**Fact Sheet:** Case Study Series: Desperate Measures in Ratanakiri Land Dispute

**Timeline:** February 2012

**Snapshot:** This case – an example of a community’s rights being continually abused – is one of many across the Kingdom of Cambodia (“Cambodia”) that suggests that the complete absence of the rule of law, the lack of accessible judicial remedies for human rights abuses, and the all-pervasive blanket of impunity lying across the country is driving people and communities to resort to extreme and desperate measures to defend their rights and to seek remedies and resolutions.

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**Introduction**

This fact sheet provides an overview of a recent case in Ratanakiri province in the far north-east of Cambodia. It also analyzes the ramifications for the country of this disturbing recent trend among rural communities whereby extreme measures are being employed by communities as a result of the incapacity or unwillingness of the courts to provide justice for ordinary people. This fact sheet is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

**Case background**

On 21 February 2012, 300 villagers in Lumphat district, Ratanakiri province, detained one employee of Jing Zhong Ri Cambodia Co. Ltd (“JZR”), two military officers and two policemen for two hours. The villagers – of the Tumpoun minority ethnic group – were protesting against the bulldozing of their land by JZR to build a rubber plantation. According to JZR, the company has been granted a 70-year, 9,000 hectare concession for this rubber plantation. As with many other economic land concessions (“ELCs”) in Cambodia, the JZR concession was granted with no consideration for the economic and social impacts on this community – in gross violation of the rights of the community.

**Desperate measures**

An arrest effected by ordinary citizens is justifiable under Article 87 of the Criminal Procedure Code in the event of a flagrant felony or misdemeanor. In the Ratanakiri case, the men were detained while carrying out excavation work on land which the villagers claim as their own, and therefore may have been committing a crime, such as the destruction of property, which is a misdemeanor under Article 410 of the Penal Code. However, this case is not an isolated incident. While detaining company employees and law enforcement officials is rare in Cambodia, communities are increasingly taking matters into their own hands and resorting to various means to try to force a resolution to their problems and an end to the violation of their rights – often their rights to land and/or natural resources. In recent months, highways have been blocked, bulldozers have been commandeered, and illegal wood has been burnt.

**Rule of law vs culture of impunity**

Article 44 of the Constitution of the Kingdom of Cambodia (the “Constitution”) affirms the right of Khmer people to own land, and that this right to ownership shall be protected by law. Article 5 of the Land Law 2001 (the “Law”) and Article 44 of the Constitution provide that no person shall be deprived of their land unless it is in the “public interest” and, if they are to be deprived, they must receive “fair and just compensation” in advance. Under Article 25 of the Law, where indigenous communities have established their existence and continue to carry out indigenous farming, it is
their land under Cambodian collective ownership law and they are to enjoy all rights and protections under the Law. Under Articles 4 and 5 of Sub-Decree 146 – a secondary legal instrument derived from the Law – an ELC may only be granted where it will promote the living standards of the people and avoid or minimize any adverse social impacts, and where there has been full public consultation.

Article 128 of the Constitution states that “the Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens”, an obligation which it has flagrantly failed to discharge. Furthermore, under Article 2.3(a) of the International Covenant on Civil and Political Rights, which Cambodia ratified in 1992, governments are obliged to ensure that those whose rights have been violated shall have an effective remedy, notwithstanding that the violation may have been committed by persons acting in an official capacity.

Instead of honoring this obligation – which requires positive action on its part – the Royal Government of Cambodia (the “RGC”) continues to allow national and foreign businesses to abuse the rights of Cambodians with complete impunity. Cambodia’s courts tend to serve the interests of these business interests – often owned by individuals with close ties to the RGC – rather than those of the Cambodian people, particularly poor and marginalized communities. Unable to rely on the country’s corrupt law enforcement and judicial system, ordinary Cambodians are forced to defend their rights and interests themselves, with all the risks of violence, summary retribution and the further loss of trust in the country’s institutions and branches of government.

**Conclusion/Recommendations**

This case highlights many uncomfortable home truths: the extent to which the Cambodian authorities allow businesses to take advantage of Cambodian communities; the lack of remedies provided by the state for people whose rights have been abused; and the extent to which communities are being pushed in order to defend their rights in the face of continual abuses. This worrying trend of civil unrest underscores the need for the RGC to embark upon an immediate and thorough process of reform as regards Cambodia’s law enforcement and justice system.

In his September 2010 report, United Nations Special Rapporteur on Human Rights in Cambodia, Professor Surya Subedi, set out a clear framework for reform in this area. The report outlines specific measures and legislation that require implementation to ensure that Cambodia’s judiciary functions independently and to provide effective remedies in accordance with the rule of law. Such reform would empower ordinary Cambodians to rely upon the courts to protect their rights and provide effective remedies in the event that people’s rights continue to be violated, and would remove the need for communities to resort to desperate measures, such as those used in Ratanakiri.

Unless such steps are taken to establish the rule of law and stamp out impunity, this vicious circle will continue and things will likely deteriorate further, putting more people in danger of injury – or worse – with damaging repercussions for Cambodia’s people, society and reputation.

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