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Cambodian Center for Human Rights

December 2020

Briefing Note on Business and Human Rights Corporate Accountability in Land Rights Violations



About CCHR

The Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization that works to promote and protect democracy as well as respect for human rights throughout the Kingdom of Cambodia. CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s development. CCHR promotes the rule of law over impunity; strong institutions over strong men; and a pluralistic society in which variety is harnessed and celebrated rather than ignored or punished.

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Queries and Feedback

This Report and all other publications by CCHR are available online at www.cchrcambodia.org and www.sithi.org.

Should you have any questions or require any further information about this Briefing Note, or if you would like to give any feedback, please email CCHR at info@cchrcambodia.org. Alternatively, please call us at +855 (0) 23 72 69 01 or contact us at #798, Street 99, Boeung Trabek, Khan Chamkarmon, Phnom Penh, Cambodia.

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ACRONYMS AND SHORT CITES

| | |
|----------------|--|
| AAC | ActionAid Cambodia |
| CCHR | Cambodian Center for Human Rights |
| CSOs | Civil Society Organizations |
| CSR | Corporate Social Responsibility |
| ELC | Economic Land Concession |
| ESIA | Environmental and Social Impact Assessment |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IFC | International Finance Corporation |
| IMG | Independent Mediation Organization |
| MAFF | Ministry of Agriculture, Forestry and Fisheries |
| MENV | Ministry of Environment |
| MOC | Ministry of Commerce |
| MOI | Ministry of Interior |
| MoLMUPC | Ministry of Land Management, Urban Planning and Construction |
| NALDR | National Authority for Land Dispute Resolution |
| NCP | OECD National Contact Point |
| NGO | Non-Governmental Organization |
| NHRI | National Human Rights Institution |
| OECD | The Organisation for Economic Co-Operation and Development |
| RGC | Royal Government of Cambodia |
| SEZ | Special Economic Zone |
| SLC | Social Land Concession |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNGPs | United Nations Guiding Principles on Business and Human Rights |
| WBIP | World Bank Inspection Panel |

EXECUTIVE SUMMARY

Over the past two decades, Cambodia has undergone a substantial transition in economic growth. The country's economy maintained an 8% growth rate between 1998 and 2018, with a four year high in 2018, making it the fastest growing country in East Asia in 2018 and one of the fastest growing economies in the world.¹ While it is noted that 2020 has seen some serious economic hardship and uncertainty in the country due to the economic ramifications of the global COVID-19 pandemic and the withdrawal of the European Union's 'Everything But Arms' trade agreement,² there is no doubt the overall economic growth in recent years has done great things for Cambodia. This has included leading to significant poverty reduction, strides in maternal and child health, as well as increases in education at all levels.³ However, it has also led to an exponential increase in land disputes across the country in recent decades.

Significant portions of land are now used for infrastructure developments, creating factories and plantations, and developing special economic zones ("SEZs"), and is often leased to foreign and domestic companies and the political elite in economic land concessions ("ELCs"), through which over two million hectares of land has been granted.⁴ This has proved problematic when combined with Cambodia's fractured land registration system, historically linked with the systems put in place during the Khmer Rouge era and the civil war, a result of which is that large tracks of land remain unregistered across the country. Due to this insecurity of land tenure, a lack of formal titles and a weak rule of law, a wave of land grabs and forced evictions have occurred. As a result, the systematic violation of land rights is currently one of the most prevalent human rights issues in Cambodia and one of the most cited obstacles to Cambodia's sustainable development. As of March 2014, more than half a million people were reportedly involved in land disputes.⁵ Between April 2019 and March 2020, 55% of the public assemblies recorded by CCHR were related to land rights.⁶

As part of its efforts to promote sustainable development, the Royal Government of Cambodia ("RGC") has acknowledged the importance of resolving land disputes and put the issue high on their agenda. Public authorities have taken a number of steps to progress this, ranging from the promotion of land tenure security through the issuance of land titles and pledging to register all land by 2021,⁷ the creation of a communal land title process for indigenous communities,⁸ and the setting up of numerous committees, to resolve land disputes. While it is commendable that the RGC has acknowledged the crucial need for land dispute resolutions, communities involved in land disputes across Cambodia face significant challenges in accessing a remedy for resulting human rights violations.

A core part of this problem is that it is difficult to hold companies accountable for their human rights impacts. Businesses across the globe have an impact, directly or indirectly, on virtually all internationally recognized human rights. This is particularly evident in land disputes, as companies are frequently accused of land

¹ The World Bank, 'The World Bank in Cambodia' (17 April 2020) <https://www.worldbank.org/en/country/cambodia/overview#2>.

² European Commission, 'Cambodia loses duty-free access to the EU market over human rights concerns' (12 August 2020) https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1469.

³ The World Bank, (n. 1).

⁴ LICADHO, 'Cambodia's Economic Land Concessions' (6 March 2020) http://www.licadho-cambodia.org/land_concessions/.

⁵ LICADHO, 'Renewed surge in land disputes must be addressed, not denied' (15 February 2015) <http://www.licadho-cambodia.org/pressrelease.php?perm=374&english>.

⁶ CCHR, ADHOC and Solidarity Center, 'Cambodia Fundamental Freedoms Monitor Fourth Annual Report' (August 2020) p. 33, <https://cchrcambodia.org/admin/media/report/report/english/Fourth%20Annual%20Report%20of%20the%20Cambodia%20Fundamental%20Free%20Monitor%202019-.pdf>.

⁷ Pech Sotheary, 'Ministry to Resolve All State Land Disputes by next Year' (*Khmer Times*, 25 February 2020) <https://www.khmertimeskh.com/50694708/ministry-to-resolve-all-state-land-disputes-by-next-year/>.

⁸ CCHR, 'Access to Collective Land Titles for Indigenous Communities in Cambodia' (August 2020) https://cchrcambodia.org/admin/media/newsletter/newsletter/english/ser-access-to_47995682p-EN.pdf.

grabbing, land clearing, forced or violent evictions and disrespecting indigenous land rights. While on paper Cambodian communities should be able to seek a remedy for these land rights violations through a range of methods, including through companies themselves, through relevant Government ministries and through domestic courts, in practice seeking corporate accountability is difficult.

CCHR has been monitoring and conducting research on land disputes in Cambodia since its creation in 2002. As part of the Business and Human Rights Project, this report focusses on the challenge of seeking corporate accountability across four land disputes impacting over 1800 households. This report examines the various mechanisms available to those facing land rights violations in Cambodia, and the methods employed by the communities under examination in this report in seeking a resolution to land disputes. In compiling this report, CCHR has undertaken extensive desk research covering national and international law regarding land disputes, as well as undertaking field research and interviewing affiliated stakeholders, including communities, authorities and companies.

The four disputes under examination in this report are a dispute between villagers and Mitr Phol Sugar Company in Oddar Meanchey Province; a dispute in Monduliri Province between the local indigenous communities and the rubber company Socfin KCD; a dispute between villagers and the MDS Company within the MDS Thmor Da SEZ in Pursat Province; and a dispute in Koh Kong Province between villagers and two companies, the Koh Kong Sugar Industry Co. Ltd and the Koh Kong Plantation Co. Ltd.

The research undertaken for this report identified **nine** key problems in ascertaining a resolution for land disputes in Cambodia, as outlined in our Findings and Recommendations section. If these are addressed, it would improve the efficiency and fairness of accessing a remedy for those impacted by rights violations, and reduce the complex and harmful nature of land disputes. These include:

1. The lack of commitment, engagement and transparency by the RGC and local authorities to resolving land disputes;
2. A lack of knowledge by relevant parties about land rights, disputes and resolution processes;
3. A lack of availability of domestic remedies;
4. The lack of will and commitment on behalf of companies involved in land disputes;
5. That remedies available do not meet human rights standards;
6. A lack of consideration of community human rights impacts of land allocations;
7. Communities are hindered in their ability to freely advocate for their rights;
8. The disproportionate impact on women; and
9. The use of force and involuntary resettlement.

The report is concluded with **26 recommendations** for the RGC, civil society organizations (“CSOs”) and businesses to better protect human rights and achieve corporate accountability for land disputes, including:

- Improving the process for granting ELCs and developing SEZs to minimize the risk of land disputes, including increasing process transparency, undertaking meaningful consultation with communities and ensuring compliance with legislation on environmental and social impact assessments;
- Immediately ceasing forced and violent land evictions;
- Ensuring transparency on behalf of the RGC and businesses in the resolution of land disputes;
- Ensuring timely and fair resolutions of disputes and improving access to grievance mechanisms;
- Providing just remedies that comply with international standards to victims of land abuses;
- Ceasing the monitoring, harassment and punishment of human rights defenders and land activists;
- Improving protections for women and women human rights defenders.

INTRODUCTION



Map of Cambodia's reported land conflicts

The systematic violation of land rights is currently one of the most prevalent human rights issues in Cambodia and one of the most cited obstacles to Cambodia's sustainable development. As of March 2014, more than half a million people were reportedly involved in land disputes.¹⁰ At least 5% of Cambodia's total land area is the subject of a land conflict, or has been in the last four years, and 223 land disputes have been reported in the public domain since 2007.¹¹

One key driver of this trend is the government's practice of allowing for very large areas of land to be leased for commercial interests through the granting of ELCs and SEZs in a bid to foster rapid economic development. Approximately, since 2012 over two million hectares of land have been granted in this way to foreign and domestic companies, as well as to the political elite, for industrial-agricultural activities.¹² The mass reallocation of land in this way, along with insecurity of land tenure due to a lack of formal titles and weak rule of law, has resulted in a wave of land grabs and forced evictions.

One of the main issues faced in land disputes in Cambodia is the matter of holding businesses and corporations accountable for human rights violations committed, better known as corporate accountability. Businesses and corporations across the globe have an impact, directly or indirectly, on virtually the entire spectrum of internationally recognized human rights, including for example, land rights and labor rights. Corporations can be held accountable for human rights violations, through judicial or non-judicial mechanisms, by governments, individuals or groups, however there a number of barriers to doing so in practice in Cambodia.

CCHR has been closely monitoring corporate accountability within land disputes for a number of years, working with the communities and engaging the authorities and corporations in their efforts to solve the disputes, and hold corporations accountable for actions which they have committed.¹³

In this report, CCHR focusses on the challenge of seeking corporate accountability across four land disputes, impacting more than 1800 households. This report examines the various mechanisms available to those facing land rights violations in Cambodia, and the methods employed by the communities under examination in this report to achieve a dispute resolution. In compiling this

What is an Economic Land Concession ("ELC")?

An ELC is an agreement made between the Government and a beneficiary which provides the beneficiary with specific rights to control an area of land for a fixed period of time to undertake certain activities on the area. While a concession is often provided for a long-term period, the land will remain state property and it does not grant full ownership rights to the beneficiaries. An ELC is a long-term land lease which allows the beneficiary to clear the land and develop industrial scale agriculture. ELCs have been used for various activities including, plantations, factories, raising animals, fishing, tourism and general agricultural products.⁹

⁹ UN Office of the High Commissioner for Human Rights, 'Economic and Other Land Concessions' (26 January 2015)

<https://cambodia.ohchr.org/en/economic-social-rights/economic-and-other-land-concessions>.

¹⁰ LICADHO, (n. 5).

¹¹ CCHR, 'Reported Land Conflict', *Sithi*, http://www.sithi.org/temp.php?url=land_case/land_case_new.php&lg=.

¹² CCHR, (n. 6).

¹³ For more information see CCHR, 'Preventing, Mitigating and Remediating Land-Related Rights Violations in the Kingdom of Cambodia: Seven Areas for Improvement' (December 2018)

<https://cchrcambodia.org/admin/media/analysis/analysis/english/20181219%20BHR%20Briefing%20Note%20ENG-Final.pdf>.

report, CCHR has undertaken extensive desk research covering national and international law in regards to land disputes, as well as undertook field research, conducting survey with all affiliated parties. The four disputes under examination in this report are:

- A land dispute involving indigenous communities and the rubber company Socfin-KCD in Bu Sra Commune, Pech Chreada District, Mondulhiri Province (“Socfin-KCD case”).
- A land dispute involving villagers and Mitr Phol Sugar Company in Koun Kriel Commune, Samraong District, Oddar Meanchey Province (“Mitr Phol case”).
- A land dispute involving villagers and the MDS Company in the MDS Thmor Da SEZ in Thma Da Commune, Veal Veang District, Pursat Province (“MDS case”).
- A land dispute in Koh Kong involving villagers and Koh Kong Sugar Industry Co. Ltd and Koh Kong Plantation Co. Ltd in Dang Peang, Chi Kha Leu and Chi Kha Kroam Communes in Srae Ambel District, and Kandaol Commune in Botum Sakor District, Kong Kong Province (“Koh Kong Sugar case”).

It is hoped that this report can provide a deeper insight into the challenges faced by communities involved in land disputes in Cambodia, and what avenues are available to them for obtaining a resolution. This report is split into three parts:

- **Part 1** (What is Corporate Accountability) provides an overview of the concept of corporate accountability and focusses specifically on the various methods and ways in which individuals can hold corporations accountable, discussing both judicial and non-judicial mechanisms;
- **Part 2** (Corporate Accountability Case Studies) provides an overview of each of the examined case studies alongside strategies used for accountability in each dispute from the perspectives of the authorities, companies and affected communities;
- **Part 3** (Findings and Recommendations) draws on nine common observations acquired from research to determine where and how the RGC, CSOs and other actors can help bridge gaps in corporate accountability in Cambodia, providing eight findings and 26 recommendations.

METHODOLOGY

This Briefing Note is the second report published as part of the “Strengthening CSOs to Advocate for Increasing Respect for Human Rights by Corporate Actors in the Land Sector” project, jointly implemented by CCHR and ActionAid Cambodia. The project aims to materialize the application of international business and human rights standards in the land sector and hopes to improve corporate conduct through: 1) advocating for the authorities to regulate the activities of corporations; 2) supporting communities’ rights and raising awareness; and 3) enabling a safe environment for civil society and human rights defenders. The responsibility for the content of this report lies solely with CCHR, and affiliates to this report do not necessarily share the views expressed within it.

Purpose

Following on from our Briefing Note published 2018¹⁴, the purpose of this report is to provide an update on the state of corporate accountability in Cambodia with a special focus on the various mechanisms employed in Cambodia by communities to hold corporations accountable for human rights abuses. In addition to providing a factual update on the status of the three land-related conflicts that CCHR has been closely following over the years, this report also includes an additional case study based on research conducted in Koh Kong. It is hoped this report can provide a deeper insight into what mechanisms are employed in land dispute resolution in Cambodia, how individuals experience justice through these mechanisms, and what the core challenges are in Cambodia when it comes to holding corporations accountable. This report is based on desk and field research conducted in February to March 2020, as well as in previous years from 2017.

Development of Questionnaires

In 2017, CCHR developed a questionnaire to be used to conduct interviews during field research missions, covering six topics: (a) Background; (b) Information; (c) Consultation and access to information; (d) Due diligence, value chain and investors; (e) Legal compliance; (f) Ensuring respect for human rights; and (g) Remedies. They were designed for affected community members, CSOs, company representatives, and authorities. In 2018, CCHR developed follow-up questionnaires, designed and adapted specifically for each of the cases. Broadly, the questionnaires covered 10 topics: (a) Property rights; (b) Use of the disputed land; (c) Relationship to authorities/companies/communities; (d) Force/threats/intimidation of communities; (e) Previous dispute resolution process; (f) Ongoing dispute resolution process; (g) Impact of the dispute; (h) Perceived obstacles; (i) Internal policies (for the companies); (j) Environmental and social impact assessments (for public authorities). In 2020, the questionnaires were again further adapted to cover the following topics (a) Factual updates on the land and impacts of land loss; (b) Force/threats/intimidation of the communities; (c) Ongoing dispute resolution processes); (d) Continuing obstacles to total resolution.

Field Visits

2017: Between 27-31 March 2017, CCHR’s Business and Human Rights Team travelled to Monduliri Province and interviewed 23 residents, a representative of Socfin-KCD, local CSOs, as well as local and provincial authorities. From 24-26 April 2017, CCHR’s team travelled to Oddar Meanchey Province and conducted interviews with 23 individuals affected by the land conflict, local CSOs, and local and provincial authorities. CCHR was not able to meet with representatives of Mitr Phol, as the company left Cambodia in 2015. From 27 April to 1 May 2017, CCHR’s team travelled to Pursat Province and interviewed 16 affected families, one NGO, and five public authorities. As phone call and letter requests sent to MDS requesting a meeting received no response, CCHR’s team visited the MDS Company branch compound in Thma Da Commune. However, the employee met by the team declined an interview, stating he did not have authority to speak on MDS’ behalf.

¹⁴ Ibid.

2018: In May and June 2018, CCHR conducted field visits to three locations. Between 6-10 May 2018, the team travelled to Pursat Province and met with 10 members from the affected community, one NGO, and 14 public authorities. Between 3-6 June 2018, CCHR's team went to Oddar Meanchey Province and met 24 community members, one NGO and 12 public authorities. Again, the team was unable to meet with Mitr Phol. Further, on 8 June 2018, CCHR and AAC representatives participated in a meeting at the Provincial Hall, involving 14 public authorities. Finally, between 7-9 June 2018, CCHR went to Monduliri Province and met with 15 affected individuals, and four public authorities. Due to the ongoing confidential mediation process, Socfin-KCD declined to meet with CCHR; and NGOs approached by CCHR declined interviews. In September 2018, CCHR also meet with an OHCHR representative to discuss the Socfin-KCD case.

2019: In May 2019, CCHR again conducted field visits to three locations. Between 1-4 of May, CCHR travelled to Monduliri Province and met with 24 members of the affected community, five public authorities, and visited the Socfin-KCD compound for a meeting with their representative. Between 6-7 of May, CCHR visited Oddar Meanchey Province and met with seven public authorities, one NGO, and 30 community representatives from five affected villages. Between 9-11 of May, CCHR travelled to Pursat Province, and met with 15 families, two NGOs, seven public authorities and a representative of the MDS Special Economic Zone. CCHR also had follow up meetings in Monduliri and Oddar Meanchey Provinces on 28 August and 9 September 2019 with community members and partner NGOs.

2020: Between February and March 2020, CCHR conducted field visits to four locations. Between 24-26 February CCHR visited Monduliri Province. The team met with 23 members of the affected community, and alongside a representative from AAC, met with a representative of Socfin-KCD and toured their factory. CCHR also participated in a meeting at the Provincial Hall alongside eight public authorities, one Socfin-KCD representative and one NGO. Between 27-29 February, CCHR travelled to Oddar Meanchey Province and met at the Provincial Hall with five government authorities, the 20 affected communities and one NGO. Between 1-5 March CCHR travelled to Pursat Province and met with the one representative from department of agriculture, two NGOs, and the 10 affected communities. Between 16-20 March, CCHR travelled to Koh Kong Province and met with two NGOs, nine public authorities, and the 23 affected community members.

CCHR elected not to disclose the names or positions of the persons interviewed. Unless indicated otherwise, the information contained in this Briefing Note is based on CCHR's interviews.

Limitations and Challenges

CCHR faced some limitations in preparing the present report. In some instances, CCHR was unable to meet with key stakeholders. Other than Socfin-KCD, none of the companies positively responded to CCHR's requests for meetings in 2020. Similarly, some local and provincial authorities declined to meet the project team. Second, when interviewing affected communities in Pursat in 2020, CCHR's meeting was interrupted by local authorities who arrived to take photos and inspect our mission letter. The present report must therefore be viewed in light of the fact that CCHR was unable to get the perspective of three out of the four companies involved in the disputes. It does not incorporate their respective views on the issues discussed, unless they were publicly available elsewhere.

PART 1. WHAT IS CORPORATE ACCOUNTABILITY?

Businesses and corporations across the globe have an impact, directly or indirectly, on virtually the entire spectrum of internationally recognized human rights, including for example, land rights and labor rights. Corporate accountability in the human rights context can be defined as the act of holding corporations accountable for human rights violations, through judicial or non-judicial mechanisms, by governments, individuals or groups. It is important to distinguish corporate accountability from corporate social responsibility (“CSR”) which focuses on corporate voluntarism rather than legal obligations.¹⁵

International Framework

Under human rights treaty obligations, States must protect individuals against the acts of the state’s agents, but also against acts committed by individuals or entities.¹⁶ In this sense, states have a legal obligation to protect individuals from human rights abuses by businesses. However, there is no international convention or treaty specifically managing the responsibility of businesses and other non-state actors in protecting human rights.

In response to a global call for a treaty strengthen the international framework, in July 2014, the UN Human Rights Council adopted a resolution to establish an Intergovernmental Working Group with the mandate of creating a legally binding instrument regulating, in alignment with international human rights law, the activities of transnational corporations (“TNCs”) and other business enterprises.¹⁷ The Group released its second revised draft on 6 August 2020, and held its latest session in October 2020.

The *UN Guiding Principles on Business and Human Rights*¹⁸ (the “UNGPs”) are the first set of global standards addressing corporate accountability for human rights violations. It is important to note that the UNGPs are not binding, rather they are

Principle 28 of UNGPs:

States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

soft law principles. Despite this, as the legal framework stands the UNGPs, which have been unanimously adopted by the UN Human Rights Council,¹⁹ are the strongest framework through which to judge a business’s human rights obligations. The UNGPs are grounded in three key pillars of **protect, respect, and remedy**.

The UNGPs’ third pillar calls for corporate accountability, as states and the private sector must provide victims of human rights abuses by businesses with access to effective remedies.²⁰ The remedies provided to affected individuals or communities can include “*apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions, as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition*”.²¹ Ensuring access to a remedy for business-related

Protect

States are under a duty to protect human rights abuse within their territory / jurisdiction by third parties, including businesses enterprises.

Respect

Businesses are under an obligation to respect human rights, incl. avoiding infringing on human rights and addressing their human rights impacts.

Remedy

Victims of human rights abuses by businesses must have access to an **effective** remedy.

¹⁵ ‘Business-Related Human Rights Abuse Reported in the EU and Available Remedies’, (European Union Agency for Fundamental Rights, 12 December 2019), p. 2. <https://fra.europa.eu/en/publication/2019/business-related-human-rights-abuse-reported-eu-and-available-remedies>

¹⁶ ‘United Nations Guiding Principles on Business and Human Rights’ (OHCHR, 2011)

https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (“UNGPs”).

¹⁷ ‘Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights’, United Nations Human Rights Council, <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntnc.aspx>.

¹⁸ UNGPs, (n. 16).

¹⁹ Ibid.

²⁰ UNGPs 25-31, Ibid.

²¹ UNGP 25, Ibid.

human rights abuses requires states to facilitate public awareness and understanding of available mechanisms, including information on how they can be accessed, and whether there is any expert or financial support available for individuals to do so.²²

What are corporate accountability mechanisms?²³

Corporate accountability can be achieved through **judicial** and **non-judicial** grievance mechanisms. These are mechanisms, state or non-state based, through which complaints concerning business-related human rights abuse can be raised and a remedy can be sought.²⁴

1. Judicial mechanisms

Judicial mechanisms aim at addressing the corporation's civil or criminal liability through legal systems.²⁵ While these can be national or international, in practice, most often recourse is made to national judicial mechanisms. In this regard, Cambodia bucks the trend. As will be seen in our case studies, for various reasons recourse to national judicial mechanisms in Cambodia is rare. Nonetheless, in theory it is the obligation of the state to ensure there are no barriers preventing cases from being brought before the courts.²⁶

a) Who can cases be brought against?

Most corporations can have a case brought against them for their human rights violations. However, the structural and managerial complexity of corporations can raise several challenges in bringing cases. While a corporation might be directly present in one or several host countries, it is common for corporations to act through a network of separate entities and it can be challenging to hold accountable a parent company for the acts or omissions of its subsidiary or other entities in its supply chains.²⁷ Under the corporate law doctrine of 'separate corporate personality', a parent company is considered legally separate from its subsidiary and therefore cannot be held accountable for it except in very limited circumstances.²⁸ This means sometimes the way in which legal responsibility is attributed can facilitate the avoidance of corporate accountability.²⁹

b) Where can cases be brought?

In case of TNCs, actions can be filed either in the corporation's **country of origin** or in its **host country** (i.e. the country in which the corporation is conducting activities). Holding companies accountable through judicial mechanisms in host countries can often be difficult, especially if the company is a subsidiary, due to legal infrastructure and the managerial and structural complexity of companies. In these cases, international litigation may be the only suitable avenue. This kind of litigation can often be extremely costly and claimants can have trouble in securing legal representation, due to a lack of resources.

²² Commentary on the UNGPs (n. 16) p. 28.

²³ This report focuses exclusively on mechanisms that can be used against businesses, and does not cover mechanisms addressed exclusively against the state.

²⁴ UNGP 25, (n. 16).

²⁵ Note: not all jurisdictions recognize corporate criminal liability, and there exist important variations in approaches amongst those that do. For more information, see J. Zerk, 'Corporate liability for gross human rights abuses: Towards a fairer and more effective system of domestic law remedies', report prepared for the Office of the UN High Commissioner for Human Rights, p. 32

<https://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticLawRemedies.pdf>.

²⁶ Commentary on the UNGPs (n. 16), p. 28.

²⁷ On this point, see A/HRC/32/19 Human Rights Council, 'Improving accountability and access to remedy for victims of business-related human rights abuse – Report of the United Nations High Commission for Human Rights' (16 May 2016) p. 9

https://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/A_HRC_32_19_AEV.pdf.

²⁸ Zerk, (n. 25), p. 46.

²⁹ Commentary on the UNGPs (n. 16) ,p. 29.

c) Who can bring cases?

Any national person or legal entity can bring a case in national courts to hold companies accountable if they meet the requisite requirements. Civil claims can most often be filed by individuals. It is possible to file class actions, meaning cases can be brought on behalf of a group of affected individuals such as in the Mitr Phol case discussed below, but it depends on the admissibility requirements of the courts.

2. Non-judicial mechanisms

Redress can also be sought through non-judicial mechanisms, which can complement judicial actions and, in some cases, can completely replace them.³⁰ Non-judicial mechanisms can be conducted at the local, state or international level and have the advantage of using a different kind of leverage to generate change and new commitments by companies.³¹ For example they can “*build pressure and support to business to create change within transnational supply chains, produce mediated agreements or drive change in policy in financial institutions.*”³² Such mechanisms also play an important role in evidence gathering. It is the obligation of the state to provide effective and appropriate non-judicial mechanisms and to facilitate access to these mechanisms.³³ In addition, the UNGPs state “*business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.*”³⁴ The UNGPs set out in Principle 31 a series of criteria for mechanisms to meet, including that they are legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning.

Principle 27:

States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

State-based mechanisms

In Cambodia, the RGC has set up a range of non-judicial mechanisms to resolve land disputes. Primarily, these include the Cadastral Commission and the National Authority for Land Dispute Resolution (“NALDR”). Unfortunately, both of these mechanisms have been criticized as ineffective mechanisms for holding companies accountable for human rights abuses.³⁵ Citizens can also file complaints to Commune Councils and Administrative Committees. Petitions to district, provincial and national authorities, such as the MoLMUPC are another option for communities and commonly used in Cambodia.

Non-state based mechanisms

a) Mediation as a non-judicial dispute resolution tool

Mediation is a common dispute resolution process that parties turn to, and in two of the four case studies under examination in this report, mediation is being sought. The following provides a brief outline of the two major avenues for mediation available for business and human rights violations, there are of course more.

i) The Organisation for Economic Co-operation and Development’s (the “OECD”) Guidelines

The Organisation for Economic Co-Operation and Development (the “OECD”) is an international organization that works to build policies in relation to social, economic and environmental challenges, and has set Guidelines for responsible business conduct to which 34 OECD members and 12 other countries have agreed.

³⁰ This is also acknowledged by the Commentary on Principle 27 of the UNGPs (n. 16).

³¹ Kate Macdonald, Shelley Marshall, May Miller-Dawkins, ‘Redress for Transnational Business-Related Human Rights Abuses in the UK’, Non-Judicial Redress Mechanisms Report Series 2 (2016) p. 5.

³² Ibid.

³³ UNGPs, (n. 16).

³⁴ Ibid.

³⁵ CCHR, ‘Briefing Note: The Failure of Land Dispute Resolution Mechanisms’ (July 2014)

[https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_07_28_CCHR_Briefing_Note_The_Failure%20of_Land_Dispute_Resolution_Mechanisms_\(ENG\).pdf](https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_07_28_CCHR_Briefing_Note_The_Failure%20of_Land_Dispute_Resolution_Mechanisms_(ENG).pdf)

The OECD Guidelines set standards across a range of issues such as human rights, labor rights, and the environment. The Guidelines also establish a unique, government-backed grievance mechanism to address complaints between companies covered by the Guidelines and individuals who are negatively impacted by business conduct. The Guidelines are not legally binding for companies, but they are binding on signatory governments, which are required to ensure they are implemented and observed. Under the Guidelines, each adhering state is required to create a National Contact Point (“NCP”) whose role it is to promote the Guidelines and handle complaints, which are ordinarily dealt with through mediation. If the country in which the violations are taking place is not a signatory, or if the country does not have an NCP, individuals can apply to the NCP in the country where the company is headquartered.³⁶ Cambodia is not an OECD member, nor has it adhered to the Guidelines, therefore complaints about conduct by companies operating in Cambodia in violation of the Guidelines can only be made to the NCPs of other countries.

ANZ Bank Pay-out to Kampong Speu communities - the OECD Guidelines in action

In 2010, the RGC granted Phnom Penh Sugar Plantation Co. Ltd, owned Senator Ly Yong Phat, an ELC covering over 8,000 ha in Kampong Speu Province for a sugar plantation. In 2011, Australia and New Zealand Banking Group (“ANZ”) provided a controversial \$40 million loan to the company.³⁷ Across Kampong Speu Province, families were forced from their land for the plantation and were not provided adequate compensation for their eviction. Worsened by the granting of further land to the company through ELCs, approximately 1500 families were affected by the land grab.³⁸ The sugar company has also been linked to child labor, deforestation, and illegal logging.³⁹ In 2014, a complaint was filed by Equitable Cambodia (“EC”) and Inclusive Development International (“IDI”) against ANZ on behalf of the families to the Australian NCP for the OECD Guidelines.⁴⁰ In June 2018, the Australian NPC found that ANZs actions were inconsistent with its own policies and the Guidelines.⁴¹ On the 27 February 2020, an agreement took place, setting a precedent for the banking industry,⁴² where ANZ would provide the money it earned to the affected families due to ANZ violations of ethical standards.⁴³ This agreement means the affected families will receive a financial settlement for the rehabilitation of their livelihoods, but a disclosure agreement was signed keeping the amount confidential.

ii) National Human Rights Institutions (“NHRIs”)

NHRIs are state-mandated bodies run independently of the government with a broad constitutional or legal mandate to protect and promote human rights at the national level. NHRI’s are accredited by the UN and rated based on their compliance with the UN Paris Principles which outline the basic standards of NHRIs.⁴⁴ The structure and mandates of each NHRI varies depending on each country,⁴⁵ however, some have a mandate to deal with complaints from individuals or groups who are victims of violations of human rights.⁴⁶ It should be noted that many of them do not have power to issue binding decisions.⁴⁷ At present, Cambodia does not have an accredited NHRI. However, contacting the NHRI of the country in which the corporation involved in human rights abuse is based remains a potential mechanism for complaint resolution.

³⁶ International Federation for Human Rights (“FIDH”), ‘Corporate Accountability for Human Rights Abuses – A Guide for Victims and NGOs on Recourse Mechanisms’, 3rd edition, May 2016, p. 399.

³⁷ Erin Handley, ‘ANZ Compensates Cambodian families forcibly evicted to make way for sugar plantation’ (ABC News, 27 February 2020) <https://www.abc.net.au/news/2020-02-27/anz-compensates-cambodian-families-forcibly-evicted-sugar-plantation/12006382>

³⁸ ‘Phnom Penh Sugar Land Grab’ (Inclusive Development International, March 2020), <https://www.inclusivedevelopment.net/phnom-penh-sugar-land-grab/>.

³⁹ Miriam Deprez, ‘ANZ Bank Compensates Cambodian Community In Landmark Agreement’ (South East Asia Globe, 27 February 2020) <https://southeastasiaglobe.com/anz-compensation-cambodia-sugar/>.

⁴⁰ Ibid.

⁴¹ ‘Phnom Penh Sugar Land Grab’, (n. 38).

⁴² ‘ANZ Agrees to Landmark Settlement’ (Equitable Cambodia, 27 February 2020) <https://equitablecambodia.org/website/article/3-2355.html>

⁴³ ‘Final Statement’ (Australian National Contact Point for the OECD Guidelines for Multinational Enterprises, 27 June 2018) https://ausncp.gov.au/sites/default/files/inline-files/11_AusNCP_Final_Statement.pdf.

⁴⁴ NHRIs are accredited as one of the following statuses: A status – Fully compliant; B status – Partly compliant; No status – Not compliant.

⁴⁵ J. Drimmer and L. J. Laplante, ‘The Third Pillar – Remedies, Reparations, and the Ruggie Principles’, in *The Business and Human Rights Landscape – Moving Forward, Looking Back* (eds. J. Martin, K. E. Bravo), CUP (2015), p. 327.

⁴⁶ FIDH, (n. 36), p. 424.

⁴⁷ Ibid.

b) Other complaints mechanisms

Multilateral Development Banks

The World Bank Group has an independent complaints mechanism for people and communities who believe that they have been or are likely to be adversely affected by a World Bank funded project in the public sector. The World Bank Inspection Panel (“WBIP”) will investigate compliance with World Bank policies and procedures during the design, appraisal and/or implementation of the project. Human rights issues should therefore have been caused by lack of adherence to the World Bank’s policies and procedures. The WBIP does not prescribe remedies but will issue recommendations.⁴⁸

For private sector activities of the World Bank Group, individuals can complain to the World Bank Compliance Advisor Ombudsman (“CAO”). The CAO is the independent accountability mechanism for the International Finance Corporation (“IFC”) and the Multilateral Investment Guarantee Agency. The European Investment Bank⁴⁹ and the Asian Development bank also both have individual complaints mechanisms.⁵⁰

The World Bank Inspection Panel in action

In 2006, many Boeung Kak Lake (“BKL”) area residents were excluded from a land titling system put into place by the Cambodia Land Management and Administration (“LMAP”). This resulted in them having no protection against land-grabbing and being denied adequate compensation for expropriated land. The LMAP project was partially financed by an IDA credit of around USD 23.4 million.⁵¹ In February 2007, Phnom Penh signed a 99 year lease with Shukaku Inc. over the BKL area.⁵² The residents of the area were denied title, but also the protection of the LMAP resettlement policy. The BKL community seized the WBIP, claiming that they had suffered harm due to non-compliance with World Bank policies during the design and implementation of the LMAP. The WBIP found in favor of the BKL community. The Bank management responded with several commitments to take remedial actions but the RGC did not express any wish to cooperate. Therefore, the Bank decided to suspend new lending to Cambodia until a satisfactory solution to the dispute was found.⁵³ Shortly after the loan freeze, the RGC granted titles to 800 families.⁵⁴

Private Banks

The Equator Principles are voluntary minimum standards aimed at managing environmental and social risk and promoting responsible risk decision-making in financial institutions.⁵⁵ Currently, 101 financial institutions in 38 countries have adopted those principles,⁵⁶ which are limited to major projects (i.e. mining, dams and telecoms).⁵⁷ These principles have been criticized due to the vagueness of their formulation and that they do not include an independent review or recourse mechanism,⁵⁸ however, they may nevertheless be used as part of an advocacy strategy when addressing a bank who has adopted them.

⁴⁸ For information on how to file a claim, see <https://www.inspectionpanel.org/how-to-file-complaint>.

⁴⁹ To see projects financed by the EIB in Cambodia, see

<https://www.eib.org/en/projects/loans/index.htm?q=&sortColumn=loanParts.loanPartStatus.statusDate&sortDir=desc&pageNumber=0&itemPerPage=50&pageable=true&language=EN&defaultLanguage=EN&loanPartYearFrom=1959&loanPartYearTo=2019&orCountries.region=true&countries=KH&orCountries=true&orSectors=true>.

⁵⁰ For more information, see FIDH, (n. 36).

⁵¹ Development Credit Agreement (DCA) (Land Management and Administration Project) between Kingdom of Cambodia and International Development Association, dated March 27, 2002.

⁵² ‘Investigation Report – Cambodia: Land Management and Administration Project (Credit No. 3650 – KH), Report No. 58016-KH, *World Bank Inspection Panel*, 23 November 2010, p. xv

<http://documents1.worldbank.org/curated/en/183101468229739528/pdf/580160INVR0INS1se0only1910BOX353791.pdf>.

⁵³ Mark Tran, ‘World Bank Suspends Cambodia Lending’ (*The Guardian*, 11 August 2011) <https://www.theguardian.com/global-development/2011/aug/10/world-bank-suspends-cambodia-lending>.

⁵⁴ FIDH, (n. 36), p. 448.

⁵⁵ See: <https://equator-principles.com/about/>.

⁵⁶ See the list here: <https://equator-principles.com/members-reporting/>.

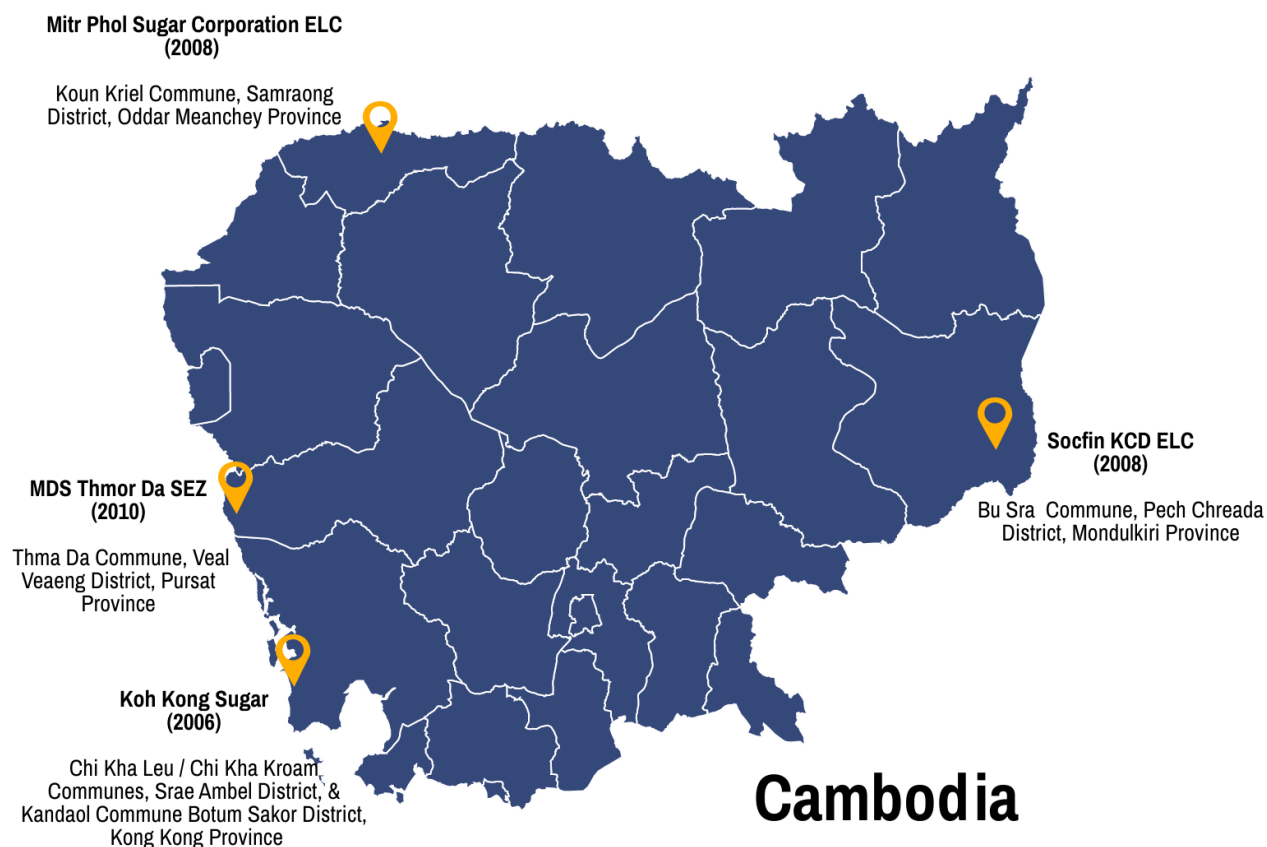
⁵⁷ FIDH, (n. 36), p. 517.

⁵⁸ *Ibid*, p. 520-521.

PART 2. CORPORATE ACCOUNTABILITY CASE STUDIES

In this section, this report examines four case studies of land disputes between companies and communities across Cambodia. Three of these four land disputes are still ongoing without a resolution. Each of these case studies provides overview of each dispute, the various methods the communities took in seeking corporate accountability for their land rights violations, and the core barriers faced in achieving a resolution.

Map of the Cases



The Mitr-Phol Case

Overview of the Dispute

| | |
|--|--|
| Location: | Koun Kriel Commune, Samraong District, Oddar Meanchey Province |
| Corporations involved: | Mitr Phol Sugar Co. Ltd. |
| Length of dispute: | 2008 – Present |
| Number of individuals affected by the dispute: | 712 households ⁵⁹ |
| Number of families awaiting a resolution: | 373 households |
| Dispute resolution strategies employed: | <ul style="list-style-type: none"> • Petitions to the authorities • Complaint filed before the National Human Rights Commission of Thailand • Class action suit filed in the Thai Civil Court • Complaint filed to the UK OECD NCP |

⁵⁹ 1 household = 1 name per parcel of land used/lost.

| | |
|--------------------------------|----|
| Has a resolution been reached? | No |
|--------------------------------|----|

This case study focuses on a land dispute between villagers in Koun Kriel Commune and Thai sugar giant Mitr Phol Sugar Co. Ltd (“Mitr Phol”). The dispute has been ongoing since January 2008, when an ELC was granted by the Ministry of Agriculture, Forestry and Fisheries to Angkor Sugar Co. Ltd (wholly owned by Mitr Phol) for the establishment of sugarcane plantations and the construction of processing factories for a period of 70 years.⁶⁰ About 712 households from 5 different villages were affected by the ELC, which spans 6,523 hectares.⁶¹ Demarcation of the land began in May 2007, before the ELC was formally granted. Land clearing activities started in April 2008 and as a result, between 2008 and 2009, villagers were forced to give up their land. On 9 August 2015, the ELC agreement was cancelled and the land was returned to the Cambodian government. For more information on the background of this dispute, see our Briefing Note.⁶²

In 2018, authorities announced they would offer 414 Social Land Concessions (“SLCs”) to families that had lost land and who had registered with the MoLMUPC. In June, a lucky draw took place and 414 families received parcels of land through this process. Interestingly, even at the time of writing this report many individuals were still unsure of whether the land they had been given was ‘exchange land’ or an SLC. Interviews conducted in February 2020 showed that even the authorities were not clear on this. One official informed us that the initial intention was to grant exchange land, however the land is now referred to as an SLC. The distinction is an important one, as SLCs grant the recipients different land rights.

Regardless of what the land is classified as, it is important to note that much of it still cannot be used by those who have received it. The parcels of land allocated are located on forest land, in an area that has not yet been cleared of unexploded ordnances (“UXOs”). Members of the community state that they cannot clear either the forest land or the UXOs, as it is too expensive. Families reported that the cost of clearing the land would be approximately US \$2000. The community report having raised the issue of UXOs to the authorities, however when asked about the presence of UXOs on the land in 2020, the authorities denied having knowledge of this. This is problematic as if individuals fail to meet the conditions of an SLC, the land reverts back to the state.

| Village | No. of land recipients | No. of recipients using the land |
|---------------|------------------------|----------------------------------|
| O’Batmoan | 126 | 126 |
| Ktom | 92 | 79 |
| Ta Man | 39 | 20 |
| Bous | 28 | 28 |
| Trapeang Veng | 54 | 47 |

In addition to the land itself being difficult to use, individuals complained of a lack of infrastructure in the area. When asked about this, one official stated that someone was inciting the community to make these demands, and that their land lacked infrastructure previously, but another reported that there were plans to develop the area. One project reported to us was the reforestation of portions of the former ELC. When asked why they registered for the SLC, many individuals said they felt they were forced into accepting this resolution. They

report that 2 hectares is not enough land but that it is their only option as they have used all their resources advocating. One individual stated *“I don’t want 2 hectares; I want my land back.”*

⁶⁰ ‘Case Brief: Class action lawsuit by Cambodian villagers against Mitr Phol Sugar Corporation’ (*Inclusive Development International*, 2 April 2018) p. 1-2, <https://www.inclusivedevelopment.net/wp-content/uploads/2018/03/Mitr-Phol-Class-Action-Case-Brief.pdf>.

⁶¹ ‘Cambodia: the bitter taste of sugar displacement and dispossession in Oddar Meanchey Province’ (*AAC & Oxfam*, May 2015) p. 15, table 3.1, www.actionaid.org/sites/files/actionaid/finalized_the_bitter_taste_of_sugar_displacement_and_dispossession_in_oddar_meachey_2015_1.pdf.

⁶² CCHR, (n. 13).

373 families are still awaiting a resolution. They could not register with the MoLMUPC back in late 2017 because some had migrated, and others were rejected for being below the legal age to own land (18) at the time the land dispute started (2008), even though at the time of registration, they were above 18.

What is a Social Land Concession?

SLCs are a “legal mechanism to transfer private state land for social purposes to the poor who lack land for residential and/or family farming purposes”.⁶³ The ‘social purposes’ for granting SLCs are broad and include:⁶⁴ providing land for residential purposes or family farming to poor families; for resettling families displaced for public infrastructure development or by natural disasters; and to facilitate economic development and ELCs, and more. There are several conditions that attach to SLCs depending on its type.⁶⁵ This may include building part of a permanent shelter or cultivating the land within 12 months. The 2001 Land Law sets out the rights an SLC recipient is entitled to.⁶⁶ These are similar to the rights attributed to a land owner, except for the right to transfer the property.⁶⁷ **After five years of occupation or use complying with the conditions of the SLC, the SLC recipient has the right to ownership of the land and title.**⁶⁸ However, if the recipient fails to meet the occupancy and use conditions, the land reverts back to the state for reallocation.⁶⁹ In practice, the acquisition of title appears mixed.⁷⁰

Seeking Corporate Accountability

a) Complaints to Local and National Authorities

In May 2019 and again in January 2020, the 373 families who remain without a resolution submitted a petition to the MoLMUPC. They reported to us in August 2020 that they have still not received a response. When asked in March 2020 interviews if they felt hopeful about a resolution via this petition, the community responded that they were not hopeful, unless somehow it reached the Prime Minister.

b) Thai Proceedings

The National Human Rights Commission of Thailand

In late 2013, the affected community filed a complaint before the National Human Rights Commission of Thailand, who concluded in a decision in 2015 that systematic human rights abuses had occurred. Amongst other issues, the complaint covered forced eviction and the torching of houses; the arrest, prosecution and detention of those protesting the loss of their land; loss of agricultural land; and a lack of food security. As part of their review, a fact-finding mission was conducted by the Commission in Oddar Meanchey in 2014 to gather additional information. A hearing was also conducted in which Mitr Phol participated. Ultimately, the Commission found Mitr Phol to be responsible for the violations and issued the policy recommendations to Mitr Phol and to the Thai Government.⁷¹ This included that Mitr Phol should provide remedies and compensation, and that local villagers should be consulted until compensated fairly. The Commission also recommended Mitr Phol consider giving a warranty ensuring villagers receive their land back in the same size and area they used to live and early livelihood. They recommended that relevant Thai authorities should

⁶³Sub-Decree #19 on Social Land Concessions 030319’ (*Cambodia Investment*, 19 September 2011), Article 2(a)

http://www.cambodiainvestment.gov.kh/sub-decree-19-on-social-land-concessions_030319.html

⁶⁴ Ibid, Article 3.

⁶⁵ Ibid, Article 18.

⁶⁶ Land Law of 2001, NS/RKM/0801/14, Article 56.

⁶⁷ Ibid, Article 56.

⁶⁸ Sub-Decree 19, Article 18.

⁶⁹ Ibid.

⁷⁰ For example, LICADHO conducted field research to eight SLCs between 2014 and 2015, and no families had received title despite meeting requisite requirements: LICADHO, ‘On Stony Ground: A Look into Social Land Concessions’ (Briefing Paper, June 2015), <http://www.licadho-cambodia.org/reports/files/208LICADHOREport-LASEDSocialLandConcessions2015-English.pdf>, p. 3. However, in March 2018, the MoLMUPC issued 776 titles to families living on social land concessions in Kampong Thom Province: Pech Sotheary, ‘Land titles granted to nearly 800 families’ (*Khmer Times*, 30 March 2018) <https://www.khmertimeskh.com/269438/land-titles-granted-to-nearly-800-families/>.

⁷¹ ‘Investigation Report No: 1003/2015’ (*Thai National Human Rights Commission*, 12 October 2015) p. 13 (unofficial English translation) https://www.inclusivedevelopment.net/wp-content/uploads/2016/09/Thai-Human-Rights-Commission-Report_Mitr-Phol_Unofficial-translation-.docx

establish a mechanism or stipulate obligations ensuring Thai overseas investment respects basic principles of human rights and the UNGPs. While the policy recommendations are not binding, the value of the decision is in the fact that it recognised the violation – often an important factor for affected individuals – and applied the relevant international law principles and the UNGPs. The Thai government later issued recommendations in 2016 and 2017 asking business operating abroad to respect the rights of individuals in those countries,⁷² and in 2019 became the first Asian country to adopt a National Action Plan on business and human rights.⁷³

Strategic Litigation before the Civil Courts

In March 2018, a civil lawsuit was filed in Thailand against Mitr Phol on behalf of more than 700 families (representing 3,000 persons).⁷⁴ The complaint alleged several human rights violations, including forced evictions and displacement, the burning of houses, the looting of crops and livestock, and the taking of legally owned farmland. The complaint also alleged that those who resisted were threatened, arrested and imprisoned.⁷⁵ In 2018, Mitr Phol refused to engage in a mediation by the Court and in June 2019 a hearing took place at the South Bangkok Civil Court to determine whether the case could be admitted as a class action. Plaintiffs could attend the hearing and were cross-examined by the Defence and the Judge. On the last day, Mitr Phol's representative was also heard. In July 2019 the Court ruled that the case was not admissible as a class action.⁷⁶ The plaintiffs appealed the decision, and on 31 July 2020, the Thai Appeal Court in a landmark decision granted the appeal to allow the families to bring the case as a class action against Mitr Phol, paving the way for the case to become Asia's first transboundary class action on human rights abuses.⁷⁷

c) OECD Complaint

In March 2019, Inclusive Development International, LICADHO and Equitable Cambodia filed a complaint against Bonsucro (a multi-stakeholder sustainability initiative for sugarcane to which Mitr Phol belongs) before the United Kingdom OECD NCP.⁷⁸ The complaint argues that Bonsucro breached its responsibilities under the OECD Guidelines and the UNGPs by failing to hold Mitr Phol accountable for violations of human rights.⁷⁹ The complaint was ruled admissible on 25 September 2019.⁸⁰ All proceedings are confidential.

Barriers to a Resolution

While there are numerous dispute resolution processes underway in relation to this case, none have thus far been fully successful. When asked in field research what the biggest obstacle was, the community overwhelmingly stated the lack of political will. The communities noted that certain powerful individuals benefitted from the dispute and a resolution is therefore not in their interest. On 13 October 2020, the Thai Ministry of Justice awarded Mitr Phol with a human rights award,⁸¹ despite the ongoing civil trial, complaints and the prior decision of the Thailand Human Rights Commission, showing extremely little will on behalf of the Thai government to hold the company accountable for their human rights abuses. The authorities in Cambodia on the other hand insist the biggest obstacle is that someone is behind the community inciting

⁷² R. Chandran, 'Cambodian farmers battle in landmark lawsuit against Thai sugar firm' (*Reuters*, 12 June 2019) <https://www.reuters.com/article/us-cambodia-landrights-court/cambodian-farmers-battle-in-landmark-lawsuit-against-thai-sugar-firm-idUSKCN1TD00P>.

⁷³ 'Thailand government adopts national action plan on business and human rights' (*Business and Human Rights Resource Centre*, 31 October 2019) <https://www.business-humanrights.org/en/thailand-govt-adopts-first-nap-on-business-human-rights>.

⁷⁴ *Ibid.*

⁷⁵ 'Forcibly Displaced Cambodians File Historic Lawsuit against Asia's Largest Sugar Producer' (*Inclusive Development International*, 2 April 2018) <https://www.inclusivedevelopment.net/forcibly-displaced-cambodians-file-historic-lawsuit-against-asias-largest-sugar-producer/>.

⁷⁶ Leonie Kijewski, 'Thai Court Rejects Class Action Sugar Giant Mitr Phol', *Al Jazeera*, 4 July 2019, <https://www.aljazeera.com/ajimpact/thai-court-rejects-class-action-sugar-giant-mitr-phol-190704104757955.html>.

⁷⁷ 'Thai Appeal Court decision on Mitr Phol paves the way' (*Inclusive Development International*, 31 July 2020)

<https://www.inclusivedevelopment.net/court-decision-paves-the-way-for-se-asias-first-transboundary-class-action-into-human-rights-abuses/>.

⁷⁸ 'Human rights complaint filed to UK government against ethical sugar association Bonsucro' (*Inclusive Development International*, 11 March 2019) <https://www.inclusivedevelopment.net/human-rights-complaint-filed-to-uk-government-against-ethical-sugar-association-bonsucro/>.

⁷⁹ *Ibid.*

⁸⁰ 'DI, EC and LICADHO v Bunsucro', *OECD Watch*, 11 March 2019, https://complaints.oecdwatch.org/cases/Case_534.

⁸¹ Joint statement, 'Thailand: Government gives human rights award to abusive company', (13 October 2020), https://chrcambodia.org/media/files/press_release/780_fismpha2cwl_en.pdf.

them to continue their claims, and that the claims have been adequately dealt with through the granting of SLCs. Further, physical and judicial harassment against those continuing claims is persistent. On 10 June 2019, one affected villager was accused of ‘clearing forestland’ and subsequently arrested and remanded in pre-trial detention. This happened one day after one of her family members had left to give evidence in the Thai court. She was later convicted and sentenced to five years imprisonment, with the sentence suspended, and released in June 2020. Such action appears to constitute judicial harassment against the villagers involved in the land dispute with Mitr Phol, since other individuals who were also ploughing the same land were never prosecuted.

The Socfin-KCD Case

Overview of the Dispute

| | |
|--|---|
| Location: | Bu Sra Commune, Monduliri Province |
| Corporations involved: | Socfin-KCD and Bolloré Group |
| Length of dispute: | 2008 – Present |
| Number of individuals affected by the dispute: | 800 families |
| Number of families awaiting a resolution: | Over 600 families |
| Dispute resolution strategies employed: | <ul style="list-style-type: none"> • Petitions to the authorities • Mediation • Civil law suit filed in France |
| Has a resolution been reached? | No |

The second case study examines the land dispute between rubber company Socfin-KCD and local villagers, which has affected more than 800 families, many from the Pu Nong indigenous community who have traditionally lived off the forest in this area. Impacting six villages⁸² in Bu Sra Commune, Monduliri Province, the dispute began in 2008 and continues today.

Socfin-KCD was established in December 2007 as a joint venture between KCD and Luxembourg-registered Socfinasia (‘SA’), and now controls two ELCs, the Sethikula and Varanasi plantations.⁸³ Whilst Socfin Group is reportedly committed to sustainable management of its plantations in Monduliri Province,⁸⁴ it has been subject to harsh criticism for alleged human rights violations which began when KCD started clearing the land in 2008. In this period, CCHR received reports that villagers witnessed the destruction of their property without prior notice and were forcibly evicted. When protesting these measures, many report facing threats from both the authorities and the company.

The effect of the loss of land on the community has been multifaceted. Significantly, villagers complain of the cultural and economic impact of the loss of the forest which historically played a vital role in their existence. One interviewee from Lames village reported that at one time the community was self-sufficient and relied solely on the forest for sustenance, to earn an income, to graze animals and for medicine – *“land is life, without land there is no life”*. Due to the loss of land, they are now unable to practice traditional farming and have had to find alternate forms of income, no longer able to grow enough to sustain themselves and earn an income selling crops. In interviews conducted in February 2020, villagers reported that general deforestation in the area has resulted in unpredictable seasons that strongly affect their crop yield, further exacerbating this problem. The community also report being unable to use the local river as it is highly

⁸² Pu Tuet, Pu Reang, Bu Sra, Lam Meh, Pu Cha and Pu Lu villages.

⁸³ For more information on the history of the acquisition of these ELCs, see n. 12. See also: FIDH, ‘Cambodia Land Cleared for Rubber, Rights Bulldozed’ (October 2011) https://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf.

⁸⁴ Socfin-KCD, ‘Sustainability Report 2018’ (2018) https://www.socfin.com/sites/default/files/2019-09/2019%2009%2005%20SocfinCambodia-2018SustainabilityReport-Final_1.pdf.

polluted by the activities of rubber companies, and they can no longer fish, drink or bathe in the water. However, in recent interviews, the community noted the situation has been greatly improved by Socfin-KCD who have tried to manage their environmental impact. The company has built two lagoons adjacent to their factory through which their water waste is processed through a natural filtering system. This water has not been released back into the river. Socfin-KCD conducts water-testing every six months inside these lagoons and in the river upstream and downstream of the ponds, and receives regular audits from the local authorities and ministries to verify compliance against national environmental laws. The community continue to complain about the strong smell expelled from the factory which reportedly frequently induces headaches, causes difficulty in breathing and has worsened the health of pregnant women. The community reportedly filed a complaint to Socfin-KCDs administrative office, who stated they would report the issue.

Seeking Corporate Accountability

10 years later, hundreds of families remain without a resolution. Two concurrent resolution processes are underway: an independent mediation process, and a civil suit filed in France.

a) Mediation

In November 2016, the Independent Mediation Organization (“IMG”) began a mediation process that is the first of its kind in Cambodia, in which nearly one hundred individuals are participating through elected representatives. The content of the mediation is strictly confidential, and to date proceedings have not been concluded, however it is estimated to be completed this year. Due to the condition of confidentiality, the community groups who are taking part in the mediation could not be consulted. In 2019, the community reported a lack of transparency with regard to the process and complained of its excessive length. Socfin-KCD report that the delay is due to the situation’s complexity, as the mediation must deal with competing claims, demarcation of land, recognition of ownership etc. When the provincial authorities were interviewed, they did not appear to know much about the process, stating they believed the dispute was already resolved.

b) Civil lawsuit

In addition to the mediation, in July 2015, 51 plaintiffs filed a civil liability lawsuit in France against Socfin-KCD shareholders, the Bolloré Group and Compagnie du Cambodge. The applicants are requesting the return of their land, as well as €65,000 in compensation for material and moral damages.⁸⁵ The number of plaintiffs has fluctuated over the course of the complaint, which initially increased to 116, however many withdrew to join the mediation. One villager explained they left as they thought the case would be lengthy and would not provide a remedy, and another reported the mediation is less confrontational. At the time of writing, there are 97 plaintiffs. The first procedural hearing was conducted on 1 October 2019, and nine villagers travelled to France to attend.⁸⁶ At this hearing, the Court requested documentation from the community to verify the identity of claimants. Five applicants who travelled to France were interviewed by CCHR, and when asked if they felt hopeful of securing a just remedy through the French courts, they noted every effort in Cambodia had been futile. Interviewees expressed confidence in the French courts and consistently referred to its independence. Explaining they lacked faith in the domestic judicial system, they described the process of the hearing, and highlighted the stark differences to court proceedings in Cambodia. The community were surprised media could attend, that the prosecutor and defense were given equal time for submissions and that they felt welcome. These elements gave them confidence in a better outcome.

Barriers to a Resolution

⁸⁵ CCHR, (n. 13). See also: Ruling of the Nanterre’s Tribunal, 10 February 2017 p. 5, http://business.sithi.org/show_report_detail_land.php?id=75&lang=en.

⁸⁶ Long Kimmarita, ‘Bunong group attends French court hearing over land dispute’ (*Phnom Penh Post*, 1 October 2019) <https://www.phnompenhpost.com/national/bunong-group-attends-french-court-hearing-over-land-dispute>.

When asked about the biggest challenge to a resolution, the community's overwhelming response was a lack of commitment by authorities and Socfin-KCD. The company however dispute this claim, explaining that there were many attempts to reach a solution with the community before this point, and they had reached agreements with families. In addition, the company has put in place various measures to manage relationships with the community, including a tripartite committee for open dialogue between the company, authorities and community, an external grievance mechanism, protected sacred areas, and the Bunong Administration.⁸⁷ Nonetheless, one community interviewee very plainly stated *"there is no co-operation or honesty from the company or the authorities"*. When asked, Socfin-KCD stated that growing land speculation in the area increased demand for land, therefore increasing land prices, in turn adding complications to the resolution. The enforcement of agreements was another barrier identified, as Socfin-KCD claims various agreements were reached between 2009-2012 but were not respected by the community. The provincial authorities reported that there was no dispute, as it had already been resolved and all further claims are the result of incitement of the community by NGOs or *"individuals acting behind the community"*. This was identified by authorities as the biggest obstacle to a resolution. In Cambodian land disputes, blame is frequently attributed to CSOs who work with communities to provide capacity building and legal support. Recently, the Ministry of Interior admitted one of challenge to resolving land disputes in Mondulkiri⁸⁸ was that many involved senior government officials, who are *"competing with each other to grab land"*.

The MDS Case

Overview of the Dispute

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| Location: | Thma Da Commune, Veal Veang District, Pursat Province |
| Corporations involved: | MDS Thmorda SEZ Co. Ltd ("MDS") |
| Length of dispute: | 2010 – Present |
| Number of individuals affected by the dispute: | 97 households from 3 different villages |
| Number of families awaiting a resolution: | 15 families |
| Dispute resolution strategies employed: | <ul style="list-style-type: none"> Petitions to the authorities |
| Has a resolution been reached? | No |

This case concerns a land dispute in Thma Da Commune,⁸⁹ Veal Veang District, Pursat Province, close to the border with Thailand. At least 97 families from three different villages have been affected by the land dispute.⁹⁰ To date, 15 families are still seeking a resolution. On 19 November 2010, the RGC authorized the establishment of the MDS Thmor Da SEZ in Thma Da Commune,⁹¹ which was granted to MDS Thmorda SEZ Co. Ltd ("MDS"), a Cambodian company. The SEZ was set up to include an import-export market, a warehouse for agricultural products, a casino,⁹² a golf club, a sport club, a parking lot and more over a surface of 2,265 hectares.⁹³ For more information on the background of this dispute, see our Case Profile.⁹⁴

⁸⁷ For more information on steps Socfin KCD has taken, please see: CCHR, 'Factsheet: Business responsibility to respect human rights' (July 2019) <https://cchrcambodia.org/admin/media/factsheet/factsheet/english/2019-7-16-factsheet-business-responsibility-to-respect-HR-eng.pdf>.

⁸⁸ Samean Yun and Joshua Lipes, 'Inability to Resolve Cambodia's Land Disputes Tied to Official Complicity: Minister of Interior', (RFA, 7 July 2020) <https://www.rfa.org/english/news/cambodia/land-07072020145521.html>.

⁸⁹ Also spelt Thmorda, Thma Da, or Thmar Da. 3 villages form the commune: Aekakpheap, Kandal and Sangkum Thmei.

⁹⁰ Sangkum Thmei, Kandal and Aekakpheap. Sangkum Thmei, Kandal and Aekakpheap villages. See 'Brief Report on the Impact of Project development of MDS Company in Thma Da Commune, Veal Veng District, Pur Sat Province', Joint Report, *NGO Forum on Cambodia, CHRAC, CLEC, ADHOC, CCHR, LICADHO Pursat*, 19 April 2017, p. 2-4 (only available in hard copy from NGO Forum on Cambodia and CCHR).

⁹¹ The Council of Ministers, Notification 1334, in which the Council of Minister grants the SEZ, is dated 19 November 2010,

http://business.sithi.org/ressource_detail.php?ressource_id=29&lang=en; However, official documents refer to 30 September 2010, see "Laws and Regulations related to the Establishment and Management of Special Economic Zone," Ministry of Economy and Finance, 2013, p. 2, entry 23, <http://www.customs.gov.kh/wp-content/uploads/2017/04/All-Regulations-related-to-SEZ-Eng.pdf>

⁹² Try Pheap's Group website, <http://trypheapgroup.com/en/?page=7>.

⁹³ Council of Ministers, 'Notification 1334', 19 November 2010, http://business.sithi.org/ressource_detail.php?ressource_id=29&lang=en.

⁹⁴ CCHR, 'Land dispute between MDS Thmor Da SEZ and Villagers – Case Profile & Update' (October 2019) https://cchrcambodia.org/index_old.php?url=media/media.php&p=factsheet_detail.php&fsid=86&id=5

In October 2010, before the SEZ was granted, MDS began clearing land to make space, destroying houses, properties and farmland. The clearing continued sporadically until 2014, despite various efforts on the part of the communities to obtain a resolution. In May 2018, public authorities told CCHR that 60-70% of the SEZ was completed, that they had received the provincial authorities' masterplan for the SEZ, and that an administrative gate would be set up at the Thailand-Cambodia border to facilitate trade of agricultural products. They added that once the road from Pursat Provincial Town to Thma Da Commune, currently being built, was completed, the SEZ development process would drastically increase. The authorities assured CCHR that they would speed up the dispute resolution process to ensure that it would go unhindered.

Community members told CCHR that MDS machinery used to bulldoze the disputed land was brought back on 15 August 2018, accompanied by soldiers and local authorities, and that construction work has been ongoing on the SEZ since then. In February 2020, interviewees reported that many buildings had been constructed as planned. These includes a casino which opened in January 2020, a modern supermarket and a petrol station. MDS Thmor Da SEZ Co. Ltd's director is Cambodian tycoon Try Pheap,⁹⁵ whose company, the Try Pheap Group Co. Ltd. is managing the SEZ.⁹⁶ The group is a large Cambodian company operating on a wide range of business activities including agro-industry, tourism, hotels, handicrafts, dry ports, SEZs and petrol distribution.⁹⁷ Two agro-industrial ELCs in the area, totaling 6,352 hectares, have been granted to the MDS Import Export Company,⁹⁸ also owned by Try Pheap,⁹⁹ who owns at least 22 companies in Cambodia.¹⁰⁰

In 2017, some community members alleged having been forced to have accept SLCs. Indeed, in May 2019, the authorities reported to CCHR that they had set aside parcels of land of 0.5 hectares next to the SEZ. Other authorities told CCHR that the land was not a SLC, but 'exchange land', and that while the average size was 0.5 hectares, the size would depend of the needs of the families. If that is correct, this means the families who received it would also receive a formal title. One NGO reported attending a meeting on 4 December 2019 at which the Deputy Provincial Governor announced it was not an SLC, but exchange land, and that mine clearance was in progress. The communities have not been informed that it is not an SLC. Those who accepted this land (18 families) as an SLC have still not began to occupy it and when CCHR visited the site in 2020, they found only one hut had been built. The community reported they were hesitant to use the land as they were afraid of land mines, and no action to demine had taken place. After being informed the land was an SLC, 15 families refused to accept it, and requested more land as they had lost 3 to 38 hectares per family. It was reported in CCHR's interviews that six of these families were landless or homeless, many were in debt and their children were not in school as they were required to assist their parents earn an income.

Seeking Corporate Accountability

In July 2019, the 15 families who remain without a resolution gathered at the National Assembly in Phnom Penh to submit a petition for a resolution and requesting the President of the National Assembly to take

⁹⁵ Cambodian Business Register, MDS Thmorda SEZ Co LTD, Directors, http://business.sithi.org/show_report_detail_land.php?id=72&lang=en, 18 September 2018 <https://www.businessregistration.moc.gov.kh/on>, "online services", "search entity", Entity Name: MDS; Register: any.

⁹⁶ Try Pheap Group, 'Special Economic Zones', Try Pheap Group Co., Ltd, 2018, <http://trypheapgroup.com/en/?page=10>.

⁹⁷ Try Pheap Group, 'Our Businesses', <http://trypheapgroup.com/en/?page=1#>.

⁹⁸ Municipality and Province Investment Information, 'Pursat Province' (CDC, March 2014) p. 113, www.cambodiainvestment.gov.kh/wp-content/uploads/2014/03/Pursat-Province_eng.pdf.

⁹⁹ See Cambodian Business Register, MDS Import Export Co LTS, General Details, http://business.sithi.org/show_report_detail_land.php?id=73&lang=en and Directors, http://business.sithi.org/show_report_detail_land.php?id=74&lang=en, obtained on 18 Sep 2018 at <https://www.businessregistration.moc.gov.kh/>.

¹⁰⁰ Open Corporate, Try Pheap is listed as director or chairman of board of director in 22 companies, <https://opencorporates.com/officers?q=Try+PHEAP>. For more background information see 'The Cost of Luxury' (*Global Witness*, 6 February 2015) <https://www.globalwitness.org/en/campaigns/forests/cost-of-luxury/>; 'Logging Mogul Blasted' (*the Phnom Penh Post*, 29 October 2013) www.phnompenhpost.com/national/logging-mogul-blasted; 'Report Calls out Try Pheap by Phnom Penh Post', (*Cambodian Human Rights Task Force*, 23 December 2013) <http://chrtf.blogspot.com/2013/12/report-calls-out-try-pheap-by-phnom.html>; 'Who profits from death of democracy', *Global Witness*, 20 July 2018, www.globalwitness.org/en/campaigns/cambodia/who-profits-death-cambodias-democracy/. MDS Company's officials and Try Pheap have systematically denied any violations or misconduct, see e.g. 'Logging Mogul Blasted' above.

action on their case. Their petition was accepted and four representatives were allowed to meet an officer, who signed an official receipt for their petition. On 12 July 2019, the families submitted a similar petition to the MoLMUPC and the Ministry of Interior (“MOI”), but only the MoLMUPC accepted it. The MOI refused the petition, stating that it was within the jurisdiction of the MoLMUPC.

On 31 July 2019, the Council of Ministers issued an official letter delegating the dispute resolution to the Deputy Prime Minister, the Minister of MoLMUPC and the head of the NALDR. The letter followed a report by a member of the Supreme Council for Consultation and Recommendations delegation working on the land dispute and a notification by the Prime Minister. On 10 August 2019, acting upon the letter, the head of the NALDR assigned H.E Khun Haing, Senior Minister and NALDR deputy, to the case. He met the 15 families and informed them that he would examine the case and find out about their needs, and report his findings to his superiors to reach a final resolution and end the dispute.

In August 2019, an inter-ministerial working group met with the affected families, and proposed three possible solutions for the families to choose from: 1) the return of the disputed land, 2) the provision of an alternative land in exchange (measuring 0.5 hectares), and 3) financial compensation. All 15 families chose to get their land back. The working group informed the families that it would report to the national level for consideration. On 10 June 2020, the remaining families were called by NALDR, who informed them that they rejected their request for their land back, and instead the claimants must accept the exchange land. The 15 families find this difficult to accept, as they lost so much land, and will be holding further discussions with NALDR in late 2020. In addition, on 2 July 2020, the claimants again met with NALDR requesting the correction of the official minutes of the June meeting, in which an official of NALDR stated the 15 families had never occupied over the dispute land. The families rejected this point, as they had in fact occupied the land since 1997. While NALDR accepted their request, so far it is unknown whether this point was corrected or not.

When asked why they initiated such a petition, the communities said they did not believe the provincial authorities had much real commitment to resolve the dispute and therefore they had no choice but to seek intervention at the national level. Others felt that such a petition was hopeless as they had submitted such petitions many times before and nothing had come of it. Others interviewed stated they were hopeful they could reach a remedy via this route as over time the number of families receiving a solution was increasing.

What is a Special Economic Zone?

An SEZ is a geographic area within a country which is subject to laws and regulations which differ from those in other areas in the country. SEZ’s are intended to create economic and competitive development, facilitate free trade and create infrastructure by providing incentives attracting foreign investment through tax benefits, reduced tariffs, and different legal or logistical arrangements. As of 2019 Cambodia has a total of 54 SEZs, and in 2019, the exports from Cambodia’s SEZ’s were reportedly US\$2,688 million, up 27% compared to 2018.¹⁰¹ While SEZs have economic benefits, they are infamous for negative impacts on human and land rights of local communities residing near or working within the SEZ. For more information on SEZs and their human rights impacts in Cambodia, please see CCHR’s Factsheet.¹⁰²

Barriers to a Resolution

The communities identified a lack of real commitment from the authorities and the company as a significant hurdle in achieving a resolution. In addition to a lack of commitment to end the dispute, the authorities have also directly targeted individuals for their activism. The communities spoke about being accused of being affiliated with the main political opposition party, a common form of judicial harassment of human rights

¹⁰¹ ‘Cambodia has 54 special economic zones, more to come’, (*Khmer Times*, 1 February 2020) <https://www.khmertimeskh.com/686294/cambodia-has-54-special-economic-zones-more-to-come/>.

¹⁰² CCHR, ‘Factsheet: Special Economic Zones and Human Rights’, (September 2018) https://cchrcambodia.org/admin/media/factsheet/factsheet/english/Factsheet_SEZ%20ENG_01_10_18.pdf.

defenders in Cambodia. Indeed, one NGO reported increased surveillance of their work in the area and interference from the authorities. The authorities also interrupted CCHR’s interview with the communities in March 2020. The issue of corruption was also raised, alongside a lack of transparency in how the SEZ was established.¹⁰³ In interviews, the majority of the community stated they had not been consulted before their land was bulldozed. Furthermore, a lack of financial resources to continue advocacy and legal claims was highlighted as a serious issue for the communities who had already accrued serious debt in the process.

The Koh Kong Sugar Case

Overview of the Dispute

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| Location: | Dang Peaeng, Chi Kha Leu and Chi Kha Kraom Communes; Srae Ambel District, Koh Kong Province; and Kandaol Commune in Botum Sakor District, Koh Kong Province. |
| Corporations involved: | Koh Kong Plantation Co. Ltd (“KKP”) and Koh Kong Sugar Industry Co. Ltd (“KKS”) |
| Length of dispute: | 2006 – Present |
| Number of individuals affected by the dispute: | A 175-family group are the focus of this study, but it is estimated the dispute has affected many families |
| Number of families awaiting a resolution: | None of the 175-family group. |
| Dispute resolution strategies employed: | <ul style="list-style-type: none"> • Petitions to the authorities • Advocacy and campaigning |
| Has a resolution been reached? | Yes, but they have not received promised infrastructure |

This land dispute between villagers in Koh Kong Province and two companies, Koh Kong Plantation Co. Ltd (“KKP”) and Koh Kong Sugar Industry Co. Ltd (“KKS”) has been ongoing for nearly 15 years. This dispute has affected over 2,000 families across 6 communes in Srae Ambel, Botum Sakor and Thma Bang Districts. This case study focusses on a 175-family community group in 3 communes in Srae Ambel District, including Dang Peaeng, Chi Kha Leu and Chi Kha Kraom communes; and Kandaol commune in Botum Sakor District.

These two companies were formed out of a joint venture between KSL Group of Thailand (“KSL”), Ve Wong Corporation of Taiwan and Senator Ly Yong Phat in 2006.¹⁰⁴ KSL currently holds an 80% ownership stake in both companies,¹⁰⁵ with the remainder owned by Ve Wong Corporation. It is reported that Ly Yong Phat sold his shares to KSL in 2010.¹⁰⁶ KKP and KKS received two ELCs by the RGC in August 2006,¹⁰⁷ and began clearing land to build a sugar cane plantation and factory that same year, including the land of the 175-family group.

The community report being given only a few days’ notice to leave by the company and authorities, and were then forcibly evicted, with their property destroyed. Villagers interviewed in March 2020 report that a nearby

¹⁰³ Ibid.

¹⁰⁴ ‘Response to Phnom Penh Sugar Company’s Allegations Against Equitable Cambodia’ (LICADHO, 21 August 2014) <http://www.licadho-cambodia.org/pressrelease.php?perm=356>.

¹⁰⁵ KSL Group, ‘2019 Annual Report’, (2019) p. 15, <https://www.kslgroup.com/index.php/en/investor-relations/publications>.

¹⁰⁶ Equitable Cambodia and Inclusive Development International, ‘Bittersweet Harvest Report’ (*Open Development Cambodia*, 2013) <https://data.opendevdevelopmentcambodia.net/en/dataset/bittersweet-harvest-a-human-rights-impact-assessment-of-the-european-unions-everything-but-arms-ini>.

¹⁰⁷ Royal Government of Cambodia, ‘Contract for plantation of sugar cane, and processing factory of sugar cane between the Ministry of Agriculture, Forestry and Fisheries and Koh Kong Sugar Industry Company Limited’ (29 June 2016) <https://data.opendevdevelopmentmekong.net/vi/dataset/agreement-for-plantation-of-sugar-cane-and-processing-factory-of-sugar-cane-between-the-ministry-of/resource/93ef6db3-1cd6-41ad-8c04-2bf785299f71/>. See also: Royal Government of Cambodia, ‘Contract for plantation of sugar cane, and processing factory of sugar cane between the Ministry of Agriculture, Forestry and Fisheries and Koh Kong Sugar Plantation Company Limited’ (August 2016) <https://data.opendevdevelopmentmekong.net/dataset/bc13a206-e31b-4f5d-b28d-4ed556688181/resource/760e3aab-821a-4cac-a0ba-b2e166ee7c18/download/kohkongplantationcompany21.06.2011.pdf>.

community who had their land cleared were threatened with gunfire, leaving one person permanently disabled after being shot. The loss of land has significantly affected the community. Land is incredibly important to the families, as it is both their homes and source of income - *“land equals income in Cambodia”*. As well as their property and possessions, the community lost their ability to farm, grow crops, raise animals and sell produce. The dispute resolution process, having taken over a decade, has greatly impacted their lives as well. The continuous travel to capital Phnom Penh, where the relevant government ministries are based, has been a disruption to their lives, impacting on their ability to earn income, as well as their children’s lives and education as they often travel with them. Moreover, the community has faced significant judicial harassment throughout the process, which they cite as being one of their largest challenges. Community representative Phav Nhieng has experienced heavy police surveillance and is currently the subject of a defamation lawsuit. Another community member, Chet Bun, has been detained since August 2019 for ‘environmental offences’, with no update reported. The company plantations and factory have been abandoned, tainted with being involved in the ‘blood sugar’ trade, with no evidence of the land being used in recent years. With the partial withdrawal of the European Union’s Everything But Arms trade agreement which provided sugar concessions,¹⁰⁸ it is unlikely they will continue their sugar cane trade in the future.

Seeking Corporate Accountability

The resolution of this dispute has been prolonged. After the initial land clearing, the community did not protest due to fear. However, after seeing other communities continue to make claims for their land, in 2014 they mobilized. The 175 families submitted petitions and complaints to Commune, District, and Provincial level authorities’ numerously from 2014 to 2015. After receiving little response, the families travelled to Phnom Penh to protest for their rights. In early August 2016, the community submitted petitions to the MoLMUPC, MOI, and Ministries of Environment (“MENV”) and Agriculture (“MAFF”), the National Assembly, the Prime Minister Cabinet, and the EU Ambassador for Cambodia. They travelled to Phnom Penh in late 2016 and January 2017 to follow up. Due to the lack of resolution offered, the community began conducting daily advocacy for months in Phnom Penh. On the 20th of March 2018, the families again demanded a response, and began a negotiation. On 22 March 2018, after a meeting between the families, Senator Ly Yong Phat, representatives from the companies, relevant Ministry officials, observed by the EU Ambassador and civil society, the 175 families agreed to accept three hectares of land and \$2,500 USD each as compensation.¹⁰⁹ In addition, the government agreed to improve the infrastructure in the area.

The community credits this resolution to the commitment and solidarity of the families. While they are grateful for compensation, they do not feel it is just, as many received far less than what they lost. Some families report having up to 10 hectares of land, and had to fight for three. Moreover, the government has not improved infrastructure in the area as promised. The land the community received is isolated without sealed roads, is far from the main road, lacks electricity, drainage systems, a local school and medical center. There are many more communities in the area affected by land grabbing. This includes 200 families from Chi Kha Leu Commune, Srae Ambel District, who were in a dispute resolution process with English company Tate & Lyle, who in March 2018 received land compensation of 1.5 hectares but no monetary compensation. It is estimated there are another 1,800 + families in varying resolution processes yet to receive compensation.

Barriers to a Resolution

In interviews in March 2020, a lack of transparency by the RGC and companies was identified by the community, authorities and NGOs alike as the largest barrier to resolving the land dispute. The RGC and

¹⁰⁸ European Commission, ‘Cambodia loses duty-free access to the EU market over human rights concerns’ (12 August 2020) https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1469.

¹⁰⁹ Soth Koemsoeun, ‘Koh Kong Land Dispute Solved, Ministry Says’ (*Phnom Penh Post*, 22 March 2018) <https://www.phnompenhpost.com/national/koh-kong-land-dispute-solved-ministry-says-0>.

relevant ministries, particularly MoLMUPC, are reportedly not transparent in handling land disputes, and do not provide information or updates to communities on the process. The government's commitment to follow through on agreed resolutions is another barrier. Throughout the process, the RGC has been slow in fulfilling promises like improving infrastructure, but the community will advocate for their rights until the resolution is completed. There is a lack of information about the company's ownership structure. None of the provincial, district and local authorities interviewed in March 2020 could identify the current owners, the company land has been visibly abandoned, and the companies could not be reached for our research. A local authority identified transparency as a recurrent problem, explaining if the company had consulted with the local level prior to clearing the land and arranged fair compensation, the resolution process would not have been so prolonged. Another difficulty is that over time more communities and families have joined the dispute. This is reportedly due to initial fears of violence and harassment as witnessed in other land disputes. Many authorities interviewed identified the lack of documents and land titles by the claimants as a reason to reject the claims, arguing many people were illegitimate and simply 'joining in' – a controversial argument in a country where land titles were destroyed and millions of people were displaced by years of war.

Findings and Interpretation

In theory, the Cambodian legal framework allows for relatively strong protection of land rights. It provides for meaningful consultations, protects against forced evictions and guarantees the rights to freedom of expression and peaceful assembly. Similarly, the RGC have acknowledged the severity of the issue of land disputes in Cambodia and have publicly announced several measures to be taken to solve them.¹¹⁰ Yet, CCHR's research shows that in practice, the situation remains dire. Not only do most of the disputes we monitor remain ongoing, in many cases dispute resolution processes and remedies are still being sought. Across the four cases outlined above, the communities involved in land disputes faced a series of challenges in seeking corporate accountability and achieving a resolution.

1. A Lack of commitment, engagement and transparency by the RGC and local authorities to resolutions

In all case studies, individuals, communities and NGOs identified a lack of engagement by and difficulties working with public authorities on the local, district, provincial and national level to resolve land disputes as a key challenge to obtaining a resolution. There appears to be a lack of political will on behalf of authorities to resolve land disputes, as companies are often linked to powerful individuals, such as in the Mitr Phol case and the Koh Kong case. Corruption and public officials being engaged in land grabbing or benefitting financially from it is widespread, as acknowledged by the government themselves,¹¹¹ and often results in impunity. As an example, in October 2020, an investigation revealed that 10 high ranking officials, including a Senator, were complicit in land grabbing in Monduliri province - all of whom, at the time of writing, faced no criminal charges.¹¹² Further, in our research, authorities regularly accused those who have lost their land as having ulterior motives and therefore did not take calls for a resolution seriously. This includes authorities claiming that communities have not genuinely lost land, such as in the Koh Kong case; that there are NGOs 'behind' the communities who are inciting them to obtain additional donor funding, such as in the Socfin-KCD and Mitr Phol cases; and accusing individuals of being affiliated with the political opposition party, such as in the MDS case.

Individuals who advocate for their land rights are subject to regular harassment from authorities, which is further discussed in detail below. Furthermore, many petitions submitted to authorities, such as in the Koh Kong case, are simply left unaddressed and ignored. All four cases witnessed a lack of transparency with affected communities. In the March 2020 interviews for the Koh Kong case, a lack of transparency by the RGC and companies was set as the largest barrier to solving the dispute by the community, authorities and NGOs alike. All stakeholders reported that the RGC alongside relevant ministries, specifically the MoLMUPC, have not been transparent in dealing with land disputes and reluctant to provide information and updates to communities regarding the process. A recurrent lack of transparency was also prevalent in the MDS case, regarding the establishment of the SEZ and SLC land.

2. Lack of knowledge on behalf of relevant parties on land rights and dispute resolution process

Across the case studies, provincial authorities lacked awareness on land disputes and resolution processes taking place in their provinces. Many local authorities claimed that it was the responsibility of the national MoLMUPC and that they were not involved. Some local authorities even stated that the national ministries are not transparent with the local level about land disputes or allocation, and therefore they cannot assist.

¹¹⁰ For example, see Pech Sotheary, (n. 7).

¹¹¹ Samean Yun and Joshua Lipes, (n. 88).

¹¹² Aun Chhengpor, 'Authorities steer clear of prosecuting senator and generals in Monduliri land grab', (VOA Khmer, 9 October 2020) <https://www.voacambodia.com/a/authorities-steer-clear-of-prosecuting-senator-generals-in-monduliri-land-grab/5615101.html>.

In one case, a local authority explained if the MoLMUPC and the company had consulted with the local level originally, the resolution process would not have been so prolonged.

Individuals have difficulty accessing dispute resolution processes as it is unclear what is available to communities on the local, provincial and national level and the appropriate steps to be taken. Individuals and authorities also lack knowledge on legal rights in relation to land. It should be noted that ensuring access to remedy for business-related human rights abuses requires states to facilitate public awareness and understanding of available mechanisms, including information on how they can be accessed, and whether there is any expert or financial support available for individuals to do so.¹¹³ It does not appear that the RGC has met these obligations.

3. Lack of domestic remedies available

It is notable that no legal proceedings are ongoing in Cambodia for the monitored disputes. Indeed, every community interviewed across the case studies noted that there are no legal remedies available in Cambodia because of the lacking independence and impartiality of the Cambodian courts. Out of four cases, only one came before a Cambodian court. In 2014 in the MDS case, some community members filed a complaint to the Pursat Provincial Court against the Deputy Provincial Governor for the actions of the mixed armed forces which bulldozed and destroyed the houses and plantations of 11 families inside the SEZ in November 2014. They reportedly asked for US \$2,000 compensation per family, as well as for legal action to be taken against the Deputy Provincial Governor. The four community members who filed the complaint were interviewed by the Court in January 2015, and nothing has happened since. For many, the court instead represents a place where individuals are facing charges for their activism, not a place where they can seek remedies for violations of their human rights. As a result of the futility of finding a resolution in Cambodia, many seek remedies through non-legal mechanisms, and two of the four discussed cases sought corporate accountability overseas, which has its own challenges. Specifically, there are limited opportunities for individuals to access and engage in such processes. As highlighted in the Socfin-KCD and the Mitr Phol cases, filing a complaint abroad is costly and requires expert support.

4. Lack of commitment on behalf of companies involved in land disputes

It is common for companies involved in land disputes to deny responsibility for their human rights impacts and to be unwilling to engage in dispute resolution processes. In two of the four cases, communities highlighted a lack of real commitment and transparency by the companies as one of the largest barriers in the dispute resolution processes. In some cases, companies have put mechanisms in place aimed at working with communities and engaging in dispute resolution processes, however the genuineness of the commitment is questioned. Moreover, companies often hide behind the corporate veil and there is often a lack of transparency about the ownership structure or who to contact to raise grievances.

5. Remedies offered don't meet human rights standards

In cases of human rights violations, victims are entitled to an effective remedy. Such remedies must not only compensate for the material loss (e.g. land, buildings), but also compensate for the other, immaterial prejudice suffered such as loss of income, the costs of moving elsewhere, health impacts, etc. In the case of forced evictions, international law provides that an effective remedy should include return, restitution, resettlement, rehabilitation and compensation.¹¹⁴ Principles 25 to 31 of the UNGPs specifically deal with the State's obligation to provide an effective remedy for human rights violations by businesses.¹¹⁵ CCHR's

¹¹³ UNGPs Commentary, (n. 16), p.28.

¹¹⁴ "Basic principles and guidelines on development based evictions and displacement" (OHCHR, April 2018) www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf.

¹¹⁵ UNGPs, (n. 16)

research shows that dispute resolution processes took place on a case by case rather than systematic basis, and only occurred after significant violations and irreparable damage had already taken place. Notably, little consideration is given to the remediation of the human rights violations suffered; instead, resolution processes mainly focus on compensation of material loss. In all cases researched, remedies offered have not aligned with human rights standards and do not make up for the losses faced by the affected communities. For example, in the Mitr Phol case affected families were offered two hectares of land as compensation, which for many was much smaller than their original land, next to a forest area not yet cleared or demined. In the Koh Kong case, the affected families were offered 3 hectares of land, without basic infrastructure or electricity, alongside US \$2500. Many community members had up to 10 hectares of land and therefore did not deem this a fair resolution. These remedies did not remotely cover the immense loss faced by families, nor did they include all five measures of return, restitution, resettlement, rehabilitation and compensation.

6. Lack of consideration of community and human rights impacts in land allocations

In all of the case studies, due consideration was not given by authorities and companies to the impacts of the land allocations on the local communities. In three of the monitored disputes, the companies involved were granted the land through an ELC by the government. However, these ELCs often did not comply with the law in regard to consideration of their effects on the community. Article 4 of the Sub-Decree No.146 ANK/BK on ELCs clearly states that an ELC can only be granted if an environmental and social impact assessment (“ESIA”) has been completed.¹¹⁶ It is essential to undertake an ESIA prior to development to assess positive and negative social and environmental impacts of development. This is undertaken through analysis, monitoring and managing said impacts as well as creating planned interventions such as policies, plans and projects to handle any negative consequences. ESIA’s assessments were not conducted prior to the start of operations within the Koh Kong case, and families were not properly consulted prior to being forcibly evicted from their land. Whilst an ESIA was reportedly conducted prior to the start of Mitr Phol operations, villager’s participation was not accepted and the assessment was not made publicly available. Many villagers stated feeling coerced into signing the requisite paperwork. If an agreed upon implementation plan with communities was assessed and undertaken many negative consequences could have been avoided. Similar problems are represented with the allocations of land for SEZs, such as in the MDS case.

7. Communities must be able to freely advocate their rights

In all four cases, affected communities reported being threatened by authorities when protesting for their rights, as well as being subject to judicial and physical harassment. Individuals affected by land disputes who attempt to advocate for their rights, either before, during or after the ELC or SEZ was granted, faced various issues including, intimidation, threats, physical violence and imprisonment. This does not align with international human rights standards as it is a direct violation of many human rights, including to the right of freedom of expression, assembly and association and community representatives are qualified as human rights defenders as they are requesting and fighting for the promotion and protection of their communities human and land rights.¹¹⁷ In the Mitr Phol case, one affected villagers was accused of "clearing forestland" and was subsequently arrested and sent to the provincial prison one day after her family member left to give evidence in the Thai court. Communities also reported being threatened with their houses being burnt if they continued to protest. Moreover, in Mondulkiri, villagers who witnessed the destruction of their property without notice and were subsequently forcibly evicted reported facing various threats from both the company involved and authorities when protesting. In the Koh Kong case one of the community members

¹¹⁶ ‘Cambodia - Land Cleared for Rubber Rights Bulldozed: The impact of rubber plantations by Socfin-KCD on indigenous communities in Bousra, Mondulkiri’ (FIDH, October 2011) p. 19, https://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf.

¹¹⁷ ‘Human Rights Defenders’, Office of the High Commissioner for Human Rights, www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx.

has been imprisoned since August 2019 with no update, and the community representative has been subject to extensive intimidation by the local authorities.

8. Women in land conflict

CCHR research has consistently uncovered the disproportionate impact of land disputes on women.¹¹⁸ This research period, across all monitored disputes, the communities interviewed again highlighted that as women rely on land differently to men, they are differentially impacted by the loss of land and ongoing land disputes. As highlighted by the communities in the MDS and Koh Kong cases, traditional women's roles in looking after the home, land, and family, and that women are more likely to use their land as their primary source of income, mean they spend more time on their land and have a unique relationship with it. This has led to the trend of women taking the lead on activism and seeking a resolution for their communities in Cambodia, becoming community representatives and women human rights defenders. Unfortunately, this is a highly persecuted group - not only do they face judicial harassment and intimidation as explained above, but communities report increased rates of domestic violence against women that step into activism roles, as well as increased family consequences such as divorce.¹¹⁹

9. Use of force and involuntary resettlement

Across all monitored land disputes, the communities were subject to violence and forced evictions. Measures associated with forced eviction included the burning and bulldozing of homes and land without prior notice, threats of criminal charges, the use of weapons, and physical violence. In the Mitr Phol case, 154 homes were demolished by company staff while the local authorities were present.¹²⁰ Villagers who attempted to protest or stop the demolition were threatened with imprisonment, while they witnessed their property being burnt and destroyed. In 2008, an entire village was destroyed for the ELC. Furthermore, several community members who were protesting the dispute were detained, including two community representatives who were sentenced to two years in prison. In the Socfin-KCD case, villagers reported witnessing the destruction of their property as well as being forcibly evicted without prior notice. Similarly, the villagers in the Koh Kong case were provided with only a few days' notice prior to eviction to their forced eviction by the authorities with their property destroyed. The MDS case witnessed clearing of the land prior to the granting of the SEZ, and the company destroyed property and farmland while being protected by armed forces, as well as forcibly evicted villagers.

¹¹⁸ CCHR, 'Cambodia's Women in Land Conflict' (27 September 2016)

https://cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=116&id=5

¹¹⁹ Ibid, p 15.

¹²⁰ Mitr Phol Case Brief, (n 60).

Recommendations

Considering the current situation of land rights in Cambodia, CCHR makes the following recommendations to the RGC, as well as to CSOs and businesses:

For the Royal Government of Cambodia and Relevant Ministries

- R1. Clearly require ESIA's before allowing any development, infrastructure project or SEZ**, including ELCS, and ensure that they are made available to affected communities and to the public in a timely manner, and that implementation mechanisms used are in accordance with international human rights standards, including Principle 18 of the UNGPs;
- R2. Implement policies and measures to speed up land title registration** for communities, including **collective land title** for indigenous communities, by relevant departments to increase security of land tenure across the country;
- R3. Take steps to ensure transparency on land developments** in Cambodia, including making all information on existing and cancelled land concessions publicly available and accessible; making publicly available information on the mapping classification and registration of public land, private land and protected areas, as well as any reclassifications of land;
- R4. Ensure transparency in land dispute resolutions**, including making clear the appropriate steps for communities to take with relevant Ministries and ensuring Ministries are responding to complaints regarding land disputes and updating communities on the status of complaints;
- R5. Stop all forms of monitoring, harassment and punishment of human rights defenders** in relation to land disputes; and release community representatives and land rights activists currently imprisoned for exercising their freedoms of expression and assembly;
- R6. Ensure that meaningful consultations with affected communities** take place prior to any contract being given, and that communities are kept informed of any developments, ensure that the principle of free prior and informed consent is respected;
- R7. Ensure timely resolutions of land disputes**, failure of which causes the disputed land to be given back to the victims, in accordance with international standards such Article 3 (a) of the ICCPR, and Principle 26 of the UNGPs;
- R8. Ensure that remedies available for land dispute resolutions respect international standards**, including that agreed resolutions are enforceable by communities and implemented appropriately by relevant Ministries, including the timely provision of remedies;
- R9. Once a resolution has been reached, authorities should take all steps to ensure that the agreed remedies are fully provided to the communities and ensure they fulfil promises made;**
- R10. Ensure that in the event of change of land title, families are provided with adequate compensation and accepted by the claimants; and there is no use of excessive force;**
- R11. Take relevant steps to reduce domestic violence** across the country, including disseminating information on the Domestic Violence law, increasing education in schools and communities on gender equality, ensuring complaints of domestic violence are acted upon by the relevant authorities and women are offered all available protections, and provide training to local authorities on how to recognize domestic violence and support survivors;
- R12. Develop and adopt a National Action Plan on Business and Human Rights**, in consultation with civil society, to disseminate and implement the UNGPs;

For Civil Society Organizations

- R13. Increase awareness on business and human rights issues** to all relevant stakeholders including the RGC, corporate actors, communities and CSOs;
- R14. Ensure that communities, including rural and indigenous communities, are informed and aware of their legal land rights and what constitutes an effective remedy under human rights law;**

- R15.** Raise awareness amongst communities of **women’s rights and domestic violence**, through education and training;
- R16. Provide support for affected communities during the mediation processes**, especially indigenous communities which may hold language barriers;
- R17. Continue to actively monitor** land disputes and keep a record of affected individuals as well as of human rights violations, and **publicly report on dispute resolution processes**;
- R18.** Develop projects offering **legal representation** to affected communities on **civil cases** to assist communities in filing civil lawsuits and engaging with other corporate accountability mechanisms against companies;
- R19. Encourage and facilitate dialogue** between affected communities, corporate actors and public authorities to discuss the resolution of land disputes in accordance with the UNGPs;

For Businesses

- R20.** Companies involved in land disputes should take responsibility for the dispute and **seek to work with CSOs and affected communities** in reaching a solution, rather than take action against them;
- R21. Exercise due diligence** prior to starting any operation in Cambodia, in accordance with Principles 15, 17 and 18 of the UNGPs;
- R22. Ensure the respect of human rights**, within all business operations aligning with international human rights standards following principles 11 and 12 of the UNGPs;
- R23. Effectively remedy all human rights violations**, and ensure that any remedy meets the effectiveness requirements of Principle 31 of the UNGPs;
- R24. Conduct ESIA**s, make them available to affected communities and to the public in a timely manner, and put into place mechanisms to monitor their implementation, in accordance with international human rights standards such as Principle 18 of the UNGPs;
- R25. Engage with affected communities**, ensure meaningful consultations respecting the principle of Free Prior and Informed Consent, and constantly engage with affected communities and CSOs involved in land dispute resolution process;
- R26.** Establish an **effective, accessible and transparent operational-level grievance mechanism** for those who may be adversely affected by business activities, in line with Principle 29 of the UNGPs.