

# **Increasing Pressure for Land - Implications for Rural Livelihoods in Developing Countries: The Case of Cambodia**



Photo by LICADHO

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By Andrea Bues

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## **Abbreviations**

ADB	Asian Development Bank
AI	Amnesty International
CDC	Council for the Development of Cambodia
COHRE	The Centre on Housing Rights and Evictions
EC	European Commission
ECHO	EC Directorate-General for Humanitarian Aid
ELC	Economic land concession
EIA	Environmental Impact Assessment
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
GIZ - GTZ	Gesellschaft für Internationale Zusammenarbeit ( <i>former GTZ</i> )
ICSO	Indigenous Community Support Organisation
IFPRI	International Food Policy Research Institute
ILO	International Labour Organisation
LICADHO	Cambodian League for the Promotion and Defence of Human Rights
LMAP	Land Management and Administration Project
MAFF	Ministry of Agriculture, Forestry and Fisheries
NGO	Non-Governmental Organisation
UN	United Nations
UNDP	United Nations Development Programme
WB	World Bank
WFP	World Food Programme
WHH	Welthungerhilfe

## **Executive Summary**

Cambodia is one of the poorest countries in the world with a considerable share of the population suffering food insecurity, especially in the remote Northeastern province of Ratanakiri. The German development organisation Welthungerhilfe has been working with indigenous people in the area since 2004, focusing on general development issues such as nutrition, water supply and sanitation. Since 2010, the granting of economic land concessions (ELCs) in the areas in which Welthungerhilfe runs projects has led to the demarcation, and in some cases the clearing, of indigenous peoples' farmland and forest. Land and forest are the most valuable resources of the otherwise resource-poor indigenous people in Ratanakiri. Despite this, the early impacts of ELCs on the livelihood of indigenous people as well as the general conditions under which these are granted remain to be assessed.

This study therefore aims to (1) analyse the early impacts of ELCs on indigenous people in the project area of Welthungerhilfe, (2) analyse the context and the procedure of how ELCs are granted in practice, and (3) evaluate possible entry points of intervention. The methodological background is the qualitative case study, with semi-structured interviews with experts and focus group discussions with inhabitants of five villages as the main source of data.

Results show that if the investments continue the way they have started, serious impacts on the livelihoods of indigenous people will result, leaving indigenous people in a state of food insecurity and loss of tradition. Three major reasons for this development were identified:

- Poor possibilities for farmers to participate in the process of ELC implementation, as well as a lack of adequate protection and support mechanisms. A contributing factor here is the rapidness with which ELCs are granted to investors, as compared to the land titling process, which could otherwise help locals to register their traditional land rights.
- Poor coordination of governmental activities with an erratic flow of information between high and low governmental officials.
- Gap between laws and practice, with well-elaborated laws significantly lacking sound execution and enforcement on the ground.

The analysis of the results lead to the conclusion that even in the case of well-designed laws, if resource-poor farmers are confronted with government-backed investors being allocated their land, serious impacts can result. Given (i) the already observed negative environmental impacts in terms of high deforestation rates, (ii) the investigated early social impacts in terms of the loss of access to farmland and (iii) the high speed at which ELCs are granted, immediate action is needed.

# 1 Introduction

## 1.1 Statement of the Problem

In recent years, foreign direct investment in agricultural production for food, bioenergy crop cultivation and other agriculture-related cultivation has accelerated tremendously, both in terms of number and scale of the investments<sup>1</sup> (see WB 2010, IFPRI 2009, The Economist 2009). Although the trend of foreign actors securing farmland in other countries is not new, for instance a common occurrence in colonial times, it has nevertheless reached new dimensions in recent times. Since 2001, 227 million hectares have been sold, leased, licensed, or are under negotiation for large-scale land deals, the majority of them since 2008 (Oxfam 2011). The main driving forces behind this trend are favourable market conditions for agricultural commodities, population growth and the change in consumption patterns requiring more land for food production, as well as the increase in general land speculation. All this contributes to an increasing global pressure for land.

This phenomenon, often referred to as “land-grabbing”, has gained considerable attention over the last years. Many see major opportunities for low-income countries to generate foreign capital inflow and urgently needed investments in agriculture, while others raise concerns as to the food security of the local population, as fertile agricultural land is devoted to producing export goods instead of staple crops for the local population (GRAIN 2008, Friends of the Earth 2010, Daniel and Mittal 2009). In 2010, the World Bank launched a report about land deals and concluded that in the investigated cases, investments lack far behind their goal of poverty alleviation and can even contribute to an increase in poverty (WB 2010). Literature on theoretical aspects has increased considerably, while the range of empirically focused case studies has remained limited. In particular, there is a lack of studies investigating the early impacts of such investments on the general livelihood conditions of the local population, taking into account the context and process of FDI in the respective setting. Furthermore, there is a lack of studies considering the role of development agencies working with local people affected by agricultural foreign direct investment. As they are especially concerned with the livelihood of local people, the investments also impact on their work.

The German development organisation Welthungerhilfe has witnessed rapid agricultural change due to foreign investments in their project regions in the West African country Sierra Leone and the South-East-Asian country Cambodia. Until now, the process, context and early impacts of these investments on the livelihood of project beneficiaries are still unclear.

**Objective:** This study, therefore, aims to (1) assess the context in which agricultural foreign direct investments take place, (2) identify characteristic features of the process, (3) assess the early impacts of the investments on people’s livelihood and the environment, and (4), elaborate on recommendations for the involved actors, especially Welthungerhilfe.

## 1.2 Methodology and Outline of the Study

The conceptual framework of the study is depicted in annex I of this report. The central aspects for analysis are the context, the process and the early impact assessment of the investments. They each further divide into sub-aspects and specific aspects of analysis.

In order to derive comparable results, a common methodological approach for the two case studies was developed. The research strategy here is the case study, which allows for an in-depth study and an the identification of interrelated and interconnected relationships and processes (Denscombe 2007). Several research methods were employed:

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<sup>1</sup> In this report, agricultural foreign direct investment refers to *large-scale* investments

1. Literature review of relevant existing literature and policy documents
2. Semi-structured interviews with key experts
3. Focus group discussions with farmers
4. Direct observation

The **Literature review** included project documents as well as policy documents and theoretical literature on the topic. Regarding the **interviews** with key experts, the use of a **semi-structured** type of questionnaire (Schnell et al. 1999, Labaw 1982) encouraged the participants to speak freely with the guidance of several questions. The recording of interviews was dependent on the interviewee's consent, in order to encourage a confidential conversation.

Key experts included:

- Welthungerhilfe: desk officers and project staff in the countries
- Government officials from national, provincial, district and commune levels
- Managers of the Investment Companies
- NGO representatives involved in the issue of FDI
- Other experts from international organisations

In the Cambodian case study, however, none of the investment companies present in the project area of Welthungerhilfe was willing to give an interview. Governmental officials at the **national** level included representatives from the Ministry of Agriculture, Forestry and Fisheries. At the **provincial**<sup>2</sup> level, the Provincial Governor of Ratanakiri was interviewed, as well as representatives of the following line departments:

- Agriculture Department
- Land Department
- Forestry Administration
- Department of Planning

At the **district** level, the District Governor of Andong Meas as well as the vice District Governor of Ta Veng were interviewed. Further on, two **commune** chiefs were interviewed.

With local farmers, **focus group discussions** were carried out (Kamberelis and Dimitriadis 2005). For this purpose it was planned to select 5-6 villages for each country case study. The number of villages was limited by the time frame for the field research of the study. Concerning selection criteria for the study villages, it was decided to form sub-groups according to a) the different kinds of investments/different investors and b) different ways in which the villages are affected, e.g. directly by investments on their land or indirectly by having land bordering the plantations.

The selection of the Cambodian villages was based on a preliminary village report prepared by Welthungerhilfe in April 2011. At that time, six foreign investors were reported in thirteen of the project villages in Andong Meas and Ta Veng district. In order to identify differences in the procedure of the implementation of the investments, it was decided that each investor should be present in the study. Villages were thus grouped according to the investor. From each group, the village with the larger affected area was chosen, with one exception. Chan village, although it had a smaller area than the other two villages affected by the same investment, was chosen because it was the first village that had approached Welthungerhilfe seeking help, thus expressing urgency in having their situation analysed.

The following five villages were thus selected: in Andong Meas District, the villages Dal Veal Leng (Nhang Commune), Nhang (Nhang Commune), Ka Nat Thum (Ta Lav Commune) and In (Ta Lav Commune), and in Ta Veng District, the village Chan (Ta Veng Leu Commune).

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<sup>2</sup> In Cambodia, the lowest administrative unit is the commune, followed by the district and the province.

While the villages of Ka Nat Thum, In, Dal Veal Leng and Chan were visited, villagers of Nhang were invited to the local office of Welthungerhilfe due to adverse weather conditions. Two focus group discussions per village were carried out. This included one group discussion with females only, except for Nhang village, where only one male group participated. Two participatory research tools were employed:

- Participatory mapping: villagers were asked to draw a map of their village and farmland and indicate the activity of the investment
- Livelihood impact assessment through an impact matrix, in which villagers were asked to rank the abundance of several food resources before and after the investments. In cases where the companies had not started to operate within the demarcation area, farmers made assumptions about the consequences on their food resource status.

Lastly, the fourth method employed for data collection was **direct observation**, which was employed mainly during village visits.

The chosen methodology proved appropriate for data collection in the villages. Villagers were informed prior to the focus group discussion by Welthungerhilfe staff, thus attendance was satisfactory. The focus group discussions were started when at least four villagers were present, but usually more villagers arrived later and groups were sometimes as large as 30 people. It was originally intended to do both participatory research methods with both females and males, but this was not successful, and it was decided that the predominantly male group would draw the map, while the female group did the impact assessment focused on nutritional changes due to the investments, women being traditionally occupied with food.

All farmer interviews as well as some of the expert interviews were conducted in Khmer or in the local language of indigenous people, an interpreter translating them into English. It must be noted, therefore, that direct quotes made by farmers as well as by some governmental officials presented in this report are not literal citations, but are a translation from the original statement made in the local indigenous language.

Social research should always respect certain ethical and moral concerns. No short or longer term repercussions or any other harm should stem from the participants' involvement in the research. All villagers are therefore cited anonymously, and some of the answers of governmental officials are not openly accredited to one particular individual.

The study is structured as follows. After having introduced the study and having outlined the methodology in this chapter, chapter 2 provides a rough overview of Cambodia and its investment structure. Chapter 3 introduces Cambodia's legal framework of land rights with special reference to indigenous people and economic land concessions. Chapter 4 describes the case study area, presenting general information on the area and the relevant actors. Here, a short overview of indigenous people in Ratanakiri, Welthungerhilfe's activities as well as the investors active in the area are given. Chapter 5 presents the results of both field investigation in the villages as well as the results from interviews with governmental representatives and experts. Chapter 6 discusses the findings of the previous chapter and aims at answering the research questions. Chapter 7 concludes the study and provides an outlook, while chapter 8 offers recommendations for several actors.



## **2 Cambodia – Overview and Investment Structure**

The Kingdom of Cambodia is located in the southern part of the Indochina peninsula in Southeast Asia, bordered by Thailand to the Northwest, Laos to the Northeast, Vietnam to the East, and the Gulf of Thailand to the Southwest. It has a population of 13,4 million (2008), with an annual population growth rate of 1,54 (2008). Cambodia experienced two decades of isolation, insecurity and civil war, which officially ended with the signing of the Paris Peace Agreement in 1991. The Khmer Rouge tribunal which has been launched in 2011, no less than 30 years after their demise, gives an impression for the country's ongoing struggle with its legacy. Since the early 1990s, Cambodia has experienced political stability and the opening of its economy.

Cambodia is struck by widespread poverty. GDP is 830 USD per capita (2010 estimates) and 30 percent of the population is below the poverty line (2007) (ADB 2011). The country's Human Development Index is 0,494, occupying the 124<sup>th</sup> place out of 169 countries with comparable data (UNDP 2010). Life expectancy at birth is 61 (2007), maternal mortality ratio per 100.000 live births is 461 (2008), adult literacy is 77,6 (2008), and child malnutrition in percentage below 5 years is 39,5 (2008) (ADB 2011). Three million people face undernourishment (FAO 2011).

Poverty is an overwhelming rural problem, with 91 per cent of the poor living in rural areas (WB 2006). Out of the whole population, approximately 80 per cent of Cambodians live in the rural areas and 71 per cent depend primarily on agriculture (mainly rice) and livestock for their livelihood (WB 2011). The average farm size among the rural poor is 1,5 ha, while 40 per cent of rural Cambodians live off less than 0,5 ha (WB 2006).

The government of Cambodia aims at making agriculture the driving force of economic growth and poverty reduction, with an emphasis on large-scale agro-industry. This corresponds with the current opinion of the Asian Development Bank (ADB) and the World Bank. ADB notes that in the face of the global economic downturn, Cambodia's sources of growth in recent years (garments, tourism and construction) were hit hard. A stronger agricultural sector could therefore contribute to economic diversification and also include rural areas where the majority of poor people live (ADB 2011). Similarly, a Senior Natural Resources Management Specialist at the World Bank states that Cambodia has abundant natural resources which provide a range of economic development opportunities. It can be expected that a country at the stage of Cambodia's development will explore opportunities for foreign direct investment in mineral extraction, hydropower development, and land-based investments in agriculture. It is important, however, how this process is managed and tailored in a way that it is not only beneficial to the country as a whole, but also to the people who live in the affected areas<sup>3</sup>.

The focus on agriculture is set out in the Rectangular Strategy, a policy tool launched in 2004 to implement the National Poverty Reduction Strategy. It contains elements of the Millennium Development Goals and the Cambodia Socio-Economic Development Program 2001-2005 (Royal Government of Cambodia 2004) and includes four strategic "growth rectangles": (1) enhancement of the agricultural sector; (2) private sector growth and employment; (3) continued rehabilitation and construction of physical infrastructure, and (4) capacity building and human resource development. The top priority for the agricultural sector is to shift its focus from "expansionary" and "extensive" to "deepening" and "intensive" while attracting investments and boosting agricultural exports. The private sector is seen as the main partner for sustained economic growth.

Since the opening of the Cambodian economy in the early 1990s, the country has attracted a range of investors in various branches of the economy, such as in the garment sector which has become an important source of export revenues. Investments in the agricultural sector have started to increase in recent years. Since 1992, about one million hectares have been granted to investors (Cambodia Daily 2011a).

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<sup>3</sup> Interview conducted in August 2011.

Rubber is one of the crops being increasingly cultivated. For a long time, it has been a major source of foreign exchange for Cambodia. Major export destinations include Viet Nam, China, Malaysia and Singapore (Hang 2009). With world market prices at peak, rubber plantations have become a profitable business. The area of rubber plantations has steadily increased in the last years. In 2007, the total area of rubber plantations was 82.059 ha, dominated by state-owned plantations (48 percent), followed by smallholders (44 percent), private companies (6 percent) and plantations of economic land concessions (2 percent) (ibid). Today, all rubber plantations are privately owned, with the last state-owned estate being divested in 2009 (ibid). The Director of the General Department of Rubber Plantations said in an interview that with price levels for rubber staying high, he hopes that demand for rubber will increase the cultivated area in Cambodia to 400.000 ha by 2030 (Cambodian Town 2008). Regarding the taxes paid by rubber plantation owners, a representative from the International Labour Organisation states that they usually pay 0-10 dollar per hectare<sup>4</sup>. A representative from the Forest Administration says that rubber companies cutting the forest also pay a tax on the extracted wood<sup>5</sup>.



**Figure 1: : Intercropping with young rubber trees (left). Right: Tapped rubber plantation.**



**Figure 2: Rubber trees take up to six years until they can be tapped (the collection of sap by an incision in the tree's bark)**

<sup>4</sup> Interview with an ILO representative, Phnom Penh, August 2011.

<sup>5</sup> Interview with a representative of the Forest Administration in Ratanakiri, August 2011.

### 3 Cambodia's Legal Framework and Land Rights Structure

In order to understand the legal background of the case study, the following section shortly presents the most important laws and regulations on land rights including land titles, with special reference to the livelihood of indigenous people.

#### 3.1 Land Rights, Land Titles and Indigenous People

Cambodian regulatory frameworks governing land issues have been marked by the various political changes which the country has experienced. The concept of individual land ownership was first introduced during French colonisation (1863-1953) and continued after independence. The 1956 Constitution specifically provided for private property rights. Landlessness, however, became a major challenge and steadily increased from 4% in 1950 to 20% in 1970 (Hall et al. 2011). Under the Khmer Rouge (1975-1979), private property was abolished. After their demise, land remained state-owned, but the 1989 Constitution reinstated private property. With the 1991 Paris Peace Agreement and the UN administered national elections, the principles of a free-market economy were introduced, and Cambodian land has begun for the first time to acquire significant market value (WFP 2011). At the same time, involuntary landlessness is still one of the major reasons for poverty in Cambodia, the main contributing factors being population growth, land conflicts and high vulnerability of the rural poor to external shocks, which can lead to them selling their land (Supreme National Economic Council 2007).

Currently, the Land Law of 2001 is the central legal document on land rights and land occupation in Cambodia. It defines the basic types of property under Cambodian law, namely private property, collective ownership of monasteries or indigenous communities (chapter 3), and state public and state private land. *State public land* includes any property with natural origins, such as forest, water, lakes or seashore and generally any property that renders public service or is created or used for public interest use, such as roads or schools (Art. 15). In contrast, *state private land* is all land that is neither state public land nor legally privately or collectively owned or possessed under the Land Law. The Land Law recognises customary land rights in that any person who enjoyed peaceful, uncontested possession at least five years prior to the promulgation of the law in 2001, has the right to request a definite title of ownership, but only for land that can be privately owned, thus not for state public land (Art. 30).

Indigenous ethnic minority groups have the right to register their traditional residential and agricultural land as collective land, including areas reserved for shifting cultivation (Art. 25). This collective ownership involves “*all of the rights and protections of ownership as are enjoyed by private owners*” (Art. 26). The measurement and demarcation of the boundaries of indigenous people's land should refer to the “*factual situation as asserted by the communities*” (Art. 25). The detailed procedure of indigenous people's land titling is set out in the Sub-Decree on Indigenous Land Titling (Kingdom of Cambodia 2009). It includes detailed provisions on the steps of communal land titling, involving boundary demarcation, actual surveying, public display and regular reporting to higher governmental authorities. Several steps are necessary in order to receive an indigenous communal land title. First, the community must be officially acknowledged as an indigenous community by the Ministry of Rural Development. Second, they need to register as a legal entity at the Ministry of Interior. Third, they may apply for registration of community land in the form of a collective title at the district office of the department of Land Management, Urban Planning, Construction and Cadastre. Land to be registered explicitly includes land currently used for housing, land currently used for farming and rice cultivation (state private land) and reserved land for shifting cultivation, spiritual land and burial ground forest land (state public land). Spiritual land and burial forest may not exceed seven hectares per community (Sub-Decree Art. 6). The community land can be registered if the boundaries are agreed upon by the neighbours and the administrative authority without any dispute. Therefore, the village, commune and district chiefs are key figures in evaluating whether there is actually a dispute on the boundaries of the land.

Furthermore, the Sub-Decree also includes regulations in the case of a single person wanting to leave the community. In this case, the person may receive an “appropriate piece of land” which is dissected from the indigenous community’s communal land.

While the Land Law provides indigenous people with the right to continue their traditional way of life, including collective management of natural resources, they still have the choice between applying for private or communal land titles. Many NGOs, however, as well as the International Labour Organisation, have advocated communal instead of private land titles for indigenous people, arguing that communal ownership is more consistent with the traditional way they have been managing their land for generations. While communal land titles make individual sale of pieces of land difficult, private land titles register the land per family and thus open up the window for selling land to outsiders. Experience from ILO shows that private land titles often lead to the weakening and eventual breakup of indigenous people’s cultural identity and tradition<sup>6</sup>. The Indigenous Community Support Organisation (ICSO), a Cambodian NGO based in the province of Ratanakiri, provides a similar argument. The organisation supports land titling in 33 villages in Ratanakiri and states that when indigenous people from their project villages were given information on the consequences of private land titles versus communal land titles, all of the 33 villages opted for communal land titling, although the decision was left to them alone. NGOs like ICSO or the human rights organisation LICADHO state that private land titles are often used to make single families sell their farmland at a low price to outsiders.

To date, however, this right to communal titling of indigenous peoples’ land has remained unrealised in the whole of Cambodia. With the exception of three government-initiated pilot villages<sup>7</sup> in which the process of communal land titling is almost complete, no indigenous community is actually in possession of official communal land titles. The complex and time-consuming procedure of acquisition certainly contributes to this. Due to their low educational level and language barriers, it is hard for indigenous people to apply for a communal land title by themselves. The Indigenous Community Support Organisation (ICSO) has been working in 33 villages to acquire communal land titles for four years, but only six of them have reached the second step so far<sup>8</sup>.

Since the opening of Cambodia’s economy in the early 1990s, economic land concessions have increasingly been granted on indigenous people’s land (ADB 2011), which is also the focus of this study. Given this fact, the acquisition of communal land titles as a safeguard has become a race against time. The Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction released a circular on interim protective measures of indigenous people’s land in May 2011. It states that in the process of collective land titling, as soon as an indigenous community is registered as a legal entity at the Ministry of Interior, their land is protected from purchase and sale until the process of communal land registration is finalised.

### **3.2 Economic and Social Land Concessions, Forest Concessions**

The Sub-Decree on Economic Land Concession (2005) provides the detailed procedures and preconditions for economic land concessions. It states that the purpose of ELCs is to develop intensive agriculture that requires a high rate of initial capital investment, to increase employment in rural areas, to encourage investments in ELC projects, and to generate state revenues through economic land use fees, taxation and related service charges (Art. 3). It further declares that an ELC may only be granted on land that meets all of the following five criteria (Article 4):

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<sup>6</sup> Interview with ILO representative in August 2011

<sup>7</sup> One in Mondulkiri (Ou Reang district), and two in Ratanakiri (Ou Chum district and Trom district)

<sup>8</sup> Interview with ICSO employee in August 2011

1. “The land has been registered and classified as state private land (....)
2. 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
3. Environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects.
4. Land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. 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.
5. Land for which there have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality”

ELC proposals shall be evaluated based on the following criteria (Article 5):

- ⤴ “Increase in agricultural and industrial-agricultural production by using modern technology;
- ⤴ Creation of increasing employment;
- ⤴ Promotion of living standards of the people;
- ⤴ Perpetual environmental protection and natural resources management;
- ⤴ Avoidance or minimizing of adverse social impacts;
- ⤴ Any linkages and mutual support between social land concessions and economic land concessions; and
- ⤴ Processing of raw agricultural materials, to be specified in the concession contract.”

The Sub-Decree also stipulates public consultations in the process of ELC granting at various steps (Art. 4, Art. 35), including participation with land registration and defining the area of the ELC. Article 35 states that public consultations should be held to discuss and review the project proposal of the ELC. However, the Sub-Decree does not further define a detailed required procedure of public consultations.

Several governmental bodies are involved in the process of ELC granting. The procedure reflects the generally hierarchical way which characterises Cambodian administrative structures. While upper governmental departments negotiate and sign the contract with the investor, line departments carry out the practical steps in the procedure and regularly report back to the higher instances. The **Council for the Development of Cambodia** (CDC) is the highest decision-making level for investments in the private and public sector. The CDC is chaired by the Prime Minister and is responsible for the decision-making and evaluation of all investment projects. Regarding investments in agriculture, the Ministry for Agriculture, Forestry and Fisheries (MAFF) also has to sign the contracts and hosts the “**Technical Secretariat**” (Sub-Decree on ELCs, Art. 31). The Technical Secretariat is the implementing body of ELCs into agriculture, being responsible for developing project documents, monitoring performance and providing recommendations. It is composed of representatives of the MAFF, the CDC, the Council of Jurists, and representatives of the Ministries of Economy and Finance; Land Management, Urban Planning and Construction; Interior; Commerce; and Environment (Sub-Decree on ELCs, Art. 31). The latter takes the lead in all matters related to environmental impact assessment. Furthermore, the Sub-Decree on ELCs provides for the inclusion of **provincial and district line agencies in the form of working groups**. The **commune council** is also officially mentioned to be part of the ELC procedure, whose members are directly elected by the people.

While ELCs are granted for economic purposes, the idea behind social land concessions as regulated in the Sub-Decree on Social Land Concessions (2003) is to provide private state land for settlement and family farming to poor families, disabled soldiers and families of deceased soldiers

who lack land. To date, however, few social land concessions have actually been realised and these few have concentrated on allocating land to former military affiliates.

Concessions on forest, however, are regulated by a different set of laws and Sub-Decrees. Forests make up the largest bulk of state property in Cambodia. The Law on Forestry (2002) as well as the Sub-Decree on Community Forestry Management stipulate that a forest concession should not interfere with customary user rights (Forestry Law Art. 15 and 40, and Sub-Decree Art. 11). Similarly to the Sub-Decree on ELC, the Forestry Law requests all concession holders to include a social and environmental impact assessment in their Forest Concession Management Plan (Art. 19). The Sub-Decree on Management of Forest Concessions states that cancelled forest concessions shall be reverted to natural forest protected areas and cannot be converted into an ELC (GIZ 2009).

Given the multitude of laws and Sub-Decrees pertaining to land rights and concessions, there is often the discussion in Cambodia of which regulations are stronger and overrule others. In the view of many people, the most recent laws are considered as more important than the preceding ones (Andersen et al. 2008).

### **3.3 Land Rights in Practice**

Cambodia has signed several human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination (UN 2007). The 1993 Constitution of Cambodia incorporates the right to adequate housing (Article 31), and Article 44 of the Constitution and Article 5 of the 2001 Land Law provide protection against the arbitrary expropriation of property.

However, Cambodia's strategy to increasingly support the private sector and attract investors for agricultural and infrastructure development has come with a range of concerns raised both by national and international organisations. In its 2011 human rights report, Amnesty International count forced evictions, land grabs and land disputes among the most serious human rights issues in Cambodia (AI 2011). A report released by the Cambodia Office of the High Commissioner for Human Rights concludes that economic land concessions have proven to compromise “the livelihoods of rural communities in favour of the enrichment of the few, as well as foreign business interests” (UN 2007: 22). A range of national NGOs have also released reports on the nature of increased land disputes and forced evictions in Cambodia (e.g. COHRE 2008, LICADHO 2008, LICADHO 2009). As land disputes as a consequence of governmental development projects and the granting of land concessions are increasing, so is local resistance (Schneider 2011). Protesters, however, often face unnecessary force by police breaking up protests (AI 2011).

One of the most prominent discussed cases of land disputes is Boeung Kak Lake in the middle of the capital city Phnom Penh. The government had given permission to a Chinese-funded property developer to fill in the lake to create new space to build office buildings, luxury flats and upmarket shops. Approximately 3.000 resident families living from and around the lake were forced to move and their houses dismantled, although they should have enjoyed lawful possession right according to the Land Law.

It is criticised that the case of Boeung Kak Lake is an example of the arbitrary manner in which laws are enforced on the ground. Although possession rights are guaranteed by the 2001 Land Law, they are often effectively not granted for the rural and urban poor who live on land that is sought after by powerful individuals and companies (e.g. Land and Housing Working Group 2009). Another point of concern in this regard is that according to the law, economic land concessions can only be granted on land that is registered as state private land. However, land registration in most areas has yet to take place, leading to cases where ELCs are granted on land that communities

lawfully occupy and claim according to the Land Law (UN 2007), which was the case in Boeung Kak Lake.

The concern of commercial interests impeding the legal right to have ones possession right converted to a land title, as guaranteed under the Land Law, has also given rise to criticism of the multi-donor Land Management and Administration Project (LMAP)<sup>9</sup>. LMAP was initiated in 2002 in order to support the implementation of the 2001 Land Law. LMAP's stated goals were to “reduce poverty, promote social stability, and stimulate economic development” (WB 2002, p.2). The planned activities included “(a) development of national policies, the regulatory framework, and institutions for land administration, (b) issuance and registration of titles in urban and rural areas, and (c) establishment of an efficient and transparent land administration system” (ibid).

Despite some recognised successes of LMAP such as the registering and titling of nearly one million parcels of land (WB 2009), the main point of criticism is that it included the provision that areas “likely to be disputed” and areas of “unclear status” would not be targeted by the titling system. Tenure security in such areas, however, was often especially needed, as in many cases, poor households with legitimate claims were threatened with losing their land to planned developments and concessions, such as at Boeung Kak Lake (Grimsditch and Henderson 2009). The World Bank acknowledged that the success of LMAP largely concentrated on the rural areas, but shortcomings were observed in many urban areas of land disputes. Some of those areas were excluded from titling without clear criteria or explanation to the local communities, which did not correspond to LMAP's stated goal to improve land tenure security (WB 2009). The World Bank Inspection Panel noted that Boeung Kak residents “were denied access to due process of adjudication of their property claims and were displaced in violation of the policies the Bank agreed with the Government for handling resettlement” (WB 2011b). The World Bank urged the government of Cambodia to correct shortcomings in the way the government dealt with the evictions and the remaining residents of the lake. In early August 2011, the World Bank publicly announced it had frozen funding to Cambodia, “until an agreement is reached with the residents of Boeung Kak Lake<sup>10</sup>”.

## **4 The Case Study: Actor Characterisation**

### ***4.1 Indigenous People in Ratanakiri***

This study focuses on indigenous people<sup>11</sup> in Ratanakiri, situated in the north eastern part of Cambodia, neighbouring Vietnam to the East and Laos to the North. Ratanakiri is one of the poorest provinces in Cambodia and is characterised by dense forest and rich volcanic soil. The province counts approximately 153.400 people from various ethnic groups<sup>12</sup>. Ratanakiri has become a resource frontier in Cambodia. Endowed with vast areas of dense primary forest and rich volcanic soil, the government sees high potential for agro-investments. Ratanakiri has experienced rapid agricultural development in recent years with the conversion of vast areas of

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<sup>9</sup> LMAP was funded by the World Bank, GTZ, the Government of Finland, and the Canadian International Development Agency (CIDA)

<sup>10</sup> World Bank Country Office Director Annette Dixon in Cambodia Daily 2011b, p. 1

<sup>11</sup> In this report, the words “farmers”, “locals” and “villagers” are used interchangeably to refer to indigenous people, acknowledging that indigenous people in Ratanakiri are not exclusively farmers, as they derive a considerable share of their food from the forest.

<sup>12</sup> Commune Database 2009

forest to agricultural land, in particular to rubber plantations. Every year, an estimated area of 2.500 to 3.000 ha is converted from forest to agricultural land<sup>13</sup>. 17 companies now operate in Ratanakiri, and a total of 80.000 ha is allotted for these companies<sup>14</sup>. This section aims at providing basic information on the livelihood of the indigenous people that the case study focuses on, starting with a brief historical overview.

Indigenous people in Cambodia's northeast highlands of Ratanakiri have long maintained trade relations with lowland inhabitants, while enjoying relative sovereignty over their territories. With the establishment of permanent settlements around rubber plantations and gem mines under French colonial rule, this started to change. After independence in 1954, efforts were undertaken to incorporate the indigenous hill tribes into Khmer mainstream society by encouraging them to resettle. Under the Khmer Rouge, many indigenous communities were relocated, but many started to return to their original homesteads after 1979 (ADB 2011, p.93f).



**Figure 3: Homestead in Chan village**

Indigenous people in the case study villages include the ethnic minorities Jarai, Kachok, Kreung and Lao. Indigenous communities in the area have long lived in an isolated way pursuing their traditional livelihood. Being located in deep primary forest for generations, their traditions and culture are profoundly adapted to livelihood conditions of the forest ecosystem. Although they also practise agriculture, especially rotational swidden farming, indigenous people derive a large share of their food from gathering in the forest, including wild vegetables and fruits, meat, bamboo shoots and various kinds of herbs. Forest food products constitute an important enrichment of their diet in nutritional terms. Besides being an important source of food, the forest also plays a crucial role as a source of non-timber forest products (NTFP) such as rattan for handicraft, or medicinal plants for traditional medicine. The forest also has a high cultural value. Some parts of the forest are seen to be occupied by spirits, which constitute an important part of indigenous peoples' identity and spirituality. Additionally, some parts of the forest act as sacred burial ground.

The main staple crop is rice, which is usually cultivated in the chamkar area. Chamkar areas are fields situated further away from the primary village. In some villages, most of the inhabitants stay at the chamkar areas during the labour-intensive wet season when rice planting takes place. For this reason, farmers usually also have houses there. After the period of planting, farmers move back to their village. The traditional way of practising agriculture is rotational swidden agriculture. After several years of cultivation, the farmland shifts to another place, leaving the previously cultivated land fallow and allowing the forest to regrow.

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<sup>13</sup> Interview with the Provincial Governor of Ratanakiri, August 2011

<sup>14</sup> *ibid*



**Table 1: Selected key data on the case study village before the concessions (source: Welthungerhilfe internal baseline survey, 2011)**

	Chan	Dal Veal Leng	In	Ka Nat Thum	Nhang
<b>Number of families</b>	44	53	67	123	51
<b>Total population</b>	173	174	326	580	231
<b>Total farmland per village (ha), including paddy and upland rice</b>	377	115	53	209	104
<b>Total number of families with irrigable paddy farmland</b>	-	14	-	26 <sup>15</sup>	-
<b>Total number of families with paddy farmland</b>	42	4	37	41	-
<b>Number of families having less than 1 ha paddy farmland</b>	38	1	6	21	-
<b>Number of families having 1 to 3 ha of paddy farmland</b>	4	3	6	21	-
<b>Total upland farmland (in ha)</b>	230	62	11	58	58
<b>Total farmland for permanent crops (ha)</b>	17	27	5	50	41
<b>Number of families with a vegetable garden</b>	10	4	11	-	9

Other sources of food are vegetable gardens and, initiated by Welthungerhilfe, fish ponds. Cultivated vegetable varieties include Chinese cabbage, green petiole, long bean, cucumber, egg plant, chilli, wax gourd, scarlet fruit gourd, and water green, although not all villages grow all crops.

Livestock is also important. Pigs, chicken and ducks are kept in most of the villages and usually roam freely in the village area. Buffalos are used as draught animals for fieldwork and are set free during the dry season and caught back from the forest when the work of the rainy season starts again.

Despite the potential range of food sources, most villages experience periods of food insufficiency during several months a year. The actual period of food scarcity, without rice, is mainly from June to August. In periods of food shortage, the forest becomes especially important as a source of food, and in the dry season, villagers additionally diversify with vegetables and fish.

<sup>15</sup> In Ka Nat Thum, the irrigation scheme is out of use.



**Figure 4: Paddy rice field (left) near Ka Nat Thum and upland rice at Chan village (right)**

The monthly cash income of households in In and Chan village is less than 50.000 Riel (less than 8 Euro), while income in the other three villages range between 50.000 and 100.000 Riel (between 8 and 16 Euro).<sup>16</sup> The main cash income of approximately half of the farmers in the project area of Welthungerhilfe is related to cashew nut plantations, which are harvested from March to May. Cashew nut farmers have approximately one hectare of plantation. The purchase is usually done via middlemen or traders who directly contact the farmers. The second most important source of income is cassava, which is harvested in December and January. Marketing is the same as for cashew nuts<sup>17</sup>. Regarding agricultural products, most of the harvest and production is used directly for consumption. However, some villagers also derive a small income from selling livestock. Another source of income has become sporadic work in agriculture, e.g. harvesting rice, preparing the field or making holes for growing bananas. Further, there have also been reports on land sales and illegal logging as a source of cash income<sup>18</sup>.

## **4.2 Welthungerhilfe's Activity in the Area**

Welthungerhilfe started their activities in Ratanakiri with two consecutive rural water supply projects for indigenous people from the end of 2004 to early 2007, both interventions being co-financed by the European Commission Directorate-General for Humanitarian Aid (ECHO). Subsequently, Welthungerhilfe has been active in implementing two EC co-funded food security projects "Advanced Livelihood and Sustainable Development for Indigenous People in Ratanakiri" in Andong Meas and Ta Veng districts, with a total of 9.370 individuals or 2.140 households. The project's objective is the improvement of the food and nutrition security situation of women and the rural poor, and the empowerment of local communities in decision making for the achievement of the stated goals of food security and nutrition.

Major activities include:

- Establishment of farmer-managed demonstration plots for e.g. vegetable gardens and fish ponds

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<sup>16</sup> Welthungerhilfe internal baseline survey, 2011

<sup>17</sup> Welthungerhilfe internal baseline survey, 2011

<sup>18</sup> Interview with the Project Manager of Welthungerhilfe office Ban Lung

- Introduction of improved food production methods (e.g. SRI: system of rice intensification)
- Establishment and promotion of sustainable management of fish/frog ponds and training in fish raising activities
- Promotion of sustainable management of animal husbandry
- Promotion of sustainable management of nutrition diverse agriculture (e.g. vegetable gardens)
- Documentation of village food habits
- Construction of water supply systems in the villages and in the chamkar areas
- Establishment and support of institutional structures for empowerment processes such as women's groups and water user groups.

The construction of water supply systems is a core activity. All five villages focused on in this report have been provided with one or several wells either only in their village or also in their chamkar area.



**Figure 5: Wells in In village.**

### **4.3 The Investors**

This report focuses on Welthungerhilfe villages in Ta Veng and Andong Meas districts. In Ta Veng district, the relevant active company is named **Krong Buk**. In Andong Meas, the companies are **Heng Brother, C.R.D.** and **Veasna Investment** at the Western side of the river, and **Hong An Ou Ya Dav** and **7 Makara Paris** on the Eastern side of the river (see Figure 6).

As noted earlier, access to information and documents on investments in Cambodia is limited (UN 2007), and for the case study, no information could be obtained regarding lease prices or taxes paid. As further described below, some governmental officials state that the investors have to build social infrastructure, e.g. health posts. However, none of the lower governmental officials were aware of this, neither the villagers were informed. The Ministry of Agriculture, Forestry and Fisheries (MAFF) has published some information on ELCs on their website in 2006. However, it is now outdated and only provides information on some ELCs, not mentioning others. It only provides data on two of the companies relevant in this case study: Heng Brother and Krong Buk. Regarding the other investors, however, some information could be derived from interviews with provincial governmental officials.

**Table 2: Investors in the case study region<sup>19</sup>**

District	Investor and Nationality	Date applied for land	Date contract signed and duration	Crops and area	Other information	Affected WHH villages in this report
Ta Veng	Krong Buk Vietnamese	Sept. 2009	April 2010	Rubber 6.695 ha	Permission to clear first zone in 2010	Chan
Andong Meas	C.R.D.	-	Concession signed by provincial authorities dated October 2010*	-	Started in 2011	Ka Nat Thum
	Heng Brother Vietnamese	Feb 2006	July 2009 70 years	Applied for rubber and acacia 2361 ha	These three companies cooperate	Ka Nat Thum
	Hong An Ou Ya Dav	-	Concession map signed by provincial authorities dated June 2011*	-		In
	7 Makara Paris	-	-	-		Nhang
	Veasna Investment	-	Concession map signed by provincial authorities dated October 2010*	-	Received land from another company that stopped	Ka Nat Thum
	Cheang Ly			Concession map signed by provincial authorities dated August 2010*	1.900 ha	

<sup>19</sup> Source for Krong Buk and Heng Brother: <http://www.elc.maff.gov.kh/en/profile/21-rtk.html>, all others: interviews with governmental officials (August 2011) and information derived by Welthungerhilfe (denoted by \*)

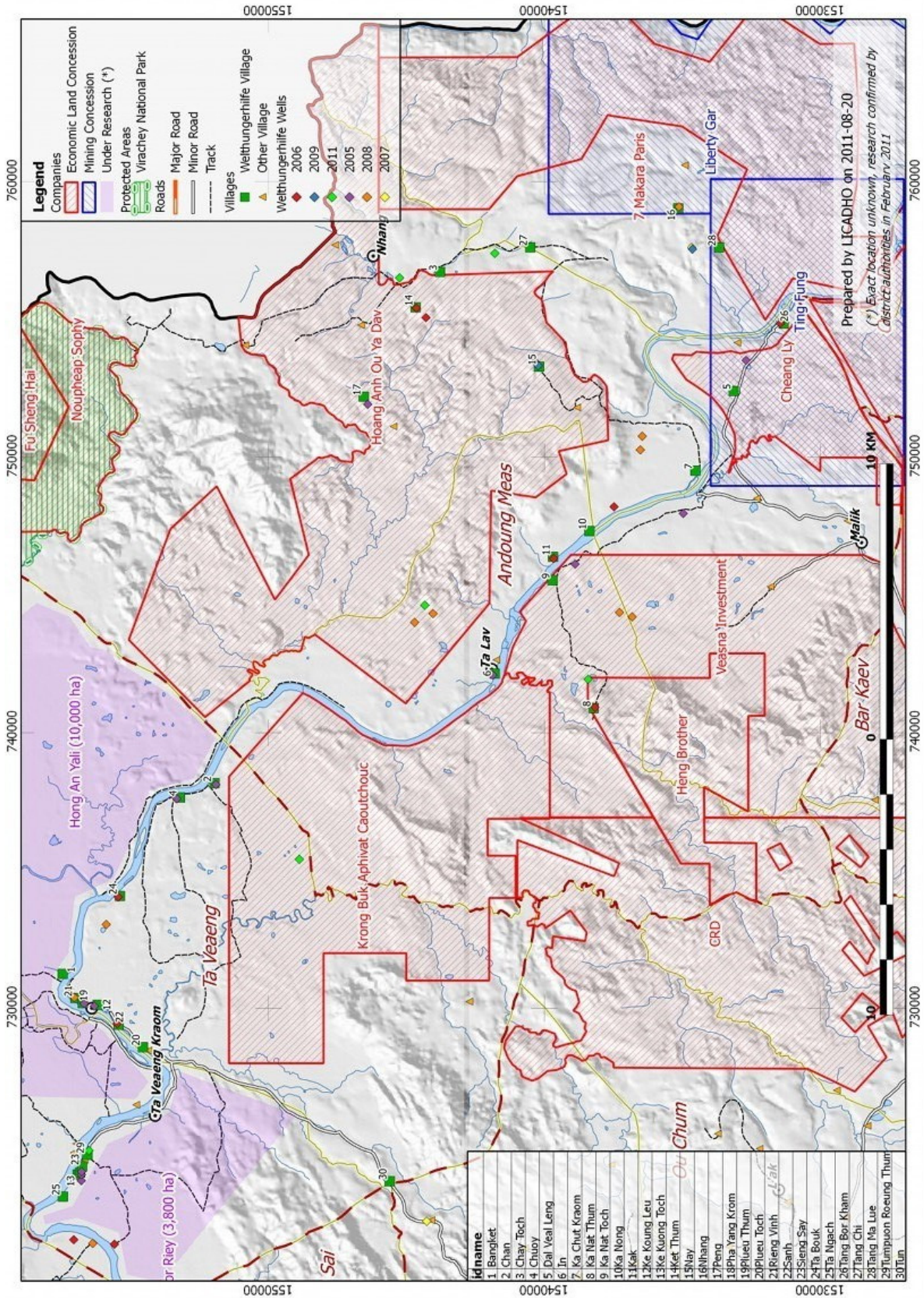


Figure 6: Map of Concessions Areas in Welthungerhilfe villages (map prepared by LICADHO)

## 5 Results

This chapter presents the results from villagers' interviews and field investigation, as well as from interviews with governmental officials. For each of the four categories (i) "state of the investments", (ii) "consultation and transparency", (iii) "benefits and threats" and (iv) "scope of action", first the results from the village level are presented, followed by the results derived from governmental officials, experts and other sources.

### 5.1 State of the Investments

As depicted above in Figure 7, all investigated villages are either situated near or directly in a concession area. For each village, the demarcation includes land actually being used by farmers such as plantation land, paddy fields or forest, but also land which has an important function as fallow land, and is currently out of production. Regarding the dimension of the affected area, Chan villagers report that the farmland of 47 families is inside the concession area, Ka Nat Thum villagers report 30, and Nhang villagers 16 affected families. Dal Veal Leng villagers state that large parts of their land is situated in the 1.900 ha concession in their area. Villagers from In village do not exactly know how much farmland is affected, but they say that the demarcated concession area covers most of their farmland and forest, including multi-crop land used for growing rice, vegetables and their old cashew nut trees (see Figure 7). Their paddy field and some farmland reserved for rice cultivation, however, would be exempted from the concession.

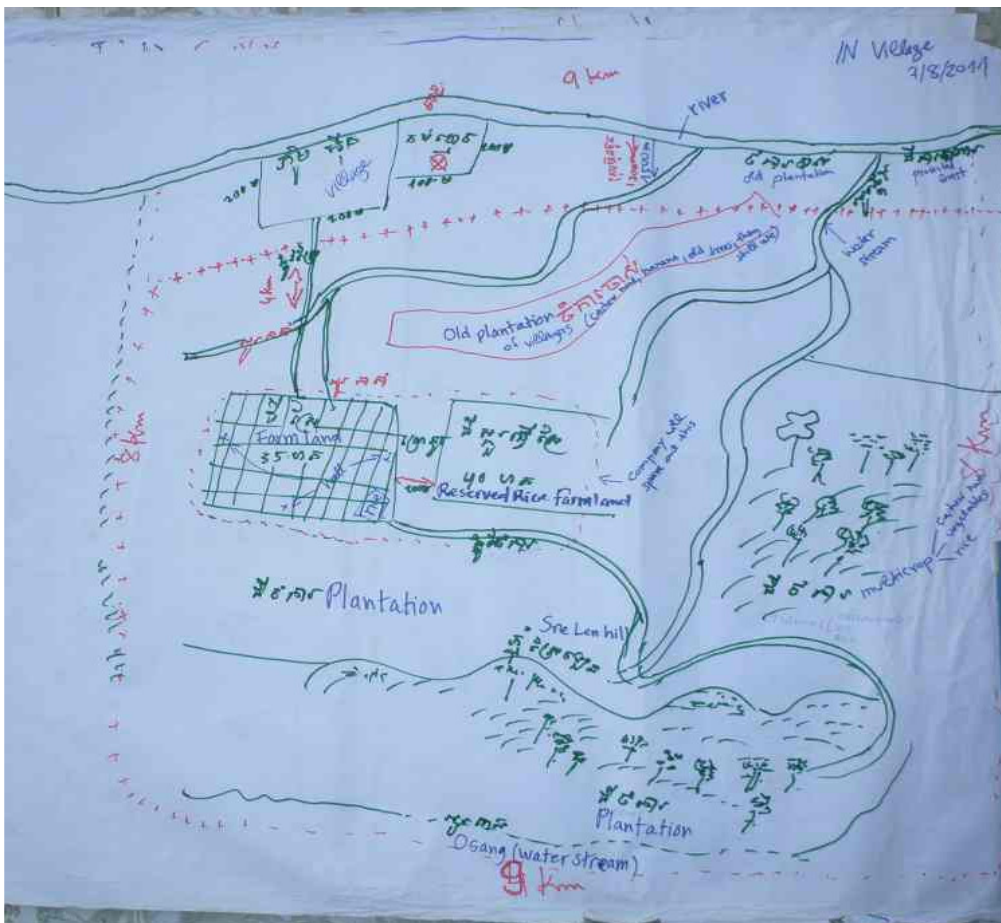


Figure 7: Village map of In Village. The red line represents the demarcation area.

With all concession areas near the villages being demarcated, companies have started operation in areas situated further away from the villages and indigenous people's farmland and forest areas. For three of the investigated villages, however, companies' activities have already affected peoples' farmland inside the demarcated concession area close to the villages. In Dal Veal Leng village, farmers report that the company has built a road on people's forest land and that the company also blocked a road so that there is no way for them to walk anymore. In Chan village, the company has cleared some of villagers' chamkar areas and parts of their forest, leaving out, however, their paddy fields (see Figure 8). Chan villagers report that six families have consequently lost their farmland. The company has now stopped operation due to heavy rain but would continue early 2012 when the weather condition is more favourable. The third village which is already directly affected is Ka Nat Thum village, being encroached by three companies. This case will be described in detail later.



**Figure 8: Chan village map. Striped area depicts cleared area. Crossed out rectangles depict cleared chamkar land.**

### **The government's view on ELC procedure and state of the investments**

According to the Forest Administration, the first step of the ELC granting at provincial level is an environmental impact assessment (EIA) undertaken through teamwork by several provincial line departments such as the Agriculture Department, the Forestry Administration, the Environment, Land and Industry Department. Villagers are also involved and the company bears the costs. After having reported back to the national level government, land is allocated to the company and the land is demarcated. Villagers' land is already roughly cut out of the concession, leading to a

reduction of the company's initially requested area of land. The government declares the land as state private land and a masterplan is finalised which includes an inventory of all the land. The contract is then given to the company, and a second EIA has to be carried out, which is done by an independent consulting firm. The second EIA further examines which land the company can clear, as was decided through consultation with the villagers.

Accordingly, the Land Department as well as other governmental officials including the Provincial Governor state that the current demarcation of the land concessions in the visited villages is preliminary and does not mean that this land will be completely allocated to the companies. The basis and precondition of cutting farmers' land out of the concession is land identification, which means determining whether the considered land for ELCs is private or public state land or if it belongs to local people. This is the task of the provincial Land Department. If the land belongs to the villagers, it "*cannot be given*"<sup>20</sup> to the company and is consequently cut out of the concession. The Land Department official states that this process of land identification has not yet been finished for the investments in the area, meaning that the land is not yet registered. He further states that there will also be a demarcation of the excluded farmers' fields. According to the Agriculture Department, spared out areas also include areas needed for shifting cultivation.

The Agricultural Department and the Forestry Administration note that the second environmental impact assessment has not been finalised for any of the investments, but the Forestry Administration expects them to be finalised before the end of 2011. However, some companies' initially requested land has already been reduced. The company Heng Brother, operating in Andong Meas district near Ka Nat Thum village, was initially allocated 3.000 ha from the national level authorities, but due to environmental impact assessment and consultation with farmers, this area was reduced to 2.000 ha. Another example of a reduction of initially requested area of land is the company Krong Buk operating in Ta Veng district near Chan village. The Ministry of Agriculture, Forestry and Fisheries (MAFF) states that Krong Buk initially requested 10.000 ha, but the government only granted 6.695 ha after having cut out villagers' chamkar and paddy areas<sup>21</sup>.

The fact that the second environmental impact assessment has not yet been finalised, the Forestry Administration argues, can lead to problems with local farmers: as they do not completely understand the process of economic land concessions (ELCs), some farmers are afraid and sell the land to the company because they think the company will take the land anyway. This concern was reiterated by the official of the Agriculture Department. The Land Department also states that farmers fear that the whole demarcated area has been given to the company, when in fact the land identification has not yet been completed.

Regarding the current state of the companies in the area, the District Governor of Andong Meas says that Veasna investment (operating near Ka Nat Thum) has started with a 30 ha rubber nursery and Heng Brother is also already clearing and planting. The company 7 Makara Paris (operating near Nhang village) is also active now, having taken over land which was used by a company which was suspended, and has already planted 300 ha of rubber. All other companies only received a letter to inform them that the boundaries of their concession can be marked, but with the instruction not to start clearing yet.

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<sup>20</sup> Interview with a Land Department official in August 2011

<sup>21</sup> Interview of Welthungerhilfe with MAFF representative in June 2011



## **5.2 Consultation, Transparency and Flow of Information**

Most of the villagers found out about the concession by noticing outsiders in the area or by discovering marking on trees used to demarcate the concession. Only in Dal Veal Leng village did the commune and district chief inform the villagers about the land concession in their area prior to its demarcation. They were told that the company would get the forest and all the land that is not currently farmed by them, which means that all fallow land would belong to the company. In Nhang village, after trees had been marked to demarcate the concession area, villagers report that they were informed by a company representative and the commune chief that the company would settle in the area, and wherever they would see a paraglider in the sky, the land underneath would be allocated to the company. So far, villagers report to have seen a paraglider in 2009 and in August 2011, flying above the whole area. Chan villagers saw outsiders collecting soil samples in 2008, and one or two months later, bulldozers were transported to the area. Villagers declare that in 2010, a team from the company went to the village, and when villagers asked them why they had sprayed farmers' trees, the company replied that they would protect the land and not sell it.

None of the villages has been consulted on the implementation of the land concession around their villages, and apart from Ka Nat Thum, no village has detailed information on the investments. Villagers from In village only know the company originates from Vietnam, and that their paddy field would be left out of the concession (see above). Dal Veal Leng villagers state that they do not even know what "*they want to plant*", but they know that the former company was called Cheng Ly, and that now there is a new company whose name they do not know. They also say that they were told that parts of their farmland will be left outside of the concession, including their currently used paddy fields, but the adjacent fields previously used for shifting cultivation would be claimed by the company. In Chan village, farmers know that the company is called Krong Buk, and they received the information that the company would spare their paddy fields. Ka Nat Thum, however, has some documents about the investments. Villagers acquired them by taking the keys of the company's bulldozers and stating that they would not give the keys back until they got some information on the investment (see below – case study Ka Nat Thum).

The lack of general information also resulted in some unintentional land transactions. In Dal Veal Leng and Ka Nat Thum, villagers lost farmland involuntarily through thumbprinting. In Dal Veal Leng, the village chief told them to come and put their thumbprints on a sheet of paper, but villagers did not know what it was about. The village chief, however, states that no one was forced to thumbprint the paper. Villagers state that the thumbprints were then used to sell the land. In Ka Nat Thum village, villagers similarly lost farmland because of thumbprinting. One of the companies organised a party and brought a buffalo to eat. People were asked to give their thumbprints on a paper. Villagers report that they did not understand what was written on the paper, and they were told it was to receive medicine and second hand clothes. In the end, the thumbprints turned out to be signatures to give their land to the company.

### **The Government's view on consultation, transparency and flow of information**

Regarding farmers' involvement in the investment projects and thus their opportunities to acquire information, all interviewed departments say that farmers are involved at several steps. The Forestry Administration reports that villagers are actively involved in the demarcation of the land for example. The Department of Land states that villagers will still be heavily involved in land identification in that each single family will be asked which land they currently use and this land will be taken out of the concession. The Department of Agriculture says that all involved parties decide on the map of the concession, meaning the location of the investment. Involved parties include the commune and district offices, as well as several departments and ministries at the national level.

The District Governor of Andong Meas and the vice District Governor of Ta Veng both report that it was during meetings with the province that they were informed about the concession. During that meeting, they were also told about the procedure of ELC granting. A working group made of several governmental bodies would conduct a first study, and if it became apparent that the

concession would affect local farmers' land, then they would organise a meeting with local people. One of the Governors said that he knows that this group has been there, but they did not carry out the study completely, which means not according to the regulations of the ministry. On the other hand, though, when this working group saw that one company had not completely followed their contract, they also advised the company to abide better by the contract and improve their performance. Regarding general information, the vice District Governor of Ta Veng states that he only has the old map of the company, but not the new one in which some changes have been included such as leaving some distance to the river, as previously requested by him. He does not have a copy of the licence or any other documents.

While the higher governmental officials' role is to supervise the procedure of ELC granting and they therefore have documents about the investments, lower governmental officials are often unsure about details on the investments. For example, as mentioned above, the company Krong Buk's (operating near Chan village) initially requested area was reduced from 10000 ha to 6695 ha, according to the Ministry of Agriculture, Forestry and Fisheries. The Vice District Governor of Ta Veng, however, says that the land initially requested by the company was 6000 ha, but after his request to spare villagers' farmland, it was reduced to 5000 ha. The lower situated Commune Chief of Ta Veng Leu states that Krong Buk has applied for 10.000 ha, but he heard that they only agreed on 9.000 ha.

Concerning the information flow to the lower situated governmental officials, the statement of the Commune Chief of Ta Veng Leu (responsible for Chan village) is illustrative. When asked how he got to know about the investment in his commune, he says that before the company came to the area, the district level organised a meeting and called all commune chiefs. Villagers also participated. They were informed that a company was granted an economic land concession and that this order was from the Prime Minister. When the company came to the area, he continues, they did not get any further information, nor were they aware of the boundaries of the concession. Furthermore, when the company started cutting trees, they did not inform the village nor the commune chief. One day, the company organised a party to celebrate the start of the clearing of the land, and all village chiefs, the District Governor and the Provincial Governor were invited. At this party, the Commune Chief and the District Governor informed the Provincial Governor of three main problems with the concession, namely that the villagers will lose land, grazing land for livestock will be lost, and security in the area will worsen. The company and the Provincial Governor replied that nothing of the village would be touched, including paddy rice and chamkar area. However, according to the Commune Chief, when the company started to operate, they cleared everything. Once he asked the company for documents, and received the response that the commune chief is not important in deciding about land issues.

### **5.3 Perceived Benefits and Threats**

Farmers' perception on the investments is generally shaped by uncertainty and anxiety. Villagers feel inadequately informed and because much of villagers' farmland and forest lie within the demarcated concession areas, farmers expect to lose their land to the operating companies. In villages that have already been affected by company's clearing activities, villagers are afraid the companies will continue clearing.

Regarding their **food situation**, villagers expect it to considerably worsen due to the investments. Ka Nat Thum villagers, who have already experienced actual loss in farmland, indicated that their main food resources are "rice", "cassava", "wild vegetables from the forest", "fish", "cashew trees", "beans", "wild meat" and "vegetable garden". On a scale from one to five, with one indicating an abundant situation and five a lacking situation, villagers rated the situation before the investments as one, as compared with a rating of four after the investments, for all items except for "vegetable

garden” about which they were not sure<sup>22</sup>. The picture is similar in the other villages: although ranked differently before, all food resources are expected to become less available to farmers, thus decreasing food security.

Farmers also fear losing access to their **water sources**. Most villages use various water sources such as water from the river, streams and lakes in the forest and wells, some of them having been constructed by Welthungerhilfe. The investment activities have not so far resulted in a change in water availability or access, but many of the water sources used are situated in the concession areas. In Dal Veal Leng village, for example, villagers use water in equal shares from the wells situated in their village, from lakes and from collected rainwater. Farmers expect that they will lose access to the lakes because they are in the concession areas. In Ka Nat Thum village, farmers use a stream and a lake which are situated within the concession area. Regarding the wells built by Welthungerhilfe, In village has three and Chan village has one, situated further away from their homesteads and directly in the concession area. Ka Nat Thum has one well which is located two meters outside of the demarcated area (see Table 3). If they lose their farmland, they also risk losing access to these water sources.

**Table 3: Location of wells in Welthungerhilfe villages (Source: Welthungerhilfe internal data)**

Village	Total no. of wells			Well in concession areas	Well not inside concession areas
	Village	Chamkar	Total		
In village	1	3	4	3 (the company indicated that the 3 wells will be cut out from the concession)	-
Chan	1	1	2	1	-
Ka Nat Thum	2	1	3	-	1 (well location 2 meter beside the concession area)
Dal Veal Leng	1	-	1	-	-
Nhang	1	-	1	-	-

Farmers are also worried about their **livestock**. Traditionally, many indigenous communities let their cattle roam freely during the dry season and catch them again for the rainy season. Also dogs and other livestock such as pigs and chicken move freely. Farmers fear losing their animals once they enter a plantation site and get confiscated. In one of the villages, a company even told the farmers that they would shoot their animals if they enter the plantation site. Additionally, grazing areas for cattle are also situated in the concession areas and farmers are also afraid to lose these. As seen in Ka Nat Thum village, the company Veasna has erected fences for some parts of their concession area. In Chan village, the company has dug deep trenches which pose the risk of livestock falling in.

Another concern farmers raise is **safety**. Villagers report that with the concessions, many outsiders have come to the area. This has led to the feeling of insecurity in terms of potential robbery, theft and physical violence including rape. This is especially important for women who traditionally go to the forest to collect various kinds of food and non-food products. As one woman from Ka Nat Thum

<sup>22</sup> Villagers referred to the *change* in food availability, comparing the situation before and after the investments. This is why they rated the food situation before as one, despite experienced food shortages during several months a year.

village states, “*we are not afraid of tigers, not afraid of ghosts, only of the Khmer to rape the women*”. As a consequence, women in Ka Nat Thum have already started to go to the forest only in groups.

Farmers also fear a general **loss in tradition**. The influx of outsiders makes them less isolated and more prone to outside influence. As a consequence of outsiders bringing development to the area, farmers from Nhang village fear a loss of tradition, identity and lifestyle. As one villager puts it, “*We are not used to society, we fear the changes*”. If farmland and especially forest is lost, so too is the cultural value of spiritual forest and burial places, as well as the traditional practice of shifting cultivation which will no longer be part of indigenous people’s identity.

Regarding **job opportunities**, most of the interviewed villagers assert that it is not in their tradition to work as labourers. The opinion of a farmer from Ka Nat Thum, for example, is that working for a company is undesirable because there would be fights with the boss, one would be beaten, lose all ones money and then finally die. A Chan villager states that the company “*uses the money from our labour*”, but if one day they are sick, they do not get paid. In contrast, if they have their chamkar and their forest, they can always borrow food from the village if they are sick. Other villagers from Ka Nat Thum confirm that they do not want employment because they have jobs on their own farmland, but they also say that the poorest ones would probably go and work for the investments, if they had to – but not out of choice. Dal Veal Leng villagers also say that they are not accustomed to work as employees. Since about ten years, however, male villagers have been doing wage labour outside the village. It is something they do not want to do, but do when necessary, usually only when they are free from their own duties or need money. For women as yet, there is no tradition to do wage work. Only farmers from In village hope for jobs from the new investments, in order to be able to buy shoes and soap, but they are unsure about the number of workers that would be needed. Some of them already work on commercial plantations further away from the village where they are paid on a piece rate basis, such as earning 300-500 Riel (0,05-0,09 Euro) per hole they dig to grow bananas. However, as there is no fixed agreement and no contract, the feeling of insecurity makes them rate the investment negatively.

Many villagers were also told that **improved infrastructure** such as roads or electricity would accompany the investments. Ka Nat Thum villagers state that they would welcome development such as roads, but only in harmony with their land and their forest. They do not want to exchange their natural resources for development. One farmer from Nhang village states that they wish for a road, but do not want to lose their identity. Thus, they only welcome development if it does not affect them negatively.

In all, the ratings show that villagers’ anxiety to lose their forest and farmland exceeds the possible expected benefits regarding infrastructure and income opportunities. In an overall rating, villagers assess the investments in their area as unbeneficial to them. A villager from Dal Veal Leng states that when the authorities explained the planned investment to him, he thought that the investment would be positive and would bring employment opportunities, but now he is sure that it is not good, neither for humans nor for animals. Chan villagers are worried about their children under the current development, leading to their wish that the company stops clearing their land.

### **The Government’s and other experts’ view on benefits and threats**

Most of the governmental officials recognise that granting economic land concessions does involve major changes in Ratanakiri. This section summarises the government’s perception of the benefits and threats brought by these investments for local people, and includes the opinion of a representative of the International Labour Organisation on the potential creation of employment.

According to the Provincial Governor of Ratanakiri, 50.000 ha of rubber plantation currently exist in Ratanakiri, and up to 80.000 ha have been allotted for future rubber developments. This will provide large labour opportunities for Ratanakiri’s 150.000 inhabitants, but “*we still face a lack of labour*”. Regarding indigenous people’s history, he recognises that wage labour is not part of their

tradition, and that most do not like being labourers. In his opinion, the duty of the provincial governor is therefore to make them understand how to earn “*good money*”, how to generate an income, and thus to change their attitude towards wage labour. His main goal is to “*educate them to understand the value of the development in this area, to educate them how to make money*”. He continues that in Ratanakiri, people have a lot of land as compared to other areas in Cambodia, because one family often owns more than one hectare. However, the government has experienced conflicts with local people who do not clearly understand the purpose of the government policy for economic growth.

On the other hand, the Provincial Governor raises the concern that due to such quick development, prices for land have increased, and outsiders either try to buy land from local people or to encroach or simply just take the land away. Another concern is that some people tell the locals that they will take their land, leaving the locals worried, despite the fact that the 2001 Land Law regulates precisely who has the right to the land and who has not, meaning that there is no cause for anxiety. In some villages, he continues, people sell a lot of land in order to buy motorbikes. The Provincial Governor concludes that development always entails unavoidable difficulties. His duty is not only to care for agricultural development, but also for economic growth, to build roads, and some of the companies even require a reactivation of the airport in Ratanakiri. The government is, he continues, also concerned with helping the indigenous highland people through land registration. Nonetheless, he worries that this comes too late, and that many people will sell their land. The government is therefore trying to dissuade people from selling their land to outsiders.

The District Governor of Andong Meas acknowledges that “*we are all concerned about the effects on the people*”, and that the land belongs to the indigenous people. He knows that they are the vulnerable ones in the implementation of economic land concessions. Up until now, he believes that the government has considered the culture of indigenous people, not deserting them but rather initiating land registration. The Governor states that it is still unclear how much land the indigenous people actually need, but that if the land not included in the ELCs is insufficient in the future because of population growth, the government will reclaim land from the companies.

In terms of positive impacts next to the creation of employment, the Agricultural Department states that all companies are obliged to build schools, and that there will also be health posts. The official admits that wage labour is difficult with indigenous people, as they do not understand it – for example, by not turning up to work consistently.

The Land Department is also aware of the “*big impacts of these ELCs*”, but the official is sure that the government will take care of it. He is not worried about the people, as he believes that no land will be taken away from them. Although he heard in the news that people from Ratanakiri will lose their land, he says that “*the truth is that indigenous people do not lose their land, they sell their land*”. Compared to other areas in Cambodia, he continues, the people of Ratanakiri have a lot of land. The official of the Land Department identifies the granting of economic land concessions as a strategy of prevention. The government’s purpose is to keep the land for the people, and after 70 years, the land will be returned to them. He reasons that if the government did not provide land concessions to the companies, the land would become private, and the government would then have to buy it back from private individuals in order to create social land concessions.

The creation of employment is named as the most immediate advantage of ELCs in Ratanakiri, as stated by governmental officials as well as in the Sub-Decree on ELCs. Regarding the actual numbers on employment created, a representative from ILO gives the following rough overview<sup>23</sup>: per hectare, two workers are needed to tap the rubber trees, which is done only on approximately ten days per month. Therefore, if the work is organised in a rotational way, these two workers can work constantly and manage two to three hectares. They gain 50 USD per month. However, this work is on a day-to-day basis, meaning that the Cambodian Labour Law of 1997, which provides for basic labour standards, does not apply.

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<sup>23</sup> Interview with an ILO National Project Coordinator, Phnom Penh, August 2011

## 5.4 Indigenous People's and Government's Scope of Action

While some villages believe that the authorities will help them when they face difficulties, other villages have already undertaken actions to inform the authorities about the situation and to protect their farmland from being cleared by the companies. This section describes the actions which are possible for farmers and governmental officials, as well as the actions that have actually been carried out.

In the case of land concessions in Ratanakiri, many experts including some interviewed governmental officials consider the issuing of communal **land titles** as one of the most promising ways of securing indigenous people's tenure security, especially with regard to economic land concessions. Many NGOs as well as ILO state that once indigenous people are provided detailed information on the advantages and disadvantages of private versus communal titles, most indigenous people opt for the latter (see chapter 3.1). In the villages investigated, however, there is a clear tendency towards the application for private land titles. It remains unclear as to whether villagers were given appropriate and independent information and advice on land titling, because three out of the five villages expressed the wish for individual households to apply for private land titles. In some cases, it is the village or commune chief who advocates for private land titles or even facilitates the transfer of farmland to outsiders, while little is done to support communal land titling. In Nhang village, farmers report that the commune chief informed the villagers to register their land privately per family, arguing that this would contribute to the protection of people's farmland against the companies: They were told that they "*need this document because when the company gets in, you need a safe title*". The commune chief is a wellknown local landbroker and has already sold communal land from Nhang village to outsiders<sup>24</sup>. He has also given the Nhang village chief paperwork to make individual land occupation certificates, as the latter reports. Dal Veal Leng villagers state that the village chief collected thumbprints without telling farmers what he intended to do with them, and these "signatures" turned out to be the agreement to transfer ones land to the company. He also informed the villagers about the possibility to register their land per family, which costs 20.000 Riel (ca. 3,60 Euro) per plot. All families followed his advice and applied for private land titling, except for five families who could not afford to do so. The villagers of In village also expressed their wish to register the farmland privately per family, but that the forest should be held under communal land title. Chan villagers went to the district office and asked for information about land titles, and were given the response that "*it costs 60.000 Riel per ha, but you may not do it now, only later*".

Regarding communal land titles, none of the five villages investigated has acquired communal land title yet, reflecting the general status of communal land titling for indigenous people in Cambodia. Ka Nat Thum is the only village that, with external support, has completed step one of the process, namely being officially acknowledged as an indigenous community.

Another possibility to cope with the changes brought about is to **move outside the concession area**, but villagers replied that they could not do so, because either the land around was also concession area or it was the land of another community. The families in Chan village whose farmland was lost due to the company having cleared it had reacted by clearing some forest for temporary food production in the north of the village, but this area is also situated within the concession.

**Complaining to the companies** operating in their area is another option open for villagers. However, interaction between company staff and villagers is rarely based on trust and friendliness. When Chan villagers for example complained to company staff about the clearing of their land, the staff responded that the villagers do not have a right to the land anymore, because the company is now the owner, and what they sprayed is their land. An additional factor is that for many

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<sup>24</sup> It must be noted that the sale of land that has not been registered is theoretically illegal. However, as laws are poorly executed in rural Cambodia and hardly any land is officially registered, land is still sold and bought on a customary basis.

concessions, it is common that military or district police guard the concession<sup>25</sup>, which makes indigenous people more insecure about the role of the state regarding the concessions and contributes to intimidation<sup>26</sup>.

Another direct possibility to react is writing **complaint letters to the authorities**. An official complaint letter can be sent to all authorities, but also to court directly. While most of the villages are not aware of this option, some are supported by local NGOs in drafting and following up complaint letters. Two of the investigated villages wrote complaint letters. Ka Nat Thum sent one letter to the district governor and one to the ruling party. Chan village wrote two complaint letters to the district governor, two to the commune chief and two to the provincial governor. So far, none of the complaint letters had led to a solution.



Figure 9: Chan villagers with complaint letters (*individuals have been anonymised*).

As well as writing complaint letters, **physical action** counts among the potential activities of indigenous people. Those actions which have been carried out are **peaceful assembly** aiming at stopping the company from clearing and **confiscating bulldozer keys** in order to receive information on the investment. Both were done in Ka Nat Thum village. In this case, both actions led to criminalisation of the involved villagers. As Ka Nat Thum stands out in this regard, a short case study of this village will now be presented.

### Case Study Ka Nat Thum

Ka Nat Thum village, as one of four out of the five villages, was not informed about the investment prior to the demarcation of the concession area. Ka Nat Thum lies in between three concessions (see Figure 10), assigned to the companies Heng Brother, C.R.D. and Veasna. The latter has already erected fences around parts of the concession area (see Figure 11).

Farmers report that when they saw military police in the area, they asked the commune chief for more information. He told them that the land would become a concession area and that they could not do anything about it. When the company started their clearing activities in the area, the farmers

<sup>25</sup> As observed during a field visit to the concession of Krong Buk in Ta Veng.

<sup>26</sup> Military forces and district police are also often used by concession holders to guard timber transports. (Interview with LICADHO, August 2011)

asked the district governor if he knew anything about it, but he answered that he did not know if there was a licence to rent the land or not. Further, farmers report that he accused them of selling land to the companies. Later on, however, the district governor told them that all land would become a concession and that the government would take care of them.

The company Heng Brother has started operation next to the village and cleared the land of four families<sup>27</sup>. Grazing land for cattle has also been lost due to the companies' activities.

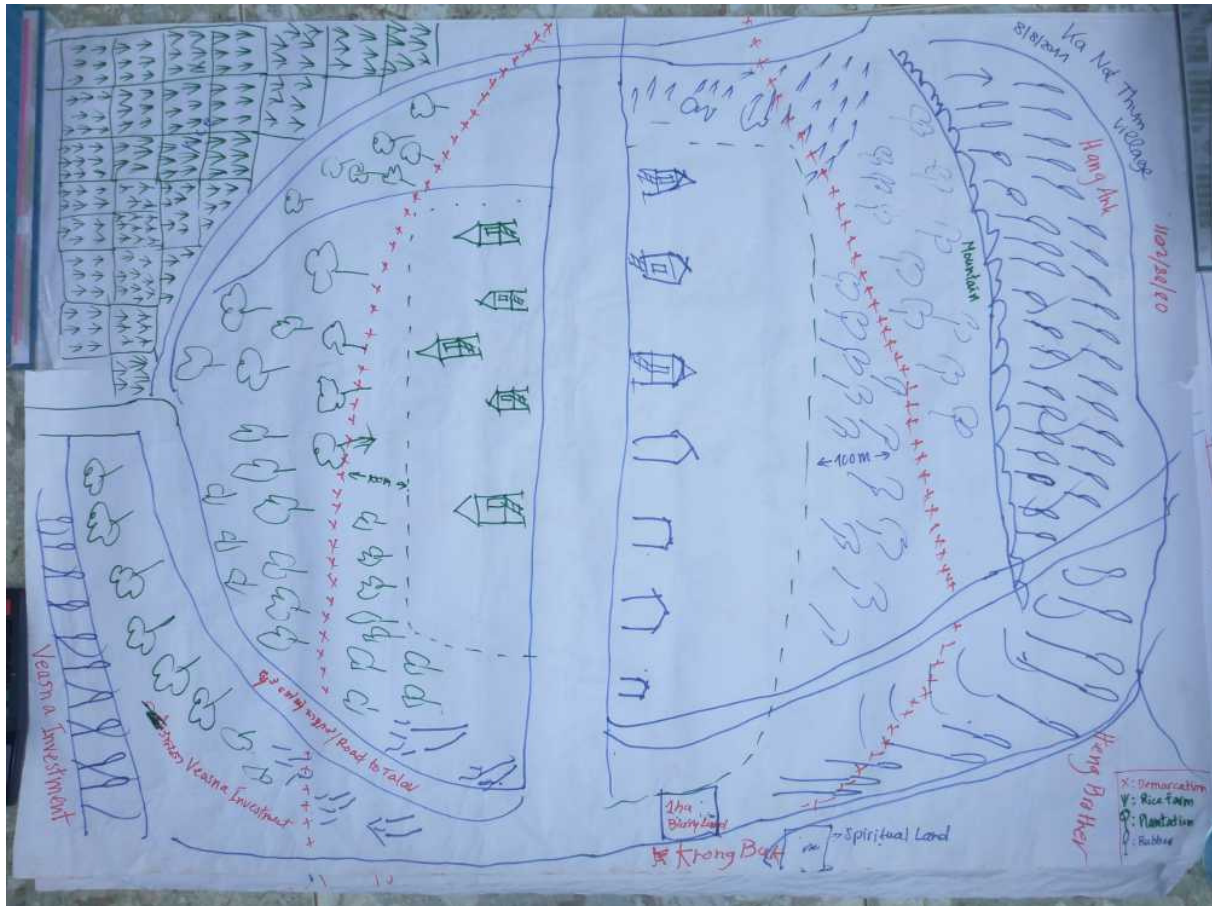


Figure 10: Ka Nat Thum village map. The red dotted line represents the demarcation.

<sup>27</sup> A study conducted in 2010 also found that Heng Brother had also constructed a road through an old burial forest containing an old graveyard of Ka Nat Thum village (Ironsides and Bora 2010)





**Figure 11: Fences around the concession area at Ka Nat Thum village (photo by LICADHO)**

Besides the clearing of farmland in the concession area, direct voluntary and involuntary land transactions took place between Ka Nat Thum villagers and the companies. Being asked by Heng Brother, villagers agreed to give some land situated further away from the village in exchange for medicine and second-hand clothes. One of the companies organised a party and brought a buffalo to eat. People were asked to give their thumbprints on a paper. Villagers report that they did not understand what was written on the paper, but they were told it was to receive medicine and second hand clothes. In the end, the thumbprints turned out to be signatures to give their land to the company.

Interactions between the company and the village are characterised by both intimidation and promises. Farmers state that one of the companies asked them if they wanted to sell land, adding that if they would not sell, the company would take it anyway. Villagers report that one of the companies threatened them with prison if villagers set fire to the plantation. Another company promised them to upgrade the road, to help with the community and to help with the work in the rice field. Company staff also told some women that they could grow beans inside the rubber plantations.

After concession land was demarcated and companies started operation, Ka Nat Thum villagers wrote letters to the District Governor as well as to the Cambodia People Party expressing their concerns about the company marking their farmland and requesting them to help. The ruling party replied that they should not protest because they had liberated them from the Khmer Rouge.

The village has also seen support from several NGOs and the International Labour Organisation. This has resulted in the first step of communal land registration, that of being officially recognised as an indigenous community.

In early May 2011, villagers took three keys of the company's bulldozers and requested the company Heng Brother to stop clearing the land and to provide information on their licence. The company gave them the verbal agreement that they would not continue clearing the land. Furthermore, they were given several documents on the company's investment, namely the licence from the Ministry of Agriculture, Forestry and Fisheries to clear 1000 ha, and two maps indicating the concession area. The letter also includes four conditions that the company has to follow. First, the company is not allowed to clear land that officially belongs to the villagers. Second, before and after clearing the land, the company must cooperate with local authorities, especially the Forest Administration. Third, after clearing the land, they must plant immediately. Fourth, they must put a logo on the construction vehicles in order to inform the public that they belong to the company. Additionally, they must report the implementation of the activities every two months to the authority. If the company does not abide by these conditions, the government would terminate the contract.

Regarding the company Veasna, villagers report that it had not consulted farmers either. The police guarding the investment told them that *"this is the government's land, they have a concession. If*

*you protest, they will send you to prison*". When villagers noticed the company had started clearing the land, about 260 farmers protested end of May 2011 at the investment site where the company had brought equipment to clear the land. A week later, villagers gathered at the company's bulldozers to protest again, and the company consequently moved their camp to another site. After the camp had been moved, villagers report to have burned some of the remnants of that camp, such as wooden sticks. Following this, four village members were accused of "criminal incitement" and were sent warrants to meet the prosecutor. However, an official complaint by the company has not been issued<sup>28</sup>, meaning that the complaint originated from police forces hired by the company to guard the concession area.

Farmers also report about a meeting in the provincial capital city of Ban Lung between the company Veasna, the district governor and community representatives from Ka Nat Thum and other villages. In this meeting, villagers state, the company handed out ten mobile phones and 80.000 Riel (about 20 USD) to farmers telling them: "*We give you this, if there is a problem you can call us, but stop protesting against the company*". Farmers, however, did not use the phones to make such calls, as they doubted the seriousness of the offer.

The main demand of Ka Nat Thum villagers is to have a clear demarcation between their land and the company's land, to receive information about the investment and to keep their farmland and forest.



**Figure 12: Ka Nat Thum villagers: "We want a clear demarcation of our land." (individuals have been anonymised)**

### **The Government's view on their own and indigenous people's scope of action**

As outlined in chapter 3, the official role of provincial line departments in the procedure of ELC implementation is to facilitate, manage and monitor the implementation of ELCs. Regarding the interviewed provincial Land Department, Forestry Department and Agriculture Department, they are part of the working group executing the ELC on the ground. The Forestry Department is in charge of all concessions affecting forest, and the Land Department undertakes land identification. The following section presents the results of the interviews with governmental officials. Their views and perceived scope of manoeuvre is schematically summarised in table 3.

<sup>28</sup> Interview with the prosecutor in Ban Lung by LICADHO on 12<sup>th</sup> August 2011.

Only lower governmental officials<sup>29</sup> identify the activities of some of the companies as problematic. One interviewee for example reports that he is aware of one of the companies having cleared more than allowed according to the contract. Being asked why companies can already operate without the second environmental impact assessment having been completed, the Forestry Administration confirms that companies can definitely clear the land before the EIA, but that *“this is positive”* and unfortunately, he cannot give more information about this due to internal policies. The Agricultural Department states that the companies start without the second EIA having been completed, because the companies need to operate quickly since it takes a long time for the rubber to grow, and EIA is a lengthy process. Another department official states that the company can in fact start clearing without prior land identification *“when they are sure it is not affecting people”*. When the company knows that there is an impact, they will not clear the land.

Regarding the scope of action of the interviewed governmental representatives, most report limited room for manoeuvre. Being directly asked if they have the power to halt the company if they observe that it does not operate according to its contract, the Land Department states that only the Provincial Governor has this right. The Forestry Administration states that if there is a problem, the village would inform the authorities, which in turn inform the provincial level, which would then call all involved departments for a meeting. In case the company does not follow the contract, the representative states, the government takes the land back. Last year, two companies were suspended. The Agriculture Department says that it is *“difficult to control the companies”* because *“the companies want to do it fast”*. However, two companies have been suspended in the past as they did not abide by their contract. The company Heng Development was stopped by the government after taking three years for the environmental impact assessment in Andong Meas District where they were active, this being considered as too slow. The whole area of land was then given to the company 7 Makara Paris, which is however owned by a relative of the suspended company's owner<sup>30</sup>. According to the Provincial Governor of Andong Meas, the new company has already planted 300 ha of rubber. The other suspended company is Oryung, which, according to the Agriculture Department, was stopped because it did not follow the contract as they produced neither an environmental impact assessment nor a masterplan. In this case, the land was given to the company Hoang Anh O Ya Dav, which is cooperating with Heng Brother and Hoang Anh.

The Andong Meas District Governor states that the only action within his power is to report back to the governmental working group that had done the primary demarcation of the concession area. This working group would investigate the situation and send a report to the Provincial Governor. However, if a company is operating on an area that is not allowed by law, such as directly next to a river, then he does have the right to halt the company. Regarding the company's demarcation, he does not have any power to interfere directly.

Both interviewed commune chiefs state that they do not have any influence on in the process. One says that he wants to help the villagers, but that his possibilities are restricted to contacting the provincial and district levels. He also would like to have international support, if possible.

As mentioned above, two villages sent complaint letters to authorities. Villagers from Chan reported that they had sent complaint letters two times to the commune chief, two times to the district chief and two times to the Provincial Governor. While the Commune Chief of Ta Veng Leu confirmed to have received the complaint letters, the vice District Governor of Ta Veng states that he was aware of the conflict between villagers and the company, but officially, there was no conflict, because he had not received any complaint letter. However, as a response to farmers' complaints, he says that he initiated four meetings with villagers, two in the commune center, one at the place of the actual conflict, and one at the district level. When asked about his ability to influence the process of ELCs in his district, the Vice District Governor of Ta Veng states that if farmers complained to him, he would send a small report to the Provincial Governor, which he had done already. The response was that he should try to explain more about the nature of ELCs to the

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<sup>29</sup> Lower governmental officials refer to village and commune officials.

<sup>30</sup> Interview with LICADHO, August 2011

villagers (see also statement by Provincial Governor below). He added that if the area of affected land is large, then they will find a solution, but if the area of land concerned was small, such as half or one hectare, then there will be no discussion, as the company will not give back such small pieces of land.

Regarding Ka Nat Thum, the District Governor of Andong Meas states that he had never received any complaint letter, but he read about it in the newspaper. The letter was sent directly to provincial level via the local NGO Adhoc. In 2010, there was a high delegation at Ka Nat Thum identifying that 168 families and 1000 ha were affected. Consequently, this area was recognised by all involved parties. Now, however, some NGOs have told the villagers that they should ask for more land than was agreed upon. Because of the violence used by Ka Nat Thum villagers, there is now a temporary stop of the companies' activities. The District Governor acknowledges that villagers are afraid to lose all their land, but claims that this fear is not substantiated. He estimates that it might be due to faulty translation, and states that in reality, when they start doing the social impact assessment, all of the villagers' land will be taken out of the concession.

The Provincial Governor of Ratanakiri states that there was a complaint letter from Ka Nat Thum village, but suggests that in general, when people hear that a company is coming, they start occupying the land. Usually, the local authorities can identify very well which land belongs to local people, but people occupy more land than they need, because they also include the area needed for future generations. He argues that some people, for example people from the opposition party, cause unrest among the locals by telling them that the government will sell their land. If locals want to have farmland for future generations, he continues, they must apply for social land concessions. Regarding economic land concessions, the local people do not lose the land, as it can still be converted into social land concessions later on. In contrast, if people sell the land to foreigners, this land can never be returned to the people nor be converted into a social land concession, as there is no law in Cambodia to take back private property.

The other governmental officials also consider **land titling and social land concessions** as a good option for local farmers to strengthen their tenure security and traditional way of life. A representative of the Ministry of Agriculture, Forestry and Fisheries for example says that if indigenous people want to improve their life and develop Cambodia, their tradition must by definition change. The government, however, does not want to see the people suffering, but rather to witness prosperity. If they want to continue their traditional way of life, they have the right to apply for a communal land title.

The Land Department denies the claim by some people that the government gives all the land away for economic land concessions, adding that this is illogical, as the government also initiates social land concessions. There is a plan to create 9.700 ha of social land concessions, though this has not yet been realised and the actual size will depend on requests from the villagers. The Agriculture Department gives the example of Koun Mom district where he states that already more than 8.000 ha of social land concession has been granted. When a company does not hold the contract, the government can always reclaim the land and create a social land concession by request.

The national government is aware that land concessions can lead to potential and actual land disputes. In August 2011, Prime Minister Hun Sen warned owners of economic land concessions to resolve disputes with villagers living on the land, otherwise their licences would be cancelled. He instructed officials to carefully review land disputes with concession holders. The statement said that "Samdech Hun Sen has advised the Agriculture Ministry, Environment Ministry and Land Management Ministry to visit and tackle problems in areas of embroiled economic land concessions, create harmony between the people and the investors committing money to the agriculture sector". It also says that if there are cases of people having houses in areas designated for ELC, "we will go to check the site" (Cambodian Daily 2011a).

In 2007, however, MAFF officials noted that it was difficult to comply with all the requirements set

out in the Sub-Decree on ELC, because MAFF faced pressure from investors seeking concessions. If the Ministry insisted on waiting to grant concessions until all requirements are met, investors would turn their back on Cambodia (UN 2007).

**Table 4: Authorities' views on ELCs and perceived power to act**

	Views on ELCs	Perceived power to act
Provincial Governor	No need to interfere	Yes
District Authorities	Aware that some companies do not follow the contract, but these are stopped	No direct intervention, only <ul style="list-style-type: none"> <li>• Report to provincial level</li> <li>• Organise meetings</li> </ul>
Communal Authorities	The procedure of ELC granting and the operations of the companies are problematic	No direct intervention, only <ul style="list-style-type: none"> <li>• Report to higher levels</li> <li>• Organise meetings</li> </ul>

## 5.5 Donor Reaction and Strategy

As described in this study, Welthungerhilfe's project areas lie within the areas demarcated for economic land concessions (see Figure 6), and some of the area has already been cleared for the establishment of rubber plantations. If the activities continue as planned in Figure 6, the basis for Welthungerhilfe project activities as well as the efforts which have been undertaken for years will not lead to the anticipated improvement of indigenous people's livelihood. Welthungerhilfe therefore faces serious uncertainty regarding their ability to continue the projects in the investigated villages<sup>31</sup>. In this context, the position of Welthungerhilfe's project donor becomes important. The following section reflects the statements of two EU representatives<sup>32</sup>.

The two representatives were aware of the situation of ELCs in Ratanakiri only by means of the information that Welthungerhilfe had previously provided. No direct bilateral cooperation exists in this part of Cambodia, but the EU supports several projects on indigenous people's land registration in Ratanakiri. However, progress in this realm is slow, calling for a change in strategy which has yet to be discussed.

One major point of intervention that the EU sees is to foster **community empowerment**, which means supporting communities and local authorities to learn about their legal rights and how to enforce them. The last two EU calls for project proposals were thus both oriented towards land rights. According to the EU representatives, another promising way of positively shaping the process is by advocating **partnership farming**, in which local smallholders and investors work side-by-side to the benefit of both.

Because ELCs are decided upon from the top, the process is fast, while it takes a long time for the application for communal land titles or to reach agreement on a bilateral level. This **divergence in speed of legal processes** is one major constraint from enabling legally fair response to the commercial pressure for land. Furthermore, social measures being implemented in parallel to support communities to cope with this fast process are lacking. Another constraint is the **lack of an**

<sup>31</sup> Interview with the Welthungerhilfe Regional Director Cambodia and Laos, August 2011

<sup>32</sup> Interview conducted in August 2011

**independent judiciary** in Cambodia which makes the enforcement of laws difficult.

The EU aims in general at keeping constructive dialogue with the Cambodian government on the issue, concentrating on the dual strategy of both engaging in existing coordination mechanisms and supporting existing positive initiatives. Entry points for interventions are mainly on the bilateral level, but also the support of NGOs in terms of project funding. The EU delegation is part of the Technical Working Group on Agriculture, which would be the appropriate forum for discussing the topic. Bilateral discussions are preferred over public statements, which are often seen as the last resort and do not necessarily lead to positive outcomes. However, the EU officials raise the concern that the government is not very responsive to discussions on the issue of ELCs.

Further, the EU delegates state that support to Welthungerhilfe could be given by drafting letters to the Ministries and the companies from the official EU side, requesting detailed information on the land investments in the project areas funded by EU. The Welthungerhilfe Regional Director Cambodia and Laos says that upon the advice of the EU, Welthungerhilfe has conducted several meetings with the relevant authorities. It appears that Welthungerhilfe has exhausted its level of leverage with the government in seeking a solution on behalf of the affected communities. Further support is now required by the EU to engage directly with the relevant authorities in discussing the situation of the indigenous communities<sup>33</sup>.

## **6 Discussion: Serious Early and Potential Impacts**

This chapter summarises the observed and potential impacts of the economic land concessions in the assessed project villages of Welthungerhilfe in Ratanakiri. First, the three dimensions of sustainability (social, economic and ecologic) are addressed, followed by an outline of the three major reasons for the occurrence of these consequences.

### **6.1 Social, Economic and Environmental Impacts**

**Social impacts** refer to general livelihood conditions of indigenous people as well as to their culture and tradition. Indigenous people in Ratanakiri are highly dependent on their forest and farmland, deriving most of their food through small-scale cultivation or gathering in the forest. Labour opportunities do not play an important role, neither in terms of the number of people partaking in external employment, nor in terms of the value attributed to it by tradition. At the time the investigations took place, the demarcation of ELCs in the studied villages clearly included farmers' land and vast areas of forests used by indigenous people. A number of families have lost forest and farmland due to companies clearing inside this demarcated concession area (Chan, Ka Nat Thum, and Dal Veal Leng village). These families are already in a state of insecurity as to how to sustain their livelihood and feed themselves. If indigenous people continue to lose access to forests and farmland, they are likely to lose their ability to support themselves. This will leave them in a state of constant and acute **food insecurity**, which was limited to several months a year prior to the investments. Furthermore, the loss of land will entail the **vanishing of indigenous cultural identity** as connected to spiritual and burial forests. The anticipation of change has already started

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<sup>33</sup> Statement of the Welthungerhilfe Regional Director Cambodia and Laos, August 2011

to transform indigenous livelihood. Due to the lack of information, indigenous people feel deeply **insecure about their future**. With company staff coming to the area, some villagers also feel physically unsafe in the area (**security concern**).

**Economic impacts** refer to the economic situation of indigenous people, as well as to the economic impact of the discussed ELCs for the district and the whole country of Cambodia. Referring to the latter aspect, no information could be acquired from the governmental side, referring to the level of taxes or lease payments. A representative from ILO, however, stated that taxes were 0-10 dollar per hectare and month. With an estimated profit of 2750 USD/month/ha, this tax level seems very low<sup>34</sup>. No information was available as to how much of this money will be used in the region and how much will go to the national level. Some regional officials, nevertheless, said that financial matters are organised on the national level and were not aware of the details.

Regarding the economic impact on the indigenous people living in the area, the immediate and already observed consequence for them is loss of land without compensation. Land constitutes their immediate resource to acquire income and attain food security. With the loss of land, an **immediate decline of their financial situation can be expected**, as some of the food produced is used for sale or to feed livestock which can be sold. This raises the question as to which extent labour opportunities can compensate the financial losses due to indigenous people losing their primary production resource. This question neglects the fact that the majority of the interviewed indigenous people expressed the wish not to become wage labourers in the first place, who stated that they would only do so if forced. At the time of investigation, none of the villages has been offered positions as labourers on any of the investment sites, despite the statements of higher governmental officials that the creation of job opportunities is the major advantage for the region. The following considerations are based on the assumption that indigenous people lose most of their land and become wage labourers on plantations in the future.

- (1) During the phases of clearing the forest and preparing the plantation, more labour would be needed, but after the plantation is set up, only one or two workers per two to three hectares are needed.
- (2) Labour opportunities as plantation workers would only be seized by male villagers, due to cultural reasons. This could lead to a further marginalisation of women, who are, in rural settings of low-income countries, generally more prone to poverty and undernourishment.
- (3) As no functioning system of monitoring private companies or enforcing regulations on these companies in the rural areas exists, labour opportunities can be expected not to follow international labour standards such as referring to safety measures, and as labour opportunities on rubber plantations in Cambodia are paid on a daily basis, neither does the Cambodia Labour Law apply.
- (4) As rubber tapping can be done by unskilled labourers and competition for job positions would be high, wages can be expected to be low and it would be difficult to sustain a whole household compensating for the loss of land which, before, supported a whole family.
- (5) High competition between locals and people from the lowlands migrating to the area seeking employment can be expected to occur, leading to a situation in which not all indigenous people's households are able to send one worker to the plantation to raise family income. Additionally, employers might prefer Khmer-speaking lowland migrants, leading to a further marginalisation of those indigenous people who have lost their land.

All in all, it is doubtful whether under the given circumstances, labour opportunities can make up for indigenous people's loss of their major production resource, their fields and their forest.

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<sup>34</sup>

Interview with an ILO National Project Manager, Phnom Penh, August 2011

**Environmental impacts** are intrinsically tied to social and economic impacts. The focus here is on forest and water resources, which are again interlinked. The most immediate observable environmental impact is deforestation of large tracts of land, as the planned development implies the conversion of large areas of primary forest into rubber plantations. Primary tropical rainforest provides a range of ecosystem services, which all change with deforestation. These include regulatory functions, habitat functions, production functions and information functions (de Groot et al. 2002). *Production functions* refer to the productive value of the forest ecosystem in terms of producing food and other raw materials. *Information function* includes the cultural, recreational, spiritual and medicinal value that forest ecosystems provide. While these two functions were already discussed in the social and economic impacts, the habitat and the regulatory function are especially important with regard to environmental impacts. The *habitat function* is related to biodiversity. Primary tropical rainforest counts among the most biodiverse terrestrial ecosystems. It is home to an immense diversity of flora and fauna. The **loss in biodiversity** on the cleared tracts of land in the study area is already visible and assessable. Clear-cut areas do not offer the same habitat opportunities as primary forest and represent a **crucial degradation of habitat conditions for wildlife species**. Next to this habitat function, forest ecosystems play an essential role regarding *regulatory functions*. This stands for the regulation of essential ecological processes and life support systems through bio-chemical cycles, for example water supply and regulation, soil retention and formation, nutrient cycling and climate regulation. With deforestation, all these services will decline, and some of them will only be perceivable in the long run. Regarding water quality and quantity, changes due to deforestation will already be perceivable in the short and medium term.

Therefore, two major factors will lead to the **deterioration of water supply for the local residents**, both in terms of quantity and quality of water. Firstly, as mentioned above, the water purification services of the primary forest ecosystem will vanish and lead to **poorer water quality**. Additionally, deforestation will lead to a lower water holding capacity of the soil and to a change in the region's microclimate, both contributing to a **decrease in water availability**. Secondly, the shift in land use from forest and small-scale agriculture to rubber plantations also has serious impacts on water. As rubber plantations use considerably more water, **groundwater levels will decrease**, which can be aggravated when irrigation is applied during the nursery of young rubber trees. Furthermore, a decline in water quality can be expected, as fertilisers and pesticides will be applied, which can lead to a **contamination of ground- and surface water**. Due to the absence of water purification mechanisms, intoxication of the local population using the same water sources can be expected. Additional environmental consequences following deforestation and the implementation of rubber plantations will be increased traffic, leading to **increased gas and noise emission**.

Three major aspects have led to the investments resulting in the social, economic and environmental impacts that have been mentioned. Firstly, the government's value and respect for indigenous people's livelihood is low. This materialises in very limited possibilities for indigenous people to have a voice in the whole process and partake in the shaping of their future regarding their land. Secondly, governmental activities are poorly coordinated, and the flow of information between different levels of hierarchy is erratic. This makes it difficult to hold companies accountable for their activities. Thirdly, there is a big gap between laws and practice, as the two factors mentioned above illustrate. All three aspects will now be discussed in more detail.

## **6.2 Poor Possibilities for Farmers to Participate**

Opportunities for indigenous people to *de facto* participate in and influence the process of ELC granting are poor. No consultation, despite the requirement by law, was undertaken to include indigenous people's views and perspectives. However, the actual options of indigenous people



during the process of ELC granting are also limited. The following factors contribute to this.

First, the **priority** set by the government to establish tenure security for indigenous people in terms of **communal land titling is low**. While economic investment licences come directly from the top, the procedure of communal land titles is initiated from the single village and has to pass all administrative levels from the lowest to the highest. As Cambodia's governmental structure is strictly hierarchical, orders from the top usually remain unquestioned, while initiatives from below often depend on the goodwill of the respective official. In one of the villages, when farmers wanted to acquire information about communal land titling at the district level, they were told that they were not allowed to do it at that time and that they should come back at a later date. Also, as described above, several cases were reported in which **lower governmental officials sold the land of indigenous people or initiated the application for private land titles** which makes the sale of individual plots to companies easier.

The **low priority attributed to communal land titling** for indigenous people materialises in the **rapidness at which ELCs are granted**. The implementation of ELCs progresses considerably more quickly than the process of communal land titling. While the government-supported three pilot communities (in areas without ELC conflicts) have almost completed the procedure of titling, NGO-supported titling has been taking several years and no community has yet acquired land titles. On the other hand, the granting of ELCs to companies can take as little as seven months (e.g. for Krong Buk). However, it must be acknowledged that the government has written a circular on interim protective measures for communities which have started the process of land registration. Nonetheless, it remains unclear whether these measures are actually communicated to or implemented at the lower administrative levels (see below: governmental information flow).

A second factor compromising farmers' ability to participate is the involvement of armed forces – military soldiers, military police and police officers - in guarding the concessions as well as their engagement in other activities such as accompanying timber transports. In the case of Ka Nat Thum village, the cooperation of the public with the private sector has led to a court case for villagers, as the company had not officially complained, but the police working for the investor launched the complaint. Thus, the association of military and district police with the concessions further raises local people's impression that the land concessions are initiated and backed by the government, potentially impeding them to launch official complaints and leaving them in a state of **intimidation**.

The third, and probably the most fundamental factor interlinked with the other two aspects is **indigenous people's profound lack of access to independent information**. As most of them have only enjoyed basic education, they are prone to believe what they are told. Most believe in the government to solve their problems, as one farmer said: "*The village chief is the driver and we are the passengers*". This makes them vulnerable to one-sided information and rent-seeking behaviour on the part of both officials and company staff. Examples are the involuntary transfer of farmland through thumbprinting or the initiative to persuade villagers to apply for private land titles without providing them prior independent and detailed information on the advantages and disadvantages.

The fourth factor, as illustrated by the case of Ka Nat Thum, is that even if a village uses several measures to have their voices heard, the **companies are** still in the **more powerful** position. Although Ka Nat Thum village has acquired the first step of the communal land titling procedure (which is the acknowledgement as indigenous people), and has written complaint letters, their farmland has still been cleared by the company. When villagers took keys of the bulldozers to halt them, they were criminalised by the police collaborating with the investors.

### 6.3 Poor Coordination of Governmental Activities

On the one hand, the government has undertaken some efforts to shape the process of ELC in a sound way. Cambodian laws regulating land tenure and the procedure of granting economic land concessions contain fair provisions on both. Furthermore, the government recently made some attempts at national level to strengthen indigenous people's tenure security, such as by publishing the circular on interim protection measures. In August 2011, the Prime Minister requested all holders of ELCs to settle land disputes, otherwise their licence would be cancelled (Cambodia Daily 2011a). Some companies have also been suspended in the past because they have not operated according to their contract, and the initially requested area of other companies was reduced due to governmental orders. The fact that some companies attempted to and actually acquired farmland from farmers directly suggests that these companies do not believe that they would get the whole area of land from the government anyway.

On the other hand, from evidence on the ground, it could be observed that **laws are poorly executed** (see following section) and that the **flow of information** between the governmental levels is **poor**. This contributes to the impression that some companies have a free hand to operate. For example, all lower level governmental officials stated that they do not have the power to stop a company if they notice it does not abide by the contract. Two district officials even said that it was the company's responsibility to assess if there was an impact on the local villagers, and if there was one, they believe that the company would not start operation in the area. Some of the interviewed officials stated that it was difficult to control the companies, because they wanted the process to be fast. The question remains as to who should hold the companies accountable if not the government. While **lower governmental officials**, who are generally more informed about the actual situation, **saw higher officials as being in the position** to directly hold companies accountable, **higher governmental officials stated that there was no problem** and that the conflict has arisen because villagers did not understand the process. Apparently, the information on the actual situation did (a) either not reach higher governmental officials, or (b) they still interpreted the situation as not being serious, or (c), they deliberately ignored it.

What can be extracted from the presented case study is that the **flow of information between governmental hierarchies is poor** in many instances. Looking at the question as to whether people's land will still be cut out from the concession, governmental representatives' answers depend on their hierarchical level. Higher governmental officials from MAFF (the *national* level) said that if indigenous people want to continue their traditional livelihood including shifting cultivation, they should apply for a social land concession. Most of the interviewed governmental officials at *provincial* level said that villagers' land will still be cut out, including chamkar, paddy fields, forest and the land needed for shifting cultivation. At the *communal* level, Commune Chiefs were not aware that the exact concession area was intended as preliminary by the higher governmental levels. Evidence from the ground tells that the company operating in Dal Veal Leng village explicitly told the villagers they would lose their fallow land. In other villages, farmers were told that only their paddy fields would be excluded from the concession, such as was done in Chan village.

Thus, all levels of governmental hierarchy have different information, which could be the reason for their **different views on the process**. While it is mainly lower officials who raise concerns as to the actual implementation of the ELCs, higher governmental officials stated that everything was functioning well and that indigenous people should not be afraid. This is also a consequence of the **top-down power structure** prevailing in Cambodia, in which higher governmental levels give orders and the lower levels must tolerate and implement them, at all cost.

## **6.4 Gap between Laws and Practice**

As outlined above, Cambodia has a range of laws regulating the process of ELC granting as well as laws with detailed provisions on land tenure. However, as observed in this case study, several of the laws were not respected. The most important of these will be presented in the following section.

First of all, the **basis for the granting of ELC is unclear**. The Sub-Decree on ELC clearly prescribes public consultations in several steps prior to project implementation (Article 4, Article 35). However, no public consultation has taken place and only in one of the investigated villages were farmers informed prior to the company's activities. Furthermore, as stated in the Sub-Decree on ELC in article 5, a project proposal may only be approved if it meets the criteria of "promotion of living standards of the people" and "avoidance or minimizing of adverse social impacts". Due to the fact that (a) villagers were not consulted about the project being implemented in their area, and (b) no precautionary measures were implemented to guarantee that villagers' concerns or complaints reach the relevant authorities in power to hold companies accountable, those two evaluation criteria have not been met. Consequently, it remains unclear on which legal basis the ELCs were granted in the investigated area.

While governmental officials confirmed that all companies were already operational without the required second environmental impact assessment (EIA) having been finalised, **it remains unclear whether all required studies such as the first environmental and social impact assessment were soundly conducted** prior to the signing of the contracts, as requested by Article 7 of the Sub-Decree on ELC. Given the fact that no consultation with community members took place, the social impact assessment has not taken place in the required form, as also confirmed by one governmental official. Regarding the first environmental impact assessment, if it has been produced, it is not clear to which extent it has been taken into account in the planning of the ELCs. As large areas of forest are to be cut down, huge impacts on both biodiversity and hydrologic balance are to be expected.

Second, **customary land rights as guaranteed by the 2001 Land Law** have not been respected. Article 30 of the Land Law acknowledges customary land tenure in the way that it guarantees people who have been using land for five years prior to 2001 the right to convert this possession right into a legal land title. Although indigenous people therefore have possession rights under the Land Law and a legal right to acquire a land title, their land tenure is in fact insecure.

Third, there is no evidence that the **right of indigenous people to continue their traditional way of life** is taken into account, as asserted in the 2001 Land Law (Article 23). As mentioned above, however, higher governmental officials said that indigenous people should take up wage work, or should apply for social land concessions if they want to continue their traditional agricultural practices.

## **7 Conclusion**

### **7.1 Good Intentions, Poor Performance**

Land and forest are the most valuable resources of the otherwise resource-poor indigenous people in Ratanakiri. Their status of food security as well as their identity and culture depends entirely on those assets. If they lose access, villagers will ultimately have to move to other places and indigenous culture will vanish. The observed situation in Ratanakiri corresponds to the literature about housing rights in Cambodia:

1. The laws are principally well-intended, but poorly executed on the ground. In the case study setting, higher governmental officials lack will to acknowledge the facts on the ground, while lower officials refer to higher levels to solve the problems.
2. The intended development does neither take into account indigenous people's perception nor their vulnerable position as resource-poor remotely situated smallholders.

As set out in the Sub-Decree on Economic Land Concessions (Article 3), land investments are intended to benefit the country as a whole as well as the people living in the area where the investment takes place (see chapter 3.2 of this report). However, this “good intention” behind ELCs is, in reality, leading to severe results on the ground, due to the poor performance of the implementing actors. The anticipated development in Ratanakiri, due to the absence of any participation, information or protection mechanisms, deliberately accepts putting indigenous people into a state of insecurity. It equally accepts a potential drastic decline in food security due to loss in farmland and forest, and ultimately, it also accepts the vanishing of indigenous culture. From this point of view, the development is not geared towards improving the rural poor's livelihood, but as already observed in the literature for other cases, to benefit foreign investors and those who facilitate their activities.

However, “development is a people-centred process that encompasses economic, social and cultural well-being. It must benefit the population as a whole, and people must be involved in decision-making about their land and livelihoods” (UN 2007). Therefore, immediate action should be taken, as reflected in the recommendations below.

The results of this case study can be generalised to the extent that the chosen villages and their inhabitants show typical features. They are characterised by a low educational status, high dependency on their natural resources, and high vulnerability to the arbitrary actions of those in power. The results can therefore be transformed to similar settings where powerful investors backed by the government seek resource-poor villagers' land.

## **7.2 A Code for Responsible Land Governance?**

The increase in agricultural investments in low income countries served as catalyst for the development of codes of responsible land governance for large scale land deals. The “*Voluntary Guidelines on Responsible Governance on Tenure of Land, Fisheries and Forest*” were elaborated under the leadership of FAO. Welthungerhilfe followed the elaboration and regularly commented on draft versions. It is anticipated that the Guidelines will be adopted by the Committee on Food Security (CFS)<sup>35</sup> in October 2011. They were initiated by the CFS and build on the Voluntary Guidelines on the Right to Food<sup>36</sup>. Reviews of these guidelines emphasise the participatory and transparent process in which they were drafted (FIAN et al. n.d.)<sup>37</sup>, having involved a large range of regional consultations and a high number of stakeholders.

The “*Voluntary Guidelines on Responsible Governance on Tenure of Land, Fisheries and Forest*” (hereafter “*the guidelines*”) aim at providing voluntary and thus non-legally binding principles for good governance of tenure by both governments and investing companies. The guidelines explicitly state that foreign investments in agriculture should seek to benefit all, but in particular the vulnerable and marginalised people. They are based on guiding principles which should be

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<sup>35</sup> The CFS is an intergovernmental body to serve as a forum in the United Nations System for the review and follow-up of policies concerning world food security

<sup>36</sup> The full title is: Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.(FAO 2011b, p.3)

<sup>37</sup> FIAN et. al. (n.d.) The Global Campaign for Agrarian Reform. Land Research Action Network. Source: [http://www.landaction.org/IMG/pdf/Final\\_ENGL\\_FAO-VG-Principles.pdf](http://www.landaction.org/IMG/pdf/Final_ENGL_FAO-VG-Principles.pdf).

observed in all aspects of tenure, including human dignity, non-discrimination, gender and social equity and justice, a general holistic approach, consultation and participation, rule of law, transparency, accountability and continuous improvement of tenure governance. Furthermore, they clearly address the responsibilities of nation states to provide the framework conditions through developing laws, implementation and monitoring mechanisms with regard to tenure issues. The guidelines also encompass agrarian redistributive reforms in order to provide more equitable access to land and other resources. They emphasise the respect of rights for the underprivileged people, promote gender equality and the rights of ethnic minorities.

**In Cambodia, no code for responsible land governance has so far been in place.** Therefore, the question is raised as to which extent these voluntary guidelines would have led to different outcomes as observed in this case study. The guidelines promote good governance of resource tenure while also calling nation states to design the appropriate institutional framework. Stakeholder involvement and administrative tenure reform are therefore included, which proved especially important in this case study. However, three major concerns can be raised regarding the potential role of these guidelines in the discussed case study.

1. The proposed guidelines remain vague in some of their propositions, such as regarding the definition of “participation” or “stakeholder involvement”. This opens up the window for opportunistic interpretation, potentially leading to the “greenwashing” of governmental activities.
2. The nature of the guidelines as “voluntary” leads to the absence of an independent monitoring mechanism. Even if the government of Cambodia commits itself to these guidelines, their execution on the ground is more than questionable. As shown in this study, there is a gap between laws and their implementation. This is due to a lack of willingness to enforce the laws on the ground, as well as due to poor governmental coordination across hierarchies. Furthermore, it can be assumed that the government of Cambodia would not voluntarily restrict its ambitions on ELCs unless they are tied to more forceful mechanisms such as trade agreements.
3. The guidelines promote that “*where appropriate, States should recognize markets as a means for economic growth through the efficient trading of a broad range of tenure rights of use and ownership*”(FAO 2011b, p.16). This calls for the establishment of a land market. Although it is also mentioned that vulnerable groups should be protected, there is no provision in dealing with power inequality. As observed in this case study, resource-poor farmers are vulnerable to illicit land transfer due to the opportunistic behaviour of more powerful actors. As long as there are no protection mechanisms to take into account diverging power relations, an unregulated land market will contribute to landlessness of the poor.

All in all, it can be said that even if states and companies commit themselves to the best designed guidelines, if the underlying system is not being taken into account, they will not make a difference. In the presented case study, the voluntary guidelines most probably would have led to the assertion by higher governmental officials that they had done their job by committing to these guidelines, but on the ground, no one would be aware of these principles.

In the view of a representative of LICADHO, the situation would not be changed by a code for good land governance, because this would not touch on the impunity of the companies. As no mechanism to hold companies accountable exists, a code of any kind would only be formal and not have a major effect on the ground. Similarly, other representatives of local NGOs in Ratanakiri doubt whether such a code would do more than simply contributing to the good reputation of the government on the international level. In fact, they fear it might not even be executed, as many other laws, and thus would not change anything.

### 7.3 Potential and Limitations of the Study

The study analysed the context, process, and early impacts of agricultural foreign direct investment on the beneficiaries of Welthungerhilfe projects in Ratanakiri, Cambodia. The assessment's potential, therefore, lies in the fact that it provides a clear overview of the actual situation in Ratanakiri, and serves as an exemplary study of the dynamics and impacts of government-backed investors being allocated resource-poor farmers' land. However, two limitations of the study must be mentioned.

First, many of the investment are at an early stage, which makes the precise assessment of impacts difficult. Farmers' perceptions were partly shaped by anxiety and uncertainty, which sometimes blurred the line between *anticipated* and *actual* changes. Nevertheless, the analysis of data took this into account by clearly stating which impacts were estimated to happen in the future, and which ones had actually occurred already.

Second, as the study did not aim at carrying out a cost benefit analysis on the more general impacts of the investments on the national level, it cannot provide an evaluation as to which extent the national economy would benefit from the investments, potentially being re-invested in improving local people's livelihood.

## 8 Recommendations<sup>38</sup>

### Directed towards the Government of Cambodia:

- Temporarily halt companies' activities until their legitimation has been assessed and public consultations have taken place
- Make all documentation publicly available, including reports on environmental and social impact assessments as well as maps and contracts
- Revise the process of ELC granting, ensure involvement of local people. This also includes facilitating the acquisition of land titles for indigenous people prior to the allocation of land to outsiders.
- Install a direct path of communication between the ministries issuing the ELCs and the ministries that are important in the process of communal land titling. Provide clear legal information to villagers, such as regarding *private* and *communal* land titles
- Introduce the position of an Ombuds(wo)man at the Presidential Office as a direct link of communication between villagers and higher governmental officials
- Prohibit the involvement of armed forces – soldiers, military police and police officers - in the concession areas
- Install a sanction mechanism for companies violating their contracts
- Provide support for local people who have lost their land due to dubious practices (e.g. thumbprinting)

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<sup>38</sup> These recommendations are partly based on the author's assessment, and are partly suggestions made by various interviewees including governmental representatives and other experts.

- Adopt, monitor and enforce (on the ground) of a code for responsible land governance

**Directed towards Welthungerhilfe (and other NGOs):**

- Support local NGOs and initiatives to build local capacities and structures for empowerment and legal advice for the indigenous people in the affected areas
- Build and support advocacy networks on the national level, in terms of cooperation, funding and consultation
- Include a legal dimension in new and existing projects which provides project beneficiaries with information on their legal rights regarding land transfers and investments (this could be carried out by a local NGO)
- Continuously provide sound information to the donor and NGO community (also via the advocacy network)
- Reach out to the international community (to start with, the public and private donors of Welthungerhilfe in Germany)

**Directed towards the EU (and other donors):**

- Remind the government of Cambodia of their duty to monitor the actual execution of laws
- Support NGOs to acquire information on the investments, such as by drafting letters to the Ministry or directly to companies
- Engage in serious bilateral dialogue on the investments, referring to the important role that the EU plays in Cambodia's export and aid sector
- Consider halting funds or temporarily halting preferential status in trade (such as the Everything But Arms agreement between Cambodia and the EU)
- Revise the proposed model of "partnership farming" as a solution and use an independent expert panel to investigate and evaluate whether this model is suitable in Cambodia

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**Annex I: Conceptual Framework (Matrix Form)**

Main aspects	Sub-aspects	Specific elements of analysis	Individual Questionnaire				Group discussions			Secondary data	
			Farmer	Inv	Gov	Exp	Heads	Women	Work		
			Q1	Q2	Q3	Q4	F1	F2	F3	S1	
<b>Context</b>	<b>Policy Framework</b>	Legal Structure / land rights, enforcement rules & rules on Impact Assessment			X	X				XX	
		Role of voluntary guidelines		X	X					XX	
		Donor strategies		(x)	X						XX
		Political Investment strategies of countries (policy agenda; national and regional)		(x)	X	X					XX
	<b>Livelihood &amp; Poverty levels</b>	Actor groups				X					XX
		Land use	X			X	X				X
		Source of income	X			X	X				X
Source of food		X			X	X				X	
<b>Process</b>	<b>Investment design</b>	Design and scale of deals	X	X	X	X	X	X	X	X	
		Timeframe of deal	X	X	X	X	X	X	X	X	
	<b>Investment process</b>	Actor strategies	X	X	X	X	X	X	X		
		Actors' expectations regarding the investments (threats and opportunities)	XX	X	X	X	XX	X	X		
		Stakeholder involvement / participation (actual involvement and past and future possibilities to shape investment design and strategies)	X	X	X	X	XX	X	X	X	
		Transparency	XX	X	X	X	XX	X	X	X	
		Actual enforcement of legal structure	X	X	X	X	X	X	X	X	
<b>Early Impact Assessment</b>	<b>Social</b>	Land tenure (ownership and possession rights: access, withdrawal, management, exclusion, alienation)	XX	X	X	X	XX	X	X	X	
		Food (availability & prices)	XX	X	X	X	XX	X	X	X	
		Migration (forced, in- and out- migration)	XX	X	X	X	XX	X	X	X	
		Water rights(Access, withdrawal, management)	XX	X	X	X	XX	X	X	X	
		Water quality	XX	X	X	X	XX	X	X	X	
		Gender	XX	X		X	XX	X	X		
		Social infrastructure (schools, health posts)	X	X	X	X	XX	X	X	X	
	<b>Economic</b>	Employment (recruiting)	XX	X	X	X	XX	X	X	X	
		Employment (conditions)	XX	X	X	X	XX	X	X	X	
		Off-farm jobs & out-grower	XX	X	X	X	XX	X	X	X	
		Land markets	XX	X	X	X	XX	X	X	X	
		Infrastructure / roads	X	X	X	X	XX	X	X	X	
		Use of lease payment / taxes			X	X	X			X	
	<b>Ecological</b>	Water availability	X	X	X	X	X	X	X	X	
		Climate Change				X				X	
		Soil health / erosion				X	X			X	
		Wildlife habitat				X				X	
	<b>WHH project</b>	<i>Impact on the project of Welthungerhilfe in the region</i>	X	X	X	X	X	X	X		

## Annex II: Work Schedule and Interviewed Persons

Date	Activities/Meetings
03.8.2011 Wed	Departure from Berlin / Germany 3pm
04.08.2011 Thur	Arrival Phnom Penh, meeting with Welthungerhilfe Regional Office
05.08. 2011 Fri	Meeting with Welthungerhilfe Regional Office and LICADHO
06.08. 2011 Sat	Departure Phnom Penh to Ban Lung (appr. 8-9 hours) – LICADHO monitoring team joins, Meeting with Welthungerhilfe Regional Office in Ban Lung, Discussion with LICADHO and preparation for field visits
07.08.2011 Sun	Field investigations in In village, Andong Meas District Dinner meeting with a Commune Council Chief and two Council Members
08.08.2011 Mon	Field investigations in Ka Nat Thum village, Andong Meas District Meeting with a Commune Council Member
09.08.2011 Tue	Field investigations in Dal Veal Leng Village, Andong Meas District
10.08.2011 Wed	Interview with Nhang villagers at Welthungerhilfe Regional Office Andong Meas
11.08.2011 Thur	Field investigations in Chan village, Ta Veng District
12.08. 2011 Fri	<ul style="list-style-type: none"> <li>• Wrap-up meeting with LICADHO,</li> <li>• LICADHO meets the prosecutor in Ban Lung</li> <li>• Preparation of NGO meetings with new translator</li> </ul>
13.08. 2011 Sat	LICADHO leaves to Phnom Penh NGO meetings: <ul style="list-style-type: none"> <li>• Community Legal Education Center (CLEC): Mr. Meas Sophea</li> <li>• Indigenous Community Support Organisation (ICSO): Mr. Van Thoeun</li> <li>• 3S Rivers Protection Network (3SPN): Mr. Mech Mean</li> <li>• Legal Aid Cambodia (LAC): Mr. Yeav Sophea Vuth</li> <li>• Non Timber Forest Products (NTFP): Mr. Vay Vansak</li> <li>• Development and Partnership in Action (DPA): Ms. Chan Somanea</li> <li>• Highlander Association (HA): Ms. Dam Chanthly and Mr. Ouk San</li> </ul>
14.08.2011 Sun	
15.08.2011 Mon	<ul style="list-style-type: none"> <li>• Agriculture Department (Mr. Soy Sona)</li> <li>• Department of Planning (Mr. Kheng Vuthy)</li> </ul>
16.08.2011 Tue	Meeting in Andong Meas: <ul style="list-style-type: none"> <li>• District Chief Ta Veng (Mr. Am Dao)</li> <li>• Commune Chief Ta Veng Leu</li> </ul>
17.08.2011 Wed	<ul style="list-style-type: none"> <li>• Cambodian Company Mit Ka Ren Se San</li> <li>• Vice District Governor Andong Meas (Mr. Rochom Chiv)</li> </ul>
18.08.2011 Thur	<ul style="list-style-type: none"> <li>• Forestry Administration (Mr. You Kan Vimean, Director)</li> <li>• Land Department (Mr. Tim Si Nath, Director)</li> <li>• Wrap-up with Welthungerhilfe Project Manager (Mr. Jürgen Hofmeister)</li> </ul>
19.08. 2011 Fri	Travel to Phnom Penh
20.08. 2011 Sat	
21.08.2011 Sun	
22.08.2011 Mon	Meeting with Welthungerhilfe Regional Office Phnom Penh Reporting from Ratanakiri, translation of documents and planning of the forthcoming interviews

<b>Date</b>	<b>Activities/Meetings</b>
23.08.2011 Tue	<ul style="list-style-type: none"> <li>• ILO (Mr Sok Sophorn, National Project Coordinator)</li> </ul>
24.08.2011 Wed	<ul style="list-style-type: none"> <li>• Visit to the relocation site of Dey Krahom Community</li> <li>• Telephone interview with World Bank representative (Mr. Peter Jipp, Senior Natural Resource Specialist, World Bank office Bangkok)</li> </ul>
25.08.2011 Thur	<ul style="list-style-type: none"> <li>• EU delegation (Ms. Maria Fariello, Attaché, Good Governance and Human Rights and Mr. Georges Dehoux, Attaché Natural Resources Management – Rural Development)</li> </ul>
26.08. 2011 Fri	<ul style="list-style-type: none"> <li>• Mr. Soeung Saroeun, CCC - Analyzing Development Issues (ADI) Head of Programme</li> <li>• Embassy of the Federal Republic of Germany Phnom Penh (Mr. Hady Riad, Counsellor)</li> <li>• Presentation of preliminary results for Cambodian Indigenous Youth Association (CIYA) at Heinrich Böll Foundation</li> </ul>
27.08. 2011 Sat	
28.08.2011 Sun	
29.08.2011 Mon	<ul style="list-style-type: none"> <li>• MAFF (Mr. It Nody, Under Secretary of State)</li> <li>• GIZ (Mr. Franz-Volker Müller, Land Rights Programme, Team Leader)</li> <li>• Wrap-up Meeting with Welthungerhilfe Regional Director Cambodia and Laos (Ms. Christina Warning)</li> </ul>
30.08.2011 Tue	Departure to Berlin, Arrival in Berlin: 6pm

Contact to the Author: [andrea.bues@posteo.de](mailto:andrea.bues@posteo.de)

### Annex III: Interview Guideline Farmers

Note: this is an interview *guideline* of the topics that should be covered during the focus group discussions. It aims at guiding the discussion where possible, allowing a high degree of flexibility, and does not represent a blueprint of exactly how the discussion should look.

<p><b>Household information</b></p> <p>With the questions on the household, we want to get a picture on the overall livelihood conditions of the farmers. Also, we want to know to which degree they depend on their land for their livelihood. The questions generate general household data <i>independently from the investors</i>.</p>	
<p>General household</p> <p>own production, selling and nourishment</p>	<ol style="list-style-type: none"> <li>1 How do you and your wife/husband support your family (buy food / own production, wage labour, employment, business combinations of the same?)</li> <li>2 Which crops do you grow? (e.g. lowland rice, upland fields with rice, maize, cassava etc., cash crop plantations, etc.)</li> <li>3 What proportion of these products are for your own consumption and what do you sell? Estimate proportion self-consumption and sale.</li> <li>4 What food items do you buy?</li> <li>5 Which type of food do you eat?</li> <li>6 How do you use the <b>forest</b> to nourish your family or get raw materials for crafts?</li> <li>7 How do you generate <b>income</b>?</li> <li>8 Is your land <b>irrigated</b>? If yes: What kind of irrigation?</li> <li>9 Where do you get your <b>drinking water</b>?</li> <li>10 How much land do you have?</li> <li>11 Do you feel secure about the possession/ownership of this land?</li> <li>12 What are your <b>rights</b> to this land (ancestral land with or without title, tenant/leased land, occupied land, titled land, communal land)?</li> </ol>
<p><b>Information about Foreign Direct Investment (FDI)</b></p> <p>In this section, we ask about the farmer's knowledge on the FDI in the area. In this way, we can see later on how they were informed and consulted, and to which extent they participated and shaped the process.</p>	
<p>Knowledge about invest-</p>	<p>13 <b>What do you know</b> about the investment happening in your area? Regarding...</p> <ul style="list-style-type: none"> <li>– size of the investment?</li> </ul>

ment	<ul style="list-style-type: none"> <li>– investor (who are they? name? from which country? anything else?)</li> <li>– timeframe (when did they get land? when do they want to start?)</li> <li>– the contract (have you seen it? what is in there? anything else?)</li> <li>– anything else you know about the investment?</li> <li>–</li> </ul>
participation	<p>14 Were you informed about the investments planned in your area? If no, how did you get to know about it?</p> <p>15 Will you be affected by these investments? If yes, how?</p> <p>16 To which extent were you <b>involved</b> in the planning or implementation process of the investment?</p>
expectations	<p>17 Which kind of <b>opportunities</b> from the investments do you see for yourself and your family?</p> <p>18 Which kind of <b>threats</b> do you see from the investment?</p>
Enforcement of legal structure	<p>(depends on the context)</p> <p>19 To which extent does the government assist you in dealing with the investors?</p>
<p><b>Impacts</b></p> <p>Here, we want to ask about the impacts (positive and negative) that farmers experience due to the FDI in their area. We first ask about what precisely has changed, and then, how farmers interpret this for their livelihood. It is important to distinguish between the changes that <i>have actually occurred</i> and the changes that farmers <i>expect</i> to occur.</p>	
...social  land	<p>20 What changes <i>have you experienced</i> as a consequence of the investments?</p> <p>21 What changes <i>do you expect</i> as a consequence of the investments?</p> <p>22 Has your <b>land situation</b> changed as a consequence of the land investment?</p> <p>Or do you <i>expect</i> any change to your land situation? If yes, please specify:</p> <p>23 ...Which kind of land is affected (agricultural, forest, pasture / communal land, private land)?</p> <p>24 ...What exactly happened:</p> <ul style="list-style-type: none"> <li>– Has private land been taken away from you? How much?</li> <li>– Has communal land been taken away from you? How much?</li> <li>– Has your land not been taken, but reaching it is much more difficult (= access changed)?</li> <li>– Has your access to the forest changed? Please explain.</li> <li>– How has your access to drinking water changed?</li> </ul> <p>25 How much of your land is affected in total?</p> <p>26 Is your homestead affected as well?</p> <p>27 Has there been any <b>compensation</b>?</p>



<p>migration</p> <p>water</p> <p>food</p> <p>gender</p> <p>social infrastructure</p>	<p>28 Have there been <b>migration movements</b> as a consequence of the investments? More precise:</p> <ul style="list-style-type: none"> <li>- Have new people come to the area?</li> <li>- Have people from here migrated to other areas? <ul style="list-style-type: none"> <li>i)..... forced?</li> <li>ii).....on a voluntary basis?</li> <li>iii)..... have they sold their land?</li> </ul> </li> </ul> <p>29 Did your <b>water situation</b> change? Or do you <i>expect</i> that use of water will be changed as a consequence of the investments?</p> <ul style="list-style-type: none"> <li>- regarding water quality?</li> <li>- regarding access to water sources (e.g., to a well)?</li> <li>- regarding withdrawal of water from a source (e.g., introduced quota)</li> <li>- regarding management rights (e.g., help in cleaning a canal)</li> </ul> <p>30 To which extent has your <b>food situation</b> changed? Or do you <i>expect</i> your food situation to change?</p> <ul style="list-style-type: none"> <li>- as a consequence of the change in land and water situation?</li> <li>- because of other aspects..?</li> </ul> <p>31 How do women and men/young women and men benefit/how will they benefit from the investments?</p> <p>32 How did the position of <b>women</b> change? (e.g., more labour because of longer ways to wells, income opportunities with small business, trade ...)</p> <p>33 Is there any <b>social infrastructure</b> realised or planned as a consequence of the land investments? (e.g. schools, health centres)</p>
<p>economic impacts</p>	<p>34 What do you know about <b>employment opportunities</b> on the investment farms? Or will there be any employment opportunities in the future?</p> <p>If there are any:</p> <p>35 ...How do people get a job on the investment farm?</p> <p>36 ...What type of jobs do they get? (e.g. working hours, payment, safety measures)</p> <p><b>Other benefits</b></p> <p>37 Which other economic benefits are there because of the investments?</p> <ul style="list-style-type: none"> <li>- Is there an outgrower scheme (planned)?</li> <li>- Has the local market changed?</li> <li>- Other?</li> </ul> <p>38 Have other businesses evolved? (e.g., new shops?)</p>
<p>land market</p>	<p><b>The change in the land market:</b></p>

	<p>39 Is it more common now, with the investment, to  .....sell the land?  ...lease out land?</p> <p>40 Has the price for land changed?</p> <p>41 What is the price today and what was it 5 years ago?</p> <p>42 Have many people leased out their land, or sold their land?</p> <p>43 If yes: What are those people doing now? (e.g., leave the place?)</p> <p><b>About infrastructure that has been built because of the investment:</b></p> <p>44 Which construction of infrastructure has there been, e.g. roads?</p> <p>45 Has there been any change in the supply of electricity?</p> <p>46 If you assess the economic impact of the investment, if you weigh the benefits and the losses of the investment will the result of the investment positive or negative? (Provide reasons)</p>
<p><b>Impacts on Welthungerhilfe projects -</b>  With these questions, we want to know how the beneficiaries of the projects assess the impacts of the investments on the projects. This is a key question for the whole study.</p>	
<p>Impact on Welthungerhilfe projects</p>	<p>47 What has Welthungerhilfe so far done in this area?</p> <p>48 What are the aims of WHH project in the area?</p> <p>49 What is your opinion about these aims in view of the investments happening?</p> <p>50 In your opinion, how will the benefits change because of the investment happening in the area?</p> <p>51 How will the work of Welthungerhilfe change due to the investment?</p>
<p><b>Scope of Action and Outlook</b></p> <p>We want to round off the questionnaire with questions about the future and about their scope of action and outlook.</p>	
<p>Scope of action &amp; Outlook</p>	<p>52 What do you expect/hope for the near future of your family with regard to the changing environment brought about by the investments?</p> <p>53 With regard to your children when they are grown up:</p>

a) Where would you like to see your children when they are grown up? (e.g. as farmers, as labourers, living in the city...)

b) Under the current development, where do you see your children when they are grown up?

Other questions regarding the investments:

54 Which actions have you undertaken to influence the process?

55 Have there been any groups formed to influence the process?

56 Which (other) possibilities do you see to influence the process?

- what do you expect from the government?
- what do you expect from the investor?
- what do you expect from Welthungerhilfe?
- who else could do what?