



CAMBODIA

by:

Phallack Kong

BASELINE REPORT: CAMBODIA

SNAPSHOT BOX

<p>Number of Multinational Business Enterprises operating in the country</p>	<ul style="list-style-type: none"> - 23,302 Companies and Investment Companies - 254 Branches - 372 Representative Offices - 5,290 Sole Proprietorship¹ <p>Note:</p> <p>3,190 Companies registered in the Ministry of Commerce in 2011²</p> <p>1,659 Companies have Khmer Nationality, i.e. at least 51 per cent of the shares are owned by natural persons or entities holding Cambodian citizenship³</p> <p>1,531 Companies have foreign nationality, among them there are 37 Branches, 49 Representative Offices, and 141 Investment Companies</p>
<p>Number of Micro, Small and Medium Business Enterprises operating in the country per 1,000 people</p>	<p>According to the National Institute of Statistics' census 2011⁴ there are 505,134 enterprises established in Cambodia which can be classified as below:</p> <ul style="list-style-type: none"> - 484,691 enterprises with 5 or more employees - 39,537 enterprises with 5 and more employees - 13170 enterprises with 10 and more employees - 787 enterprises with more than 100 employees - 119 enterprises with 1000 and more employees. <p>Two criterias are applied for qualifying SMEs:</p> <p>Statistics</p> <ul style="list-style-type: none"> - Micro: Less than 10 employees - Small: Between 11-50 employees - Medium: Between 51-100 employees - Large: Over 100 employees <p>Capital</p> <ul style="list-style-type: none"> - Micro: Less than US\$50,000 - Small: Between US\$50-250,000 - Medium: Between US\$250-500,000 - Large: Over US\$500,000

1 Ministry of Commerce, Statistics of Business Registration in Cambodia from 1998-2011

2 See <http://www.akp.gov.kh/?p=18264>, 12 April 2012

3 Cambodia Investment Law, Art. 16

4 Ministry of Internal Affairs and Communications: Statistic Bureau, Director-General for Policy Planning (Statistical Standards) & Statistical Research and Training Institute of Japan, Final Results of Cambodian 2011 Economic Census, http://www.stat.go.jp/english/info/meetings/cambodia/e11f_re1.htm, to be published also at: <http://www.nis.gov.kh/index.php/pop-demog-stat/censuses>

<p>Number of State-owned Enterprises and the industries in which they operate</p>	<p>Statistics:</p> <p>In 1989, there were 187 SOEs in Cambodia. By the end of 2000, 160 SOEs had been privatized, of which 139 were leased to the private sector, 12 transformed into joint-ventures, and 8 sold outright and 8 liquidated. In 2007, there were 17 major SOEs.⁵</p> <p>Industries:</p> <p>Telecom, Bank, Insurance, Education, Health, Water, Electricity, Agriculture (Green Trade and Rubber), Printing, Pharmaceutical Enterprise, Securities Exchange (CSX), Social Security (Workers), Crafts, Royal Railway, Ports and Ferries, Laboratories, Shipping Agency.</p>
<p>Flow of Foreign Direct Investment from 2008 to 2012 (or other recent 3 to 5 year range)</p>	<ul style="list-style-type: none"> - 2008: US\$795 million - 2009: US\$ 515 million - 2010:US\$ 599 million - 2011: US\$ 676 million - 2012: US\$ 745 million⁶
<p>Main industries in the country</p>	<p>Tourism: US\$ 2503 Million Agriculture: US\$ 285 Million Garment/Textile: US\$ 280 Million Construction/Infrastructure: US\$ 101 Million Services: US\$ 91 Million Mining: US\$ 31 Million⁷</p>
<p>Number of cases involving business-related human rights violations reported to (i) NHRIs,(ii) other national human rights bodies (e.g. ombudsmen), and/ or (iii) international human rights bodies</p>	<p>National Assembly Commission on Human Rights (“NACHR”): <i>1158 complaints (2006-2010)</i></p> <p>Senate Commission on Human Rights (“SCHR”): <i>300 complaints</i></p>
<p>Have the Framework and/or the Guiding Principles been translated into the country’s languages and published in the country?</p>	<p>Yes, a Khmer version of the Guiding Principles is available in Khmer⁸</p>

⁵ UNCTAD, 2003, 74

⁶ National Strategic Development Plan (NSDP updated 2009-2013), p.viii

⁷ CIB (CDC-Approved investment Trend by Sector (Jan –Sept 2011), Cambodia Investment Guide 2012, p.II-7

⁸ See http://cambodia.ohchr.org/WebDOCs/DocPublications/Business-and-HR-Guidelines/Business%20and%20Human%20Rights_Khmer.pdf

OVERVIEW OF THE COUNTRY’S BUSINESS AND HUMAN RIGHTS LANDSCAPE

<p>Cambodia’s main industries are tourism, agriculture, garment/textile, construction/infrastructure, and mining. The key human rights concerns in these areas include:</p> <p>Labour rights: Key underlying issues are the lack of law enforcement and an ambiguity of laws and other factors. For example, 300’000 people were employed in the garment factory, and 65 per cent faced with work force.⁹The rights of Cambodian migrant workers are also an area of concern;</p> <p>Land Rights: Land disputes resulting from construction and infrastructure development projects are an area of concern.¹⁰</p> <p>Rights of indigenous peoples - violation of native customary rights and land rights of indigenous people as a result of development projects, logging activities and building of hydroelectric plants etc.</p> <p>Child Labour: Hazardous child labour in brick factories is a particular concern.¹¹</p> <p>Gender Discrimination: Discrimination mostly occurs at the workplace, especially in factories.¹²</p> <p>Right to health: Women who work as a beer promoters and sellers face great risks with regard to their health and safety.¹³</p>
--

Types of Business Enterprises in the Country

Name of the Type of Business Enterprise	Description of the Legal structure of the Type of Business Enterprise	Does incorporation of the business enterprise require any recognition of a duty to society, including human rights responsibility?	Any legislation specifically applicable to the Type of Business Enterprise (E.g. Corporations Law)
Sole Proprietorship	An enterprise owned by one person	Not explicitly, but it has to comply with laws and regulations related to businesses	Law on Commercial Rules and Register, Tax law and other related laws
General Partnership	A Contract between two or more general partners	Not explicitly, but it has to comply with laws and regulations related to businesses	Law on Commercial Rules and Register, Law on Commercial Enterprises and other related laws

9 Cambodian Centre of Human Rights, “Business and Human Rights in Cambodia: Constructing the Three Pillars,” 2010, 46.

10 Surya P. Subedi, “A Human Rights Analysis of Economic and Other Land Concessions in Cambodia,” Report of the Special Rapporteur on the Situation of Human Rights in Cambodia (A/HRC/21/63/Add.1/Rev.1,11 October 2012).

11 Cambodian Centre of Human Rights, “Business and Human Rights in Cambodia: Constructing the Three Pillars,” 48.

12 Kingdom of Cambodia, International Labour Organization, Better Factories Cambodia, “Twenty Fourth Synthesis Report On Working Conditions in Cambodia’s Garment Sector,” 30 April 2010, 14.

13 Global Business Initiative on Human Rights, “Business and Human Rights Round Table,” New Delhi, India, November 5th – 6th, 2009, 11.

Name of the Type of Business Enterprise	Description of the Legal structure of the Type of Business Enterprise	Does incorporation of the business enterprise require any recognition of a duty to society, including human rights responsibility?	Any legislation specifically applicable to the Type of Business Enterprise (E.g. Corporations Law)
Private Limited Company	Formed by Articles of Incorporation with a maximum of 30 shareholders and shares cannot be transferred or sold to the public	Not explicitly, but it has to comply with laws and regulations related to businesses	Law on Commercial Rules and Register, Law on Commercial Enterprises and other related laws
Public Limited Company	Formed by Articles of Incorporation and shares can be transferred or sold to the public	Not explicitly, but it has to comply with laws and regulations related to businesses	Law on Commercial Rules and Register, Law on Commercial Enterprises and other related laws
Public Enterprises with Economic Characteristics	An enterprise that all capital owned by the State and it has financial Autonomy and subject to commercial rules. For instance, universities, hospitals, National Social Security Fund, etc	Not explicitly, but it has to comply with laws and regulations related to businesses	Law on Commercial Rules and Register, Law on General Statute of Public Enterprises and other related laws
State Company	An enterprise that all capital owned by the State and it has financial Autonomy and subject to commercial rules. For Instance, Telecom Cambodia, Green Trade Company, etc	Not explicitly, but it has to comply with laws and regulations related to businesses	Law on Commercial Rules and Register, Law on General Statute of Public Enterprises and other related laws
Shared Enterprises	An enterprise that 51% of capital owned by the State and 49 % owned by private. It subjects to commercial rules.	Not explicitly, but it has to comply with laws and regulations related to businesses	Law on Commercial Rules and Register, Law on General Statute of Public Enterprises and other related laws
Representative Office (REP)	A foreign company has its representative office in Cambodia. REP cannot perform commercial activities and is under the management of a principal	Not explicitly, but it has to comply with laws and regulations related to businesses	Law on Commercial Rules and Register, Law on Commercial Enterprises and other related laws

Name of the Type of Business Enterprise	Description of the Legal structure of the Type of Business Enterprise	Does incorporation of the business enterprise require any recognition of a duty to society, including human rights responsibility?	Any legislation specifically applicable to the Type of Business Enterprise (E.g. Corporations Law)
Branch	A Foreign company has its branch in Cambodia. The branch can perform commercial activities and it is under the management of a principal	Not explicitly, but it has to comply with laws and regulations related to businesses	Law on Commercial Rules and Register, Law on Commercial Enterprises and other related laws
Subsidiary	A Partnership or a Company in which a foreign natural or legal person owns at least 51% of the shares. It has a separate legal personality.	Not explicitly, but it has to comply with laws and regulations related to businesses	Law on Commercial Rules and Register, Law on Commercial Enterprises and other related laws

I. How has the State reacted to the UN “Protect, Respect and Remedy” (Framework)?

So far, there has not been an official reaction from national human rights bodies to the framework. However, government officials from the Ministry of Commerce, Ministry of Economy and Finance, Ministry of Interior, Ministry of Labour and Vocational Training, ILO (Better Factories in Cambodia), and the Cambodia Human Right Committee (CHRC) participated actively in the workshop on business and human rights organized by the Office of the of the High Commissioner for Human Rights in Cambodia (OHCHR) on 20 March 2012 in Phnom Penh.¹⁴

The purpose of the workshop was to share information in relation to business and human rights with other interested institutions and

¹⁴ Surya P. Subedi, Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, (A/HRC/21/63, 16 July 2012), 13.

ministries. The mentioned bodies were also able to express their view of how their institution or ministry implements the Guiding Principles on Business and Human Rights.¹⁵

All Ministries expressed concerns with regard to operationalizing the Guiding Principles: for instance, the representatives from Ministry of Industry Mines and Energy mentioned the need for a business registration process and a clear legal framework as prerequisites to hold businesses liable.

As the chair of the ASEAN Summit 2012, and on behalf of all ASEAN member states, Cambodia produced a statement with over 95 points, including a commitment by ASEAN member states to promote and protect human rights in the region, support

¹⁵ A Khmer version of the Guiding Principles was published by the Office of the High Commissioner of Human Rights of Cambodia Office, at http://cambodia.ohchr.org/WebDOCs/DocPublications/Business-and-HR-Guidelines/Business%20and%20Human%20Rights_Khmer.pdf.

UN peacekeeping missions,¹⁶ and implement the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.¹⁷

On 7 May 2012, Prime Minister Hun Sen issued an order on Measures in Strengthening and Enhancing the Effectiveness of the Management of Economic Land Concessions on May 7, 2012. The purpose of the order is to impose a temporary halt on the granting of new economic land concessions, and to investigate existing land concession contracts with a view to protecting the interests of communities. The UN Special Rapporteur to Cambodia, Prof Surya P. Subedi welcomed this measure as a step in the right direction.¹⁸ Between 1997 and 2012, 117 companies have received Economic Land Concession licenses, covering over 1'181'522 ha¹⁹ of land.

II. Is the State duty to protect against human rights abuse by third parties including businesses (“State Duty to Protect”), recognized in the country’s domestic legal system?

1. Do any of the State’s domestic laws, including the Constitution / basic law of the State, provides a basis for a State Duty to Protect?

Despite no specific provisions in domestic laws related to human rights and business that requires a state duty to protect, Article 31 of the Constitution of the Kingdom of Cambodia states ‘The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter,

16 Chairman’s Statement of the 20th ASEAN Summit (Phnom Penh, April 3th -4th, 2012), page 4-5, point 25 and 32.

17 Ibid., 57, point 52.

18 Office of the High Commissioner of Human Rights, “SR Press Statement,” May 11, 2012, 4.

19 See <http://www.elc.maff.gov.kh/en/>.

the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights. Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.’

Furthermore, Cambodia has ratified 13 ILO Conventions²⁰ and other elements of the International Bill of Human Rights such as the UN Covenant on Civil and Political Rights (ICCPR) and the UN Covenant on Economic, Social and Cultural Rights (ICESCR). Based on these international instruments, Cambodia has a duty to protect human rights also in the area of business. In a landmark decision in 2007, Cambodia’s Constitutional Council held that judges are bound by the law which includes not only national law but also “international conventions that Cambodia has recognized.”²¹ Therefore, all of Cambodia’s laws

20 The 13 conventions are: 1. C4 Night Work (Women) Convention, 1919 (1969); 2. C6 Night Work of Young Persons (Industry) Convention, 1919 (1969); 3. C13 White Lead (Painting) Convention, 1921 (1969); 4. C29 Forced Labour Convention, 1930 (1969); 5. C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 (1999); 6. C98 Right to Organise and Collective Bargaining Convention, 1949 (1999); 7. C100 Equal Remuneration Convention, 1951 (1999); 8. C105 Abolition of Forced Labour Convention, 1957 (1999); 9. C111 Discrimination (Employment and Occupation) Convention, 1958 (1999) ; 10. C122 Employment Policy Convention, 1964 (1971); 11. C138 Minimum Age Convention, 1973 (1999); 12. C150 Labour Administration Convention, 1978 (1999); 13. C182 Worst Forms of Child Labour Convention, 1999 (2006), at <http://www.ilo.org/ilolex/english/>

21 Decision of the Constitutional Council No. 092/003/2007 of 10 July 2007 regarding the applicability of the international human rights treaties by the courts in Cambodia. English translation at <http://cambodia.ohchr.org/WebDOCs/DocPublications/CCBHR%20Constitution/CCBHR-EN.pdf>,

related to business should be interpreted in the light of the conventions and covenants ratified by Cambodia.

Despite the lack of an explicit provision on the state duty to protect, the following regulations could be interpreted in the spirit of Cambodia's state duty to protect under human rights law:

- **Business Organizations & Investment:** Law on Commercial Rules and Register, Law on Commercial Enterprises, Law on General Statute of Public Enterprises, Cambodian Law on Investment, 1994 (as amended by the Law on the Amendment to the Law on Investment, 2003), Law on Commercial Arbitration and other executive regulations related to business and investment: These Laws provide a basis for the establishment of private and state owned enterprises and investment in Cambodia and require all merchants, whether natural or legal persons, to comply with all laws and regulations related to business. These laws are to be interpreted with a view to Cambodia's duty to protect under international human rights law.
- **Labour and Employment Law:** Labour Law (1997),²² Law on Social Security, Ministerial orders (Prakas) on the Arbitration Council and other executive regulations related to employment and labour law in Cambodia. These laws and regulations provide the basis of the exercise of rights and performance of obligations of workers and employers resulting from the execution of employment contract. The ILO conventions ratified by Cambodia are particularly relevant in interpreting domestic labour laws.

²² English version is at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_150856.pdf.

- **Property Law:** Civil Code, Land Law, Concession Law, Sub Decree on State Land Management, Sub-Decree on Economic Land Concessions, Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities, Joint Ministerial Orders (Prakas) on Determination of Competence of the Court and Cadastral, Commission Regarding Land Disputes and Code of Civil Procedures and other executive regulations related to property: These laws provide the basis of property law and rules for economic land concessions and dispute resolution processes. As stated in several recommendations made to Cambodia during the 2009 UPR, Cambodia's existing human rights obligations are not yet adequately reflected in national property laws and their application.²³
- **Environmental Laws and Protected Areas Law:** Law on Environmental Protection and Natural Resources Management (1996), Sub Decree No.72 ANK/BK on the Environmental Impacts Process (1999), Protected Areas Law (2008), Preah Reach Kret (Royal Decree) on the Protection of Natural Areas (1993), Forestry Law, Sub Decree on Forest Concession Management, Sub-Decree on Community Forestry Management, Sub-Decree on Procedure Establishment Classification and Registration of Permanent Forest Estate and other executive regulations related to environment and protected areas. Although these laws do not contain an explicit state duty to protect, they clearly provide the legal basis for environmental protection, protected areas, forestry exploitation and protection and the respective state obligations. However, many of

²³ Human Rights Council, "Report of the Human Rights Council at its 13th Session," (A/HRC/13/56, 8 February 2011), para.355-369. Cambodia accepted all recommendations.

these provisions are not fully implemented and applied in practice.²⁴

- **Water and Fishery laws:** Law on Management of Water Resources in Cambodia, Law on Fishery, Sub-Decree of Community Fisheries to Council of Ministers and other executive regulations related to water and fishery: These laws provide the basis of water resources and fishery management.
- **Extractive industries and Energy Laws:** Law on Management and Exploitation of Mineral Resources (2001), Sub-Decree on Determination of Investment Principles of Mineral Resources, Petroleum Regulations (1991 with 1998 and 1999 amendments), Electricity Law and other executive regulations related to Mines, Petroleum and Energy: These laws provide a basis for exploitation of mines, petroleum, and energy in Cambodia.²⁵ There is however, no law on hydropower yet.²⁶

2. Has the State Duty to Protect been recognized by the State's courts?

Since there is no accessible comprehensive record of court decisions, it is not possible to evaluate the courts' position toward recognizing a state duty to protect. Under the law, the victims of human rights or other legal violations can exercise their rights before courts, the land dispute resolution commissions, the Arbitration Council and other ad hoc committees set up by the government.

24 Surya P. Subedi, "A Human Rights Analysis of Economic and Other Land Concessions in Cambodia," Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, paras.35- 42.

25 Human Rights Council, "Report of the Human Rights Council at its 13th Session", paras. 44-48.

26 Surya P. Subedi, "A Human Rights Analysis of Economic and Other Land Concessions in Cambodia," Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, Addendum, 48.

While it seems that the number of cases which are brought before these bodies because of an alleged violation of the state duty to protect is increasing, investigations and procedures have been criticised for a lack of transparency and due process.

The Phnom Penh Capital Court tried the administrative head and the marketing manager of Century Manpower, a recruitment company, together with a labour broker on an alleged case of illegal detention and human trafficking of 13 women sent to work as maids in Malaysia.²⁷ Another case was filed with the Svay Rieng Provincial Court against the then-Bavet municipality governor due to his alleged shooting of three female garment workers in a crowd of striking factory employees at an industrial park in Bavet's Special Economic Zone for foreign enterprises.²⁸ In January 2013, the Ministry of Justice ordered the Court of Appeals to reopen the case.²⁹

While no statistics for court proceedings are available, the Arbitration Council has heard more than 1500 collective labour disputes cases since its establishment in 2003.³⁰ In 2012 alone, the number of registered cases rose from 171 in 2011 to 255 collective labour disputes³¹ which involved 98,000 workers as compared to 173,000 workers in 2011. Observers identify a trend towards a higher number of cases involving fewer workers. The reasons for

27 "Labour Firm Staff Sentenced," Phnom Penh Post, April 6, 2012, at <http://www.phnompenhpost.com/index.php/2012050155893/National-news/labour-firm-staff-sentenced.html>.

28 For an account of the facts see : Open letter on the shooting of three female garment workers in Bavet town of SvayRieng province, 15 March 2012, <http://www.fidh.org/Open-letter,11486>.

29 Cambodia Daily, January 8, 2013.

30 See Arbitration awards at www.arbitrationcouncil.org

31 Arbitration Council Newsletter October-December 2012, at <http://www.arbitrationcouncil.org/Newsletter%20AC%20English%20October%20-%20December%202012.pdf>.

this development are not yet clear.³² Most cases relate to wages and other benefits, discipline and termination procedures especially involving trade union activists in the garment and footwear industry, and labour rights of women.³³

III. Is the State taking steps to prevent, investigate, punish and redress business related human rights abuses through effective policies, legislation, regulations and adjudication?

1. Are there government bodies and/or State agencies that have the responsibility to prevent, investigate, punishes and redresses business-related human rights abuses? If so, how have they done so?

There are no specific government bodies and/or State agencies responsible for preventing, investigating, punishing or providing redress for business-related human rights abuses. However, there are a number of government agencies which are empowered by law to deal with human rights or human rights-related issues under their jurisdiction. For example:

- The Ministry of Labour and Vocational Training is responsible for labour issues under the Labour Law. The Labour Inspection Department is responsible for inspection the workplace. The Health and Safety Department is responsible for health related issues. The Labour Dispute Resolution Department and Arbitration Council are responsible for conciliation and arbitration on labour disputes. In 2011, the Ministry of Labour and Vocational Training suspended a license of T&P Co Ltd because of allegations of violations of migrant workers' rights before

sending them to work in Malaysia.³⁴

- The Ministry of Land Management, Urban Planning and Construction is responsible for land disputes. The Mandate of the Cadastral Commission has the mission to resolve the following conflicts between possessors over unregistered land subject to possession rights: disputes occurring outside adjudication areas and disputes within adjudication areas that cannot be conciliated by the Administrative Commission.³⁵
- The Ministry of Environment is responsible for environmental protection and for overseeing environmental impact assessments before the commencement of business operations.
- Besides responsible ministries, there are number of councils and commissions or committees set up by the government to investigate specific issues. For instance, the National Sand Committee is responsible for oversight of sand licenses and assessing the impact of sand exploitation. The Anti-Corruption Unit is empowered to deal with corruption issues, etc.
- Additional relevant institutions include the National Assembly Commission on Human Rights (NACHR), the Senate Commission of Human Rights (SCHR) and the governmental Cambodian Human Rights Committee (CHRC). For the previous two terms, the Senate Commission has received 397 complaints from citizens, most of which are related

³² Cambodia Daily, January 11, 2013.

³³ Arbitration Council Newsletter October-December 2012.

³⁴ "Government Suspends Malaysia maids Recruitment Firm," <http://www.opendevdevelopmentcambodia.net/news-source/the-cambodia-daily/government-suspends-malaysia-maids-recruitment-firm/>, Open Development Cambodia, accessed July 5, 2012.

³⁵ Ministry of Land Management Urban Planning and Construction, Cadastral Commission, 2012, at <http://www.mlmupc.gov.kh/?page=detail&menu1=23&ctype=article&id=23&lg=en>, accessed 5 July 2012.

to land disputes.³⁶ NACHR and SCHR are institutions for citizens to voice their concerns and complaints with regard to human rights violations. They are advisory bodies to the Royal Government of Cambodia. In contrast, CHRC's role is to investigate and mediate complaints relating to human rights, collect information relating to the implementation of human rights, and to organize training and disseminate information on human rights. It also responsible for preparing human rights reports for the UN.

However, these government agencies are not authorized to punish and redress business-related human rights abuses. The prosecution of offences is the sole responsibility of the Public Prosecutor and the competent courts.

In addition, it has been noticed that the sensitive issue of economic land concessions arose in Cambodia. While the objective of the concession policy is to foster economic development, it also affects the rights and livelihoods of individuals and communities. Because of the lack of formal land titles the indigenous populations and people living in rural areas are particularly vulnerable. In order to address this problem, on 7 May 2012, the government issued an order imposing an immediate moratorium on new concessions and called for a review of existing concessions. A few days later, on 11 May 2012, the UN Special Rapporteur published his preliminary findings on a recent mission called for a review of the government's land concession policy.³⁷ The Cambodian government

responded with a statement on 14 May 2012 that all illegal concessions would be revoked and that 10 per cent of the newly gained land would be set aside for Cambodian families. For implementing this plan a "New Mission on Existing Policy" was established in June 2012.³⁸ As a result, more than 300,000 Cambodian families applied claiming over 1.2 million ha of land. In order to provide the necessary land titles around 1,100³⁹ to 2,000⁴⁰ youth volunteers have been involved in a government-led land measurement mission.⁴¹ While some 40,000 ha of land concessions were cancelled by the Prime Minister in July 2012,⁴² at the time of this writing the success of these measures is not clear with many observers remaining sceptical.⁴³

38 Speech given by the Prime Minister, 14 June 2012, at the launch of the 2011 mid-term review report on the implementation of the National Strategic Development Plan Update (2009-2013) and the related Government decision: Government Decision No.24 Sor.Sor.Ro, 25 June 2012; See also: Surya P. Subedi, "A Human Rights Analysis of Economic and Other Land Concessions in Cambodia", Report of the Special Rapporteur on the Situation of Human Rights in Cambodia Addendum, 51.

39 See http://www.cnv.org.kh/2012_releases/26jun12_youth%20mision%20to%20measure%20land_comments.html.

40 See <http://www.phnompenhpost.com/index.php/2012090558506/National-news/pm-will-hand-deliver-titles.html>.

41 Cambodia New Vision, Prime Minister's Speech, Selected Impromptu Statements and Comments during the Meeting with Youth Volunteers for Land Measuring Missions for the People, Koh Pij, 26 June 2012, at: http://www.cnv.org.kh/2012_releases/26jun12_youth%20mision%20to%20measure%20land_comments.html

42 David Boyle and May Titthara, The Phnom Penh Post, Economic land concessions in Prey Lang rejected, 6 August 2012, the letter dated 2 July 2012 declares that four ELCs totalling 40,618 hectares have been cancelled in Kampong Thom's Sandan district because they are located in the middle of evergreen and semi-evergreen forest inside "the largest low-land [contiguous evergreen] forest in Southeast Asia" – Prey Lang.

43 Surya P. Subedi, "A Human Rights Analysis of Economic and Other Land Concessions in Cambodia," Report of the Special Rapporteur on the Situation of Human Rights in Cambodia Addendum, 212.

36 Senate of the Kingdom of Cambodia, H.E. Yang Sem, the Chairman of CHRC holding discussion with the German Senior Legal Officer attached to the Senate, at http://www.senate.gov.kh/home/index.php?option=com_content&view=article&id=42&Itemid=245&lang=en, accessed 5 July 2012.

37 Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia, Professor Surya P. Subedi, 11 May 2012, at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12144&LangID=E>.

2. Are there laws and/or regulations that hold business enterprises and individuals accountable for business-related human rights abuses, and are they being enforced?

There are some laws that regulate the conduct of business enterprises and provide for accountability for businesses to respect human rights laws and regulations:

a) Cambodian Labour law 1997

According to the Cambodian Labour Law Article 25,⁴⁴ any regulations regardless of their legal status (formal laws, regulations, conventions or collective agreements) that suppress or limit the rights of workers, are null and void. The Labour Inspector shall require the inclusion of enforceable provisions in laws and regulations in effect.⁴⁵ In addition, the Government can define specific labour standards, such as the minimum wage or health allowance.⁴⁶ All employers and managers of establishments in which child labourers or apprentices less than eighteen years of age or women work, must watch over their good behaviour and protect their decency before the public.

⁴⁴ Cambodia Labour Law (1997), Art. 25.

⁴⁵ Ibid., Art.172.

⁴⁶ “Notification on the minimum wage of textile, garment, and shoe-sewing workers” (No. 049/10 K.B/S.C.N), 9 July 2010, at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/89827/103282/F1122638522/KHM89827.pdf>; Declaration of the Labour Advisory Committee on transportation and accommodation allowance and attendance bonus in the textile, garment, and footwear sector,” 11 July 2012, at http://www.arbitrationcouncil.org/Declaration%20of%20the%20Labour%20Advisory%20Committee_En_Final.pdf; “Notification 041/11 on transportation and accommodation allowance and attendance bonus in the textile, garment, and footwear sector,” 1 September 2012, at http://www.arbitrationcouncil.org/Declaration%20of%20the%20Labour%20Advisory%20Committee_En_Final.pdf; “Notification 206/11 on health allowance for textile and footwear workers” (No. 206 K.B/S.C.N), 13 December 2011, at http://www.arbitrationcouncil.org/law/Notification-on-health-allowance_En.pdf.

According to the 2012 ILO/IFC report on labour conditions in garment factories, there are several areas where compliance with domestic labour standards needs to be improved. These areas include payments for maternity leave (54% compliance), acceptable heat levels in the factory (38% compliance), the limitation of overtime to 2 hours per day which is only observed in 14% of the factories and obeying the requirements for exceptional overtime with only 3% compliance.⁴⁷ The Fundamental Rights at Work as comprised in the ILO Core Conventions are generally observed with the exception of reported cases on interference with freedom of association (6%), underage workers and child labour (7%) and discrimination (19%). A particular challenge is strikes which took place in all the factories monitored during the last reporting period. In none of them did the workers comply with the legal requirements.⁴⁸ Similarly, safety regulations are neglected in 35 % of the cases. Finally, substantial improvements are necessary with regard to the 2 hour daily overtime limit which is only observed by 14%.

b) Law on Environmental Protection and Natural Resource Management (1996)

Due to the Law on Environmental Protection and Natural Resource Management, an environmental

⁴⁷ Kingdom of Cambodia, International Labour Organization, Better Factories Cambodia, “Twenty Fourth Synthesis Report On Working Conditions in Cambodia’s Garment Sector, 13.”

⁴⁸ The legal requirements for commencing a strike include striking for reasons permitted by law; attempting to settle the dispute using other peaceful methods first; union members’ approving the strike by secret ballot; and providing 7 working days prior notice to the employer and the Labour Ministry. If workers failed to comply with any one (or more) of these requirements, the strike is included in the figure above. Under Cambodian law, only a court has the authority to declare a strike illegal. See: International Labour Organisation and International Finance Corporation, Better Factories Cambodia, “Twenty-Eighth Synthesis Report on Working Conditions in Cambodia’s Garment Sector.”

impact assessment has to be conducted for every project, both private and public. The project and the results of the assessment are then to be examined and evaluated by the Ministry of Environment before the project is submitted to the Royal Government for decision. This assessment shall also be applicable for activities which are under process and for which environmental impacts have not yet been assessed.⁴⁹ The purpose of this assessment is to provide the public with the possibility to participate in the protection of the environment and the management of natural resources and thereby prevent any acts which may negatively affect the environment.

c) **Land Law 2001**

The Royal Government of Cambodia has issued Economic Land Concessions for thousands of hectares to private companies for investment purposes. According to Article 49 of the Land Law 2001, land concessions shall relate to a social or economic purpose.⁵⁰ In practice, however, concessional land can then be subject to infrastructural enhancements, or so-called beautification projects, which ostensibly appear to be purely economic redevelopments with serious impacts for the people being relocated under difficult conditions.⁵¹

2.1. To what extent do business enterprises and company organs face liability for breaches of laws by business enterprises?

The concepts for holding business enterprises legally accountable as legal persons are found in various Cambodian Laws:

49 Law on Environmental Protection and Natural Resource Management (1996), Art.6.

50 Land Law (2001), Art. 49.

51 Cambodian Centre of Human Rights, "Business and Human Rights in Cambodia: Constructing the Three Pillars."

- **Law on Commercial Enterprises:** According to the Law on Commercial Enterprises, a general partnership has a legal personality separate from that of each partner.⁵² This concept is also applied for a limited partnership.⁵³ Therefore, all obligations contracted by a general partner in his own name bind the general partnership when the obligation is within the scope of the business of the general partnership or when the subject matter is property used by the general partnership.⁵⁴ All general partners are jointly and severally liable for the obligations of the general partnership according to the law. Therefore, a third party is required to seek the enforcement of obligations against the general partnership and its assets prior to the seeking the enforcement against the general partners.⁵⁵ This provision is also applied to the limited partnership.⁵⁶ Furthermore, according to the Law on Commercial Enterprises, a company comes into existence and acquires legal personality on the date shown in the certificate of incorporation.⁵⁷ A company has the capacity, rights and privileges of a natural person.⁵⁸ Where a company commits an offence, any director or officer of the company who knowingly authorizes, permits or acquiesces in the commission of the offense is a party to the offence and liable to be fined.⁵⁹

- **Labour Law: Chapter 16** of the Labour Law imposes civil and criminal sanctions on the employer, company heads, directors, managers or officers who violate provisions of the labour

52 Law on Commercial Enterprises, Art. 12.

53 Ibid., Art. 84.

54 Ibid., Art. 41.

55 Ibid., Art.42.

56 Ibid., Art. 81.

57 Ibid., Art. 98.

58 Ibid., Art. 99.

59 Ibid., Art. 291.

law.⁶⁰ For example, under article 369, any employer using forced labour or discrimination will be liable to a fine of sixty-one to ninety days of the base daily wage or to imprisonment of six days to one month.⁶¹ Moreover, article 375 stipulates that Company heads, directors, managers, or officers-in-charge who personally violated the provisions of Articles 229 (Standard of hygiene and Sanitation), 230 (Prepared Proper Safety System) and 231 (Regulation imposed by Ministry of Labour) or the Ministerial Order (Prakas) for enforcing these articles are liable to a fine of thirty to one hundred twenty days of the basic daily wage.⁶² Fines are imposed by the Labour Inspector and the Labour Controller.

- **Criminal Code:** According to the Criminal Code, a legal entity may be held criminally responsible for offenses committed on their behalf by their organs or representatives.⁶³

2.2. Do laws and/or regulations require business enterprises to avoid causing or contributing to adverse human rights impacts through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services and require individuals to ensure their business enterprises do so?

There are no specific provisions in Cambodian Laws requiring business enterprises to avoid causing or contributing to adverse human rights impacts through their activities. However, all business enterprises are required to comply with all laws and

⁶⁰ Cambodia Labour Law (1997), Chapter 16, Art. 359-386.

⁶¹ Ibid., Art. 369.

⁶² Ibid., Art. 375.

⁶³ Royal Kram NS/RKM/1109/022, Law on the Promulgation of the Criminal Code 2009, Chapter. IV, Art. 42 regarding Responsibility of a Legal Entity.

regulations of the country. Therefore, when there is an alleged violation of laws and rights, the injured parties can file a complaint against the company or offenders to the respective agencies and competent courts.

2.3. To what extent, how, and by whom have the laws and/or regulations identified in Question 2.2 above been enforced by the State?

According to the law and current practice, each ministry is responsible for the implementation of the laws within the mandate of their ministry. For instance, the labour law is implemented by the Ministry of Labour and Vocational Training and the land Law is implemented by the Ministry of Land management, Urban Planning and Construction. Therefore, parties to the disputes can seek the enforcement of the law from the former if the case is related to the labour disputes and the latter if the case is related to the land disputes. If disputes cannot be settled by the respective ministry, parties can seek further enforcement by the court.

Despite these mechanisms, the enforcement of laws in Cambodia needs to be strengthened. The lack of adequate data related to enforcement makes it difficult assess accurately the current state of implementation and enforcement.

3. Is the State periodically assessing the adequacy of the laws and/or regulations identified in Question 2 above, and addressing any gaps?

No, but on May 7 2012, Prime Minister Hun Sen issued an order to review all land concession contracts.

In March 2011, the Prime Minister Hun Sen signed an eight-article sub-decree on revocation of fishing lots which cancelled the allocation of 35 fishing lots.⁶⁴ The license revocation was made in order to make way for an investigation into fishery offences⁶⁵ and urged the authorities to prosecute the violators. Another important reason was the prevention of a further deterioration of natural fishing habitats and the hope to revive diminishing stocks for subsistence fishermen. All fishing lots must be handed over to the people in order to fish for daily life and create locations of conservation.

The Prime Minister mentioned that the investigation had showed that fishing lot operators had used banned fishing nets to catch even small fish; moreover, they used chemical substances to drive fish away from flooded forests into their lots in. However, Tonle Sap fishermen and fisheries experts said that illegal fishing on the lake had increased substantially since the cancellation of commercial fishing lots in March 2012.⁶⁶ So far, no legal proceedings against fishing lot operators or officials have been initiated.

Overall, the purpose of annulling the fishery contractual lot should be seen as (1) strengthening and expanding the fishery community, (2) empowering and giving ownership to the local community for the management of the fishery sector; (3) conserving natural resources, and (4) promoting the development of sustainable aquaculture.

64 Food Security Programme (2012), "Cambodia Cancels Fishing Lots around Tonle Sap Lake." The article says that the majority of the lots were around Tonle Sap Lake in the provinces Battambang, Siem Reap, Pursat, Kompong Chhnang and Kompong Thom and two others in Banteay Meanchey, at http://www.foodsecuritylink.net/cambodia/index.php?option=com_k2&view=item&id=263:cambodia-cancels-fishing-lots-around-tonle-sap-lake&Itemid=40, accessed June 8, 2012.

65 The Philstar (2011), "Breaking News: Fishing Licenses around Cambodia's Tonle Sap Lake revoked," at <http://www.philstar.com/breaking-news/717051/fishing-licenses-around-cambodias-tonle-sap-lake-revoked>, accessed 8 June 2012

66 See <http://www.opendevdevelopmentcambodia.net/aquaculture/tonle-sap-illegal-fishing-increased-group-says/>

4. Is the State using corporate governance measures to require or encourage respect for human rights?

4.1. Is the State requiring or encouraging directors of business enterprises to exercise due diligence in ensuring that their business enterprises respect human rights?

There are no specific provisions in the Cambodian laws requiring or encouraging directors of business enterprises to exercise due diligence in ensuring that their business enterprises respect human rights, but the Law on Commercial Enterprises provides a provision of duty of care for directors and officers.

4.1.1. What are the general legal due diligence obligations that directors have to comply with?

Article 289 of Law on Commercial Enterprises states that every director and officer in exercising his duties shall i) act honestly and in good faith with a view to the best interest of the company; and ii) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

4.1.2. Do directors have specific legal obligations to consider their business enterprises' human rights impacts in carrying out their duties?

There are no specific legal obligations that directors have to consider their business enterprises' human rights impacts in carrying out their duties, but under the labour law, directors are civilly liable regarding violations. Therefore, it can be held that directors shall consider human rights impacts on labour relations resulting from their business enterprises.

4.1.3. Do directors have specific legal obligations to take into account the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

See 4.1.2

4.1.4. Have any of the directors' duties identified above been enforced by the State in relation to business-related human rights abuses?

There has been no specific enforcement by the State in relation to business-related human rights abuses.

4.1.5. Has the State provided non-binding guidelines encouraging directors to take into account (a) their businesses' human rights impacts in carrying out their duties, and/or (b) the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

There are no non-binding guidelines encouraging directors to take into account (a) their businesses' human rights impacts in carrying out their duties. However, according to the sub-decree on Environmental Impact Assessment, all projects of private or state owned enterprises that affect the environment are required to have an Environmental Impact Assessment.

4.2. Does the State require or encourage business enterprises to communicate their human rights impacts, as well as any action taken to address those impacts?

See 4.1.4

4.3. Is/are the country's stock exchange regulator(s) taking steps to require or encourage business enterprises listed on the stock exchange to respect human rights? If so, what are these steps?

The Stock Exchange started to operate in Cambodia in April 2012. According to the Law on the Issuance and Trading of Non-Government Securities and other related regulations, there is no provision related to the respect of human rights for business enterprises who wish to be listed on the Cambodia Stock Exchange (CSX).

To regulate the security exchange market, the Law on Insurance and Trading of Non-Government Securities was promulgated on 19 October 2007 in order to regulate the securities exchange, the securities depositories and other operators in the securities market. Its purpose is to develop and maintain the confidence of public investors in the kingdom of Cambodia by protecting their lawful rights and ensuring that the offer, issuance, purchase and sale of securities are carried out in a fair and orderly manner.⁶⁷

The Securities and Exchange Commission of Cambodia (SECC) is the supervising authority for securities markets, both with regard to governmental and nongovernmental actors. Its mandate includes the power:

⁶⁷ Law on the Insurance and Trading on Non-Government Securities, Art. 2.

1. to enforce policy with respect to securities market;
2. to formulate conditions for granting approvals to the operators of a securities market, clearance and settlement facility, and securities depository;
3. to formulate conditions for granting licenses to securities companies and securities company representatives;
4. to promote and encourage compliance with the requirements of this law;
5. to play a role as an institution to examine and solve complaints against licensed legal entities' decision affecting the benefits of participants or investors;
6. to consult with any qualified person to develop policies for the purpose of developing a securities market in Cambodia⁶⁸

5. Has the State adopted other non-binding measures to foster corporate cultures respectful of human rights?

5.1. Is the State implementing any non-binding initiatives requiring or encouraging business enterprises to respect human rights?

So far, there have not been any non-binding initiatives requiring or encouraging business enterprises to respect human rights in Cambodia.

5.2. Is the State providing guidance to business enterprises on how to respect human rights throughout their operations?

Cambodia has not provided any guidance to business enterprises on how to respect human rights throughout their operations, but all business licenses and contracts with the government require all businesses to comply with existing laws in force.

6. Is the State taking steps to require or encourage business respect for human rights in its own relationships and dealings with businesses?

6.1. Does the State require or encourage State-owned or controlled business enterprises to respect human rights?

According to article 4 of Law on General Statute of Public Enterprise, the management in all fields of public enterprises shall be in accordance with the principles and procedure of the law on commercial enterprises unless otherwise stipulated under the provisions of this law. Therefore, all rules and regulations which govern commercial enterprises shall apply to state-owned enterprises too. Until now, there is no requirement or encouragement from the state for state owned enterprise to respect human rights.

6.2. Does the State require or encourage businesses that receive substantial support and services from State agencies (“beneficiary enterprises”) to respect human rights?

There are no requirements for businesses that receive substantial support and services from State agencies (“beneficiary enterprises”) to respect human rights.

⁶⁸ Ibid., Art. 7.

6.3. When services that may impact upon the enjoyment of human rights are privatized, is the State taking step to ensure that the business enterprises performing these privatized services respect human rights?

There are no public records of cases of privatization where the state has taken steps to ensure that those enterprises assuming such services shall respect human rights.

6.4. Does the State require or encourage respect for human rights in carrying out public procurement?

Cambodia has been a member of the WTO since 13 October 2004.⁶⁹ The assumption of membership status had two important impacts: First, Cambodia has to bring its laws in accordance with WTO rules. Second, it sets an incentive to improve the quality of goods and services in the private sector. According to the Law on Environmental Protection and Natural Resource Management, public and private enterprises are required to undergo an environmental impact assessment before submitting projects to the Government decision. The purpose of this assessment is to prevent any act that may negatively affect the environment and to provide the public with the possibility to participate in the management of natural resources.⁷⁰ In addition, Cambodia also expressed a strong commitment to promote and protect human rights. Furthermore, Cambodia welcomed the involvement of ASEAN Nations especially Foreign Ministers and the ASEAN Intergovernmental Commission on Human Rights in human rights issues.⁷¹

⁶⁹ Available at http://www.wto.org/english/thewto_e/countries_e/cambodia_e.htm, accessed July 3, 2012.

⁷⁰ Law on Environmental Protection and Management of Natural Resource of Cambodia, Art.6.

⁷¹ Chairman's Statement of the 20th ASEAN Summit Phnom Penh.

7. Is the state taking steps to support business respect for human rights in conflict-affected and high-risk areas?

7.1. Is the State engaging with business enterprises operating in Conflict-affected and high-risk area in relation to identifying, preventing and mitigating the human rights-related risk of their activities and business relationships?

The region in the Northwest of Cambodia at the Thai border may be considered a conflict-affected and high risk area. Both Cambodian and Thai troops have clashed over land immediately adjacent to the Preah Vihear temple, leading to deterioration in relations. In the Northwest provinces of Preah Vihear and Ourdor Meanchay such armed conflicts occurred in areas adjacent to the border. At Preah Vihear province, there are some national and multinational extractive enterprises such as Delcom Cambodia Co. Ltd (Malaysian Company) and Ratanak Stone Cambodia Development Co. Ltd (Cambodian joint venture) which obtained licenses from the Ministry of Industry of Mine and Energy for their operations. There are no known records of State agencies engaging with these business enterprises so as to identify, prevent, or mitigate human rights related risks in carrying out their business operations.

7.2. Is the state providing assistance to business enterprises operating in conflict-affected and high-risk areas to assess and address the heightened risk of human rights abuses, including gender-based and sexual violations?

There are no known records of state agencies providing assistance to business enterprises operating in conflict-affected and high-risk areas to assess and address the heightened risk of human rights abuses; particularly, gender-based and sexual violation.

7.3. Is the State denying access to public support and services for business enterprises operating in conflict-affected and high-risk area that they are involved with human rights abuses and refuse to cooperate in addressing the situation? Are their laws, regulations and /or polices that have the effect of doing so?

There are no public records related to the State denying access to public support and services for business enterprises operating in conflict-affected and high-risk area that they are involved with human rights abuses and refuse to cooperate in addressing the situation.

7.4. Has the State reviewed its policies, legislation, regulations and enforcement measures with a view to determining whether they effectively address the risk of business involving in human rights abuses in conflict-affected and high risk areas, and taken steps to address any gaps?

There are no public records related to State review of policies, legislation, regulations and enforcement measures with a view to determining whether they effectively address the risk of business involvement in human rights abuses in conflict-affected and high-risk areas.

8. Is the state taking steps to ensure coherence in its policies domestically and internationally such that it is able to implement its international human rights obligations?

8.1. Is the state taking step to ensure that government all departments, agencies and other State-based institutions that shape business practices are aware of and observe that State's human rights obligations when fulfilling their respective mandates?

The awareness of Human rights in business in the governmental departments, agencies and other State-based institutions is limited because this concept is very new in Cambodia. There has consequently been little or no activity regarding the development of coherent policies or the promotion of awareness in state agencies concerning the fulfilment of state obligations regarding human rights and the regulation of business practices.

8.2. Is the State taking steps to maintain adequate domestic policy space to meet its human rights obligations when concluding economic agreements with other States or business enterprises?

There is no official information or evident steps taken by the State to maintain adequate domestic

policy space to meet its human rights obligations when concluding economic agreements with other States or business enterprises. However, Cambodia is participating in an initiative launched by UNCTAD with a view to making investment agreements socially sustainable. This is particularly relevant because Cambodia is attractive for investors not least because of its inexpensive labour force.⁷² A major step towards higher labour standards was achieved with the conclusion of the US – Cambodia Bilateral Textile Agreement in 1999. It granted higher export quotas to Cambodia’s garments under the condition that Cambodia demonstrated improvements in labour standards.⁷³ The agreement ran for three years and was then extended for another three years until the end of 2004 and Cambodia’s joining the WTO.⁷⁴

It was in this context that the U.S. funded two ILO projects to improve working conditions and the application of labour laws – one to monitor working conditions in garment factories (today, Better Factory Project), and the other to help resolve labour disputes throughout Cambodia (the Labour Dispute Resolution Project, the establishment of Arbitration Council).

8.3. Is the State taking steps to ensure and promote business respect for human rights when acting as members of multilateral institutions that deal with business-related issues?

⁷² UNCTAD, “Investment Policy Framework for Sustainable Development,” Geneva, 2012, 21.

⁷³ U.S. Cambodia Bilateral Textile Agreement, 20 January 1999, at http://cambodia.usembassy.gov/uploads/images/M9rzdrzMKGi6Ajf0SIuJRA/uskh_texttile.pdf.

⁷⁴ “U.S.-Cambodian Textile Agreement Links Increasing Trade with Improving Workers’ Rights, New Memorandum of Understanding Extends Bilateral Trade Agreement for Three Years,” 7 January 2002, at <http://www.fordschool.umich.edu/rsie/acit/LaborStandards/LaborInUSCambodiaTextile.pdf>

There is no official information or evident steps taken by the State to ensure and promote business respect for human rights when acting as members of multilateral institutions that deal with business-related issues. However, Article 3 of the Law on Investment in Cambodia states that the Council for the Development of Cambodia is the sole and one-stop service organization responsible for rehabilitation, development and over-seeing investment activities. Moreover, the Council for the Development of Cambodia is the Royal Government’s “Etat-Major” responsible for the evaluation and the decision making on all rehabilitation and development, and investment project activities.⁷⁵ Article 3 mentioned above provides for the jurisdiction of the state to over-see and make decision in terms of the investor’s activities. As the chair of the ASEAN Summit 2012, Cambodia contributed to the drafting of the final statement which contains the commitment of ASEAN to promote and protect human rights in the region, to support UN peacekeeping missions,⁷⁶ and to implement the ASEAN Declaration on the Protection and Promotion of the rights of migrant workers.⁷⁷

9. Is the State taking steps to ensure, through judicial, administrative, legislative or other appropriate means, that when business-related human rights abuses occur within their territory and/or jurisdiction those affected have access to effective remedy

So far, there are two known cases, where the State took legal steps to ensure human rights compliance in a business context. The first case relates to alleged shooting of three garment workers on strike by the

⁷⁵ Cambodia Investment Law, Art. 3.

⁷⁶ Chairman’s Statement of the 20th ASEAN Summit.

⁷⁷ Ibid.

then Bavet Town Governor, Chhouk Bandith.⁷⁸ Legal proceedings were initiated but then closed in December 2012 and reopened again in January 2013.⁷⁹

Another case relates to the death of an environmental activist, Mr. Chut Wutty. He was killed in April 2012 while researching alleged illegal logging and land seizures in Koh Kong Province.⁸⁰ The Prime Minister established a governmental investigation committee which led to proceedings before the Koh Kong Provincial Court.⁸¹ In October 2012 the Court decided that Wutty had been killed by a military officer named Rattana who had then accidentally been shot to death by the head of the logging company's security guards in an attempt to prevent further shooting. As a consequence, the Court decided to close the case on Chut Wutty's death given the murderer's death. It proceeded to sentence the head of security to two years imprisonment for the accidental killing of Rattana.⁸²

9.1. What are the legal and non-legal State-based grievance mechanisms available to those seeking a remedy for business-related human rights abuses?

The Arbitration Council is a national labour arbitration institution established under the labour

78 See <http://www.voanews.com/khmer-english/news/Court-Seeks-City-Leader-After-Garment-Protest-Shooting-141593083.html>.

79 See <http://www.voacambodia.com/content/appeals-court-picks-up-shooting-case-against-former-bavet-governor/1612021.html>

80 See <http://www.un.org/apps/news/story.asp?NewsID=41894&Cr=cambodia&Cr1=#.URYVuWfuxt0>

81 "Cambodia: Investigation Order in Killing of Activist," 01 May 2012, at <http://www.nytimes.com/2012/05/02/world/asia/investigation-ordered-in-killing-of-chut-wutty-in-cambodia.html>

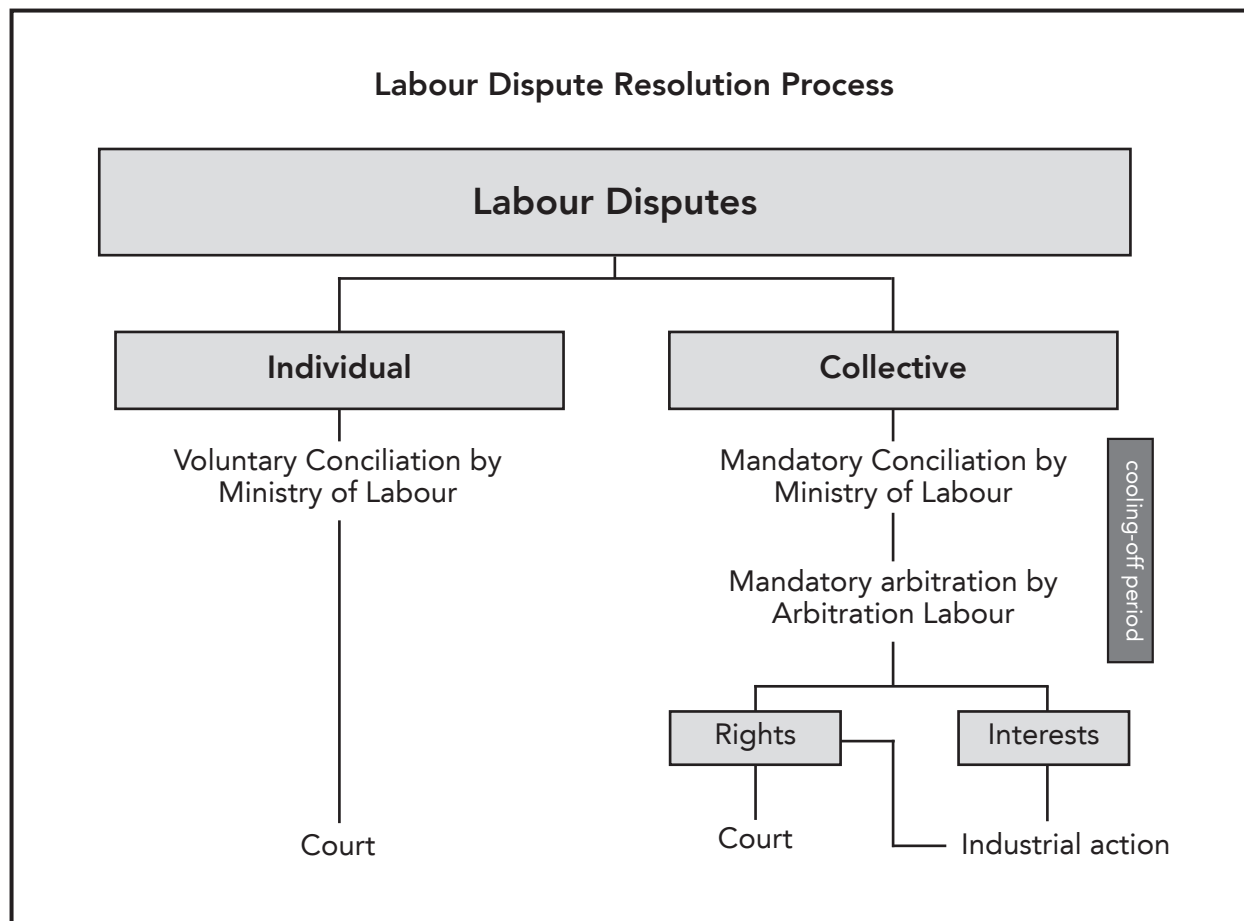
82 "Cambodian Courts Drop Case of Murdered Environmental Activist Chut Wutty," 4 October 2012, at <http://www.globalwitness.org/library/cambodian-courts-drop-case-murdered-environmental-activist-chut-wutty>

law to resolve collective labour disputes between employers and workers or their unions. The Council is a tripartite institution with its member being one third employers' representatives, one third union's representatives and one third representing the Ministry. The Council is mandated to resolve both 'rights disputes' – related to existing rights under the law, employment contracts or collective bargaining agreements, and 'interests disputes' – related to desired future benefits (mostly in the context of collective bargaining). It issues arbitral awards that are –in principle– non-binding on the parties.⁸³ While the conciliations process is mandatory for collective labour disputes, it is voluntary for individuals.

The arbitration award will be binding on the parties only with their agreement. If they do not agree, they can formally object within 8 days via the Secretariat. A timely objection means the award is unenforceable and triggers the parties' right to take industrial action (i.e., strike or lock-out) or, in the case of a rights dispute, proceed to the court. If no timely objection is filed, the award automatically becomes binding and enforceable. Under the law, if either party refuses to abide by an enforceable award, the other party can ask the court to enforce the award.⁸⁴

83 Hugo van Noord, Hans S.Hwang, Kate Bugeja, "Cambodian Arbitration Council: Institution Building in Development Country," ILO Working Paper No. 24, August 2011, 4, at http://www.ilo.org/asia/whatwedo/publications/WCMS_166728/lang-en/index.htm

84 Hugo van Noord, Hans S.Hwang, Kate Bugeja, "Cambodian Arbitration Council: Institution Building in Development Country," ILO Working Paper No. 24, August 2011, 5-6, at http://www.ilo.org/asia/whatwedo/publications/WCMS_166728/lang-en/index.htm

Overview of proceedings⁸⁵

9.2. What barriers to access to remedy through these State-based grievance mechanisms have been reported?

There are no governmental reports, but the UN Special Rapporteur concluded that the main problem is not a lack of a legal framework but its implementation:

“The majority of the challenges I have identified in this report [...] derive from a failure to apply the domestic legal framework – that is, the laws, policies and regulations that the Government itself has

developed [...]. The granting and management of economic and other land concessions in Cambodia suffer from a lack of transparency and adherence to existing laws. Much of the legal framework on these matters is relatively well developed on paper, but the challenge is with its implementation in practice.”⁸⁶

⁸⁵ Ibid., 5.

⁸⁶ Surya P. Subedi, “A Human Rights Analysis of Economic and Other Land Concessions in Cambodia,” Report of the Special Rapporteur on the Situation of Human Rights in Cambodia (A/HRC/21/63/Add.1/Rev.1, 11 October 2012), 197.

9.3. Are there laws, regulations, policies and/or initiatives requiring or encouraging the establishment of non-State-based grievance mechanisms?

The Cambodia Labour Law requires a company to develop its own internal regulations which normally would provide a grievance mechanism. According to Article 22 of the Cambodian Labour Law, every employer with eight or more workers is under an obligation to establish internal regulations after consultation with workers' representatives and review by the Ministry of Labor and Vocational Training.⁸⁷ In addition, the Labour Law also allows the company to develop a Collective Bargaining Agreement (CBA) with workers' representatives or trade union in the company. In practice, if a CBA is developed a grievance mechanism is included.⁸⁸

10. Is the State giving the country's National Human Rights Institution sufficient powers to enable it to contribute to the area of business and human rights?

The term "National Human Right Institution"⁸⁹ in Cambodia now encompasses the National Assembly Commission on Human Rights (NACHR), the Senate Commission on Human Rights (SCHR), and Cambodian Human Rights Committee (CHRC).

Up to now, there is no evidence that the state is granting them sufficient powers to qualify as an NHRI under the Paris Principles.

However, according to Professor Surya Subedi, the United Nations ("UN") Special Rapporteur on the Situation of Human Rights in Cambodia in 2011, between 2006 and 2010 the NACHR received total of 1,158 complaints from members of the public, mostly relating to land disputes, and the NACHR wrote to the relevant government departments in a "good number" of cases. The total number of responses from the government departments received was around 250.⁹⁰ As for SCHR, the Special Rapporteur reports that in recent years the SCHR has received 300 complaints, and has received responses from government departments in approximately 100 of these cases. The SCHR has been regarded by the Special Rapporteur as being slightly more effective than the NACHR, being more proactive and occasionally engaging in "fact finding" missions under its own initiative.⁹¹

The CHRC's role is to investigate and remedy complaints relating to human rights, collect information relating to the implementation of human rights, organize training and disseminate information on human rights. It is also responsible for preparing human rights reports for the UN. It is not a National Human Rights Institution according to the Paris Principles.

87 Cambodia Labour Law, Art. 24

88 Cambodia Labour Law, Art. 96 (2)

89 Cambodian Prime Minister, in 2006, committed to set up the National Human Right Institution according to the Paris Principles, the National Human Rights Institution is not yet established.

90 Cambodia Centre of Human Rights, Fact Sheet: Institutions Series: National Human Rights Bodies in Cambodia, March 2012, Vol. 3, at http://www.cchrcambodia.org/admin/media/factsheet/factsheet/english/2012_03_30_CCHR_Institutions_Series_Factsheet_National_Human_Rights_Bodies_ENG.pdf

91 Ibid., 1-2.

11. What are the efforts that are being made by non-State actors to foster State engagement with the Framework and that Guiding Principles?

One of the active non-State actors to foster the State engagement in human right framework is the Office of the High Commissioner for Human Rights in Cambodia (OHCHR). OHCHR translated the Guiding Principles into Khmer language and has organized two meetings in December 2011 and in March 2012. The purpose of the meeting is to promote awareness of the Guiding Principles among all stakeholders including the government ministries. Besides OHCHR, the Cambodian Centre for Human Rights (CCHR) launched the Cambodian Business and Human Rights Project in August 2009 and published its first report on Business and Human Rights in Cambodia in November 2010. Furthermore, the Arbitration Council Foundation, a NGO registered with the Ministry of Interior, has played an important role in promoting healthy industrial relations in particular in the area of collective labour dispute resolution.

World Bank: In 2011 the World Bank Inspection Panel published a report on alleged forced evictions and resettlements in the Boeung Kak Lake area in the context of the Land Management and Administration Project sponsored by the International Development Agency. The report identified a willingness of the Cambodian Government to support the 2009 Action Plan, which had been issued by the Management in response to the Panel's first report on this case in 2009. Based on this Plan the Cambodian Project Management had undertaken several initiatives in order to mitigate the harm of people living in the affected area. It suggested :

- “(a) undertaking a social impact assessment on the affected communities in the BKL area and in other Project provinces;
- (b) preparing a mitigation plan for poor and vulnerable affected groups and developing economic opportunities;
- (c) using other IDA credits to provide a set of protection measures to the affected people in line with what they would have received under the RPF; and
- (d) assisting Government efforts to evaluate options to mitigate adverse environmental impacts from the filling of BKL.”⁹²

Yet, as the Inspection Panel stated in its Report and the World Bank's Board of Executive Directors confirmed, these initiatives have not been sufficiently supported by the Government. Following the report, in August 2011, the Government issued a sub-decree (#183), giving over 700 families still living near the lake approximately 12 hectares of land on the planned development site and the government issued titles to 259 of these families on December 10, 2011.⁹³

⁹² International Bank for Reconstruction and Development, “International Development Association, Management Report and Recommendation in Response to the Inspection Panel Investigation Report: Cambodia, Land Management and Administration Project” (IDA Credit No. 3605-KH), (INSP/58016-KH, 21 January 2011), 45.

⁹³ World Bank Document, “Land Management and Administration Project: Implementation Completion and Results Report,” 27 December 2011, Report No: ICR1491), at http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2012/03/16/000333038_20120316004734/Rendered/PDF/ICR14910P070870C0disclosed030140120.pdf.

ILO: ILO plays an important role in Cambodia, both with regard to standards and technical assistance in their implementation. Two significant programmes have been initiated under the auspices of the ILO. The Better Factory Cambodia (BFC) monitoring and reporting on labour conditions in factories and the Labour Dispute Resolution (LDR) which facilitated the establishment of Arbitration Council (AC).

Non-governmental organisations are playing an important role in raising awareness for the human rights and business agenda. Many of these organisations cooperate under the umbrella of the NGO Forum Cambodia.⁹⁴

⁹⁴ See www.ngoforum.org.kh/