

Empowerment of the affected people – opportunities and risks for the implementation of the FAO Voluntary Guidelines

[Outline of inputs for workshop]

1. What are necessary preconditions for safeguarding equal access to grievance mechanisms regarding land conflicts in Cambodia?

- a) As no grievance mechanisms regarding land conflicts are currently effectively implemented in Cambodia, there are many preconditions for safeguarding equal access that remain to be met.
- b) The grievance mechanisms related to land conflicts in Cambodia are almost entirely inaccessible to those without wealth or powerful connections.
- c) There is no independent court system or respect for rule of law.
- d) The courts send cases they don't want to deal with to the Cadastral Commission, which sends them back to the courts, all with complete disregard for each body's jurisdiction or legal requirements.
- e) Courts also delay cases for years when they do not want to address claims brought by average citizens against powerful interests.
- f) On occasion, courts also file retaliatory criminal charges in response to civil lawsuits brought by average citizens mired in land disputes.

2. What is needed to acknowledge and effectively protect HRDs?

- a) The courts are increasingly used by the government to silence any opposition or human rights defense. In other words, the government is becoming more sophisticated in going through the motions to try and imprison activists on false charges. Critical speech, peaceful assembly, and even filing a complaint with a court to protect or assert your rights are all likely to result in prison time for HRDs.
- b) Such cases, like the baseless convictions of 13 female Boeung Kak Lake land rights activists, of Mam Sonando, and of Yorm Bopha – all of which took place last year – have illustrated a significant deterioration in the human rights landscape in Cambodia.
- c) Indeed, our attorneys have been informed of spurious criminal charges against their clients immediately upon filing a civil suit attempting to assert land rights on more than one occasion.
- d) The international community's role in securing freedom from lengthy and groundless prison sentences over the past year has been significant. Embassy officials have been increasingly active in private lobbying and in attending the high profile trials of HRDs. INGOs have similarly launched high visibility campaigns on behalf of HRDs targeted by Cambodia's courts, such as the Prisoner of Conscience campaign for Yorm Bopha by Amnesty International. It is crucial that the international community continues to recognize where courts are being used to silence HRDs, particularly as the government continues to become more sophisticated in its efforts.
- e) A good example is the amount of direct foreign aid that has gone into judicial reform efforts over the past decade. Australia alone has given tens of millions of dollars directly to the judiciary. For those of us monitoring human rights on the ground, particularly trial rights and abuses by the judiciary, One can say maybe the money has

not been used in the most transparent and efficient way. Aside from the number of cases against HRDs, there is no progress even at the most basic level.

- f) As of 2013 several court verdicts are still not accessible to the public, for example. Often there are no written verdicts describing any of the court's analysis at all. There is some controversy over whether verdicts are confidential, though there is no provision in the law indicating they potentially could be. How can donors expect to assess the impacts of their aid for judicial reform when there is no basis on which to do so?
- g) The lack of an impartial judiciary has also rendered legal safeguards meaningless. Cambodian law on land rights is actually quite strong. But there is no forum in which to assert violations of those laws. In the best case scenario, the case will languish unaddressed for years (examples are the Koh Kong and Borei Keila cases). In the worst, as noted above, the plaintiffs will find themselves facing criminal charges and lengthy stints in prison.

3. Where are the Voluntary Guidelines important and what needs to be taken up for their implementation?

- a) Implementation at the national level would require a genuine commitment by key state actors and overall political will to implement – both of which are lacking as of now in Cambodia. Such commitment is unlikely to come from a donor imposed/supported platform or framework.
- b) The problem in Cambodia is not that such frameworks are currently lacking, but that they are routinely ignored. The laws governing Economic Land Concessions, for example, are quite strong. They are likely in line with the key aspects of the VGs and their implementation and enforcement would greatly improve land tenure security and food security for Cambodian people.
- c) As such, perhaps the VGs most promising role in Cambodia is with respect to influencing non-State actors. The VGs include many provisions dictating business behavior, for example. If the VGs are incorporated into international standards or laws in investors' home countries, then they could potentially carry weight in regional or international human rights monitoring bodies. Incorporation into laws governing business behavior could ultimately be a powerful step towards their implementation. Similarly, the VGs could potentially be used to lobby businesses with regards to their Corporate Social Responsibility policies and own internal grievance mechanisms.
- d) In the same vein, the VGs could perhaps be incorporated into the triggering provisions of grievance mechanisms for international banks and finance institutions, which could play an important role in stopping land grabbing in Cambodia.