriation of residential and agricultural land of local communities, and numerous households have reportedly lost land after coming into dispute with powerful private sector actors engaged in land speculation.<sup>31</sup>

Around 3.9 million ha<sup>32</sup> of arable land is currently under private sector investment, of which more than 2.6 million ha was transferred by the State. Information on access to planted arable land is lacking to date. Some granted ELCs have specified land utilisations within different plantation stages, but others do not. ELC statistics also differ between State (i.e. MAFF) and national NGO sources. According to the former, there are 117 ELCs over an area of 1,181,522 ha, whereas according to the latter, there are over 300 ELCs covering a total area of 2.6 million ha.

Figure 5: Arable land under private sector use (total: 3.9 million ha)



The Cambodian government does not yet have in place a proper monitoring system to ensure the lawful implementation of ELCs in accordance with existing regulations. This has led to demarcation problems where borders of ELCs are vague, restriction of access and ensuing accusations of trespass, and illegal clearing and logging with no or little actual agricultural plantation, whereby joint investment with partners is then solicited for remaining unplanted areas.<sup>33</sup>

In the RGC, citizens are entitled to land ownership under the Land Law of 2001, as well as Sub-decree N°48 on sporadic land registration of 2002 and systematic land registration of 2006, as well as other national policies supporting the Cambodian constitutional law of 1993. However, in practice, most Cambodians are not aware of or know very little about these laws and policies, with the exception of some government officials working on land issues such as cadastral officials, real estate businesses and NGOs working on land tenure and food security.

By 2013, ELCs for plantations of inter alia sugarcane, rubber, cassava, acacia, eucalyptus and palm oil under private sector investment covered around 65% of total arable land. This rapid expansion of agribusiness has been accompanied by increasing attention from civil society to human rights violations, with questions

raised as to the accountability of operating companies, including those which are partly or totally owned or operated by the State itself.

#### *Lack of recognition of land rights*

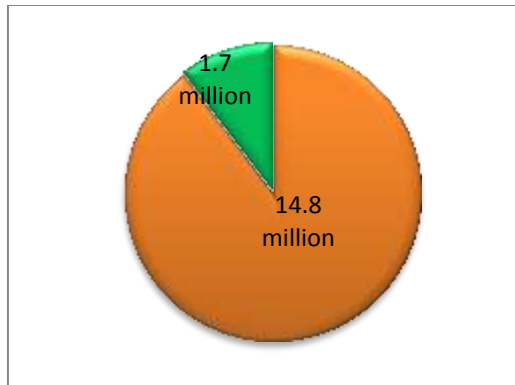
The Cambodian land registration system began in the late 1990s. Following the Land Law of 2001, a number of regulations which provide a legal framework for land registration were also redesigned and the roles and responsibilities of Cambodia's cadastral authorities outlined. The RGC, with support from its development partners, has been working to develop the country's land administration capacities, with the aim of eventually registering all of Cambodia's land parcels. However, the land registration process has advanced very slowly in practice.

The total population<sup>34</sup> of Cambodia in 2009 was of 14.8 million. However, based on the report of the Ministry of Land Management, Urban Planning and Construction (MLUPC) in 2011, only 1.7 million people have received land ownership titles.

In May 2012, the Prime Minister of Cambodia issued PM Directive 01, ordering the cut-off of land under conflict from ELC areas<sup>35</sup> and offering certificates to local communities for land ownership. This move was meant to accelerate the land registration and ownership process, bearing in mind that over thirty years after the Pol Pot regime, only over a million people had received such land titles. However, reliable statistics concerning people entitled to land ownership via implementation of the PM's directive 01 was not available as of early 2013.



Figure 6: Estimated population entitled to land ownership certificates, and actual certificate ownership in 2011



The total population of indigenous peoples in Cambodia is estimated at 1.4 million, consisting of 24 different ethnic living in 15 provinces, 39 districts, 68 communes and 186 villages.<sup>36</sup> However, out of this population, only five indigenous communities held land registered as communal collective land by 2012.

#### *Impacts of Large-Scale Land Acquisitions on the livelihoods of local communities*

Due to lack of law enforcement and irregularities in the implementation of existing legislation, human rights abuses have multiplied in recent years in Cambodia. Almost every investment project by private sector investors has led to inequitable development, including for smallholders and local communities, who find themselves deprived of promised benefits and whose rights are not adequately protected by State agencies.

Furthermore, many development projects underway have been implemented without disclosure of information or public consultation with affected local communities, meaning that these communities are not able to access information related to the nature of the project, its impacts on their livelihoods, forms of compensation, or complaint/grievance mechanisms.

Food insecurity has increased in rural areas and families have become impoverished as a result of the loss of their farmland and grazing land to large-scale agribusiness investors. Struggling to make a living, some parents are having to taken their children out of school in order to work and support the family make an income. Some people who lost all their land have had no choice but to work on the plantations, despite low pay and irregular work hours and salary.

Many affected farmers can no longer grow enough food to feed their families, with some having to resort to selling off their livestock, as former grazing land is converted to plantations. In some cases, company guards have shot or confiscated livestock from local communities, such as buffalos and cattle.

Certain crops that local farmers have been cultivating for generations, including cashew, jackfruit, coconut and mango, have been destroyed in the process of land conversion. Furthermore, chemical waste from plantations and processing mills have in some cases polluted local water sources and poisoned fish, which is the main source of protein for many Cambodian communities. Further limiting these communities access to natural resources, some company staff have reportedly prevented local inhabitants from entering forest land to collect NTFPs.

Many outspoken community members have protested against these abuses, but also fear for their own security as a result of their activism. Long-running disputes over land abound, and to date efforts to seek resolution based on relevant laws and procedures have failed. Companies holding concessions continue to clear disputed land and local farmers have been forced to relocate with little or no compensation for their losses.

### **Associated human rights abuses**

Agribusiness investment is being promoted in Cambodia as a key mechanism towards enhancing local food security, improving local livelihoods and encouraging green growth development.

However, lack of due consideration and consultation over the potential negative impacts of such development on local communities and the environment had led to the eruption of conflicts between companies and local communities whose farmland and community forests have been 'grabbed', and who have suffered forced evictions without fair compensation. Women and children's wellbeing have been particularly affected by these abuses.<sup>37</sup> Poverty and impoverishment in rural areas as a result of indiscriminate land leasing to private sector companies without benefit-sharing mechanisms for local communities, remains significantly high.

Lack of law enforcement, lack of public consultation and lack of acknowledgement of the rights of local communities to land have been identified by NGOs working on land-related issues as root-causes of land conflicts. As result of land grabbing, people are being forced to migrate to urban areas to find employment, or become migrant workers in other ASEAN countries, where protection of their rights and access to information is even weaker. Most land conflict cases to date in the agribusiness sector have been settled without payment of due and fair compensation to the grieved parties.

#### *Resettlement and forced evictions*

Forced evictions and resettlement of local communities without fair and just compensation or prior public consultation has been reported on several occasions in Cambodia. The result of these evictions has been the loss of access to land and livelihoods by local communities.

Nor do resettlement areas always provide these communities with access to public services, adequate infrastructure, health services or schools. Individuals who have protested against resettlement have faced pressure from government authorities and investment companies, as well as arrests and imprisonment in certain cases.

#### *Indigenous peoples' rights to land and culture*

As of 2013, few indigenous peoples in Cambodia hold legal status as communities with formal rights to land. One reason for this is that the governmental and administrative procedures required are tedious and complex, and the process slow. Another is that while the government is pushing for increased and vaster land investments by the private sector, meaningful participation and awareness on the part of these communities of the rights of indigenous peoples under international law are significantly limited. Furthermore, indigenous peoples affected by large-scale agribusiness projects are being persuaded to accept private land ownership, which contrasts with their customary collective modes of land ownership and use.

As a result of these discrepancies and imbalances in knowledge and power, vast amounts of indigenous peoples' customary lands are being converted to ELCs, leading to the erosion of these communities' livelihoods, culture, sacred forests and protected forests.

In Cambodia, collective land registration is determined after registration of private land. By 2013, only five indigenous communities had received land registration certificates, whereas the remaining 163 communities were in the process of claiming legal rights over their land through the Ministry of Rural Development and Ministry of the Interior at the time of writing.

### *Impacts on community forestry*

The complex procedures required for the creation of Community Forests under existing legislative and administrative structures have made community forestry areas an easy target for conversion to, or overlap with, ELCs. Documented instances include clearance of community forestry areas and logging by influential individuals and concessionaires. Forestry activists and local communities have faced intimidation from company security guards and some NGO workers supporting local communities have been threatened and accused of incitement.

### *Land conflict and land registration*

Most land conflicts in Cambodia involve large-scale investments in agricultural land. With the aim of reducing such land conflicts, the Prime Minister's Directive 01 of May 2012 ordered a cut-off of land under conflict from ELC areas and the restitution of these lands to affected communities, as well as the granting of certificates of land ownership.

However, the recent land report on Directive 01 notes challenges in actual implementation and effective action towards concretising these objectives. For instance, some ELCs are in violation of existing guidelines and the Directive. An example of this is the case of company Union Development Group (UDG), which operates on 36,000 ha of land in Botum Sakor and Kiri Sarkor districts, Koh Kong province. Even though conflict over residential and farmland was ongoing, the area was not cut off, but rather communities were offered small areas of heavily vegetated land outside the UDG's concession, without any road access or infrastructure.

In other cases, areas within the collective lands of indigenous peoples have been measured and then divided up as private ownership parcels. Community forestry

areas have been encroached upon and cleared for private company use. Land conflicts continue to occur and comprehensive solutions have yet to be developed and implemented. Instead, the relocation of people away from conflict-affected land to resettlement sites where ELCs overlap with local community land is becoming routine practice.

### *Rights of smallholders/out-growers*

By 2013, and despite the ever increasing number of large-scale agribusiness investments in Cambodia, no appropriate action has been taken by the State to protect and support the rights of smallholders and out-growers. The potential of contract farming as a mechanism to secure local communities' land tenure security has not been considered seriously by the State as a requirement on investment companies.

The government still lacks the ability to seek better access to the global market or free market for smallholders. For instance, in Svay Rieng province, Monorom commune, a private company has invested in sugarcane and cassava plantations through hiring farmland from the local community. Some of the inhabitants are hesitant to lease their farmland to the company as they worry about the impact of large-scale mono-crop plantations on the quality of the soil, and have asked to instead engage in smallholder contract farming with the company. However, the company does not accept to buy sugarcane or cassava from the local communities as smallholders.

Conflict has also arisen from smallholder contract farming in other parts of Cambodia. For instance, indigenous people in Mondul Kiri province have come into land-related conflict with companies Dak Lak and KDC-Socfin. Both companies have implemented contract farming by clearing the land under conflict and have lent smallholders money to buy

rubber seedlings for a plantation. Rubber plantations are a long term strategic investment, as at least five years are required after planting before resin can be harvested. What has resulted is that the indigenous people under the contract scheme have become indebted to the company due to increasing loan interest, and their daily income is increasingly dependent on access to NFTP alone and employment with the company, to support their daily needs. Engaging in the smallholder contract scheme has effectively led to impoverishment rather than enrichment in this and other documented cases.

#### *Environmental impacts*

Most large scale investment projects in Cambodia have drawn more benefits from *access* to the concessions, for instance, from logging from forest clearance, rather than from actual *production* from plantations. Corruption, weak rule of law and lack of accountability enforcement mechanisms on the part of the State have allowed this to take place.<sup>38</sup>

While such logging is prohibited by national legal frameworks, including the Sub-decree on Economic Land Concessions, the Law on Forestry and the Law on Natural Resource Management among others, these laws are disregarded in practice and the reality of implementation differs starkly from their provisions.

Such illegal action have led to protests, such as that of the ethnic minority group Jarai in Rattanakiri province, who filed a complaint against a Vietnamese company for illegal logging and deforestation in early April 2013.<sup>39</sup>

Figure 7: Bird's eye view of forest and clearing activities for plantation development in Cambodia



Negative impacts on the environment include the pollution of water sources and soil due to chemicals, pesticides and fertilisers, with documented impacts on the health of both people and livestock as well as flora and fauna.

In 2012, the Ministry of Environment and the Prime Minister of Cambodia announced a moratorium on the granting of ELCs following a plethora of conflicts at the community level, with protests held in Phnom Penh city in front of Prime Minister's residence and relevant government institution offices.

However, NGO Adhoc reports that 33 ELCs covering an area of 208,805 ha have been granted following the announcement of this moratorium.<sup>40</sup> The explanation given by the government for these leases are that they were already being processed when the moratorium was declared. Of further concern in terms of environmental impacts, local Cambodian NGOs record 18 ELCs covering an area of 272,597

ha<sup>41</sup> located inside wildlife sanctuaries and protected areas.

### **Human rights framework**

Cambodia is a signatory to almost all human rights instruments including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. As of 2012, the RGC has made considerable and active efforts towards the implementation, protection and promotion of human rights.

For instance, Cambodia has adopted the ASEAN Declaration on Human Rights and is a member of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). Cambodia is also member of the ASEAN Committee on the implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), some provisions of which are directly relevant to economic development in the agribusiness sector.

However, there are serious concerns and increasing attention on the human rights impacts of agribusiness investments in Cambodia, such as land grabbing, forest resettlement, forest clearance, environmental destruction, loss of biodiversity and wildlife, loss of collective land for indigenous peoples and other minority groups, and the erosion of these peoples' and groups' traditional cultures as a result.

Furthermore, the RGC has yet to develop and apply principles on business and human rights to the corporate sector, in order to hold the private sector accountable for its conduct, including those businesses that are owned, operated or controlled by the State. Existing

Corporate Social Responsibility (CSR) programmes tend to focus on ad hoc charity work and company-driven and determined compensation, meaning that root issues such as land access, food security and sustainable local livelihoods are not adequately, if at all, addressed.

### *Human rights obligations of Cambodia*

The Kingdom of Cambodia became a party to ICESCR on 26<sup>th</sup> August 1992. By becoming a party to the covenant, the State has made a legally binding commitment to its citizens and to the international community to implement the provisions of the treaty to promote and protect economic, social and cultural rights.

Article 31 of the Cambodian constitutional law also guarantees the Covenant as part of Cambodian law and other articles reaffirm Cambodia's commitment to ensuring that all Cambodians are able to enjoy their economic, social and cultural rights to the fullest extent possible:

“The kingdom of Cambodia shall recognise and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenant and conventions related to human rights, women's and children's rights.”

Cambodia's initial report to the Committee of Economic, Social and Cultural Rights was due for submission in June 1994, but was only submitted in October 2008 for consideration by the Committee in May 2009.

Furthermore, a number of the Articles of the ICESCR stand out in relation to the impacts of agribusiness expansion in Cambodia, namely:

Article 11: the right to an adequate standard of living, including adequate food, clothing and housing and continuous improvement in living conditions is yet to be implemented widely. Affected communities forced to move to

resettlement sites as result of land grabbing report lack of adequate infrastructure in resettlement areas, loss of daily income, unfair compensation terms and amounts, and lack of access to or existence of, public facilities for health and education.

Article 12: the right to physical and mental health is not yet fully respected or protected in Cambodia, where a vast majority of local people in rural development areas are living in fear of reprisals and intimidation, should they oppose development projects on their lands. Land grabbing has frequently been accompanied by the use of excessive force by State and private sector actors to put pressure on communities, including through the use of death threats, arbitrary arrests and imprisonment. Human rights defenders have also reported threats, intimidation and accusations of incitement and ‘disinformation’.

Cultural rights: respect for and protection of cultural rights is also far from widely applied in Cambodia, particularly in relation to the land and the cultures of indigenous peoples. Collective lands of indigenous peoples have been handed over by the State to private investors, including these peoples’ protected forests and spiritual areas, which have been indiscriminately cleared. Ancestral graves have also been dug up. As a result, the continued practice of customary traditions and livelihoods by indigenous peoples in Cambodia is seriously threatened.

Figure 8: People seeking intervention in land-grabbing case



#### *Recent developments in human rights*

At the national level, the RGC has established mechanisms and policies to enforce human rights protections, such as through the establishment of a Human Rights Commission at the National Assembly and at the Senate. The national legal framework has also been adjusted to better accommodate international human rights instrument requirements.

The Law on Demonstration was developed to allow citizens of Cambodia to practice their right to assembly, albeit with a limit of 200 individuals at a time. Specific locations have been allocated as ‘Freedom Parks’ for civil society gatherings and expression of views, but collective marching and campaigning outside these designed areas remain prohibited.

At the regional level, the RGC is actively involved in the ASEAN human rights mechanisms mentioned above, and the implementation of its Declaration of Human Rights. In May 2011, the Ministry of Environment signed an MoU with Global Green Growth Institute (GGGI) represented by the Republic of Korea to enhance and ensure inclusive, equitable, coherent and balanced sustainable development through Cambodia’s National Strategic Plan on Green Growth 2013-2030 to mitigate and adapt to climate change.

Furthermore, a law on Environmental Impact Assessment (EIA) seeks to strengthen the accountability of the private sector in terms of environmental preservation. The Law on Agricultural Land and the Law on Access to Information were still in draft form at the time of writing.

Despite these positive initiatives, it must be noted that mechanisms and legal frameworks in use at present remain overall inadequate in terms of protecting and promoting human rights and fundamental freedoms, including those of expression. Control over supposedly independent institutions remains tight, including cases of lawyers being forbidden from speaking to the media without permission from the Director of the Bar Association.<sup>42</sup>

Of serious concern is the projected Law on NGOs (NGOs Law), which may lead to greater control by the State over the activities of such organisations, including those working towards the protection of human rights in Cambodia. For instance, the draft NGOs Law places restrictions on the types of engagement, scope and area of work, as well as funding sources, of NGOs. The division of NGOs into ‘Government NGOs or NGOs supporting the Government’ (GONGO) and ‘NGOs’ is a further threat to the independence of these organisations.<sup>43</sup>

## Conclusion

Large Scale Land Acquisition for agribusiness development in Cambodia has increased rapidly from 2009 to 2013, during which time more than 1.6 million ha of land have reportedly been converted to private State land for agricultural investments. Investment trends show a drive towards transforming Cambodia’s farm and forestland into monoculture plantations by both domestic and foreign investors. However, the actual utilisation

of many of these concessions remains unclear.

Despite receiving significant revenue for national economic development, it appears that Cambodia is not yet ready for development of the agribusiness sector. At present, existing legal and technical frameworks are limited, making it difficult to manage this windfall revenue.

Deforestation and subsequent expansion of permanent low-land monocultures have severely disrupted agro-ecosystem stability and affected landscape-wide environmental stability and resilience, resulting in large-scale loss of wildlife and the destruction of natural habitats.

Lack of information on investment trends and key financiers from State Ministries is also a significant obstacle in terms of research on the agribusiness sector in Cambodia. This includes lack of information on the total area of land converted, and of this, the proportion of agricultural, permanent crop and pasture areas.<sup>44</sup>

Recognition and protection of local communities’ rights to land remain inadequate, and land titles are held by less than 12% of the population. Indigenous peoples’ land rights are particularly poorly protected under existing legislation and administrative procedures for land title acquisition.

People living within existing and project concession areas remain generally ignorant of basic information about the concessions and their purpose, pointing to a systematic failure by relevant institutions to inform the public about such projects and their potential impacts. Furthermore, private companies are coveting land which should be protected from investments, including protected areas and indigenous peoples’ lands.

Hundreds of communities across Cambodia have expressed their concerns

over the fact that they have been denied their rights to land. As a consequence of their protests, many are facing forced evictions. In most cases, the authorities have failed to comply with legal requirements concerning evictions and resettlement, both of which continue to occur illegally. Lack of freedom of expression and assembly continues to hamper human rights advocacy and expression by both communities and human rights defenders, as well as legal practitioners.

International human rights standards on business and human rights have yet to be implemented in the context of Cambodia, and CSR programmes remain largely voluntary and designed by the private sector with little consultation with, or genuine choices and alternatives offered to, affected local communities.

### **Recommendations**

Cambodia still needs to strengthen its land and natural resource management, and better enforce human rights protections and promotion, if it wishes to align itself with other ASEAN countries. Some recommendations to this end are made below:

- 1) Agricultural investment needs to be accompanied with information-sharing and consultations with local communities. Such information should include at least, but not only, land transfer trends, investment trends, key financiers, main markets, company details and so forth.
- 2) Appropriate schemes also need to be developed to engage smallholders in ways that respect their rights to manage their small-scale agricultural activities and access markets more easily.
- 3) Land Use Planning should be carried out throughout the country, and spatial planning data made available for access by the public. Sub-provincial authorities should allocate land and natural resources based on use (such as agricultural or residential) and allocate Social Land Concessions to support family-based plantations, as this will in turn sustain local livelihoods, land tenure security and food security.
- 4) Areas should be allocated for sustainable use of natural resources by local communities distinct from investment locations.
- 5) The implementation of national legal frameworks needs to be strengthened and better monitored. This includes the Cambodian Constitutional Law of 1993, the Sub-decree on Economic Land Concession of 2005, the Land Law of 2001, the Law on Environmental Protection of 1996, the Sub-decree on Social Land Concession and the Forestry Law of 2005, among others (see Annex).
- 6) The implementation of international human rights instruments adopted by the RGC – UDHR, ICCPR, ICESCR, UNDRIP and ICERD – needs to be better enforced and monitored. Of particular importance for indigenous peoples is the need for State recognition and respect in practice of UNDRIP and ICERD.
- 7) Further active commitment to and involvement of Cambodia in ASEAN's human rights mechanisms is necessary, including the AICHR, ACWC, ACMW and implementation of the ASEAN Declaration of Human Rights.
- 8) Continued and expanded cooperation with the Global Green Growth Institute (GGGI) and other institutions



should be encouraged to enhance and ensure inclusive, equitable, coherent and balanced sustainable development in Cambodia's National Strategic Plan on Green Growth 2013-2030 to mitigate and adapt to climate change.

- 9) Strengthened accountability mechanisms for the private sector need to be developed as well as rigorous implementation of the EIA law, the Law on Agricultural Land and the Law on Access to Information.
- 10) The agribusiness sector should be prioritised for the enhancement of Cambodia's green economy and sustainable development *but* with adequate consideration given to food security, water security, energy security, clean production, a zero water product life cycle, and sustainable consumption and production.

11) Commitment on the part of the RGC towards achieving Cambodia's Millennium Development Goals (MDGs) must be strengthened.

12) National green growth implementation should be supported by integrating the green growth paradigm into the four dimensions of Cambodia's sustainable development (i.e. economy, environment, society and culture) and balancing the development of the four pillars with each other in a coherent, sustainable and rights-based manner.

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RESOURCE	WEBSITE
Ministry of Agriculture, Forestry and Fisheries	<a href="http://www.maff.gov.kh">www.maff.gov.kh</a>
Investment Guide-Cambodia	<a href="http://www.investmentincambodia.com">www.investmentincambodia.com</a>
Invest in Cambodia “Israel Cambodia.com”	<a href="http://www.israel-cambodia.com">www.israel-cambodia.com</a>
DFDL (largest legal firm in Cambodia)	<a href="http://www.dfdlmekong.com">www.dfdlmekong.com</a>
Ministry of Commerce	<a href="http://www.moc.gov.kh">www.moc.gov.kh</a>
Council for Development of Cambodia	<a href="http://www.cambodiainvestment.gov.kh">www.cambodiainvestment.gov.kh</a>
International Business Chamber of Cambodia	<a href="http://www.ibccambodia.com">www.ibccambodia.com</a>
The NGO-Forum on Cambodia	<a href="http://www.ngoforum.org.kh">www.ngoforum.org.kh</a>
Business & Human Rights Resources Centre	<a href="http://www.business-humanrights.org">www.business-humanrights.org</a>
Mong Reththy Group company	<a href="http://www.mongreththy.com">www.mongreththy.com</a>
Global Witness	<a href="http://www.globalwitness.org">www.globalwitness.org</a>

### Annex: Selected Cambodian laws and regulations applicable to agribusiness investments

#### Laws on land

- Land law
- Concession law
- Sub-decree on state land management
- Sub-decree on Economic Land Concession
- Sub-decree on rules and procedures on classification of state public properties and public entities
- Join Prakas on determination of competence of the court and cadastral commission regarding land disputes

#### Laws on forestry

- Forestry law
- Sub-decree on forest concession management
- Sub-decree on procedure establishment classification and registration of permanent forest estate
- Sub-decree on community forestry management

#### Law on water resources

- Law on management of water resources in Cambodia

#### Laws on investment

- Law on the investment of the Kingdom of Cambodia
- Law on amendment to the law on investment of the kingdom of Cambodia

### Endnotes

<sup>1</sup> Blas 2010.

<sup>2</sup> A total of 314 investment companies were recorded in the NGO-Forum on Cambodia database in 2012.

<sup>3</sup> *Business and Human Rights Resource Centre: Cambodia*. Statistics on ELCs differ based on source (Cambodian League for the Promotion and Protection of Human Rights (Licadho), ADHOC, CCHR and NGO-Forum on Cambodia) but are all approximately within the figure of 2 million ha or slightly above.

<sup>4</sup> According to statistics from the MAFF on 8<sup>th</sup> June 2012, the total number of ELCs was of 117 over a land area of just 1,181,522 ha.

<sup>5</sup> Ros 2012.

<sup>6</sup> See [www.asean.fta.govt.nz](http://www.asean.fta.govt.nz)

<sup>7</sup> For instance, the Land Law 2001 and Sub-decree N°146 on Economic Land Concession of 27<sup>th</sup> December 2005.

<sup>8</sup> Examples include an oil palm plantation in Sihanoukville of 11,000 ha and Green Sea Agriculture's total concession area of 100, 852 ha.

<sup>9</sup> Two of Y.L.P's companies are in Koh Kong province, two in Kg Speu province and three in Oddar Meanchey province.

<sup>10</sup> *Clean Sugar Campaign: The Concessions*.

<sup>11</sup> These are: one palm oil company in Sihanoukville, Green Sea Agriculture in Stung Treng, Reththy Kiri Seyma in Kratie and Keo Seyma district, Mondulkiri province and Reththy Kiri Sakor in Stung Hav district, Sihanoukville.

<sup>12</sup> See [www.mongreththy.com](http://www.mongreththy.com)

<sup>13</sup> Pheapimex operates in two locations, Pursat (138,963 ha) and Kg Chhnang (176,065 ha).

<sup>14</sup> Wuzhishan LS Group holds 199,999 ha of land in principle for its operations, of which 10,000 ha have been approved for preliminary testing. However, in July 2005, over 16,000 ha had already been planted.

<sup>15</sup> See

<http://www.elc.maff.gov.kh/km/images/en.png>

<sup>16</sup> These companies are: Heng Nong (6,688 ha), Heng Yue (8,959 ha), Heng Rui (9,119 ha), Rui Heng (8,841 ha) and Lan Feng (9,015 ha), located in the province of Preah Vihear and producing sugarcane and acacia.

<sup>17</sup> Kirirm (35,000 ha), Phnom Boukkor (140,000 ha), Kep (5,000 ha), Ream (150,000 ha), Botum Sakor (171,250 ha), Phnom Kolen (37,500 ha) and Vireak Chey (332,500 ha).

<sup>18</sup> Phnom Oral (253,750 ha), Peam Krasaob (23,750 ha), Phnom Samkos (333,750 ha), Roneam Dounsam (178,750 ha), Kolen Prom Teb (402,500 ha), Beong Pae (242,500 ha), Lumpath (250,000 ha), Phnom Prech (222,500 ha), Phnom Lamlea (47,500 ha) and Snoul (75,000 ha).

<sup>19</sup> See ASEAN Affairs 2011.

<sup>20</sup> See

[http://www.mongreththy.com/index.php?page=mong\\_reththy\\_invest](http://www.mongreththy.com/index.php?page=mong_reththy_invest)

<sup>21</sup> See <http://www.lypgroup.com/index.php>

<sup>22</sup> See <http://www.mongreththy.com>

<sup>23</sup> One ELC is located in Memut district, Kampong Cham province (4,400 ha) and the other in Oyadav district, Ratanakiri province (6,324 ha).

<sup>24</sup> See <http://www.mensarun.com.kh>

<sup>25</sup> See

<http://www.moc.gov.kh/Graphs/StatisticGraphs.aspx?MenuID=48#3>

<sup>26</sup> Information available on key financiers relates to the textile and clothing industry only.

<sup>27</sup> See for instance, the websites of LICADHO, ADHOC, CCHR, CHRAC, CLEC and NGO-FORUM as well as website

<http://www.boycottbloodsugar.net/>

<sup>28</sup> See <http://www.investincambodia.com/>;

ASEAN Affairs 2011.

<sup>29</sup> Hong Anh: 9,785 ha; Jing Zhong Tai: 9,936 ha; Fu Sheng Hai: 7,079 ha; Try Pheap: 9,707 ha.

<sup>30</sup> Pacific Lotus Join-Stock: 9,014 ha; Pacific Pearl: 9,614 ha; Pacific Grand: 9,656 ha; Pacific Prize: 9,773 ha.

<sup>31</sup> See [www.ngoforum.org.kh](http://www.ngoforum.org.kh)

<sup>32</sup> Ros 2012.

<sup>33</sup> See

[http://www.mongreththy.com/index.php?page=Green\\_Sea\\_Agriculture](http://www.mongreththy.com/index.php?page=Green_Sea_Agriculture).

<sup>34</sup> Blas 2010.

<sup>35</sup> Most of these land conflicts have resulted from the overlap of the ELC with communities' lands.

<sup>36</sup> Indigenous Rights Active Network 2010.

<sup>37</sup> See Brickell 2013.

<sup>38</sup> See Global Witness 2013.

<sup>39</sup> Phnom Penh Post, 5<sup>th</sup> February 2013; Phnom Penh Post, 26<sup>th</sup> March 2013. And see <http://www.business-humanrights.org/Links/Repository/1018069>

<sup>40</sup> Cambodian Human Rights and Development Association 2012.

<sup>41</sup> Ibid.

<sup>42</sup> This was stipulated in a letter from the Cambodian Bar Association in February 2013, as well as statements made by the Minister of Information H.E Khieu Kanharith.

<sup>43</sup> This distinction was visible during an event of the ASEAN Peoples' Forum (APF) in November 2012 in Phnom Penh, where NGOs divided into two groups (GONGOs and Civil Society NGOs) to submit their concerns to the Chairs of ASEAN and of the AICHR.

<sup>44</sup> Figures for total agricultural land are available from the World Bank for 2006 to 2009, but not available for 2009 to 2013.