
Eradicating land grabbing

Posted by Sandvand - 2007/04/22 10:43

WE HAVE RECEIVED THE FOLLOWING STATEMENT FROM ASIAN HUMAN RIGHTS COUNCIL:

CAMBODIA: Rule of law is more effective in eradicating land grabbing

On March 3 2007 Prime Minister Hun Sen received from his party, the Cambodian People's Party (CPP), full power to eradicate the land grabbing that has been plaguing the country for many years. With this full support, Hun Sen set out to wage "a war against land grabbers" whom he has identified as "CPP officials" and "people in power". Among these officials, he has singled out senior army officers as the main culprits, saying that "land grabbing mostly involves military commanders, generals." He has urged all those powerful people to cease of land grabbing or he would strip them of all power, stressing that "regardless of the person's rank and position, if they are directly involved or stand behind land grabbing, they must be punished". Hun Sen's declarations have confirmed something that has been widely known and publicized for many years, that is, the main culprits involved in land grabbing are but the powerful and the rich backed by these powerful.

It is gratifying to see the prime minister, known as the "strong man" of Cambodia, with all power already "centralised in his hands", personally address this issue and end the suffering of many victims of this abuse. One would hope he would succeed. However, resolving this issue with the rule of men, as he has been doing for many years, has so far not been successful. Over a month since gaining his party's support, his war has only subdued three land grabbers. The first one is an army major colonel named Te Haing who has been arrested for encroaching on state land and cutting into forestry land to take about 1,567 hectares in Banteay Meanchey province. The second one is an army general named Chao Phirun who has been forced to hand over 200 hectares of land back to the government. However, no action has been taken against him. The third one is a tycoon named Tan Seng Hak who is a former advisor to CPP Chairman Chea Sim. Tan Seng Hak together with two members of his group have been arrested for falsifying documents regarding the 300-hectare of lands located on the outskirts of Phnom Penh.

Critics have said that this high-profile war staged just several weeks before the commune election on April 1 was simply a campaign message, while human rights groups have doubted the ability of the court to enforce the law.

This doubt seems to be well founded. When the court action against Tan Seng Hak was reported to have received support from Hun Sen it was noted that land grabbers are powerful people and many of them are CPP members, as are many of the judges and prosecutors.

Hun Sen's strong rule of men in the past has not been very successful. For instance, in March 2004 he introduced, with a lot of publicity, an "iron fist" policy aimed at ridding the judiciary of corruption. This policy first led to jail terms for three judges, two deputy prosecutors, and two court clerks for taking bribes from suspected armed robbers. It also resulted in disciplinary action against a number of other magistrates, and a judge and a prosecutor were dismissed. But over a year later this policy ended up simply as "a slap on the wrist" when the judges and prosecutors condemned for bribery had their sentences quashed upon retrial, and all the judges and prosecutors affected by his "iron fist" policy were reinstated with the exception of the dismissed judge and prosecutor. This policy has made little impact and has since been forgotten.

This recent move by Hun Sen to tackle the land grabbing issue is not his first attempt. He began to realise the danger that land grabbing poses to his regime back in 1999 when he then ordered land grabbing officials to return land to victims and created a ministry of land management to address the matter. He also had a new land law protecting the property right enacted in 2001 with the creation of district, provincial and national cadastral commissions to adjudicate disputes over non-registered land while disputes over registered land were and are under the jurisdiction of courts of law. In April 2002 he warned that land grabbing could spark off a "peasant revolution", a warning he repeated in September 2005. In February 2006 he created by decree a National Authority for the Resolution of Land Disputes (NARLD) and appointed a deputy prime minister and the second most powerful leader, Sok An, to head it. NARLD has not met with any success and now seems to be have been superseded by Hun Sen's direct responsibility.

That he had to step in with the support of his party is a testimony to his failure in the past, and it is highly doubtful his personal handling of the issue will ensure any greater success. The number of arrests so far is laughable compared with the huge number of land grabbing cases directly affecting the poor people. An NGO has listed 1,551 cases between 1991 and 2004, affecting nearly 160,300 families or almost seven per cent of the population. Another NGO recorded 335 cases in 2005 and 450 in 2006 in which victims had to seek assistance. Hun Sen's war against land grabbing could well have the same fate as his "iron fist" policy to rid the judiciary of corruption and end up as a small raid making little dent. Land grabbing may diminish for a while but then quickly persist.

Though the direct involvement of the prime minister is helpful and his own rule of men might prevent a "peasant revolution", they are palliatives and cannot replace the rule of law as a means to eradicate land grabbing. Which is what

the ruling party and Hun Sen appear to want. In the first place the government must enforce the property right as protected by the country's constitution. This right has so far been overlooked or violated by those "people in power". In fact article 44 of this constitution stipulates that "legal private ownership shall be protected by law." The same article has also fixed specific conditions for the confiscation of such property for public interests. It says that the "right to confiscate properties from any person may only be exercised in the public interest as provided for under law and shall require fair and just compensation in advance." The "people in power" have not offered victims of land grabbing that "fair and just compensation in advance". This has created injustices which victims have staunchly protested against. Therefore there must be a law to determine that the land targeted for confiscation will be used for public interests. This law must also provide for an independent and impartial mechanism to award fair and just compensation to owners of affected properties.

Next, the government must enforce the land law of 2001 whose chapter 19 prohibits infringements on ownership and imposes penalties for these infringements. It must also ensure the proper functioning of the district, provincial and national commissions set up pursuant to this land law to adjudicate conflicts related to unregistered land. These commissions need to have functional independence, resources and expertise to perform their duties, which they have not had since their creation. In order to avoid conflicts and injustice, before making any land concession, the government needs to closely follow its own policy of consulting with people who are likely to be affected by such a concession, and of ensuring that these people have fair and just compensation as set out in its decree on land concession for economic purposes. So far, no proper consultations have been conducted and fair and just compensation has been rare. Concessions have been decided by top officials. People affected by such concessions have normally been coerced to accept unfair and unjust compensation, and force has been used to quell any protest.

The government could avoid protests to land concessions for economic purposes if it could worked out beforehand land concessions for social purposes and make land adequately available for the poor for their housing and cultivation.

More importantly, there is no avoiding the need to ensure that courts of law are independent, competent and impartial and are trusted by people, which is not the case so far. It is too much to expect that the courts will take action against land grabbers who are "people in power" and CCP officials when, as mentioned previously, almost all judges, prosecutors and other courts officials are affiliated to the ruling CPP party. The reported support from the prime minister in the arrest of tycoon Tan Seng Hak mentioned above is a testimony to their inability to act on their own upon receiving complaints from victims. There is therefore a need to sever judges' party affiliation and end the executive control of the judiciary. There is also a need to secure judges' tenure with the enactment of the laws on their status and on the organisation of courts which have been at the drafting stage for about ten years now. Courts must also be endowed with adequate resources and expertise to do their job properly, which they are now lacking. Furthermore, the Supreme Council of the Magistracy (SCM) which is responsible for the nomination and discipline of judges must change its corporatist composition of seven judges out of nine members and replace the majority of these judges with non-judges to make it less corporatist. The SCM must also be made easily accessible to the public and transparent in its functioning, which is not the case now.

The Asian Human Rights Commission (AHRC) urges the Cambodian government to abandon the rule of men and embrace the rule of law to eradicate land grabbing. It should protect the property right of the Cambodian people and enact a law on confiscations of land for the purpose of public interests with an independent and impartial committee for fair and just compensation for people affected by such confiscations.

The Cambodian government should ensure that the cadastral commissions for the adjudication of conflicts related to unregistered land have functional independence and adequate resources including expertise to perform their respective duty. It should ensure that, before making any land concession, people likely to be affected are consulted, and fair and just compensation are offered to them. Furthermore, adequate land should be made available to the poor and the landless for their housing and cultivation.

The Cambodian government should respect and support the separation of powers and the independence of the judiciary by ending its control over it and judges' affiliation to political parties. It should enact the laws on the status of judges and on the organisation of courts to secure the tenure of judges and ensure good administration of justice. It should ensure that courts are not deprived of necessary resources for their proper functioning and it should enforce their judgments regardless whether the affected persons are "people in power" or not. It should reform the SCM and make it less corporatist but more accessible and transparent.

The AHRC urges all donors, UN agencies, international aid agencies and the human rights community to work with the Cambodian government and judiciary to embrace the rule of law and ensure that the institutions of this rule of law that deal with land and land grabbing function properly and are adequately endowed with resources and expertise to perform their duties.

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About AHRC: The Asian Human Rights Commission is a regional non-governmental organisation monitoring and lobbying human rights issues in Asia. The Hong Kong-based group was founded in 1984.

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Re:Eradicating land grabbing

Posted by gyogoat TS - 2007/04/22 16:24

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Those ASEAN governments are good for themselves and very good at wongdoings -misleading(As Burma's national hero said -Burmese hair is growing very good at the wrong place). Burmese government officials don't learn good things from the west and they don't want to co-operate with the west for better economy and better lives for their own citizens. They go on their own way but most are leading to be bad to worst."sauk ta lwe". Only they think they are nationalists. Actually they ain't "nationalists" at all BUT they all are "nationals..ts". :angry:

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