Executive Summary

“All human beings depend on the environment in which we live – a safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, for example, the rights to life, health, food, water and sanitation.”

(John Knox, Special Rapporteur on human rights and the environment, 2015)¹

Human rights and the environment are intrinsically linked – human beings depend on the environment for the enjoyment of their rights, and at the same time, protecting human rights helps to protect the environment.² In recent years there has been increasing recognition of the links between human rights and the environment, so much so that, in 2015 the first Special Rapporteur on human rights and the environment was appointed – Mr. John Knox.³

In the Kingdom of Cambodia (“Cambodia”), approximately three quarters of the population depend on natural resources to support their livelihoods,⁴ relying on agriculture, forest products, and fisheries to subsist. Thus, the environment is particularly important for ensuring the fulfillment of human rights in Cambodia and as a result, any development project that may impact on the environment has the potential to seriously threaten the human rights of Cambodian citizens. Yet, it is increasingly apparent that large-scale logging of forests, resource extraction, infrastructure projects, and land concessions are causing environmental degradation throughout the country. The Royal Government of Cambodia (the “RGC”) and corporate actors continue to flout domestic and international law in relation to the implementation of such activities, to the detriment of both local communities and the environment. In its work with local communities throughout the country, the Cambodian Center for Human Rights (“CCHR”) has noted that the issue of environmental degradation and the negative impacts it has on communities’ human rights is arising with increasing frequency.

With the domestic construction boom and foreign consumption fuelling the demand, weak governance and rampant corruption are facilitating uninhibited and illegal mining of sand throughout Cambodia’s rivers, estuaries and coastal regions. This Briefing Note seeks to highlight

¹ OHCHR, ‘Special Rapporteur on human rights and the environment (former Independent Expert on human rights and the
² Ibid
³ Mr. Knox had previously been appointed in 2012 as the first Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (the “Independent Expert”)
how widespread and uncontrolled sand dredging in the country is having a damaging impact on the local environment and the human rights of local communities.

The information in this Briefing Note is based on a review of the available literature, media monitoring, and interviews with affected community members from Koh Sralau village, Koh Kapi commune, Koh Kong province, and Dak Por village, Beung Tranh Khang Tbong commune, Samraong district, Takeo province, in addition to a number of interviews and conversations with experts in the field.

The first section of this Briefing Note introduces the phenomenon of sand dredging in Cambodia; the second section outlines the domestic, regional and international legal frameworks applicable to sand dredging; the third section describes sand dredging operations in practice in Cambodia; the fourth section highlights a number of human rights abuses that have been linked to sand dredging with reference to case studies; and finally, the fifth section concludes by providing a series of recommendations, among which are the following key suggestions to the RGC:

- Immediately place a moratorium on issuing new licenses to dredge sand until further research into the long-term impacts of sand dredging in Cambodia has been conducted;
- Review all existing sand dredging licenses and take appropriate action where companies are found to be in violation of their license restrictions;
- Revoke the licenses of sand dredging companies who are found to be in contravention of their environmental impact assessments (“EIAs”) and those companies who have not conducted comprehensive EIAs;
- Increase transparency in relation to future licensing, by ensuring public consultation and publishing license issuances and license conditions;
- Increase efforts to put an end to illegal sand dredging and ensure the perpetrators are held accountable;
- Ensure the mining sector is transparent and accountable, making relevant information available to the public, including a list of companies holding valid licenses to dredge sand, EIAs, and hydrological reports; and
- Immediately end intimidation and harassment of environmental activists, and take action to protect the rights of activists from corporate actors and other third parties.

This Briefing Note is written by CCHR, a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and to protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

1. Introduction

Sand dredging is an excavation activity carried out underwater, in shallow seas, estuaries, rivers and lakes, which involves the removal of sediment from the waterbed. Sand dredging occurs predominantly to service the construction and land reclamation markets, but can also be conducted under the justification of widening or deepening waterways for better passage of boats and barges, and reducing flooding. Dredging companies use barges to source sand from the waterbed. There are
a number of ways of bringing this sand up to the barges, but predominantly sand dredgers use either mechanical scoops or hydraulic suction pumps to lift sand to the surface. This sand is then transported by the barges, and onto larger ships if the sand is due for export.

In Cambodia, sand dredging has occurred over the last decade in a number of sites along Cambodia’s rivers and off the coast of Koh Kong, Kampot, Kep and Sihanoukville provinces. In terms of domestic demand, an industry businessman has estimated that Phnom Penh alone requires 10,000 cubic meters of sand per day for its construction needs, which is supplied from dredging sites in Kandal, Kampong Cham, Svay Rieng and Prey Veng provinces, as reported last year. While Cambodia’s sand dredging undoubtedly supplies the domestic construction demand, it is widely believed that the majority of sand produced from dredging along Cambodia’s coast is being exported to Singapore, where it is used for land reclamation and construction. Singapore has expanded its surface area by over 22% since its independence in 1965, and intends to artificially expand its territory by 6,200 hectares by 2030. In particular, Cambodia became of interest to Singapore following Indonesia’s ban on sand exportation in 2007. In fact, due to its environmental impacts, Indonesia, Malaysia and Vietnam have all limited or banned exports of sand to Singapore. According to environmental NGO Mother Nature, millions of tons of sand have been exported to Singapore from Koh Kong’s estuaries since 2009. As potential sources of sand in the region have become unavailable, Cambodian sand has become more and more valuable to international buyers. In addition to Singapore, Cambodia has supplied sand to other countries in the region, including India, Thailand and Vietnam.

In his first report, the Independent Expert stated that one “firmly established” aspect of the relationship between human rights and the environment is that “environmental degradation can and does adversely affect the enjoyment of a broad range of human rights.” As has already been mentioned, a large majority of Cambodia’s population depends on the land for their daily subsistence; thus, environmental degradation particularly has the potential to adversely affect human rights in Cambodia. As this Briefing Note will demonstrate, sand dredging in Cambodia has had devastating impacts on the environment, which has serious human rights implications for the communities living in proximity of the sand dredging sites.

2. The Legal Framework

CCHR has on several occasions outlined Cambodia’s legal commitments to human rights, including land rights, in both domestic and international law. In particular, CCHR’s Factsheet, ‘Applicability of International Human Rights Law in Cambodia’, highlights the applicability of the main sources of international human rights law in the Cambodian legal system, and CCHR’s Report, ‘Cambodia: Land

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in Conflict, An Overview of the Land Situation’,\(^\text{12}\) provides an analysis of the legal framework protecting land rights. In addition to protecting human rights, Cambodia also has further legal obligations to protect the environment, as this section of the Briefing Note will demonstrate.

**Domestic Commitments**

A number of domestic laws in Cambodia provide legal protection to the environment, and address public consultation and the management of natural resources. While Article 59 of the Constitution of the Kingdom of Cambodia (the “Constitution”)\(^\text{13}\) provides that the State has a responsibility to protect the environment, principally, the Law on Environmental Protection and Natural Resource Management\(^\text{14}\) (the “Environment Law”) provides specific protection for the environment and Cambodia’s natural resources. Included in the stated objectives of the Environmental Law are: to assess the environmental impact of all proposed projects prior to the issuance of a decision by the RGC; to encourage and enable the public to participate in environmental protection and natural resource management; and to suppress any acts that cause harm to the environment.\(^\text{15}\) Of particular relevance to Cambodia’s sand mining industry is Article 8, which explicitly states that Cambodia’s natural resources, including sand, shall be conserved, managed and used “in a rational and sustainable manner.”\(^\text{16}\)

Chapter III of the Environment Law, ‘Environmental Impact Assessment’, states that an EIA must be conducted for “every project and activity, private or public,” and for “existing and in-process activities that have not yet been assessed for environmental impact.”\(^\text{17}\) The procedure for conducting EIAs is outlined by Chapter III of the Environment Law, Sub-Decree No. 72 on Environmental Impact Assessment (“Sub-Decree No. 72”), and related regulations. EIAs should be reviewed and evaluated by the Ministry of Environment (“MoE”) before being submitted to the RGC for a decision.\(^\text{18}\) Further, Sub-Decree No. 72 requires that an EIA be conducted for all projects involving activities listed in an attached annex, which includes mining,\(^\text{19}\) although the Sub-Decree includes an exemption for projects deemed as “special case[s]... approved by the Royal Government.”\(^\text{20}\) While public participation is “encouraged” by the laws governing the EIA procedure, no concrete requirements are stipulated. In addition, there are no requirements for the disclosure of information.\(^\text{21}\)

Sub-Decree No. 72 states the MoE is responsible for conducting follow-up monitoring to ensure the project implementer follows the environmental management plan laid out in the EIA.\(^\text{22}\) Any project implementers that fail to submit EIA reports or fail to comply with their environmental management plans will be held accountable under Cambodian law.\(^\text{23}\)

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\(^{13}\) Constitution of the Kingdom of Cambodia (1993) Article 59

\(^{14}\) The Environment Law (1996)

\(^{15}\) Ibid, Article 1

\(^{16}\) Ibid, Article 8

\(^{17}\) Ibid, Article 6

\(^{18}\) Ibid, Articles 6 & 7


\(^{20}\) Ibid, Article 2


\(^{22}\) Ibid, Article 3

\(^{23}\) Ibid, Article 29
While the MoE is responsible for implementing the Environment Law and related sub-decrees, other ministries involved in the protection of Cambodia’s environment are: the Ministry of Agriculture, Forestry and Fisheries (“MAFF”) – responsible for managing forest areas and granting economic land concessions; and the Ministry of Mines and Energy (“MME”) – responsible for granting mining licenses and monitoring the activities of mining companies.

The RGC is currently in the process of developing an EIA Law – the seventh and latest version of which was made available in February 2015. While the EIA Law has yet to be adopted, it is demonstrative of the intended direction for EIAs. Importantly, Article 7 of the draft EIA Law states:

“The EIA shall always adopt and apply the precautionary principle to prevent the risks that may be caused directly or indirectly by the implementation of the development project. In cases where the study has found that the environmental situation may face with threats of serious or irreversible environmental damage, then the vagueness and the lack of scientific certainty shall not be used as a reason for denying the existence of the risks… The doubt in this case shall be interpreted for the benefit of forbidding the implementation of the project.”

The latest draft of the EIA Law appears to fall in line with international standards; however, it remains to be seen what the final version will look like, or when it will be introduced. In addition, regardless of whether the final draft of the EIA Law does adhere to international standards, this will be irrelevant if there is a lack of implementation once the law is entered into force.

Specific to mining, the 2001 Law on Mineral Resource Management and Exploitation determines the management and exploitation of mineral resources, including sand. Under this law, companies extracting mineral resources must hold a mineral resource license issued by the RGC to conduct its activities. Notably, Article 21 states that every license holder or subcontractor must conduct exploration and mining operations in compliance with the Environment Law; protect the safety of the public in and around mine sites; and provide education, training and jobs to Khmer citizens.

Since March 2015, following a directive issued by Prime Minister Hun Sen, the MME has been in charge of granting sand dredging licenses, taking over from the Ministry of Water Resources and Meteorology. According to the same directive, the committee on sand resources management – which had to approve hydrological studies of proposed project areas - was to be turned into an oversight and advisory body, with the “right to keep track of, monitor and provide recommendations on all technical points, principles... and duties related to [the sand dredging] sector.”

Furthermore, where sand dredging is being carried out by, or forms part of the supply chains of, foreign companies, those companies may additionally be subject to domestic environmental or human rights obligations in the jurisdiction from which they operate.

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26 Ibid, Articles 4 & 5
27 Ibid, Article 21
Regional Obligations

Cambodia’s legal commitment to environmental sustainability extends beyond local mandates, to regional and international bodies as well. As a member of the Association of Southeast Asian Nations ("ASEAN"), Cambodia signed the 2007 Declaration on Environmental Sustainability (the “Declaration”) at the 13th ASEAN Summit in Singapore. The Declaration was prompted by the World Summit on Sustainable Development in an effort to achieve the UN Millennium Development Goals, in particular to ensure environmental stability.30 Of significance, signatories of the Declaration made commitments “to promote the sustainable management and use of our soil, forest, coastal and marine environments,” as well as “to foster the sustainable management and efficient use of mineral resources and environmentally-sound mining practices”.31 More recently Cambodia further signaled its commitments to protecting human rights and the environment by adopting the 2012 ASEAN Human Rights Declaration at the 21st ASEAN Summit in Phnom Penh, which affirms a number of human rights, including “the right to adequate and affordable housing”, and “the right to a safe, clean and sustainable environment”.32

International Human Rights Law

“Human rights law includes obligations relating to the environment,” concluded the Independent Expert in his December 2013 report33 that mapped human rights obligations relating to the environment. There exist a growing number of legal statements that together create a body of human rights norms relating to the environment – such statements, the Independent Expert contends, are “evidence of actual or emerging international law.”34

According to the Independent Expert, obligations relating to the environment under human rights law include: procedural obligations of States to assess environmental impacts on human rights and to make environmental information public; to facilitate participation in environmental decision-making; and to provide access to remedies.35 Moreover, the obligation to facilitate public participation includes obligations to protect the fundamental freedoms of expression and association against threats, harassment and violence.36

Substantive human rights obligations related to the environment include the requirement upon states to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights, including harm caused by private actors.37 It is important to note here that, although these obligations do not require States to prohibit all activities that may cause environmental degradation, and States have “discretion to strike a balance between

31 Ibid
34 Ibid
36 Ibid
37 Ibid
environmental protection and other legitimate societal interests”, this balance “cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights.”38

These obligations are directly applicable in Cambodian law by way of Article 31 of the Constitution,39 according to a 2007 decision of the Constitutional Council of the Kingdom of Cambodia.40 In order to assist States to meet their human rights obligations relating to the environment, and corporations and civil society organizations (“CSOs”) to meet their responsibility to respect those rights, the Independent Expert compiled a report41 of “good practices”, which was submitted at the Human Rights Council’s 28th session in March 2015.

Moreover, as stated in the United Nations Guiding Principles on Business and Human Rights42 (the “UNGPs”), the RGC is obliged to protect human rights, while sand dredging companies have a responsibility to avoid infringing human rights and address adverse human rights impacts with which they are involved. While not legally binding themselves, the UNGPs are based on, and in many cases restate and explain, the legally binding obligations to which states are already subject under international law. Furthermore, the UN Human Rights Council unanimously endorsed the UNGPs in June 2011, establishing the UNGPs as the global standard of practice that is now expected of all States and businesses with regard to business and human rights.

3. Sand Dredging Operations In Practice

While a fairly comprehensive legal framework for the protection of the environment exists in Cambodia, in practice sand dredging companies have been able to circumvent such regulations and as such, sand dredging has had detrimental impacts on both the environment and on human rights. The RGC’s policy regarding sand dredging has been in a state of constant change since the MME first began issuing sand dredging licenses in 2006. Complicating matters further is the fact that many of the companies engaged in dredging activities operate under a veil of secrecy, often outside of the parameters set by their licenses – as such, it is difficult to know accurately where companies are engaged in dredging activities, and which companies are involved. Moreover, a proliferation of unlicensed operators dredging sand, often under the cover of night, make it even more difficult to determine the actual state of sand dredging in Cambodia.

38 Ibid
39 The Constitution of the Kingdom of Cambodia (the “Constitution”), Article 31
40 Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, (10 July 2007)
In May 2009 Prime Minister Hun Sen announced a ban on the export of dredged sand, pending environmental studies, which he reaffirmed in July that same year.\textsuperscript{43} Despite the ban, a report published just a year later by Global Witness, a prominent environmental and human rights NGO, exposed how not only had the ban been completely flouted, but sand exports from Cambodia’s coastline had actually increased.\textsuperscript{44} In other parts of the country where sand is being dredged from the rivers, policy has been similarly inconsistent. In 2011, the top and bottom of the Mekong River and the Tonle Sap Bassac river were named protected areas, effectively prohibiting dredging in those areas.\textsuperscript{45} In 2012, Prime Minister Hun Sen ordered the Ministry of Public Works, the Ministry of Water Resources and the National Mekong Committee to work together to create a master plan for dredging sand from the Mekong River, aimed at restoring shallow areas along the waterway; with dredged sand to be sold as export.\textsuperscript{46} The announcement was made at the inauguration ceremony of a terminal used for exporting sand, funded by the government of China in Kien Svay, Kandal province.\textsuperscript{47}

In August 2013, Phnom Penh municipal governor Pa Socheatvong ordered a complete suspension of all sand dredging activities in the capital while the municipality investigated whether the dredging

\textsuperscript{43} Vong Sekheng, ‘Hun Sen again calls for sand export ban, study of impacts’, \textit{Phnom Penh Post}, (02 July 2009) \url{http://bit.ly/1T0TUKe}
\textsuperscript{44} Global Witness, ‘Shifting Sand: How Singapore’s demand for Cambodian sand threatens ecosystems and undermines good governance’ (May 2010) \url{http://bit.ly/1UBoN2z}
\textsuperscript{47} Ibid
companies were operating illegally. Yet, reports after the order was made suggest sand dredging in Phnom Penh continued.

In October 2013 a ban was imposed on sand dredging along the Mekong and Tonle Sap rivers; however, two months later the RGC impounded five barges illegally operating in Kandal province’s S’ang district. At around the same time, residents in Kandal province’s Khsach Kandal district protested against five other barges dredging sand in the local area, further evidencing the ban’s minimal impact.

In March 2015 the RGC placed a moratorium on new applications for sand mining licenses, with MME minister Suy Sem announcing that the environmental and social impact studies would determine the future of sand dredging. Existing license holders were told they would have to apply to extend their permits if they wanted to expand their operations at the existing dredging sites, however they would not be permitted to open new dredging sites while the moratorium was in effect. At that time, according to the MME there were a staggering 142 dredging companies operating in Cambodia, but only 37 had licenses. Unsurprisingly, it soon became apparent that sand dredging companies continued to operate without licenses. A month after the moratorium was announced, 11 people, including three sand dredging company directors were arrested for operating sand mining operations without a license. The arrests came a day after the RGC held a meeting with 20 companies, threatening crackdowns if they continued their unlicensed mining activities. Considering the fact that unlicensed companies have continually flouted the law for several years in their operations despite a number of warnings, it seems remarkable that the RGC did not hold these companies accountable straight away.

Further, later in April the RGC decided to auction four two-year sand dredging licenses along the Mekong River, under the auspices of “restoring navigation of the waterway”. The four licenses were for designated “green zone” areas, where, according to the MME spokesperson, “there is no risk of riverbank collapse”; a claim met by environmental NGOs with skepticism. Moreover, it was recently reported that the MME had granted nearly 70 new sand dredging licenses without holding public auctions or requiring the companies to make publicly available EIA results, bringing the total number of companies holding licenses to dredge sand to 84, as of May 2016.

As is apparent, tacit endorsement of the activities of dredging companies continues, even when they are operating outside of the law. Inconsistent policies by the RGC and a low risk of punishment for

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51 Ibid
53 Ibid
55 Ibid
57 Ibid
companies operating illegally have meant that sand mining along the Mekong and other rivers and coastal areas in Cambodia has continued virtually unabated.

4. The Human Rights Impacts of Sand Dredging

While sand dredging may be conducive to the economic development of Cambodia, the unregulated way in which the practice has thus far occurred is of grave concern – CCHR has documented several cases whereby sand dredging activities in Cambodia have had serious implications, direct and indirect, for both the environment and human rights. The following section of this Briefing Note presents these implications.

**Displacement and tenure insecurity**

“Access to secure housing and land is a prerequisite for human dignity and an adequate standard of living...”

(Raquel Rolnik, former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 2012)⁵⁹

The most obvious and serious impact on human rights caused by sand dredging occurs when land is lost to riverbank collapses and severe erosion, impacting on the right to adequate housing,⁶⁰ and the right to property,⁶¹ including the right to security of tenure, as traditionally villages are built close to water sources such as rivers. Moreover, riverbank collapses often have a major effect on livelihoods as farmers often grow crops close to the river’s edge, affecting the right to work,⁶² the right to just and favorable conditions of work,⁶³ and the right to food.⁶⁴ When this land is lost or threatened, these farmers and villagers are forced to relocate, threatening the right to adequate housing, and causing financial stress and often, a loss of livelihoods.

It is important to note that all riverbanks experience natural erosion, which can cause riverbank collapse. However, increasing the water-flow of waterways increases the rate of erosion and the likelihood of the riverbank collapsing. In Cambodia, as stated by Prime Minister Hun Sen in a letter, “facilitating the proper hydrological flow of [the] waterways”⁶⁵ – or in other words, increasing the water-flow – is one of the reasons for sand dredging in the country. Moreover, a study conducted by the California Department of Conservation into river dredging in the United States and New Zealand found that rapid riverbed degradation may induce bank collapse and erosion by increasing the heights of riverbanks.⁶⁶ Additionally, the Food and Agriculture Organization of the United Nations (“FAO”) has also identified sand dredging as a factor that exacerbates natural erosion, which “jeopardize[s] opportunities for coasts to fulfill their socio-economic and ecological roles in the long

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⁶⁰ Universal Declaration of Human Rights (“UDHR”), Article 25(1); International Covenant on Economic, Social and Cultural Rights (“ICESCR”), Article 11; Convention on the Rights of the Child (“CRC”), Article 27

⁶¹ UDHR, Article 17; ASEM Human Rights Declaration, Article 17

⁶² ICESCR, Article 6

⁶³ ICESCR, Article 7

⁶⁴ ICESCR, Article 11

⁶⁵ Letter dated 16 November 2015 by Prime Minister Hun Sen to Heng Somrin, president of the National Assembly

term at a reasonable societal cost.” In a speech made in March 2015, Prime Minister Hun Sen himself raised the link between sand dredging and riverbank collapses and the effect on peoples’ land rights – referring to the MME (at the time recently placed in charge of granting sand dredging licenses), he said: “You will be responsible for the places where sand dredging is allowed and [where it] causes the collapse of people’s homes.”

The loss of mangroves constitutes another link between sand dredging and the loss of land, due to the mangroves’ important role as buffers between the sea and the land. As acknowledged by the FAO, mangroves provide protection against coastal erosion, and coastal locations characterized by the presence of mangroves exhibit less erosion than areas with non-vegetated land or former mangrove areas. Yet, mangroves are being eradicated at an alarming rate in Koh Kong. A study conducted by the International Union for Conservation of Nature (“IUCN”) – a global environmental network of scientists, NGO and government members, which has worked with the government of Cambodia on environmental preservation programs – has shown that the onset of river dredging correlates with increased mangrove devastation. Moreover, the same study found that in Koh Kong “sand mining has severely reduced the volume of river sand that stabilizes river banks upstream of the beach barrier,” causing erosion and river bank collapses, which has led to the displacement of several families where river widening has reached up to 100m.

Further evidence of the worrying effects of sand dredging on people’s land rights is plentiful throughout Cambodia along the country’s rivers. In August 2012, a length of shoreline in Kien Svay district, Kandal province, collapsed within a month of sand dredging operations in the area by a Vietnamese company operating six to seven barges on a daily basis. The collapsed bank, measuring over 500 meters long and five meters wide, affected the predominantly farming community of Koh Prak village, washing away crops and endangering the homes of those living close to the river. According to villagers, the loss of land directly affected 46 families and indirectly affected a further 100 families living nearby. Speaking to the Phnom Penh Post shortly after the incident, a village representative commented, “The activity of sand dredging… has severely affected our villagers’ lands and houses.” Subsequent protests against the sand dredging company proved to be futile, and insecurity of land tenure continues – as one villager described, “I am afraid that my house and land will slide into the river some day.”

Villagers in Tboung Khmum, formerly Kampong Cham province, have also been affected by the increased water-flow due to sand dredging, which began in the area in early 2011. In 2012, it was reported that at least 70 houses in Chirou Ti Muoy commune had to be moved to avoid danger from...
the riverbank collapsing.

According to villagers, since the sand dredging began, areas of the riverbank between 70 meters to 100 meters have collapsed. One villager reported at the time, “we are moving because we know the danger. The water is flowing fast and the riverbank is collapsing,” adding, “the more sand is dredged, the more the riverbank is going to collapse. The riverbank rarely collapses without the sand dredging.”

According to the commune chief, 60% of the villagers in his commune had resorted to taking out bank loans due to the costs associated with relocating further away from the riverbank, demonstrating the huge financial stress families are placed under when they are forced to move from their land.

Alarmingly, the loss of land due to sand dredging in Cambodia has even been linked to violations of the right to life. In February 2014, the collapse of the embankment on the Mekong River in Kandal province caused the death of a family of three when their home was washed away. Authorities at the time attribute the incident to a ‘natural disaster’, however local villagers claim that boats illegally and heavily dredging sand along the river had weakened the riverbanks.

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**Case Study: Loss of land and livelihoods in Takeo Province**

The 470 families that occupy Dak Por village, located next to the Slakou River in Beung Tranh Khang Tbong Commune, Samraong District, Takeo Province, have lived in the area for several decades, and rely on farming cucumber, cassava, potatoes and other vegetables on the land along the Slakou River. Although the land along the river where they farm their vegetables is state-owned being in such close proximity to the river, up until 2013 the community had never faced any problems regarding their farmland before and this practice has been widespread in Cambodia for centuries.

In April 2013, the villagers observed that across the river in Rom Pak Pen village, Tram Kak district, two bulldozers, three excavators and several trucks had begun constructing a road from the south of Slakou bridge to what would later become the Hav Un Sand Pumping Work Site, and then the Slakou Pumping Work Site. Following the construction of the work site, sand began to be dredged from the river, using excavators and barges. The company operating the work site is Slakou Sand & Quarry Crushing Ltd., owned by Cambodian Ms. Hav Un. The company claims to have had a license from the government for the duration of its operations; however, the villagers have never seen it. The villagers were never consulted with regards to the project, and have never seen nor heard of an environmental impact assessment being conducted.

Once the sand dredging had begun, company representatives, in cooperation with the chief of Dak Por village, began to coerce the villagers into selling their farmland to the company for a low price, by threatening them that if they did not accept, they would get nothing. Approximately 14 of the affected families reluctantly sold their land to the company, fearful of the threats made to them and

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79 Ibid
82 As told to CCHR during interviews with community representatives in December 2013 and June 2016, unless stated otherwise
the visible deterioration that had occurred on the riverbank since the company began dredging the sand. The rest of the families refused to sell the land; however, when they decided to protest against the sand dredging, the village chief told the community that the company was well-connected and threatened to bring in military police from Preah Sihanouk province to suppress any such protest activities if they went ahead.

Across from Dak Por village, the company pumps sand from the river
Source: CCHR, November 2013

The villagers claim that loss of land along the riverbank was noticeable almost immediately after the sand dredging began. Indeed, when CCHR visited Dak Por village in November 2013 just months after operations had begun, riverbank erosion was already evident and was affecting approximately 30 hectares of land. At that time, the community told CCHR they were worried that if the company continued to pump sand out of the river, more of the land would be affected, further impacting on their ability to farm that land, which they relied on as a source of income. In June 2016, CCHR visited the village once again - this time the damage to the riverbank was startling, with even more land lost.

The sand dredging has further impacted on the villagers’ livelihoods in that by disrupting the riverbed it has led to excessive suspended sediment thereby increasing the water’s turbidity. Excessive suspended sediment can impair water quality for aquatic and human life.83 In Dak Por village, the community’s livestock relied on the river as a water source; however, after the sand dredging began, the animals could no longer drink the degraded water. Subsequently the community has had to water their livestock by using water from the well that the community uses for drinking water. This has decreased the amount of water available to the community, who in turn

have had to purchase water from outside to sustain themselves – especially during the dry season when water is in short supply anyway – further exacerbating their financial difficulties. The UN Committee on Economic, Social and Cultural Rights - the expert body tasked with monitoring compliance with the International Covenant on Economic, Social and Cultural rights, which Cambodia has ratified - has noted “the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food.” In addition, the community reported that the increased turbidity has had a further impact on their livelihoods as their catch of fish had decreased since the sand dredging had begun, which they relied on as a source of food and income. Thus, the removal of sand in the area has impacted upon the community’s rights to water and food.

In early June 2016, a company representative informed the villagers that the company’s license had expired, and it now appears the company is clearing its work site. The villagers want to ensure the company leaves the site, and that the government will not grant further licenses to dredge sand in the Slakou River, which would create further loss of land and negatively impact on the community.

It seems even the RGC is beginning to acknowledge the link between sand dredging and the loss of land – in a recent speech made in Kampong Speu province on the occasion of National Fishery Day in July 2016, Prime Minister Hun Sen declared: “In some places, sand dredging takes place until there is widespread destruction, and there is no inspection of authorities. Not just riverbanks collapse, but also roads...” Despite this recognition, it appears no compensation or relocation assistance has been given to any parties affected by riverbank collapses likely to have been caused and/or exacerbated by sand dredging in Cambodia.

Loss of livelihoods

The loss of land associated with sand dredging can often lead to the loss of livelihoods, especially when the land that is lost is used for agriculture. The livelihoods of fishing communities have also been threatened in areas where sand dredging is occurring, and affected communities claim sand dredging has led to a depletion of fish stocks. Such loss of livelihoods as a result may impact affected individuals’ human right to work and the right to food. While it is difficult to assess the exact ecological impact of sand dredging, studies have found a number of ways in which sand dredging impacts on aquatic habitats, which may have detrimental consequences for fisheries. These impacts include: altering the morphology of the riverbed, which constitutes one aspect of the aquatic habitat; affecting the quality of the aquatic habitat by exposing substrates underlying the sand; affecting water quality due to sediment plumes arising from the dredging; and impacting on fisheries due to the loss of access to traditional fishing grounds, the interruption of migration pathways and avoidance behavior due to turbidity plumes. Moreover, Nao Thuok, the former director-general of the Fisheries Administration has conceded the effects of sand dredging on Cambodia’s fisheries,

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84 UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant’ (20 January 2013), E/C. 12/2002/11
85 Ibid
86 A recording of the speech can be found at Khmer Live TV, ‘TVK PM Hun Sen Speech – National Fishery Day in Kampong Speu Province’ (02 July 2016) http://bit.ly/29GvI2j Comment referred to can be heard at 01:09:59
87 ICESCR, Article 6
88 ICESCR, Article 11
stating that during the spawning season dredging has some impact on species development, although generally "it does not impact it seriously."\textsuperscript{90}

In addition, sand dredging barges have damaged local villagers’ fishing gear, resulting in an inability to secure income from fishing and additional financial stress to replace costly equipment, as has been reported to CCHR by communities in Koh Kong. In fact, nowhere in the country have the effects of sand dredging been more prevalent on peoples’ livelihoods than in Koh Kong, where dredging is rampant. According to Mother Nature, the wide-scale sand dredging that has been occurring in the region has had devastating impacts on local peoples’ livelihoods in Koh Kong due to the decimation of fish stocks.\textsuperscript{91} The IUCN study found that in Koh Kong, “sand mining has destroyed fish habitats, resulting in a reduction of 70-90\% in fish catches.”\textsuperscript{92} While there are undoubtedly other factors that have contributed to a decline in fish stocks in the area – for example, increased competition and illegal industrial-scale fishing conducted by commercial fishing trawlers from neighboring countries, there is strong anecdotal evidence to support the link between the decline in fish stocks and the onset of the sand dredging. In early 2008 when the sand dredging operations began in the area, within weeks villagers in Koh Kong district’s Koh Sralau village had noticed a decline in the main crab species caught in the area – the swimmer crab.\textsuperscript{93} The reduction in fish has led to a trend of younger people leaving the region, as fishing can no longer sustain their livelihoods.\textsuperscript{94} The following case study on the fishing community on Koh Sralau, a small island in Koh Kong, further evidences the hugely negative direct and indirect impacts that sand dredging has had on the livelihoods of an entire community.

**Case Study: Loss of Livelihoods on Koh Sralau**\textsuperscript{95}

Koh Sralau, a small island in Koh Kong province spanning eight square kilometers, is home to approximately 320 families who began arriving on the island from 1985 onwards. The families do not possess formal land titles, but approximately 100 families have letters recognizing their possession of the land issued by the local authorities. The community on Koh Sralau has traditionally sustained itself through fishing, both in the estuaries and in the sea, depending on the season. In early 2008, companies arrived in the area and began dredging sand. The sand dredging has been ongoing since this time, and while initially the sand dredging operations were conducted far from the island, over time the dredging has occurred closer and closer; the community reports that in recent years dredging has occurred as close as 100m from the island.

The continual sand dredging has had a significant impact on the community. Community members claim that company barges have destroyed their fishing equipment in shallow water, directly impacting upon their ability to catch fish. In addition, the community alleges that the sand dredging operations have significantly depleted the fish stock – in particular, fish, crab, and mollusks - in the


\textsuperscript{95} As told to CCHR during an interview with a community representatives in April 2016 and discussions with Mother Nature
estuaries, which has led to many community members reducing or even abandoning estuary fishing. The construction of a number of hydropower dams located upstream has also had an impact in that it has blocked sediments and nutrients from travelling downstream.

Exacerbating the community’s difficulties are reports of land loss on Koh Sralau, and although it is difficult to say how much has been lost, they are worried. Moreover, a small islet, approximately 54m², known as Kabong Island used to exist approximately 100m from Koh Sralau. The community used to fish around Kabong Island, but gradually it got smaller and smaller as the land collapsed into the water; today, it no longer exists. Speaking to the Phnom Penh Post, one Mother Nature activist describes the former island: “It was about 100 meters by 50 meters... it looked like a crocodile egg, filled with mangroves and crabs. Then they took the sand around it, and when the water came in, it was gone.” As the island provided an important habitat for fish, its disappearance has had a significant impact on available fish stock. The depletion of the fish stock in the estuary has had a huge impact on affected families’ incomes, as the ability to engage in sea fishing depends on the economic situation of the community members, as it requires larger boats.

A community member told CCHR that before the sand dredging he earned approximately US$25 per day, but now only earns between US$8 and US$10 per day, remarking: “the sand dredging has destroyed everything, so it is difficult”. Due to the financial stress the loss of income has caused he has borrowed US$350 from the bank, but is not confident he will be able to pay the money back. In fact, the effect that sand dredging has had on the community’s livelihoods – both directly through the damage of their equipment, and indirectly through the depletion in the fish stock – has had such a significant impact on the community that around 80% of them have resorted to borrowing money from the bank.

In addition, the impact on the livelihoods of the fishing community has led to high rates of migration, particularly among the younger generations, as the community struggles to earn sufficient incomes. According to Dr. Melissa Marschke, a researcher on human-environment relations with an emphasis on livelihoods, as the total population of Koh Sralau had remained stable for the three decades prior to the commencement of sand dredging, the rate of migration is significant. As has already been noted, while it is important to acknowledge other factors that have undoubtedly contributed to the current difficult situation for the fishing community, sand dredging has been a major factor, hugely exacerbating problems. As Marschke surmises, “sand extraction is not the only activity to place a strain on local livelihoods; it may just have been the tipping point for some households.”

Various companies have dredged sand in the area, although it appears that the main companies undertaking the dredging have been Rainbow International Co. Ltd (“Rainbow International”), Direct Access Co. (“Direct Access”), Oudom Seima Peanich Industry & Mine (“Oudom Seima”) and LYP Group. More recently a company has begun operating in the area, whose permit does not specify a name, represented by a woman named Chong Mom. The companies listed have been linked to powerful interests. For example, Ministry of Commerce documentation obtained by CCHR reveals

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98 Ibid
that Hun Mana and Hun Maly – daughters of Prime Minister Hun Sen – were shareholders of Oudom Seima until mid-2011. Powerful business tycoon Ly Yong Phat owns LYP Group. Little else is known about the companies, which are shrouded in secrecy. Rainbow International has shown the community its license, however the license that was shown permitted the company to mine in three locations, the nearest of which was three kilometers away from Koh Sralau. As mentioned before, the community has reported mining companies operating as close as 100m away from the island. The license shown by Rainbow International expired at the end of 2015. The MME has shown the Phnom Penh Post an EIA for Rainbow International from 2009. Direct Access has not shown the community its license, although claims it has not broken licensing law. Oudom Seima claims to have a license to dredge sand in the area, although the community members have not seen it. In February 2016, the MME announced that the EIAs for the two companies dredging sand in the area would be released “soon”, however as of the time of writing, the EIAs have not been made public.

Crucially, a lack of transparency and accountability mean that the communities are often unaware of which companies are conducting the mining, and whether they have permits. Moreover, as observed by Mother Nature, over the years the barges and cranes operating in the area have remained the same, with no logos or signage indicating which company they belong to. Adding further doubt to the murky nature of the legality of mining operations in the area, even local authorities have conceded in the past that the companies have violated licensing law. In 2015, the chief of the provincial department of industry, mines and energy admitted that Rainbow International had been operating outside the boundaries permitted by its license.

Dredging companies operating in the area, including Rainbow International, have promised the community on Koh Sralau that they will receive a number of benefits provided by them, such as schools with computers, roads and a health clinic. These promises have yet to be fulfilled, but the sand dredging continues unabated and the community continues to face subsistence difficulties as a result.

In stark contrast to the reality of the situation faced by the community on Koh Sralau, a letter addressed to the National Assembly from the Prime Minister in 2015, states that in an assessment of the dredging activities of Direct Access conducted by the MME, the “ministry did not detect any impacts on people’s dwellings;” and further, that communities “expressed their acceptance and consent in regards to the sand mining” and purported solely positive developments as a result of the dredging. For example, the letter describes how in some places the dredging has made the estuary deeper, making the water more easily navigable, especially during the dry seasons. However, this effect seems more beneficial to ships and the sand dredging barges that need deep water to navigate, rather than to the local communities who use smaller boats with smaller hulls. The letter also claims that communities have stated that as a result of the dredging, the estuary’s flow has become better during rainy seasons, decreasing flooding in the area. Communities in certain areas

100 CCHR, ‘Fact Sheet: Mother Nature Activists Targeted Again’ (Case Study Series) (January 2016) http://bit.ly/1PLWhRw
101 Ibid
105 Letter dated 16 November 2015 by Prime Minister Hun Sen to Heng Somrin, president of the National Assembly
(i.e., living near the Andoung Teuk Bridge) do indeed say there are fewer floods now than what there used to be, which is a result of the dredging.

The inspection by the MME into the dredging activities of Direct Access did find “minor collapses of the estuary banks” in three locations – two located within the 25km that falls inside the company’s permit, and one collapse outside the allocated area. In relation to this, the letter states, “regarding these cases, the ministry is conducting detailed studies as there are many reasons why these river banks could have collapsed, i.e. naturally occurring erosion, logging of mangrove trees, or extraction of sand at depths that are too deep.”

In addition, the letter stated that the sand mining had “helped contribute to the development of their communities”, and that the company has respected the stipulations placed upon it by the MME and Ministry of Economy and Finance to provide US$0.02 into a community fund for each cubic meter of sand mined. The community on Koh Sralau in the above case study has not felt such benefits in terms of development. For the community fund, the Koh Sralau community has not been informed about the existence of such a fund, and in relation to neighboring communities not affected by sand dredging, Koh Sralau has the same or even inferior infrastructure, indicating that even if development had occurred on the island as a result of the sand dredging, it has been unremarkable.

By no means is the sand dredging in Koh Kong isolated to the waters surrounding Koh Sralau. It has been reported that sand is currently being dredged at several sites in Koh Kong’s estuaries, including in Koh Pao, Ta Tai, Tropeang Roung, Andoung Teuk and Sre Ambel. It is of particular note then, that a study into the environmental (physical and biological) impacts of marine sand and gravel extraction has observed that while “one dredging activity may not have a significant direct or indirect environmental impact... the cumulative effect of several (adjacent) dredging sites may induce significant changes.”

Harassment and intimidation of environmental rights defenders

While all human rights defenders take risks to exercise their rights and to promote and protect universally recognized human rights and fundamental freedoms, John Knox – acting in his then appointment as the UN Independent Expert – has noted that “in practice, environmental human rights defenders have proved to be especially at risk when trying to exercise those rights,” and that “environmental rights defenders face a high risk of killings, attacks, assault, threats and intimidation from both State and non-State actors.” For those human rights defenders attempting to protect land and the environment in Cambodia, the risks raised by Knox are certainly a reality. In particular, those activists who have attempted to campaign against sand dredging to defend the environment have been subject to continuous harassment and intimidation at the hands of the authorities and the sand dredging companies themselves.

106 Ibid
107 Ibid
This kind of harassment and intimidation not only prevents activists from legitimately opposing the adverse environmental and human rights impacts described above, but also in itself amounts to a further violation of other human rights enjoyed by such activists, in particular the rights to freedom of expression, assembly and association. For example, on 26 June 2015, three activists associated with Mother Nature were arrested while attempting to peacefully assemble and submit a petition to the National Assembly against sand dredging activities in Botum Sakor district, Koh Kong province. On 17 August 2015, three youth members of Mother Nature were arrested and imprisoned after refusing to appear for questioning at the district police station in connection with their alleged involvement in peaceful, non-violent protests against sand dredging. They were held in detention until 01 July 2016, when they were sentenced to 18 months in prison and released with the remainder of their sentence suspended. The three activists were also given a fine of two million riel (USD 500) and ordered to pay unwarranted compensation of 100 million riel (USD 25,000) to Direct Access, the dredging company that initially brought a criminal complaint against them. The unfair conviction was widely condemned by Cambodian CSOs. Alejandro Gonzalez-Davidson, a Spanish citizen and the Director of Mother Nature, has also been charged as an accomplice to the same offense, despite being in effective exile from Cambodia since he was detained and deported from Cambodia in February 2015 as a result of his activism, which included campaigns against sand dredging in Koh Kong.

In October 2015, local authorities prevented a group of students and Mother Nature activists from holding a democracy training session in Koh Kong’s Ta Meakh village, Andoung Tuek commune - where the local community has been very much affected by sand mining in recent years – and threatened to arrest the organizers if they attempted to proceed with training. In relation to this incident, a letter addressed to Prime Minister Hun Sen from the Working Group on Arbitrary Detention and various Special Rapporteurs expressed concern that, “the ban imposed on the human rights training session and the threat to arrest the participants may be linked to the legitimate human rights activities of Mother Nature who work closely with local communities to teach them about methods of direct and peaceful action to protect their environment and human rights.”

In addition, individuals have even been subject to unlawful detention by Oudom Seima, a sand dredging company operating in Koh Kong. On 07 December 2015, seven people – two Mother Nature activists, an English journalist, and three local community members from Koh Sralau, including a young girl – were detained for approximately two hours by private security guards employed by Oudom Seima. According to one of the Mother Nature activists, Mot Kimry, the seven individuals were on public land, documenting the sand dredging occurring in the mangroves near

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110 The Constitution, Articles 41, 42; and ICCPR, Articles 19, 21, 22
113 Cambodian CSOs, ‘CSOs condemn the unfair conviction of Mother Nature activists San Mala, Try Sovikea and Sim Somnang’ (Joint Press Release) http://bit.ly/29aRXgQ
114 Letter to Prime Minister Hun Sen from the Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders (18 November 2015) KHM 5/2015 http://bit.ly/1r6Qtsh
Koh Smach, which they suspected to be illegal. Upon their arrest, a representative from Oudom Seima ordered them to erase their photographs and video footage. Despite complying with this order, they were prevented from leaving and taken to a second location, where they were subject to interrogation and intimidation for approximately an hour and a half before being released.\textsuperscript{115} The incident occurred in violation of the activists’ right to freedom of expression – which includes the freedom to take photographs of things that are plainly visible from public spaces – and the prohibition of unlawful detention being protected both under domestic law and international law.\textsuperscript{116}

When the community on Koh Sralau has attempted to exercise their fundamental rights to freedom of expression and assembly and protest against the sand dredging, they have been met with harassment and intimidation by both the local authorities and the sand dredging companies. On several occasions the local authorities have threatened the community members that they will be imprisoned if they continue to protest, which has caused fear among the community.

5. Conclusion

This Briefing Note has demonstrated that the practice of sand dredging has had, and continues to have, serious and far-reaching implications for human rights in Cambodia. Not only has sand dredging led to the loss of land and subsequently displacement, the practice has also been a major factor in the loss of livelihoods and alarmingly, has even led to the loss of life. It is clear then, that while resource extraction, including sand dredging, may be conducive to the economic development of Cambodia, the unregulated way in which the practice has thus far occurred, in the absence of comprehensive environmental and social impact assessments, is of grave concern. Moreover, in reality the unsustainable extraction and exploitation of Cambodia’s sand provides little to no benefit to Cambodians: local communities do not enjoy economic benefits as jobs are invariably given to migrants from other areas of the country or overseas; the profits of the operations are enjoyed by a small number of large corporations; and finally, much of the sand is used for export and there is no publicly available information on the amount of royalties or license fees received by the RGC. Yet despite such concerns and continued reports of contraventions of the law in relation to sand dredging, the RGC continues to issue companies with licenses to operate sand dredging activities throughout the country.

In light of the worrying human rights implications of sand dredging in Cambodia, CCHR wishes to make the following recommendations to the RGC:

- Immediately place a moratorium on issuing new licenses until further research into the long-term impacts of sand dredging in Cambodia has been conducted;
- Review all existing sand dredging licenses and take appropriate action where companies are found to be in violation of their license restrictions;
- Revoke the licenses of sand dredging companies who are found to be in contravention of their EIAs, and those companies who have not conducted comprehensive EIAs;

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\textsuperscript{115} CCHR, ‘Fact Sheet: Mother Nature Activists Targeted Again’ (Case Study Series) (January 2016) \url{http://bit.ly/1PLWhRw}

\textsuperscript{116} The Constitution, Article 32, 38; ICCPR, Article 9.
• Increase transparency in relation to future licensing, by ensuring public consultation and making license issuances and license conditions available to the public, by publishing them on the MME’s website;

• Ensure the MoE has sufficient independence and power to reject EIA reports when they show adverse environmental impacts;

• Ban all sand mining activities in areas deemed to be of ecological importance, including in areas already recognized as being protected under Cambodian law, in addition to areas where EIAs show ecological importance;

• Ensure enforcement authorities are provided with sufficient resources to ensure companies carrying out sand dredging activities comply with domestic law, increase efforts to put an end to illegal sand dredging and ensure the perpetrators are held accountable;

• Oblige companies to assess human rights impacts and remedy violations when they occur, as per the UNGPs;

• Strengthen the MME and other relevant ministries to ensure the mining sector is transparent and accountable, and make relevant available information the public, including a list of companies holding valid licenses, EIAs, and hydrological reports;

• Ensure the body appointed to oversee sand mining operations has the capacity and willingness to monitor the activities of the MME and the mining companies;

• Promptly enact the Environmental Impact Assessment Law in a form consistent with international standards to strengthen the legal framework concerning projects which threaten the environment;

• Amend Sub-Decree No. 72 so that public participation is a mandatory part of the EIA process and that the results of EIAs are made publically available;

• Require the MoE to make results from follow-up monitoring (to ensure companies follow the environmental management plan laid out in the EIA) publically available;

• Place a moratorium on all sand exports until further studies into the impacts of sand dredging have been completed, and ensure future exports are transparent and effectively monitored by government agencies and CSOs;

• Organize public forums with all relevant stakeholders, including communities, local authorities, the company and CSOs, in order to provide for meaningful consultation with communities to take place before sand dredging activities commence;

• Ensure those communities that are

• affected by sand dredging are fully consulted, and provided with adequate compensation;

• Establish an effective complaints mechanism for communities affected by sand mining operations; and
• Immediately end intimidation and harassment of environmental activists, and ensure relevant stakeholders are allowed to peacefully monitor sand mining activities without fear of reprisal.

For more details, please contact CCHR Land Reform Project Coordinator Mr. Vann Sophath via telephone at +855 (0) 12 941 206 or e-mail at vann.sophath@cchrcambodia.org or CCHR Human Rights Consultant Ms. Alysha Khambay via telephone at +855 (0) 12 479 174 or email at alysha.khambay@cchrcambodia.org