Conference Summary: Foreign Investment and Urban Growth in Cambodia

"We need onsite development. The compensation should be fair and based on the actual market price. With little and unfair compensation, our lives become even harder."

Ngoun Vannak, from a community in Kandal province

STT organized a conference titled *"Foreign Investment and Urban Growth: Navigating Inequality and Vulnerability in Rural and Urban Cambodia,"* on the 25th November 2024 at the Sun and Moon hotel, bringing together experts and practitioners from different backgrounds to discuss housing challenges and solutions for Cambodia's vulnerable populations, notably those at risk of eviction. Community members from different urban poor communities around Phnom Penh and in rural areas were also present, as well as young Cambodian students interested in the housing sector and human rights. The objective of the conference was to reunite key stakeholders, from the private sector, academia, and NGOs, along with community members who are directly affected by development projects and in urgent need to seek resolutions.

Audience members and community representatives present at the conference

I. Panel Discussion

The conference opened with presentations from two speakers. Emily Traub, a Phnom Penh-based urbanist and researcher, provided a general overview of the state of the housing market in Phnom Penh. Ms Traub emphasized the shortfalls and challenges in Cambodia's housing landscape which faces significant challenges, particularly in Phnom Penh, where rapid urbanization and economic development have created an affordability crisis. The affordable housing sector, which only began taking shape with the National Housing Policy in 2014, struggles with systemic issues including inadequate data systems, weak regulatory frameworks, and fragmented institutional oversight. Land concentration among a small group of owners, combined with foreign investment focusing primarily on luxury developments, has skewed the market toward high-end properties. While rental housing has emerged organically to meet demand, it remains largely informal and unregulated. Ms Traub stressed that the situation is further complicated by the growing importance of climate-resilient construction, especially regarding thermal considerations, highlighting the need for sustainable building practices in Cambodia's evolving housing sector.

Am Sam Ath, Emily Traub, and Eric Wong

Following this, Am Sam Ath from LICADHO discussed the regulatory framework governing real estate development in Cambodia which reveals significant disparities between policy implementation and market realities, particularly concerning social impact assessments and foreign investment projects. A critical analysis of housing affordability shows that even "affordable" units, priced between USD 15,000-20,000, remain beyond the economic reach of urban poor communities, creating a significant market exclusion issue.

Communities affected by the New Airport development project today illustrate systemic issues in land valuation and compensation mechanisms. A decade-old land assessment valued 8 USD per square meter in the area, but the implementation of compensation schemes was significantly delayed. This delay created a substantial temporal disconnect between assessment and execution, as market values appreciated 70-80 USD per square meter. The rigid adherence to outdated valuations in compensation calculations, despite dramatic market appreciation, has created significant social tension and resistance from affected communities. This case highlights fundamental flaws in the compensation framework:

1. Time lag between assessment and implementation
2. Failure to account for market value appreciation
3. Lack of indexing mechanisms for land valuations
4. Inconsistent application of compensation policies

This situation underscores the urgent need for dynamic valuation mechanisms and more responsive compensation policies that reflect current market conditions rather than historical assessments.

The second panel explored the broader economic context surrounding land and housing issues in Cambodia, examining factors such as the free market, and housing dynamics in the context of Cambodian neoliberalism. This discussion featured Dr Pa Chanroeun, the director of the Cambodian Institute for Democracy, Dr. Gabriel Fauveaud from the University of Montreal, and Eric Wong, a real estate practitioner who has been active in the private sector in Cambodia for many years.

'When we address affordable housing and high housing costs, we have to think about why there is so much land and housing speculation and how to stop it.'

Eric Wong

Eric Wong and Gabriel Fauveaud both agreed that the Cambodian real estate market exhibits a critical structural imbalance, with development heavily skewed toward luxury condominiums marketed to international investors rather than addressing domestic housing needs. This foreign-centric, speculation-driven approach has led to market oversaturation in the high-end segment, creating an unsustainable dynamic where supply significantly exceeds local demand. The misallocation of development resources toward luxury properties, while neglecting affordable housing, emphasizes the urgent need for government intervention through social housing initiatives to better serve the local population's actual housing requirements.

Dr Fauveaud noted that the pursuit of urban modernization in Cambodia through high-rise developments represents a "spectacle of modernity" rather than genuine economic advancement. The housing market operates on a spectrum between use value and asset value, with Phnom Penh's condominiums heavily skewed toward asset value and speculative practices, while borey developments (gated communities) tend more toward practical residential use value. To address this imbalance, development policies must shift toward inclusive approaches, including mandatory affordable housing allocations within new projects and the deliberate integration of local residents. This reorientation would help transform Cambodia's urban development from a speculation-driven model to one that serves real community needs while maintaining economic viability.

Eric Wong, Dr. Pa Chanroeun, and Dr Gabriel Fauveaud

Cambodia is experiencing a significant geographical shift in its neoliberal economic development, expanding beyond the saturated real estate market of Phnom Penh into secondary cities. This transformation is particularly evident along the economic corridor connecting Ho Chi Minh City to Thailand through National Road 5, which has emerged as a focal point for investment. The development of these secondary urban centers is being shaped by multiple forces: government-backed investor incentives, international agency involvement in urban master planning, and substantial Chinese capital inflow. This expansion represents a strategic convergence of national and regional development policies, creating new urban growth hotspots that are reshaping Cambodia's economic geography. The trend indicates a deliberate effort to distribute economic development more evenly across the country, moving away from the traditional concentration in Phnom Penh.

'If this continues in this way, we may see a rise in land evictions in secondary cities.'

Dr. Gabriel Fauveaud

The research team from STT also presented findings from a comprehensive study entitled *'A Kingdom for an Airport'* conducted by independent researchers from Stiftung AsienHaus, focusing on communities affected by private and foreign-financed projects. The research examines Cambodia's legal framework, including the 2023 Pentagonal Strategy and Industrial Development Policy (IDP). The Pentagonal Strategy's five pillars—growth, employment, equity, efficiency, and sustainability—along with its national priorities of people, roads, water, electricity, and technology, formed the foundation of the analysis.

The research encompassed four provinces—Kampot, Phnom Penh, Kandal, and Sihanoukville—with particular attention to high-profile projects like the Bay of Lights, Prek Funan Canal, and Kandal New Airport.

Nearly 400 interviews and surveys were conducted in urban and peri-urban communities, examining projects aligned with Cambodia's vision of achieving high-income status by 2050.

The study revealed several consistent challenges across urban and semi-urban poor communities. A primary concern was reduced economic access, as communities near development projects reported significant loss of traditional livelihood opportunities, from lakeside agriculture in Beoung Tumpun to fishing access in Kampot and coastal activities in Sihanoukville. Social security issues were also prevalent, with a widespread lack of access to and awareness of the ID poor system noted across all provinces.

Housing insecurity emerged as another critical challenge, varying by region. Sihanoukville's migrant communities face particular uncertainty due to informal living arrangements on private land, while long-established communities in Phnom Penh and Kampot face eviction threats due to megaproject development. A striking finding was that only 2% of surveyed residents reported full awareness of nearby projects' scope and potential impacts. This highlights a significant communication gap between authorities and affected communities, with most information spreading unofficially through social media platforms.

The research identified investment withdrawal as a significant concern creating uncertainty among affected communities. This phenomenon was particularly evident in projects like the Prek Funan Canal, where conflicting reports about Chinese financing emerged in recent media coverage. A Bangkok Post article last week indicated uncertainty in Chinese financing, while the Ministry of Public Works refuted these claims in a Khmer Times article three days later, though specific funding details remain unclear. This inconsistent information flow creates considerable distress within urban poor communities.

Speculative land practices in urban peripheries have emerged as a persistent issue across all four provinces, where individuals purchase land solely for price appreciation, adversely affecting communities with established livelihoods in these areas. The systemic land registration process, despite substantial technological and financial support, continues to face significant barriers, leaving many urban poor households unregistered and vulnerable to inequitable compensation during evictions.

The Kandal New Airport project near Phnom Penh serves as a compelling case study of these challenges. This project, partially financed through a private bond structure exceeding 1.5 billion USD, affects approximately 2,000 households in the project area who are currently experiencing the eviction process. The compensation offered to these communities, averaging around $2,000 per household, is widely considered inadequate given their longstanding occupation of the area. Some communities reported facing eviction without any compensation, while others described experiences of violence, intimidation, and threats from local authorities. The uncertainty surrounding whether these threats originated from private companies or local authorities adds another layer of complexity to the situation.

The disparities between investment structures and compensation mechanisms highlight a troubling trend that necessitates legal and policy reforms. This ongoing situation requires careful monitoring by civil society and NGOs, particularly as communities navigate the eviction process under increasing governmental pressure to vacate their homes. These findings underscore the urgent need for comprehensive legal and policy reforms to better protect vulnerable communities while maintaining Cambodia's development trajectory.

II. Outcome and Recommendations

The conference served as a platform for addressing urban housing challenges in Cambodia, with a dual focus on systemic market issues and the specific needs of urban poor communities. Its primary objective was to generate actionable recommendations for both private sector stakeholders and government entities to foster more equitable urban development. STT has always been active in advocating for enhanced protections for vulnerable communities, particularly focusing on fair compensation during evictions and secure land tenure rights.

STT's recommendations emphasize that including marginalized communities in Cambodia's development strategy isn't just a social imperative—it's an economic catalyst that can drive sustainable growth and create value for all stakeholders, including private sector investors. This inclusive approach to urban development would not only protect vulnerable populations but also strengthen Cambodia's overall economic and social fabric, creating a more resilient and equitable urban landscape. STT believes that the recommendations listed in AsienHaus' report are in line with STT's vision to uplift the situation of the urban poor, and if adopted, the recommendations will improve the rights of all Cambodians, increase business opportunities within the country, especially for international businesses, ensure greater environmental protection can be achieved, and help Cambodia achieve implementation of human rights pertaining to land and housing.

Students asking questions at the conference

1. Public property and public interest recommendations

Relevant laws and regulations:

- *Land Law* (2001)
- *Sub-decree No 118 on State Land Management (2005)*
- *Royal Decree No. 339 (2006) 'Provisional Guidelines and Principles Regarding the Reclassification of the State Public Properties and of Public Entities'*
- *Sub-Decree No.118 on the Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006).*
- *Sub-Decree on River Basin Management (2015).*

Recommendation 1: State public property should be clearly demarcated and accessible through an online, free database.

- The Ministry of Land Management should undertake a project to develop an online, publicly accessible and free, database that provides access to all state-held property. Funding should be allocated for this purpose and development partners may seek to co-fund this project.
- Article 17(d) of *Sub-Decree No.118 on the Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006)* should be amended to reflect public access to the online database and should be made freely accessible.

State public property is any property held by the state on behalf of the people of Cambodia because of its 'public interest use'.[1] This includes places like rivers, public parks, hospitals and schools. However, there is often a lack of clarity about what land is and is not public property, especially where the land has a natural origin,[2] like lakes, forests and rivers.

This lack of clarity about state public property has contributed in part to the resettlement of private citizens who had previously, and often unknowingly, occupied state land. Article 15 of the Land Law (2001) provides an open-ended definition of property types that fall within the scope of 'state public property':

> Article 15
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> The following property falls within the public property of the State and public legal entities:
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> - *Any property that has a natural origin, such as forests, courses of navigable or floatable water, natural lakes, banks of navigable and floatable rivers and seashores:*
> - *Any property that is specially developed for general use, such as quays of harbours, railways, railway stations and airports;*
> - *Any property that is made available, either in its natural state or after development, for public use, such as roads, tracks, oxcart ways, pathways, gardens and public parks, and reserved land;*
> - *Any property that is allocated to render a public service, such as public schools or educational institutions, administrative buildings and all public hospitals;*
> - *Any property that constitutes a natural reserve protected by the law;*
> - *Archaeological, cultural and historical patrimonies;*
> - *Immovable properties being royal properties that are not the private properties of the royal family. The reigning King manages royal immovable properties.*

[1] *Land Law* (2001), Article 16.
[2] *Land Law* (2001), Article 15.

This is useful to the extent that it clarifies that some clearly bounded places, like 'railways' and 'airports', are state public property. But it is not clear on where boundaries begin and end for other areas like 'lakes' or 'forests'. For example, wetland areas provide 'courses of navigable or floatable water', but such conditions are not necessarily consistent or permanent. Rice fields are also susceptible to flooding during heavy rains. The Land Law, and subsequent legislation and policies, do not provide clear guidance on how the law is to be interpreted.

Sub-decree No. 118 enhances the understanding of state public property management by specifying what is considered state public property, detailing the classification procedure in Chapter 4, and mandating that all state land must be recorded in the 'Land Register' as stated in Article 3(c). Finally, the decree requires that public access to the Land Register be provided with the payment of a fee under Article 17(d).

Accessing the Land Registry is difficult in practice. Attempts made by researchers were often frustrated. Additionally, the process of retrieving public land documents is complicated for much of the population who may be unaware of the law, unable to pay for the documents, or lack the technical expertise to understand them.

In addition, for groups with an interest in land holdings, such as real estate businesses, CSOs and NGOs working in conservation, the lack of a publicly accessible online data registry is counter-productive to their work. During discussions with real estate professionals and Cambodian lawmakers, STT was told the government is reluctant to provide clear and free access to the land registry. This is due to the heightened potential of land grabs prior to development as a financial motive and therefore creating a heightened risk for speculation. This needs to be addressed as communities are suffering from the inability to effectively discern land perimeters. The release of a free land registry needs to be compounded with good governance and anti-corruption measures.

Human rights issues

The lack of clarity around boundaries and what is and isn't state public property presents a problem for persons living near areas that might be public property. This is the primary cause of community relocation in Phnom Penh and remains a serious concern for communities around the country who do not have title or any ownership documentation for their land.

Amendment and remedy:

Having reliable information is essential for communities facing uncertainty about their land rights. A public land registry would serve as an initial measure to clarify the legal status of land ownership for those communities. Additionally, for enterprises, public interest organizations, and Civil Society Organizations (CSOs) assisting communities with insecure tenure and those registered with the ID Poor system, the availability of a comprehensive and free online registry of all state public properties would significantly improve their access to necessary data. This would not only facilitate a more secure business climate but also enable public interest groups and CSOs to carry out their responsibilities more effectively in the public's interest.

***Recommendation 2**: To enhance transparency and accountability, it is important that the procedures governing the management of state public and state private property, as outlined in Sub-Decree No. 118 (2006), be made accessible to the public either through online publication or in an official governmental gazette. Similarly, decisions enacted pursuant to Royal Decree No. 339 (2006)*

must take into consideration the potential environmental, social, and human rights repercussions, and these decisions should also be publicly disclosed in the same manner.

Furthermore, the timeline for transitioning state public land to state private land should be standardized to a 12-month period, except in cases where urgent circumstances—such as those related to health or security concerns—justify a shorter waiting period. This standardization would ensure a balanced approach between necessary expedience and the opportunity for thorough review and public scrutiny.

Currently, there is little transparency in the process of transitioning state public property to private individuals and corporations, which has dangerous consequences for public safety and trust in governance processes. The ramifications of such lack of transparency upon international businesses and Foreign Direct Investment may be counterproductive for Cambodia in its aspirations for sustainable economic growth and competitivity in the region. In addition, state public property serves important purposes for the whole of Cambodia, and to an extent, the Southeast Asia region. Natural resources like forests, lakes, rivers, and wetlands provide food, water, and can help mitigate some of the nefarious effects of climate change, like flooding and excessive heat.

Under the *Land Law* (2001), the sale of state public properties to private individuals and corporations is only legal where the property in question has lost its 'public interest use'. Under Article 16, state public property that loses its 'public interest use' can be transferred to state private property, after which it can be sold.

> Article 16
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> State public property is inalienable and ownership of those properties is not subject to prescription.
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> …
>
> When State public properties lose their public interest use, they can be listed as private properties of the State by law on transferring of state public property to state private property.

The process for transferring land from state public classification to state private classification is set out in *Royal Decree No. 339 (2006) 'Provisional Guidelines and Principles Regarding the Reclassification of the State Public Properties and of Public Entities'* and the *Sub-Decree on the Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006).*

A key issue that has been identified is that state public property is too often being transferred to state private property without transparency. It is not currently clear from any of the laws or policies what is meant by 'public interest use', and in what ways the 'public interest use' of state public property is assessed before decisions are made.

Environmental issues:

Over the last 20 years, more than two thirds of Phnom Penh's lakes have been infilled, often using the process of transfer from state public property to state private property and then leasing the property to developers.[3] The United Nations Special Rapporteurs on housing, the environment, and the situation of human rights in Cambodia, recently highlighted the issues with transferring state public property to

[3] Last Lakes report.

private property without adequate impact assessment and public consultation in relation to ING City in southern Phnom Penh. The Public Communication discusses the reclassification of a wetlands and specifically notes that:

> [T]he wetlands are in the public interest to protect Phnom Penh and Ta Khmao from flooding, and in treating the waste water of Phnom Penh. They continue to perform both of these public interest functions and are vital in doing so.

The absence of a clear and transparent declaration detailing the criteria for determining the 'public interest' in the management of state public property poses a significant risk. If this process continues without proper public disclosure, it could lead to adverse environmental consequences and diminish public confidence in institutional integrity. It is crucial to establish and communicate a well-defined methodology for assessing the 'public interest' to prevent these negative outcomes and to maintain the trust and engagement of the community.

Amendment or remedy:

Safeguarding the environment is a critical responsibility of the Government. In adherence to its environmental legislation and international commitments such as the Ramsar Convention, the Government is mandated to implement measures for the preservation of environmentally significant areas. However, the current legal framework lacks transparency regarding how the Government fulfills this mandate in relation to state public property. This opacity could lead to environmental degradation and erode public confidence in governmental bodies.

To mitigate these risks and uphold its environmental duties, the Government must enhance the visibility of its decision-making processes concerning state public property. By incorporating comprehensive impact assessments that address environmental, social, and human rights concerns, the Government can demonstrate its commitment to environmental stewardship and reinforce public trust in its institutions. Transparent and accountable practices are essential for ensuring the protection of the environment and maintaining the credibility of governmental operations.

2. Compensation and relocation recommendations

Relevant laws and regulations:

Land Law (2001)

The Law on Expropriation (2010)

Law on Social Security Schemes for Persons Defined by the Provisions of the Labour Law. (2019)

Recommendation 3**: **When compensation is required under The Law on Expropriation (2010) it should be based on market-value, and an Annex should be added to the The Law on Expropriation (2010) that outlines the process for calculating the market-value and ensure a minimum amount of compensation to be paid to individuals with an interest in land.

There is a lack of transparency and consistency in the compensation process for persons affected by expropriation of property. The need to simplify the compensation process is important for communities, businesses, and the Government. Compensation processes are likely to continue, especially as FDI inflow and infrastructure projects increase. The need to balance the benefits of business, economic growth and infrastructure against the compensation of individuals requires sufficient clarity so as to promote a simple and fair system to ensure rights holders are not unjustly aggrieved and development is not slowed by lengthy mediation processes.

> *Land Law 2001*
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> Article 5
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> No person may be deprived of his ownership, unless it is in the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and after the payment of fair and just compensation in advance.

> *Law on Expropriation 2010*
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> Article 8
>
> The state shall buy any part of the immovable property remaining after the expropriation for fair and just compensation as proposed by the immovable property's owner and/or holder of real right to the immovable property who cannot live near the project area or cannot build a residence or conduct any businesses.
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> Article 22
>
> The amount of compensation to be paid to the owner of and/or holder of real right to the immovable property shall be based on the market price or replacement cost as of the date of the issuance of the declaration on the expropriation project. The market price or the replacement cost shall be determined by an independent committee or agent appointed by the Expropriation Committee.

Current practice is inconsistent:

An analysis of compensation for relocation in Phnom Penh over the past 20 years has found that there is little consistency in the processes.[4] Inconsistency may lead to compensation disputes where aggrieved parties seek more compensation, rightly or wrongly, because the process is not clearly determined. Ensuring fair compensation is paid requires a transparent system which clearly demonstrates the processes for calculating compensation rates.

Current practice does not align with international best practice:

The present approach seems to be at odds with globally recognized standards. When discrepancies arise between the policies of international organizations and the practical policies implemented by the Government, it can lead to a climate of unpredictability that may deter international businesses from investing in Cambodia. For instance, when the Japanese International Cooperation Agency (JICA) executes projects in Cambodia, it is obligated by its own policies to offer compensation for land use affected by its projects, even in situations where such use may not align with Cambodian legal definitions. This requirement by JICA exemplifies the potential conflict between international standards

[4] Sahmakum Teang Tnaut, 'Eviction and Relocation', 2020.

and domestic policy, underscoring the need for harmonization to ensure a stable and attractive environment for foreign investment and cooperation.

> "[T]he land occupation and use are illegal, compensation will be necessary, based on JICA environment and social guideline."[5]

This same inconsistency may be found across a range of international businesses, especially where the international law and home-country law requires human rights due diligence and the payment of compensation based on human rights impacts. Inconsistencies between the law in Cambodia and the obligations that international businesses face may discourage investment by creating a business environment that is murky.

Even where the payment of compensation is not controversial, the amount can be. Businesses may find it difficult to calculate costs when facing projects where compensation is not clearly understood and where the "land value" is temperamental.

Developing a transparent compensation model that details the adjudication procedures and specifies the methodology for calculating compensation could significantly bridge the gap between international standards and Cambodian domestic law. By incorporating safeguards to prevent potential corruption among officials, such a model would not only align more closely with global best practices but also foster a fairer and more predictable legal environment. This would diminish the conflicts that currently pose challenges for international entities operating in Cambodia, thereby enhancing the country's appeal as a destination for international investment and collaboration.

Amendment or remedy:

A benchmark minimum amount of compensation should be outlined in an Annex to *The Law on Expropriation* (2010). The Annex should include a table that outlines minimum amounts to be paid in compensation for different types of property. In addition, the procedures for the independent committee, or agent, or Expropriation committee, should be outlined and should include calculating the compensation of any recent sales of property in the last 12 months within the immediate area.

Example table for minimum compensation.

Property/process of relocation	**Minimum compensation to be paid**
Farm land (1 ha)	1,000 USD
House	1,000 USD
House (primary dwelling)	1,000 USD
Farm land (1 ha) with immediate access to water supply such as well or river or lake	1,500 USD
Costs for relocation per family	800 USD
Costs for relocation where land was primary source of income	1,200 USD

[5] JICA, 'Preparatory Survey Report on the Project for Sewerage System Development in the Phnom Penh Capital City in the Kingdom of Cambodia', 2019, p 62.

This table should include calculations to increase the minimum amounts based on factors such as the increasing cost of living, based on regularly updated standards. This table should not be used to reduce the costs of compensation where market-value indicates a higher rate of compensation.

A commitment to transparency, fairness, and uniformity in land management can be realized through the official announcement of market values *prior* to any resettlement or land acquisition initiatives. Improving the governance of the compensation procedures will not only promote equality in these processes but also position Cambodia in line with international benchmarks for compensation practices. This proactive approach ensures that all stakeholders are informed and can trust in the system's integrity, thereby enhancing the overall legitimacy and effectiveness of land management policies.

Recommendation 4: Implement a 'one-year guaranteed transitional revenue system' for all evictees across Cambodia. Adequate compensation is a crucial and indispensable lifeline that allows evictees to rebuild a new home and reintegrate a potentially new community. However, the current eviction process is inconsistent, and communities often find themselves relocated in barren or remote areas, far from any economic activity. Evictees need time to re-integrate themselves and find new employment. The government should provide every evicted household with a guaranteed monthly stipend of $350 per month, for one year – on top of existing social security mechanisms and compensation.

Compensation, whether through land, cash, a new house, or a mix of these, serves as an interim remedy. Communities require a period of adjustment after relocation. Offering a monthly stipend for one year could serve as a social safety net, that could potentially be integrated into the existing ID poor framework or the National Social Security Fund (NSSF). The current ID poor system is a positive first step in the right direction, despite some discrepancies in implementation[6].

> *Law on Social Security Schemes for Persons Defined by the Provisions of the Labour Law. (2019)*
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> Article 13
>
> Ensure the benefit provision of social security schemes to the NSSF members in a bid to alleviate the hardship of their livelihood when encountering the contingent risks—old age, invalidity, death, occupational risk, unemployment, maternity, illness or injury and other contingencies.

The following should be included in Article 13:

- Evicted persons and households

Instigating an additional transitional income program could provide displaced communities, particularly those with traditional agricultural or fishing livelihoods, the opportunity to establish similar practices in new locations without the pressure to switch abruptly to different industries such as construction, which may not align with their skills or interests.

A guaranteed minimum $350 per evicted household transitional revenue system would expand on Cambodia's Cash Transfer Program (CTP) that was put in place during the pandemic. This could have

[6] 'STT,' ID-Poor Program: The On-Demand ID-Poor from urban poor communities in Phnom Penh, 2022.

positive repercussions on Cambodia's image, and a much-needed lifeline for evicted communities while the country is pursuing economic diversification.

3. Good Governance and the committee system recommendations

Relevant laws and regulations:

Land Law (2001)

The Law on Expropriation (2010)

***Recommendation 5**: Committees set up under The Law on Expropriation (2010) should be representative, accountable, and transparent. To achieve this, the Expropriation Committee (Article 11), the Independent Committee (Article 22), and the Grievance Redress Committee (Article 32), should be constituted based on a set of principles outlined in a sub-decree to prevent corruption.*

In their current form, the Expropriation Committee (Article 11), the Independent Committee (Article 22), and the Grievance Redress Committee (Article 32) are vulnerable to corruption and lack transparency in their appointments and processes. A sub-decree should be published to clearly outline the processes for formulating the various committees, and for the process and procedures that the committees should undertake.

The committees have a variety of responsibilities including but not limited to:

- oversight of expropriations in the public interest,[7]
- determining the compensation to be paid for expropriations,[8]
- holding consultations with affected and interested parties,[9] and
- promulgation of declarations and of expropriation.[10]

Fulfilling these duties necessitates a high level of expertise to competently perform the required tasks and an assurance of autonomy to guarantee that the oversight of expropriations and the determination of compensation are impartial and equitable. Therefore, the enactment of a sub-decree that clearly defines the composition of the committees, their operational procedures, and the mechanisms in place to regulate and prevent corruption is essential. Such a regulation would enhance transparency, mitigate corruption risks, and refine the compensation processes, thereby advancing good governance practices in matters of public interest concerning expropriation.

The following should be included in the sub-decree:

The committees should consist of persons appointed to independently assist in the execution of *The Law on Expropriation* (2010) under relevant articles.

[7] Article 16, *The Law on Expropriations* (2010).
[8] Article 17, *The Law on Expropriations* (2010).
[9] Article 16, *The Law on Expropriations* (2010).
[10] Article 17, *The Law on Expropriations* (2010).

- The committees should not consist of politicians or tycoons (Okhnas), or of persons who have connections to political parties or tycoons (Okhnas). A separate oversight body should be appointed to investigate the allegations of any connections to political parties or tycoons (Okhnas).

- The committees should not consist of any persons with an interest in the expropriation of land in which the committee is set up to oversee. An interest could be any of the following situations:

    - A person who will benefit from expropriation of land.
    - A person whose family members will benefit from expropriation of land.
    - A person who will benefit from compensation paid for expropriation of land.
    - A person who owns land that will be expropriated or is purchasing land that will be expropriated; or whose family members own land that will be expropriated or who is purchasing land that will be expropriated; or that is part of a corporation that owns or is purchasing land that will be expropriated; or whose family members are part of a corporation that owns or is purchasing land that will be expropriated.
    - A person who sits on the board of a corporation that is involved in expropriation.

- If there is a perceived conflict of interest that arises because of a potential interest in land, such as those listed above, then this must be declared and made public knowledge before the appointment of a person to the committee. A separate oversight body should be appointed to adjudicate declared conflicts of interest and should publish conclusions of investigations for the public record.

- The committee members should be made known to the public and their qualifications should be made known to the public.

- Any decisions, reports, recommendations, or investigations, made by the committees should be published to encourage transparency and promote consistency in decision making by committees.

- In making decisions, the committees should be guided by a set of principles that includes considering any effect expropriation might have on human rights.

- In making decisions, the committees should be guided by relevant impact assessment processes required under various laws in Cambodia.

- In appointing persons to the committees, the aim should be to achieve gender parity. Where possible, the committee should aim to appoint persons with a disability. Where expropriation projects are near to or affecting indigenous lands, the committee should aim to appoint indigenous persons, but should not appoint persons with an interest in land to committees unless they are to be appointed as non-voting members of the committee.

In addition, the sub-decree should clarify that the survey produced under Article 16 should be published for review. Without the publication of this survey, there will exist some uncertainty as to how this process works.

Article 16.

Within 30 (thirty) working days after the completion of the survey, the Expropriation Committee shall produce a report with recommendations and submit it to the Royal Government for approval.

The right to property and the right to housing

Recommendation 6: The law should prohibit the taking of physical deeds as collateral for loans. A sub-decree should be promulgated prohibiting the physical collection of land titles by lenders for loans.

The microfinance sector in Cambodia currently provides millions of loans across the country. Many of these loans are collateralized with land titles. While there is no prohibition of the taking of a physical title for a loan under the *Land Law* (2001), it is also not a legal requirement for a loan.

Double-pledging:

Originally, the justification for the taking of physical titles was to avoid "double-pledging", or the practice of using one land title as collateral for two loans. However, there is little evidence that the risk of double-pledging is significant, and there are current safeguards in place, such as the registering of land titles at the commune level, to protect against this risk.

Microfinance loans are able to operate without taking physical land titles. Once a title is registered, and photocopies have been made, the risk of double-pledging is mitigated and microfinance institutions can accept the collateral without having to possess it physically.

Unnecessary practice:

The risk of physical possession of the land titles by microfinance institutions outweighs any benefits. As discussed, the risk of double-pledging is already mitigated through the registration of loans. As such, the need to retain the physical title for microfinance institutions is unnecessary.

Further, the taking of physical land titles by microfinance institutions can have unwanted coercive effects. Researchers have pointed to the fact that once a microfinance institution possesses the physical title, even though they only hold it as collateral, it still affects the dynamic of lender-borrower by providing more power to the lender. The physical retention of the title must be understood as potentially creating a power dynamic in which borrowers feel 'at the mercy' of lenders.

Given the lack of necessity for this practice, as well as the potentially harmful effects it can have on borrower-lender relations, the taking of physical land titles ought to be prohibited by law. The best way to achieve this is to promulgate a sub-decree disallowing it, and providing measures, including a timeline, to return physical titles to borrowers.

4. Human rights due diligence recommendations

Relevant laws and regulations:

Land Law (2001)

The Law on Expropriation (2010)

Sub-decree No 72 on Environmental Impact Assessment Process (1999)

Sub-Decree No 22 on the Promulgation of the Standard Operating Procedures for Land Acquisition and Involuntary Resettlement for Externally Financed Projects in Cambodia (2018)

Recommendation 7: Begin consultations and create a working group consisting of human rights NGOs and legal professionals to produce regulations for mandatory human rights due diligence (HRDD). HRDD should be required of all projects operating in Cambodia, especially where the risk to land and human rights issues is prevalent. This includes all major infrastructure projects i.e. dams, mining operations, airports, and large projects involving significant funding from international corporations and/or significant supply chains.

Human rights due diligence is a process for undertaking risk assessment based on the risk of causing or contributing to human rights abuse. HRDD is a requirement for businesses under the United Nations Guiding Principles on Business and Human Rights.[11] It is also required under OECD agreements and becomes heightened as a responsibility when the operating environment of business activities is high-risk.

Currently, no law requires human rights due diligence be undertaken. *Sub-decree No 72* (1999) prescribes the processes for environmental and social impacts; *Sub-decree No 22* (2018) describes resettlement procedures for externally financed projects. But no regulation requires human rights impact assessment or due diligence be undertaken to mitigate the risks of human rights abuses.

Mandating Human Rights Due Diligence (HRDD) prior to the initiation of projects offers a proactive approach to preventing potential harm. It also shields businesses from potential legal issues and fosters trust within the corporate and business sectors by demonstrating a commitment to responsible risk management and ethical business practices.

Aligning domestic law with international human rights norms

Current Cambodian regulation requires companies operating in Cambodia undertake impact assessment, but not human rights impact assessments. This is at odds with the international system of business regulation which promotes HRDD through a variety of legal instruments. International businesses have faced legal actions and withdrawn funds from Cambodia because of a failure to complete HRDD. For example, ANZ bank's failure to properly conduct HRDD led to them withdrawing

[11] John Ruggie, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises — Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, 17th sess, Agenda Item 3, UN Doc A/HRC/17/31 (21 March 2011) annex ('*Guiding Principles on Business and Human Rights*'), UNGP 15.

funds and paying compensation to affected Cambodian families.[12] A Cambodian legal system requiring HRDD would help to reduce the risk of future human rights abuses occurring and assist international corporations to understand that their obligations at Cambodian law align with international norms.

The risk that Cambodia will fall behind in a competitive international market due to lagging regulations is significant. This risk can be mitigated by promulgating mandatory HRDD to encourage businesses to operate in Cambodia in a responsible manner.

[end]

[12] Follow Up Statement Regarding complaint submitted by Equitable Cambodia and Inclusive Development International on behalf of Cambodian families, Australian National Contact Point for the OECD Guidelines for Multinational Enterprises, 27 February 2020, < https://ausncp.gov.au/sites/default/files/2020-02/Complaint_11_statement.pdf> 4.