

Threatened Lands, Threatened Lives

Human Rights Situation
of the Indigenous Peoples in Cambodia



Copyright ©Asia Indigenous Peoples Pact August 2014

All rights reserved.

The contents of this book may be reproduced and distributed for non-commercial purposes, provided AIPP is notified and the authors and AIPP are acknowledged as the source.

Writers: Charlotte Hinterberger, Bernice See, Sek Sophorn, Sochea Svay, Jade Tessier, Ek Yothin

Editing, design and layout: Edgardo Legaspi

Photo credits : Cover, back cover and page 7 by Samrith Vaing; page 16 by IRAM; page 32 by Samin Ngach.

Publisher: Asia Indigenous Peoples Pact (AIPP) Foundation

ISBN: 978-616-7898-10-0

Printer: AIPP Printing Press Co., Ltd.
32 Moo 2, Tambon Sanpranate, Amphur Sansai
Chiang Mai 50210, Thailand
Tel.: +66-53-492 422
Fax: +66 53-492 423
Email: info@aippprinting.com
Website: www.aippprinting.com

This document has been produced with financial assistance from the European Union's European Instrument for Democracy and Human Rights (EIDHR).

Disclaimer: The opinions expressed in this report do not necessarily represent those of the European Union [EU] or any of its affiliated institutions. The sharing of this report with external audience is aimed at sharing general information and recommendations and does not constitute an endorsement by the EU or its institutions. The content of this publication is the sole responsibility of the Asia Indigenous Peoples Pact.

This project is funded by
the European Union



Threatened Lands, Threatened Lives
**Human Rights Situation
of the Indigenous Peoples in Cambodia**

Asia Indigenous Peoples Pact

Contents

Acknowledgements	5
Message from the Secretary General	6
Executive Summary	8
Chapter 1: Introduction	11
The Indigenous Peoples of Cambodia	11
Box: Indigenous peoples in international law	14
Chapter 2: Legal and policy framework on indigenous peoples' rights	17
Constitutional framework	17
Protection under National Law	18
National Policy on Development of Indigenous Peoples, 2009	18
Land Law, 2001	19
The Forestry Law, 2002	21
Box: National Policies: Additional protection policies and regulations	22
Law on Natural Protection Zone, 2008	22
Enforceability of International Law	23
Chapter 3: State Mechanisms to Implement the Laws on Indigenous Peoples	25
Executive Mechanisms	25
Registration of Collective Land Titles	25
Economic Land Concessions	27
Dispute settlement	27
Judiciary	29
Human Rights Mechanisms	30

Chapter 4: Assault on the land rights of indigenous peoples in Cambodia	33
Overview of cases	33
Key cases of violations of indigenous peoples' rights in Cambodia	37
Undermining indigenous land rights	48
Denial of the right to free prior and informed consent [FPIC] and access to justice	48
Disregard of domestic laws protecting collective rights to land	50
Issuance of contradictory laws	53
Box: Indigenous Peoples: Prime Targets for Land Grabs	58
Chapter 5: Impact of land rights violations	59
Society	59
Box: Impact on women	59
Economy	60
Environment	61
Culture	61
Chapter 6: Responses of indigenous peoples and actions of the state	63
Complaints to authorities	63
Court cases	65
Community mobilizations	65
Box: Indigenous women in the struggle	68
Box: Cultural responses	71
Support from other actors	72
Attacks against IPHRDs and their communities	73
Box: Community elder, activist	76
Chapter 7: Conclusion and Recommendations	77
Bibliography	80

Acknowledgements

This report on the human rights situation of indigenous peoples of Cambodia was prepared mainly from the contributions of indigenous peoples human rights defenders (IPHRDs) and NGOs in the country. This is an update to the AIPP publication *Indigenous Peoples Human Rights Report in Asia – Cambodia, Thailand and Nepal: Towards Social Justice and Sustainable Peace* published in 2006.

IPHRDs from the Indigenous Rights Active Members (IRAM) and the Cambodia Indigenous Youth Association (CIYA), through the coordination of the Indigenous Community Support Organisation (ICSO), prepared the first draft of this report as part of capacity building for IPHRDs to advocate for their rights. The community-based CIYA and IRAM, the Organization for the Promotion of Kui Culture (OPKC) and Highland Association (HA) documented the human rights violations in their communities which formed the substantive basis of this report.

Lawyer Sek Sophorn prepared the second draft to develop further the legal and policy framework. This final draft is the collaborative work of AIPP's Human Rights Campaign and Advocacy Programme team, particularly, Jade Tessier who diligently conducted research on the national and international policy frameworks and interpreted the cases based on these; and Charlotte Hinterberger who helped review the case factsheets. The leadership of CIYA and ICSO provided the overall supervision for the project, most especially the project coordinators, Sochea Svay and Samin Ngach.

AIPP also acknowledges the following for their support and contributions: Research and Information Center of the NGO Forum on Cambodia (NGO Forum), Office of the High Commissioner on Human Rights in Cambodia (OHCHR Cambodia), Development and Partnership in Action (DPA), Cambodian Human Rights and Development Association (ADHOC), Cambodian Center for Human Rights (CCHR), Cambodian League for the Promotion and Defence of Human Rights (LICHADE), and the Cambodia Daily newspaper.

This report aims to provide information for key players involved in the promotion and protection of the human rights of indigenous peoples in Cambodia, especially advocates, donors and policy makers.

Message from the Secretary General

Our first human rights report in 2006 on the state of Cambodia's indigenous peoples focused on three main issues, namely, health, education, and land. Land expropriation, encroachment and concessions were particularly discussed.

Through the years, our members and partners in Cambodia have been reporting worsening conditions of their land rights due to the increasing number of and larger concessions granted on indigenous territories, including mega dam construction. On the other hand there is a lack of access to effective remedies for systematic violations arising from these. This is taking place with impunity in spite of the fact that Cambodia has a national law recognizing the community lands of indigenous peoples.

In the last three years, 2011 to 2014, indigenous peoples human rights defenders (IPHRDs) and communities in Cambodia became more active in monitoring, documenting and reporting on these human rights violations. This report is a product of the work of IPHRDs and their support organizations. It tells about their situation, and their stories.

The unbridled destruction of their lands and resources impacts on their daily lives, on their sustenance, wellbeing, dignity, cultural heritage and identity. It also tells of their increased understanding of their rights, including indigenous women; their bolder engagements with government and companies; their deepening solidarity with other communities in struggle, and especially for women; and their confidence to speak out and have their voices heard.

With the support of the European Union through its European Instrument for Human Rights and Democracy [EIDHR], the Asia Indigenous Peoples Pact (AIPP) implemented the project “Strengthening the Network of Indigenous Peoples Human Rights Defenders for the Promotion and Protection of Human Rights of Indigenous Peoples in Asia” in eight countries including Cambodia for the period September 2011 to August 2014.

Through the project, IPHRDs and their communities were trained on exercising their rights, documenting human rights violations and advocating for changes in their situation. Direct support for IPHRDs at risk was also provided which allowed IPHRDs at risk and their communities to continue their human rights work.

The Cambodia Indigenous Youth Association (CIYA) and the Indigenous Community Support Organisation’s (ICSO) collaboration with AIPP in the production of this book is one of the fruits of this Project. We hope this report will shed more light on the state of indigenous peoples in Cambodia and generate more attention and support to enable them to enjoy all their human rights, especially their land, territories and resources.

Joan Carling
Secretary-General
Asia Indigenous Peoples Pact
August 2014

Executive Summary

Cambodia has some of the best laws in the region recognizing the collective land rights of indigenous peoples. These laws also provide legal basis for the recognition of the distinct identity of indigenous peoples despite the gap in protection in the country's constitution. In fact, the protection of indigenous peoples extends beyond national laws to include international laws, which are legally implementable in the country.

Within the historical context of government neglect in terms of providing economic and social services, a guarantee of possession and ownership of land nurtured through generations may be able to sustain the identities and cultures of Cambodia's 24 indigenous peoples.

However, no amount of legal protections and official processes recognizing land rights are able to protect indigenous peoples from the systematic and rapid loss of territories. Existing protections laws are undermined by other legal instruments aimed at facilitating Cambodia's push for development and economic prosperity that capitalizes on the country's relatively low population density, vast expanses of 'unoccupied' land, and rich natural resources.

Being at the wrong side of the balance of political power and influence, indigenous peoples are unable to find protection in existing legal mechanisms to defend their rights, as they often find it impossible to undo and repair the damage and dispossession using existing channels. Also, granting of collective land rights titles have been painfully slow in comparison with the quick, wholesale grants of economic land concessions (ELCs) to the rich and powerful owners.

The government is breaking its own land laws protecting indigenous occupants of the lands, and also those that facilitate land concessions by disregarding existing, and by resorting to procedural shortcuts that override prescribed environmental and social protections.

Indigenous people's organizations and support NGOs in Cambodia have documented the struggles of 45 communities to defend their lands and resources from encroachments by ELCs and development projects. These 45 cases point to a clear pattern of

violation of indigenous land rights through the denial of indigenous right to free, prior, and informed consent, disregard of the law, and deception through contradictory laws that facilitate the dispossession of indigenous peoples. Moreover, indigenous peoples' leaders and activists have been targeted for defending their rights, either by leading their communities in complaining to authorities or by leading in the physical defence of the land and confronting the encroachers.

This book outlines five key case studies of indigenous communities that illustrate general patterns of how they lose their lands, are unable to seek redress and struggle to defend their rights.

Systemic unresolved issues caused by ELCs and large-scale land acquisitions have led to a crisis for indigenous peoples in Cambodia. Not only are their subsistence economies at stake with the loss of their lands, their identities and cultures are also being eroded as indigenous peoples are forced to adapt to new lifestyles in the absence of viable resettlement programs and alternatives.

The state, indigenous communities and other stakeholders must cooperate to stem the dispossession of the indigenous lands and destruction of the forest and other resources that indigenous peoples have sustained for generations. Protection laws and procedures already exist as solutions that can protect the rights of indigenous peoples and give them a better chance at survival as distinct peoples.



Chapter 1

Introduction

A country torn by war for more than three decades, the Royal Government of Cambodia has changed several times since 18th March 1970, when King Norodom Sihanouk was first ousted from power. His ouster led to the intensification and eventual victory of the Khmer Rouge, which then undertook a disastrous attempt to convert the country into an agrarian utopia, resulting in genocide of the Cambodian people. The U.S. State Department-funded Yale Cambodian Genocide Project estimates the number of deaths during the Khmer Rouge regime at approximately 1.7 million¹ (or 21% of the population of the country) through torture, killings, and many inhuman acts as well as from starvation and illnesses resulting from policies of the regime, during the period 1975 to 1979.

Indigenous peoples (IPs) all over the country were displaced from their homes and villages and forced into collectivized resettlement sites in order to erase their ethnic identity. Until today, even after 35 years since the fall of the Khmer Rouge regime, a number of indigenous peoples remain unwilling to identify themselves as members of an indigenous community for fear of being killed.

The Indigenous Peoples of Cambodia

“We, the indigenous peoples of Cambodia, like other citizens, are happy to fulfil our role as citizens of the country. [...] We consider our indigenous cultures and communities an integral part of the cultural heritage and richness of Cambodian society.”²

Cambodia has no official definition for or reference to “indigenous peoples” in its Constitution but there are laws and policies that use different terms such as “indig-

1 For more information see: Cambodian Genocide Program | Yale University, available at <http://www.yale.edu/cgp/>

2 Excerpt from the Statement by Indigenous Peoples at the first Forum of Cambodia’s Indigenous Peoples, Kampong Speu province, September 2004.

Table 1
Populations of 17 indigenous peoples in 6 provinces in Cambodia

No.	Indigenous Groups	Ratankiri (RAT)	Kratie (KRT)	Steung Treng (STG)	Mondulkiri (MKR)	Kampong Speu (KSP)	Preah Vihear (PVR)	Total
1	Tumpoung	27,239	0	4	382	0	0	27,625
2	Kreung	17,683	0	278	598	0	0	18,559
3	Jarai	20,312	0	12	93	0	0	20,417
4	Brao/Brou	8,560	0	444	0	0	8	9,012
5	Kavet	2,620	0	2,710	0	0	0	5,330
6	Kachak	3,383	0	1	0	0	0	3,384
7	Lun	267	0	251	0	0	0	518
8	Phnong	270	8,306	430	23,964	0	39	33,009
9	Kraol/Kroy	0	2,389	0	597	0	0	2,986
10	Stieng	0	3,311	0	1,335	0	1	4,647
11	Thmun/Thmoon	0	669	0	147	0	0	816
12	Kuoy	0	5,216	1,644	2	0	4,536	11,398
13	Knoung	0	544	0	0	0	0	544
14	Roong	0	0	0	0	0	0	0
15	Radaer	3	0	0	0	0	0	3
16	Suoy	0	0	0	0	1,833	0	1,833
17	Pear	0	0	0	0	0	316	316
	Total	80,337	20,435	5,774	27,118	1,833	4,900	140,397

Source: Moul Path and Seng Soutvathna, *Country Technical Note on Indigenous Peoples: Kingdom of Cambodia, November 2012*

enous communities”, “indigenous ethnic minorities”, “highland peoples”, “indigenous minorities”, which clearly refer to indigenous peoples.³

Officially, the term “chuncheat daoem pheak tech” which literally means “original ethnic minority” is used to refer to peoples who are not Khmer, Cham, Chinese, Lao, Thai, or Kinh (Vietnamese). This term is also used in the 2001 Land Law and in the 2002 Forestry Law, and in the 2009 National Policy for the Development of Indigenous Peoples (NPDIP).⁴

The NPDIP recognizes at least 24 indigenous peoples in Cambodia⁵, namely, Phnong (Bunong), Kuoy (Kui), Tumpuon (Tampuen), Charay (Jarai), Kroeung, Prov, Kavet, Stieng, Kraol, Mil, Kachak, Por, Khaonh, Chornng, Suoy, Thmaun, Lun, Saauch, Roder, Khe, Raang, Spung, Laeun, and Samre. The spellings of their names, however, may vary with different users, for example, Saauch is also referred to as Sa Ouch. Some

3 UNDP-RIPP *Natural Resource Management Country Studies: Cambodia Report*, p. 3, 24 July 2013.

4 This term is accepted as referring to indigenous peoples as it is understood in international law. See also: AIPP, *Tilting the Balance: Indigenous Women, Development and Access to Justice*, p. 67, 2013.

5 National Policy on the Development of Indigenous Peoples as approved by the Council of Ministers at the plenary session held April 24, 2009.

indigenous peoples also use different names for their identity, such as when Phnong is used by officials and media while the people call themselves Bunong.

The territories of the indigenous peoples are found in 15 of the 24 provinces of Cambodia. Most of these are in the north and northeast such as Mondulkiri, Ratanakiri, Kratie, Stung Treng, Preah Vihear, and Pursat. Other provinces with indigenous peoples are Kampong Thom, Koh Kong, Kampong Speu, and Sihanoukville. Some are scattered in Bantay Meanchey, Battambang, Kampong Cham, Oddar Meanchey, and Siem Reap. Some of indigenous peoples have small populations, such as the Chhng in Koh Kong.

The 2001 Land Law provides a working identification guide on who are to be referred to as indigenous peoples in Cambodia with respect to its implementation. Articles 23 and 24 of the said law list five main criteria⁶ for indigenous peoples:

1. Living in Cambodia
2. Manifesting ethnic, social, cultural and economic unity
3. Practicing a traditional lifestyle
4. Cultivating the lands according to customary rules of collective use
5. Being recognized as a member by others in the group.

These criteria recognizing the special relationship between indigenous peoples and their territories and lands remains a key to their survival today, as well as to the next generations.

The official figure on the population of indigenous peoples quoted in all literature is based on language disaggregated data from the 1998 Cambodia Population Census which puts the population of indigenous peoples at about 100,000 or 0.9% of the national population then.⁷ The population of indigenous peoples in Cambodia has not been officially updated since. In the 2008 census, population data was disaggregated based on location: population living in the plains, and those in the plateaus and mountainous regions. This census found a total of 1,530,544 individuals located in plateaus and mountainous regions, which may indicate that the population of indigenous peoples may be higher than the estimate. However, because of economic and social land concessions, extractive industries and energy projects, there had been a heavy influx of Khmer and Cham peoples into indigenous territories, while indigenous peoples have also been forcibly evicted. ICSO reports that the indigenous population as of

⁶ International Labor Organisation: Support to Indigenous People Project in Cambodia, Indigenous Community by Law Development, p. 9, 01 January 2007.

⁷ Indigenous Community Support Organisation (ICSO), Indigenous People in Cambodia.

Indigenous peoples in international law

The recognition of indigenous peoples as peoples in international law is an evolving concept that is recognized in some countries, and by some institutions and organizations. However, so far, there is no universally agreed definition in international law or other standards that can also be applied uniformly to different communities, countries or organizations, especially in Southeast Asia, and in particular, in Cambodia. However, the concept being used now, like that of Martinez Cobo, provides a clearer, useful way to ensure that the rights of indigenous peoples and their communities to make decisions about their lands, territories and resources are respected.

The concept is derived from traditional notions of self-determination, which is a core principle of international law – both in customary law and contained in various foundational international legal instruments, such as article 1(2) of the Charter of the United Nations, (1945), article 1 of the International Covenant on Civil and Political Rights, (ICCPR, 1966) and the International Covenant on Economic Social and Cultural Rights (ICESCR, 1966).

The concept of self-determination of indigenous peoples is not designed as a challenge to the rights of a national government to have authority over indigenous territories. Rather, as the UN Human Rights Committee explains, indigenous peoples have a right to enjoy their own culture and this “may consist in a way of life that is closely associated with territory and use of its resources”.

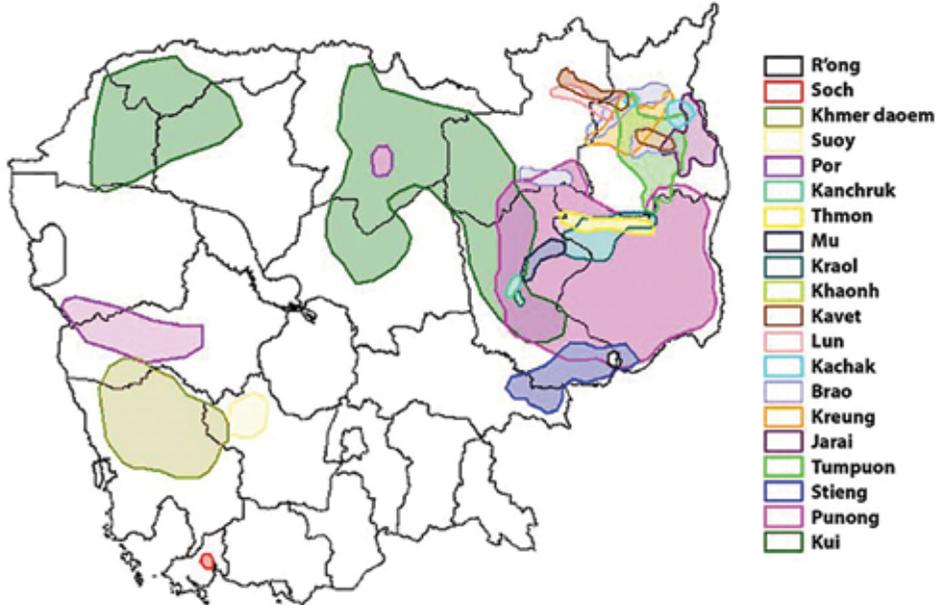
Jose R. Martinez Cobo’s Study on the Problem of Discrimination against Indigenous Populations provides a working definition of indigenous peoples. He identified indigenous peoples as communities which had a historical continuity with pre-invasion societies and that consider themselves distinct from other sectors of the societies now prevailing on those territories. Furthermore, according to him “indigenous peoples form non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”

2009 “ranges from 101,000 to 190,000, which is approximately 1.4 per cent of Cambodia’s total population”.⁸

The resource-rich but sparsely populated provinces mainly inhabited by indigenous peoples are considered “available” lands and targeted for expropriation through economic land concessions (ELCs) and well as social land concessions (SLCs).

8 Ibid.

Maps 1 and 2
Locations of 19 Cambodian indigenous peoples
based on their own self-identification.



Note: "Khmer daoem" is a generic term meaning "original Khmer".



Sources: Map 1, ICSO. Map 2, Open Development Cambodia.



Chapter 2

Legal and policy framework on indigenous peoples' rights

Cambodia's legal system follows primarily the civil law tradition. National legislation, policies, executive regulations and international instruments are in place in Cambodia for reference as basis to uphold the human rights of indigenous peoples. These include not only the rights to land and natural resources, but also education, health, vocational training, self-determined development and self-determination, and other human rights.

This chapter will describe the general framework for recognizing indigenous peoples rights in Cambodian Law. It does not aim to be an exhaustive presentation, but will only mention relevant laws in the context of the human rights situation of indigenous peoples.

Constitutional framework

The 1993 Cambodian Constitution contains no specific reference to indigenous peoples, and nor does it contain any article or provision explicitly relating to indigenous peoples' rights. The Constitution only refers to the rights of "Khmer citizens". Article 31, which provides the framework for the respect, promotion and protection of human rights of citizens, stipulates that:

"Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status."⁹

The generalized reference to "Khmer" citizens is meant to refer to all Cambodian citi-

⁹ According to Article 35: "Khmer citizens of either sex shall be given the right to participate actively in the political, economic, social and cultural life of the nation".

zens. However, this phrase can be interpreted to refer exclusively to the Khmer as the majority ethnicity, and not to other minority ethnic groups in the country. In this context, the phrase has frequently proven to be a disadvantage for the indigenous peoples in Cambodia.¹⁰

Some constitutional provisions, however, are relevant for indigenous peoples. For example, collective ownership of immovable property is guaranteed in Article 44, which also recognizes the right to fair and prior compensation to both individual and collective owners. Moreover, the Constitution guarantees freedom of practice of religious belief (Article 43¹¹), which implies respect for indigenous peoples' traditional practices, even though Buddhism is officially the state religion.

Beyond the Constitution, there are many elements of domestic Cambodian law that protect the rights of all Cambodians, not just indigenous peoples, to be involved in the decision making processes that govern what happens to the land they live on.

Protection under National Law

Despite the absence of any reference to indigenous peoples in the Constitution, recognition of their human rights may be found in various national policies, executive regulations, and laws. This recognition provides an official framework for all actors involved in implementing its human rights obligations to indigenous peoples in Cambodia.

National Policy on Development of Indigenous Peoples, 2009

The 2009 National Policy on Development of Indigenous Peoples (NPDIP) provides the main policy framework related to indigenous land rights in Cambodia. It also sets out policy directions in the fields of culture, education, vocational training, health, environment, land, agriculture, water resources, infrastructure, justice, tourism and industry, mines and energy.¹²

But the document is far from benign. For example, the NPDIP states:

10 HRAC, AIPP (2006). *Indigenous Peoples Human Rights Report in Asia: Cambodia, Thailand and Nepal*, p.18.

11 Article 43: "Freedom of belief and religious practice shall be guaranteed by the state, provided that such freedom and religious practice do not impinge on other beliefs or religions, on public order and security."

12 *Ibid.*, AIPP (2013), p. 68.

“The objective of the development of the indigenous people is to improve their livelihoods through agricultural activities which are key parts of their daily occupations. Land registration for the indigenous community, therefore, ensures security of land tenure, leading to productive uses of land. **Modern agriculture system should be carefully considered in order to improve traditional agriculture to be an intensive agriculture, cultivating high yield crops, without shifting like before.** In addition, the production will be with quality and marketable. However, all development activities shall not negatively impact their indigenous culture, habits, custom and identities”. [emphasis supplied]

The NPDIP clearly discriminates against shifting cultivation and traditional belief systems, in favour of market-driven agricultural methods and technology. Even as it cautions against negatively impacting culture and traditions, the NPDIP imposes the mainstream, lowland agricultural methods for high-yield cash crops, and implicitly regards indigenous shifting cultivation as backwards, and which needs to “improve”.

Land Law, 2001

It was an historic milestone for Cambodia to pass the Land Law in 2001.¹³ While aimed at providing a general framework for land ownership in the country, the Land Law also guarantees the recognition and protection of indigenous communities (“original ethnic minority”), traditional natural resource management systems and traditional customary land, making it the only law with specific provisions recognizing indigenous peoples’ land rights.

Articles 23 to 28 of the Land Law relate to the identity and rights of indigenous communities, with provisions for collective land titling. These provisions affirm the collective ownership of indigenous land, forests and other cultural and livelihood resources.¹⁴ It further recognizes the role of traditional authorities, mechanisms and customs in indigenous peoples’ decision-making processes.¹⁵

However, these provisions also highlight the fact that most indigenous communities in Cambodia do not have title over their traditional lands, effectively rendering them as “squatters” in their own land. According to article 23 of the Land Law,

¹³ With technical assistance from donor countries and organizations, including Danida, GTZ and the World Bank.

¹⁴ Ibid., HRAC, AIPP (2006), pp. 30-31.

¹⁵ See, for example, AIPP (2013): p. 68 and Men Prachvuthy, *Impacts of Economic Land Concessions on the Livelihoods of Indigenous Communities in Northeast Provinces of Cambodia*, March 2011.

“prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law”.

The Land Law goes further, to precisely recognize the collective rights of indigenous peoples in article 25:

“The lands of indigenous communities are those lands where the said communities have established their residences and where they carry out traditional agriculture. The lands of indigenous communities include not only lands actually cultivated but also includes reserved [areas] necessary for the shifting of cultivation which is required by the agricultural methods they currently practice and which are recognized by the administrative authorities. The measurement and demarcation of boundaries of immovable properties of indigenous communities shall be determined according to the factual situation as asserted by the communities, in agreement with their neighbours, and as prescribed by procedures in Title VI of this law and relevant sub-decrees.”

Article 26 grants collective ownership of land to indigenous peoples, while enjoying the same rights as individual owners. It states that “the exercise of all ownership rights related to immovable properties of a community and the specific conditions of the land use shall be subject to the responsibility of the traditional authorities and mechanisms for decision-making of the community, according to their customs”.¹⁶ The 2001 Land Law also recognizes the practice of shifting cultivation as part of the traditional land management system of indigenous communities.¹⁷

The law protects the land of indigenous communities from the undue interference by government authorities by ensuring indigenous peoples’ right to control, manage and utilize their land. Article 28 affirms that “no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community”.

16 Article 26 further states “Ownership of the immovable properties described in Article 25 is granted by the state to the indigenous communities as collective ownership. This collective ownership includes all the ownership rights and protections as enjoyed by private owners. But the community does not have the right to dispose of any collective ownership that is state public property to any person or group.”

17 Ibid., AIPP (2013): p. 69: The 2001 Land Law classifies land into four main categories: state public property, state private property, private property and collective property. It has been criticized for leaving too much room for interpretation in terms of indigenous communities land titling, in particular with regard to the classification of land. Lack of distinction between state public and private land, for example, poses a challenge to the registration of land ownership. See also: Men Prachavuthy, *ibid.* (2011).

Article 248 of the Land Law prohibits persons from settling on traditionally occupied land of indigenous peoples, referring to indigenous territories which have not yet been granted any title. Such act is considered a penal offence under the Land Law, which can draw a fine of 10 to 25 million Riel (approximately 2,460 to 6,150 USD, at present rates), aside from administrative sanctions.

Forestry Law, 2002

The Forestry Law 2002, governing the management of the country's forests, contains provisions for the official recognition of community forestry. It offers communities an opportunity to obtain user and management rights to forests in renewable periods through the Forestry Administration.¹⁸ This law also contains special provisions on indigenous community rights related to shifting cultivation ("nomadic agriculture") within collectively-owned land already registered with the state. Article 37 of this law stipulates that shifting cultivation practices shall be exercised as a part of the Forestry Community Development Plan.

The process of demarcation and measurement for collective land titling requires the coordination between the Ministry of Land Management, Urban Planning and Construction (MLMUPC) and the Ministry of Agriculture, Forestry, and Fishery (MAFF). As stated in Article 11:

"The Ministry of Agriculture, Forestry and Fisheries shall classify, register and set boundaries for all forests within the Permanent Forest Estates. In carrying out these activities, the Ministry of Agriculture, Forestry and Fisheries shall coordinate with concerned local communities, concerned authorities and the Ministry of Land Management Urban Planning and Construction in order to assist in registration of land property of indigenous community and preparation of the national land use map."

Indigenous communities' right to access non-timber forest products (NTFP) and to practice traditional land use inside permanent protected forests are also protected by this law even if the area is authorized for economic land concession (ELC).¹⁹ It requires no authorization to exercise traditional livelihood practices and access to NTFP.

Indigenous peoples' sites of cultural or religious significance are also protected under Article 45. These include spirit forests, graveyards and ancient temples, to name a

18 NGO Forum on Cambodia, *Indigenous Peoples in Cambodia*, April 2006

19 Forestry Law, Article 15 (1).

few. The destruction of spirit forests due to logging and land clearing then violates this law.

Law on Natural Protection Zone, 2008

This law also provides for protection and recognition of indigenous peoples' rights to land and natural resources inside and around protected areas, including their safe access to traditionally used lands, and respect for their customs, beliefs and religions (Chapter 6). It refers to indigenous community's way of land use as being sustainable and to be respected. Any title given over land inside and around protected zones shall be also authorized by the Ministry of Environment and be in conformity with the Land Law of 2001.

National Policies: Additional protection policies and regulations

In addition to the promulgation of the Land Law of 2001, a number of policies and regulations were adopted in pursuit of its implementation. These policies, as well as work among indigenous communities and support NGOs to consult about lands rights and delineate their lands, were the result of cooperation between different government ministries and foreign donors. These policies include the following:

1) Interim Strategy of Land Policy Framework, 2002. This policy document reiterates the granting of collective ownership rights to indigenous communities over their lands. It goes further in ensuring user-rights to forest products for indigenous and local communities when it explicitly refers to the protection of traditional user-rights of indigenous communities and their right to practice shifting cultivation.

2) Sub-decree 146 on Economic Land Concessions (ELC Sub-decree), 2005. According to Article 4(3) of this sub-decree, an ELC may be granted only on State private land where "environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects." The Sub-Decree also stipulates public consultations in the process of granting ELCs at various steps (Art. 4, Art. 35), including participation with land registration and defining the area of the ELC. Article 35 states that public consultations must be held to discuss and review the project proposal of the ELC. However, the Sub-Decree does not provide further details on the procedure for public consultations.

3) Policy for Registration and Right to Use of Land of Indigenous Communities in Cambodia (IP User-Right Policy), 2009 and the Sub-Decree on Procedures of Registration of Land of Indigenous Communities, 2009. These two sub-decrees strengthen the 2001 Land Law on communal/collective land titling. It also lists the requirements for the collective land registration process (See Table 2 on p. 26).

Enforceability of International Law

The 1993 Constitution of the Royal Government of Cambodia recognizes and respects internationally accepted human rights standards “as defined in the United Nations Charter, the Universal Declaration of Human Rights and all treaties and conventions concerning human rights, women’s rights and children’s rights” (Art. 31). In 2007, the Constitutional Council further ruled that the human rights treaties are part of domestic Cambodian law and should be applied by judges in the courts.

Cambodia is party to six of 10 core human rights instruments, notably the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC).

4) Decision No 009 issued by the National Committee for Development of Decentralization (NCDD), 2009, based in the Ministry of Interior which lists environmentally vulnerable areas and areas of indigenous peoples, which included 455 indigenous communities.

5) Instruction Circular No. 0974/09 on Procedures and Methodology of Implementation of National Policy on the Determination of Indigenous Community Identity. 2009. This sets out standards for the identification of an indigenous community.

6) Sub-decree 83 on Procedures of Registration of Collective Land Titling of Indigenous Communities, 2009. Article 6 stipulates a maximum limit of seven hectares allowed for spirit and burial forests of indigenous peoples.

7) Inter-ministerial Circular on Interim Protective Measures Protecting Lands of Indigenous Peoples that Has Been Requested for Collective Ownership Titling, While Awaiting Titling Process According to Procedure to be Completed, 2011. Issued by the Ministry of Interior and Ministry of Land Management, Urban Planning and Construction (MLMUPC), this provides interim protective measures for indigenous peoples already registered with the Ministry of the Interior in order to protect their lands while awaiting the lengthy process (See Table 2 on p. 26) of collective land titling to be completed. It states that during the process of collective land titling, as soon as an indigenous community is registered as a legal entity at the Ministry of Interior, their land is protected from purchase and sale until the process of communal land registration is finalised.

It is also a party to the Convention on Biological Diversity (CBD). Many provisions contained in these instruments relate directly or indirectly to indigenous peoples' rights.

In addition, Cambodia ratified the ILO Convention²⁰ No. 111 concerning Discrimination in Respect of Employment and Occupation in 1999 which protects traditional occupations of indigenous peoples from both direct and indirect discrimination.

The UN Committee on the Elimination of All Forms of Racial Discrimination [CERD] General Recommendation No. 23 calls upon the state parties to respect the effective participation of indigenous peoples in public life and their informed consent relating to their rights and interests, which is also highlighted in the UN Declarations on the Rights of Indigenous Peoples (UNDRIP, 2007), Article 10.

Finally, Cambodia voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) at the UN General Assembly on 13 September 2007. The UNDRIP sets the minimum standard for the respect, promotion and protection of the individual and collective rights of indigenous peoples, such as rights to land, territories, and resources, culture, education and health, based on existing international norms and standards.²¹

While UNDRIP is not a legally binding document under international law, it sets legal norms for the treatment of indigenous peoples around the world as provided for in binding international treaties. In part, UNDRIP helps to clearly outline the basis of an international standard for how indigenous peoples are able to manage their lives and land. This helps raise awareness and shape the global appreciation of the rights of indigenous peoples. In particular, article 10 of the UNDRIP prohibits the forcible removal and forced relocation of indigenous peoples from their lands.

Some laws in Cambodia contain explicit reference to indigenous peoples implicitly recognizing important elements of the ILO conventions, treaties and the UNDRIP. And while Cambodia has no separate law outlining the rights of indigenous peoples, international obligations require it to respect, protect and fulfil the rights of its indigenous peoples constituency.

20 The 1989 ILO Convention 169 ('C-169'), known formally as the Indigenous and Tribal Peoples Convention, although not ratified by Cambodia, contains elements on lands rights of indigenous peoples in Articles 13 to 19.

21 HRAC, AIPP (2006), p. 18.

Chapter 3

State Mechanisms to Implement the Laws on Indigenous Peoples

The implementation of the laws and policies outlined in Chapter 2 falls within the jurisdiction of different agencies at various levels. Indigenous peoples and support NGOs have to work with the different agencies responsible for implementation of laws and policies that affect them, as well as within the general structure for local governance for day-to-day affairs relating to the state in their respective areas. The absence of recognition as indigenous peoples also means that land and community disputes and human rights abuses have to utilize general mechanisms for redress through the administrative bodies, courts and the legislature.

Executive Mechanisms

Registration of Collective Land Titles

According to chapter 4 article 8 of the 2009 Sub-decree on Procedures of Registration of Land of Indigenous communities, registration of collective property (See step-by-step process on page 26) is the responsibility of two ministries with specific roles as follows:

The Ministry of Interior notifies the approval of the community's registration as a legal entity. The notification of the Ministry of Interior is a compulsory document required before taking any further step.

With the notification, the chairman of the community committee or traditional authority of each indigenous community applies for registration of community land as collective title at the Municipal/District Office of Land Management, Urban Planning, Construction and Cadastre of the Ministry of Land Management which issues the legal property title for the community to be legally recognized as an owner of the land.

Table 2: The Process for Collective Land Titling in Cambodia

Stage 1: Self-Identification and registration for recognition at the Ministry for Rural Development			
1 Indigenous community representative applies for Participatory Land Use Planning (PLUP) registration and claim for community immovable property	2 Commune Council includes the PLUP in its annual commune plans and forwards the application to the District Cadastral Administration (DCA)	3 DCA checks the application for PLUP registration and records it in its system	4 DCA develops a PLUP committee to set up internal rules and regulations and negotiate boundaries with neighbouring communities
Community learns about the relevant laws and requirements for registration; consulting with government authorities and experts in the preparation.	Community self-identifies by declaring the indigenous community and ethnic group they belong to	Each indigenous family representative applies for membership in the community which will be appraised by the MRD	Community drafts its by-laws /statutes, including a compilation of the traditional authorities and practices, and set up a working group to review the document
5 Indigenous community applies for recognition as a legal entity to process collective land titling at the Commune Council and at the provincial governor's office	Stage 2: Registration of legal entity by-laws with the Ministry of Interior (MOI)		
	6 Provincial governor's office establishes a provincial working group (PWG) for land titling	7 PWG works with and supports DCA in demarcation, measurement and adjudication	8 DCA requests technical support from National Department of Geography and Cadastre to conduct global positioning system (GPS) survey and document possible land disputes in the community area
Community requests permission from the provincial governor to hold community plenary meeting to make review, finalise and approve the community by-laws/statutes. Local government (commune, district and provincial) officials, representatives of MoI, MRD and support organisations participate.	Community applies for registration with the commune council (CC), the district administration and the provincial governor with the approved by-laws as a supporting document		
9 Investigation of all available evidence concerning rights of community land to be registered	10 DCA prepares adjudication documents consisting of record of land and survey form, map of community land, confirmation letter of status of indigenous community to be registered and approval of community bylaws (public display for 30 days)	11 During public display, any conflicting parties claiming the community land being registered are allowed to file a complaint to DCA	12 After expiration of public display, DCA prepares the sporadic index map and forwards all documents to the provincial cadastral administration (PCA)
Stage 3: Issuance and registration of the collective land title by the Ministry of Land Management Urban Planning and Construction (MLMUPC)			Community waits for certification notice after expiration of the 30-day public posting.
13 PCA verifies completeness of documents and sends these to the Central Cadastral Administration for registration			Community resolves all land disputes

Adapted from Men Prachvuthy, *Impacts of Economic Land Concessions on the Livelihoods of Indigenous Communities in Northeast Provinces of Cambodia*, March 2011.

Economic Land Concessions

The granting and monitoring of economic land concessions is the responsibility of two ministries and the local government concerned:

The Ministry of Agriculture, Forestry and Fisheries (MAFF) is the authority responsible for granting ELCs and ensuring that the law related to ELCs is followed. Until 2008, local authorities could also grant concessions for areas smaller than 1,000 hectares, but this was removed after the ELC law was amended.

Details of all ELCs should be listed in the ELC Logbook (Sub-Decree No. 146 on ELCs 2005, Article 36), which should be updated and maintained by the MAFF. But even though the ELC Logbook is a public document, only a summary is available on the internet which is in English language, rendering it inaccessible to most Cambodians, and much less villagers living in remote areas.²²

The Ministry of Environment (MoE) is responsible for assessing the environmental impact of new development projects, including ELCs, and ensuring that environmental laws and regulations are followed.

Local and provincial governments and departments handle day-to-day concerns with the ELC owners and any problems that may come up. If necessary, they may forward questions or problems to higher authorities.

Dispute settlement

In the executive branch, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) is responsible for resolving land use conflicts, as part of its function to govern land use, urban planning, construction projects, and community lands.

The Ministry is currently organized into six administrative areas, including the National Cadastral Commission that creates and maintains the registry of cadastral maps. It works with the Administrative Commission to resolve land ownership and land use conflicts. According to the article 3 of the Sub-Decree on Organization and Functioning of the Cadastral Commission, the Cadastral Commission can resolve conflicts related to unregistered immovable property if these occur outside adjudication areas, or even if disputes arise within adjudication areas but cannot be conciliated by the

²² This website can be found at: <http://maff.gov.kh/elc/>.

Administrative Commission. And according to the article 7 of the Sub-Decree, the Commission must create a file for all disputes submitted to it, regardless of its action on the case.

The National Authority for Land Dispute Resolution (NALDR) was established by royal Decree in March 2006 and has focused its work on encroachment upon state land. Its creation by Royal Decree—issuance by the King on request of the Government, rather than by parliament legislation within the 2001 Land Law—gives the NALDR a questionable legal foundation and authority and even constitutionality, as it is viewed as having a mixture of political and administrative functions. For example, its role may overlap with other land dispute resolution bodies, such as the Cadastral Commission and courts.

The NALDR primarily assists the Council of Ministers, and particularly the Prime Minister to resolve disputes, essentially giving the central government greater control over other institutions involved in land management.

Reconciling the Authority's place amongst other land dispute resolution bodies is further complicated by its "missions, roles and duties" set out in the Royal Decree. Its first task is to prevent and reduce land disputes by means of education and information dissemination to the public. However, it also has to take disciplinary measures against encroachers, to receive complaints beyond the competence of the National Cadastral Commission, and from everywhere. Its third mission is to research, investigate and resolve land disputes, and to monitor the resolution of land disputes by the Cadastral Commission and competent authorities at all levels and to report the results to the Head of Government.

In case of a land dispute, indigenous peoples face problems accessing courts. Moreover, those who have acted against private companies and authorities in defence of their land face criminal charges. Various indigenous communities have used alternative dispute mechanisms through village chiefs, commune councils, district and provincial authorities before bringing the case to court. The commune council can also be a conciliation mechanism for disputes although it does not have the power to make legally binding decisions. Though not a requirement, in practice most cases go to the commune councils before they go to higher levels.²³

Petitions and complaints are also submitted to other high level state institutions such as the National Assembly, the Prime Minister, the Council of Ministers, as well as senior ministry officials relevant to indigenous peoples' concerns. However, all of these

²³ A/HRC/21/63/Add.1, paragraph 55.

have not brought durable solutions, as victim communities almost always have to relocate, accept unjust compensation for their property and/or are subject to forcible relocation to lands not of their choosing.

Judiciary

The nominally independent judicial branch is responsible for deciding on culpability for transgressions of the law, including protection of the rights and freedoms of all citizens. Courts also determine if human rights are violated, and punish guilty perpetrators. These institutions exist at the municipal and provincial levels for low-level offences within their territorial jurisdiction. The Military Court adjudicates cases related to members of the armed forces. As in other countries, higher-level courts—the Court of Appeals and the Supreme Court—serve as forums to resolve cases if the respondents are dissatisfied with decisions of the lower courts.

However, it is commonly known that the Cambodian judiciary is not independent. In 1998, the then Special Representative of the Secretary-General for Human Rights in Cambodia reiterated the “need to protect the judiciary against direct or indirect political pressure...” (and) to “sever the links between judges and political parties”.²⁴

The same concern has been expressed in subsequent reports of succeeding UN mandate holders since 2007.²⁵ In 2010, the Special Rapporteur mentioned in his report that “seventeen years after the Constitution was promulgated, the organic law organizing the court system is still not in place.”²⁶

In 2014, three new laws—the Law on the Organization of the Courts, the Law on the Organization and Functioning of the Supreme Council of Magistracy, and the Statute of Judges and Prosecutors—were enacted to reform the judicial system, which the Constitutional Council declared as “consistent with the Cambodian constitution and can therefore be promulgated, following approval by the King.”²⁷ There were calls for the rejection of these laws as they were passed without proper legislative scrutiny from opposition party members, who have yet to take their oaths as members of the assembly at the time of the passage of these laws. Civil society groups were also not

24 E/CN.4/1998/95, para. 79.

25 A/HRC/4/36, para 6.

26 A/HRC/15/46, Para 22.

27 Licadho, Press release: “The Constitutional Council declares three laws on the judiciary compatible with the constitution”, 4 July 2014.

consulted in the drafting of these laws, which they describe as intended to legitimize and entrench government control over the courts and judges.

The judiciary also suffers from a shortage of formally trained judges and prosecutors, low budget, and other factors, which led the Special Representative to conclude that the situation “further indicates the low rank of the judiciary in the hierarchy of state institutions”.²⁸

Cambodia ranks 91st out of 99 nations in terms of adherence to the rule of law according to the World Justice Project 2014 annual Rule of Law Index. The same Index—on key indicators like checks on government power, absence of corruption and fundamental rights—found that “Cambodia’s ‘adherence to the rule of law’ was the worst in the East Asia & Pacific region.”²⁹

The above observations support the perception of indigenous peoples that the court system will not give them justice. They have increasingly stayed away from courts as recourse to their grievances. They have also become afraid of courts, because of their experiences of being charged for acts of defence of their rights to land and resources.

Human Rights Mechanisms

Legislative branch commissions which address and receive complaints on human rights have been established in both the National Assembly and the Senate. These are mandated to facilitate, receive and address all complaints made by citizens who believe their rights have been violated.

These commissions serve as important platforms to raise issues, but are not meant to replace the function of courts to decide on complaints. Rather, the work of these commissions is generally framed to assist the legislative functions of parliamentary bodies. Also, since the members of these bodies are politicians, they may not be bound by the same principles of impartiality as court judges should be.

The Senate Commission on Human Rights and Receipt of Complaints is one of the nine Senate commissions with a specific duty to protect the legal rights of citizens. On behalf of the Senate, the Commission performs roles and responsibilities to address the complaints of the people whose rights have been violated. This Commission has

28 A/56/209, *Situation of Human Rights in Cambodia: Note by the Secretary General*, paragraph 51, 2001.

29 Stuart White and May Titthara, “Low ranking for rule of law”, *Phnom Penh Post*, 6 March 2014.

the power to examine and investigate complaints lodged by the people, and to report it to the government for resolution. In 2009, the Senate received 24 complaints, of which six cases were against the verdicts of Courts, 11 cases against those of the Provincial Authorities, and seven cases settled between citizens themselves.³⁰

The National Assembly Commission on Human Rights is one of the nine commissions of the National Assembly. As does the Senate Commission, it is entrusted with the duty to protect Human Rights and address complaints of the citizens who were violated by various entities. This body has received numerous complaints from the Cambodian public: 126 cases in the first Semester of 2009, among them 87 cases involving disputes, and 39 cases related to the court decisions and other issues.³¹

In the Executive branch, the Cambodian Human Rights Committee assists the government in developing human rights policies and to coordinate investigation and resolution of human rights abuses. It is the government body assigned with the duty to promote Human Rights and the rule of law in Cambodia. It was formed by Royal Decree to investigate and remedy all sorts of complaints; to gather information related to the implementation of human rights; to organize training, and dissemination of human rights; and, to prepare human rights reports for the United Nations.

In 2007, the Cambodian Human Rights Committee received 810 complaints, of which 625 were examined. The Committee investigated 171 cases, issued letters of interventions for 89 cases, assisted in the settlement of seven cases, and is continuing to work on the remaining 185 complaints.³²

Cambodia does not have a national human rights institution that is independent of both the executive and legislative branches.

30 A/HRC/WG.6/6/KHM/1, National Report submitted to the Human Rights Council, 2009, paragraph 17.

31 Ibid.

32 Idem, para. 19.



Chapter 4

Assault on the land rights of indigenous peoples in Cambodia

Threats to the rights to land, territory and resources are the most serious issues faced by the indigenous peoples of Cambodia, particularly the granting of economic land concessions [ELCs] in indigenous territories.

The recent economic growth in Cambodia has not only caused increasing pressure to indigenous peoples' traditional ways of life but also threatens their identity and their cultural base—their territory and the whole physical environment. The government has prioritized economic development through agro-industrial plantations since the adoption of the 2001 Land Law. Privatizing state property for the sake of national interest and economy has even become more threatening to indigenous peoples' human rights.

Overview of cases

At the end of 2013, there were 44 cases (See Table 3) of human rights violations documented by IPHRDs in Cambodia. Out of these, 35 cases involved ELCs, which in the view of indigenous peoples are simply land grabbing cases. These concessions in the lands of indigenous peoples were granted without their free, prior and informed consent.

Almost all of these ELCs are intended for cash crop plantations with a few earmarked as mining concessions. One area is a site for the construction of a mega-dam. Many of the cases involve violations of human rights.

In terms of individuals, the most affected by ELCs are the Kui in terms of population and number of villages, followed by the Bunong. This data also reflects the spread of the territories of the Kui who are mostly found in the two provinces of Kampong Thom and Preah Vihear, but also in 6 other provinces. The Bunong territories, on

the other hand, are mostly in Mondulkiri but are also found in Kratie and Stung Treng. The Jarai, Tampuan and Kreung are also unduly affected by big projects like the Lower Sesan II Dam, and the huge Hoang Anh Gia Lai [HAGL] plantation based in Ratanakiri.

Most alarming is that some of the affected indigenous peoples, like the Chong of Koh Kong Province, are very small populations, and the destruction of their territories can lead to their ethnocide. The Chong peoples are affected by the Stung Areng Dam which will flood about 20,000 hectares and will affect about 1,600 Chong villagers.³³ In resource-rich provinces like Ratanakiri, the influx of migrants due to ELCs, social land concessions and land grabbing by individuals show mixed populations affected by projects.

Table 3
Location of 44 documented ELC cases affecting indigenous peoples by province

Province	No of cases
Kratie	7
Preah Vihear	7
Kampong Thom	6
Ratanakiri	6
Mondulkiri	5
Siem Reap	3
Stung Treng	3
Kampong Speu	2
Banteay Meanchey	1
Battambang	1
Koh Kong	1
Oddar Meanchey	1
Pursat	1

ELCs have been granted without prior information to or permission of indigenous communities, who are then forcefully evicted, forced to accept meager compensations and relocated. These relocation areas usually have unproductive lands, which drive community members to low-paying work that does not meet their subsistence needs. When they resist, they are arrested, threatened with jail, slapped with legal harassment cases, or threatened with bodily harm or even death.

Land grabbing cases against indigenous peoples represent a systematic violation of their right to their land, resources and territories, as well as their right to practice their culture, to an adequate standard of living, and to live in dignity. A paper presented during a World Bank meeting in 2013 said, “There is a prevalent perception among Cambodian authorities and decision-makers in the capital that indigenous peoples ‘waste’ precious land that could be used to further the country’s economic development.”³⁴

33 Rod Harbinson, “Fight on to keep dam from turning pristine paradise into ‘death valley’” in *Bangkok Post*, 14 April 2013.

34 Jeff Vize and Manfred Hornung, *Indigenous peoples and land titling in Cambodia: a study of six villages*, Heinrich Böll Foundation, Phnom Penh, Cambodia, 2013, p. 6.

Table 4a
Land Disputes affecting indigenous peoples by ethnicity

Ethnicity of People affected	Province	Total Number of Cases	Number of cases affecting this ethnicity only	No. of cases with other ethnicities	Ethnicities of other peoples affected
Bunong	Mondulkiri, Kratie, Stung Treng	8	7	1	Kreung, Prov, Tampuen, other unidentified ethnic minorities
Chong	Koh Kong	1	1		Unknown
Jarai	Ratanakiri	3	1	2	Tampeun, Cham, Kachok, Krueng, Lao, Khmer, Vietnamese
Ka-chok	Ratanakiri	2		2	Tampeun, Jarai, Kreung, Cham, Lao, Khmer, Vietnamese
Kui	Kampong Thom, Preah Vihear mostly; Stung Treng, Siem Reap, Battambang, Tbeng Meanchey, Oddar Meanchey, Kratie	20	18	2	Bunong, Khmer
Por	Battambang	1	1		Unknown
Prov	Pursat, Stung Treng	3	2	1	Bunong
Stieng	Kratie, Mondulkiri	2	2		Unknown
Suoy	Kampong Speu	2	2		Unknown
Tampuen	Ratanakri	3	2	1	Krueng, Kachok, Cham, Lao, Khmer, Vietnamese

Table 4b
Land Disputes affecting indigenous peoples by number affected

Ethnicity of People affected	Province	Total No. of Cases	Number Affected				
			Villages	Families	Individuals	Women	Children
Bunong	Mondulkiri, Kratie, Stung Treng	8	10	1,612	5,476	474	Unknown
Chong	Koh Kong	1	2	437	1,401	693	434
Jarai	Ratanakiri	3	19	208	1,061	543	63
Ka-chok	Ratanakiri	2	3	Unknown	Unknown	Unknown	Unknown
Kui	Kampong Thom, Preah Vihear mostly; Stung Treng, Siem Reap, Battambang, Tbeng Meanchey, Oddar Meanchey, Kratie	20	46	3,347	6,974	3,973	2,107
Por	Battambang	1	1	106	Unknown	286	Unknown
Prov	Pursat, Stung Treng	3	2	121	318	371	78
Stieng	Kratie, Mondulkiri	2	1	110	Unknown	Unknown	Unknown
Suoy	Kampong Speu	2	3	267	1,443	878	136
Tampuen	Ratanakiri	3	3	162	184	42	103

Also, a fact-finding mission of the International Federation for Human Rights (FIDH) in 2010 quotes a provincial official who said that “There is a policy to support indigenous peoples, but we are asking them to change their traditions. They need to settle down and stop being nomad[s] otherwise they won’t get out of poverty”.³⁵

State agencies normally grant ELCs without consultation with the affected indigenous peoples, who are also denied their right to exercise free, prior and informed consent. In

³⁵ FIDH, *Cambodia Land Cleared for Rubber Rights Bulldozed*, p. 6, 2011.

almost all cases, indigenous communities will only learn about such concessions when bulldozers arrive to begin levelling their farms and forests, or when strangers start marking their trees for cutting or to inform them that the lands are no longer theirs.

When this happens, the only resort left for affected communities is to resist land grabbing and engage state authorities as far up as possible. Aside from confronting commune councils about the encroachment and to file some cases in court, indigenous peoples have not used existing land dispute mechanisms, as these are not familiar to them.

The next section presents four key cases that depict varied and overlapping issues and human rights violations, which indigenous peoples in Cambodia face in relation to ELCs.

Key cases of violations of indigenous peoples' rights in Cambodia

Case 1: Kui villagers and the Sambath Platinum Company

Location: Chang Oo Kna and Kabit villages, Norgn Commune, Sandan District, Kampong Thom Province

In January 2012, representatives of the Ministry of Environment (MOE) invited community representatives, administrative police post, the Norgn commune chief, and Chang Oo Kna and Kabit villagers to attend a meeting, informing participants about the development plans of the government. They showed a map of the Sambath Platinum Company ELC covering 2,946 hectares of the land of 72 Kui families in Chang Oo Kna and Kabit. The plan would affect community forests, rotational farms, lands in fallow, among others. The officials did not ask whether the villagers consented to this ELC or not.

On 1 February 2012, the MOE personnel returned and invited the chief of police, community representatives and commune council members to examine the boundaries of the ELC. Despite knowing that the two Kui villages were included in the ELC area, the government officials, without consulting the affected villagers, still gave the ELC permit to the company to clear the land.

Whether the Kui villagers in Chang Oo Kna and Kabit have collective land title or not, the villagers have legal claims to their territories as determined by Article 10 of the Land Law, which says: "Ownership by a group of persons exercising their prerogatives through a legal way regulated for such ownership is collective ownership."

Moreover, article 25 of the same law recognizes the entitlement of the Chang Oo Kna and Kabit villagers to their indigenous community property by having established their villages and practicing traditional methods of farming, including reserved lands necessary for shifting cultivation.

The Ministry of Environment's approval of the Sambath Platinum Company ELC application disregarded Article 23 of the Land Law on two levels. Article 23 states that "prior to their legal status being determined under the law, the existing groups shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law". By granting the ELCs, the MOE breached Article 23 by depriving the villagers of their immovable property. Also, even though the villagers did not yet have a collective land title, Sub-Decree 146 states that before an ELC is granted over a piece of indigenous peoples' lands, it must be clear that no other person has any claim to that land.

In any case, the MOE and the Sambath Platinum Company, having known that the land is in use by the Kui indigenous peoples, should have sought permission of the villagers, in recognition of the IP right to free, prior and informed consent, as required by the UNDRIP.³⁶

Case 2: Kui villagers in Prame and the Ruy Feng and Lan Feng 'concessions'

Location: Prame Commune, Tbeng Meanchey District, Preah Vihear Province

On July 06, 2011, the government granted ELCs for rubber and sugarcane plantations to five foreign companies, including Lan Feng and Rui Feng (Cambodia) International Companies . The area granted covers a total of 42,422 hectares of Kui territory, without the knowledge of the affected villages in three districts in Preah Vihear Province. Around 85 of the 375 families in the three villages are directly affected by the concession.

The Kui of the three affected villages of Prame, Bous Thom and Sre Preang in the Prame Commune claim that the entire Lan Feng concession area is part of their territory.

The Lan Feng and Ruy Feng companies started bulldozing the land on 8 April 2012. Sugar cane fields, resin trees, and fallow fields have been destroyed. Apart from farms lands, the concessionaires also destroyed spirit forests, burial grounds, water sources

³⁶ Article 19 of the Declaration requires the state to get the free, prior and informed consent of affected indigenous peoples before adopting and implementing legislative or administrative measures that may affect them.

and ancient temples. After the affected villagers protested many times on site, the company shifted to night-time operations. Since that time, the villagers have been keeping vigil at the contested site to stop any further clearing.

On 9 November 2013, the company resumed its daytime operations accompanied by the district police military who threatened the protesting Kui villagers with arrest.

Some villagers were arrested on 2 January 2014 while returning to the village from their daily vigil. They were charged with incitement and trespassing on company land but were subsequently released for lack of merit of the charges. In 2012, two Kui IPHRDs who were educating their people on their rights under the law were threatened with arrest, and one, even death, forcing them to flee the community out of fear for their safety.

The same breaches of the law as the previous case occurred in the Prame Commune case affecting the Kui villagers. In this case however, it is notable that the local police also arrested and charged the villagers.



Kui villagers from Prame survey the fruit trees felled by workers of the Ruy Feng and Lan Feng concessions. (Photo by Smin Ngach/CIYA)

The Lan Feng and Ruy Feng companies started bulldozing the land without any authorization. Article 5 of the Land Law states that no owner or legal possessor should have their land taken away from them unless it is in the public interest, and they are compensated at the market value in advance. The ELC mentioned cannot be considered as a project in the public interest because it is a private business. As such, the law does not allow dispossessing the indigenous peoples of their land for an ELC unless the latter freely consent to it and are justly compensated.

The ELCs interfered with the community's right to manage their land according to their traditions.

Further, the government violated the law by giving immovable properties (lands, forests, and waters) of the Kui indigenous peoples to the two companies. Article 28 of the Land Law is unequivocal against such disenfranchisement by assuring that "No authority outside the community may acquire any right to immovable properties belonging to an indigenous community". This article serves as the basis for requiring the consent of the affected Kui villagers. The Land Law obliges the determination of prior rights to the land before any action is taken on immovable property, which in this case is the long-established Kui villages.

The government must also first determine the legality of the ELC grants, being beyond the cumulative legal limit of 10,000 hectares stated by Article 59 and its violation of article 248 of the Land law, prohibiting infringements on prior ownership and other legal rights to immovable property.

In the two previous examples, and as in many other cases, ELCs have been granted without the free, prior and informed consent (FPIC) of affected indigenous communities. Since the communities in these cases did not receive any information about these concessions until companies started operations, communities have clearly not been consulted properly and meaningfully. Moreover, communities are not aware of the requirement under the ELC sub-decree for a social and environmental impact assessment (SEIA), which includes community consultations.

Case 3: Jarai villagers and Ms Keat Kolney³⁷

Location : Kong Yuk Village at Pate Commune, O'Yadao District, Ratanakiri Province

In the evening of 20 August 2004, local authorities invited the Jarai villagers of the Kong Yuk village to an evening of food and wine to celebrate the so-called 'sale of 50

³⁷ For more information, see: US Agency for International Development, Cambodia program on rights and justice, Final report, October 2003 through December 2008, p. 12-17.

hectares' of community land to Keat Kolney, the wife of the Secretary of State of the Ministry of Land Management, and sister of a former finance minister. During the feast, local officials collected thumbprints of villagers on documents that the latter did not understand, as the majority of villagers in Kong Yuk do not speak, read or write Khmer.

A week later, Keat Kolney along with the village chief, the O'Yadao District Governor, and the Pate Commune Chief visited Kong Yuk, distributing envelopes containing money and gifts to each family. Again, the Jarai villagers were asked to thumbprint documents that they could not read. The envelopes were taken back but the following day, 400 USD was distributed to each family. It was only then that they learned that the money they received was payment for the sale of 450 hectares of land to Keat Kolney.

The women of the affected families were particularly offended by the deception, as they were not consulted about the sale by not being invited to the feast. Assisted by the human rights organization ADHOC, the Kong Yuk villagers filed a case in court in October 2004 to cancel the land transfer and to return the 500 hectares. They also demanded to stop the clearing of their lands, for the dissolution of the Commune Council, and the filing of a complaint with the Cadastral Commission and the Ministry of Interior. Despite all these, the clearing of village lands and forests and planting of rubber trees went on.

In 2006, the villagers were able to get legal assistance from the Community Legal Education Center (CLEC)³⁸ and Legal Aid of Cambodia (LAC) to obtain the return of the land fraudulently taken from them. In January 2007, twelve representatives of 50 families filed a complaint with the Ratanakiri Provincial Court seeking the cancellation of the contract of sale of 450 hectares of land, on the basis of fraud, and the return of the said land. They also filed the criminal complaint against Keat Kolney, the former Kong Yuk Village Chief, five Pate commune officials, the O'Yadao District Governor and two others for fraud, corruption, bribery, forgery of private documents and infringement of the land rights of indigenous communities.

On 19 June 2007, Keat Kolney retaliated by asking the Cambodia Bar Association to investigate legal aid NGOs for coaching villagers to defame her through the media. Three days later, she filed a case of cheating and fraud against the villagers.

A month later, about 42 families retracted their statements that they were deceived

38 CLEC, *Urgent Action Appeal: Jarai Indigenous Communities Face Displacement After Land Stolen by Politically-Elite Businesswoman* (2013).

into selling their lands. Between September to November 2007, local police reportedly prevented representatives from the CLEC and LAC from consulting with the villagers and holding community discussions. The Cambodian Bar Association has reportedly initiated inquiries concerning the 10 lawyers helping the Jarai. However, it has not yet taken a decision in relation to this complaint.

The court's first concrete response on the civil case came on 25 October 2007, with the presiding judge advising for an amicable settlement of the land case. Both sides held their ground. However, he continued to investigate Kolney's complaint against the villagers.

Over the next five years, until early 2012, responsibility for the case was transferred through four judges, without any substantial progress. The victims attribute the turnover of judges to the influence Keat Kolney because of her links to high officials.

Suddenly on 16 and 17 January 2012, summons were issued by the Ratanakiri Provincial Court for six Jarai IPHRDs—five from O'yadao Commune and one Tampuan—to answer charges of fraud, defamation and collusion.³⁹ The warrants showed that the court filed criminal charges against the six in May 2010, but did not notify them until the issuance of the summons almost two years later.

39 CLEC and CCHR. *Land alienation 2005 and indigenous communities fact sheet and case study* (2012).



A sign at the Kong Yuk disputed land reads "No entry without authorization". (Photo by CLEC)

In the words of one advocate, “Kong Yuk is emblematic of the worst of these cases. It pits the interests of the rich and powerful against the needs of the poor. How this case is handled by the courts will be a litmus test for land disputes all across Cambodia.”⁴⁰ The Kong Yuk case is one of the infamous cases that depicts the absence of rule of law and the extreme use of economic and political power to trample on the powerless in Cambodia.

Information on the Kong Yuk case was transmitted to the UN Special Rapporteurs on adequate housing, on the right to food, and on the situation of human rights and fundamental freedoms of indigenous peoples. On 3 April 2008, the three Special Rapporteurs sent a joint allegation letter regarding the alleged illegal seizure of lands traditionally belonging to the indigenous Jarai peoples.⁴¹

The fraudulent sale of the Jarai land in Kong Yuk is in violation of Articles 23 to 28 of the Land Law, which recognize and protect the rights of indigenous communities to collective ownership of their lands. Indigenous land cannot be sold, and article 265 criminalizes acts of government authorities who infringe against indigenous land rights.

The alleged sale contract of the land to Ms Keat Kolney is invalid under the Contract Law due to fraud, since authorities asking them to thumbprint the document did not explain what it was about. In addition, the date of the sale was fraudulently dated before the 2001 Land Law was enacted, which is clearly an attempt to circumvent indigenous land rights claims. The sales contract also indicated that 110 families sold their lands, instead of 45 which is the actual number of families affected. For these reasons, the villagers charged the officials with document forgery.

Moreover, there was no prior information, nor discussion or consultation with the affected villagers about the sale of the land.

Keat Kolney and the government officials used the Civil and Criminal Codes to accuse IPHRDs of infringing on “their” property after villagers insisted on repossessing the land. IPHRDs were also charged with defamation, and with inciting people to commit violence, which is prohibited under the Law on Peaceful Demonstration. In addition, the provincial court threatened the villagers with separate charges of inciting indigenous community members to act against the national development plan.

⁴⁰ Licadho, Press Release: “Reclamation of the indigenous land illegally taken in Rattanakiri” (2007).

⁴¹ A/HRC/10/7/Add.1, Joint allegation letter from the Special Rapporteur on adequate housing, the Special Rapporteur on the right to food and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, p. 14.

Politically influential people in Cambodia intimidate villagers through legal harassment and the use of the media. According to the Report of the Special Rapporteur on adequate housing, there have been increasing numbers of accusations by authorities and the media that NGOs are ‘inciting’ communities to protest or complain about violations of their rights⁴². In this case, Cambodian media outlets have accused CLEC, LAC and other NGOs of inciting the villagers of Kong Yuk and Kong Thom to take politically-motivated legal action against Keat Kolney. These restrictions on freedoms of assembly, movement and expression have no basis under Cambodian law, as these are protected under article 41 of the Constitution.

Case 4: Stieng villagers and the “CIV” rubber plantation

Location: Meanchey and Krobei Cholrong villages, Sre Char Commune, Snoul District, Kratie Province

A rubber plantation company known only to the villagers as as “CIV” obtained a 1,000-hectare concession covering the Stieng people’s villages of Meanchey and Krobei Cholrong without the latter’s knowledge. The villagers have not met the owner of the company and nor have they been allowed to see its license and development plan.

The company began clearing the forests on August 2008, directly affecting about 58 families. The land clearing destroyed the villagers’ subsistence and livelihood base, after wildlife, firewood, mushrooms, rattans, vines, and other non-timber forest products became scarce. Neakta (spirits) houses, burial forests, and other sacred areas were also destroyed. In addition, the company also grabbed their rice paddies, posing a threat to their survival. Of particular significance to the Stieng is the destruction of trang, a palm specie used for housing material, making tools and for food.

Villagers live in fear because company guards carry guns to enforce a ban forbidding anyone from entering the forests. The company told the villagers to sell their land at set prices of 100 USD per hectare for farmed lands and 50 USD per hectare for unfarmed lands. Refusal to sell is threatened with confiscation of their land.

When the villagers attempted to stop the company tractors, they were accused of robbery. Commune authorities sided with the company after the villagers were unable to show any written document indicating their ownership of the land. The district authority also supported the company when it insisted that the lands were only newly occupied. In fact, about 2,600 hectares of those lands are part of the rotational farms of the Stieng.

42 A/HRC/10/7/Add. 1 Report of the Special Rapporteur on adequate housing, (2009).

Since the dispute happened around the 2013 elections, local authorities offered help in exchange for village votes for the ruling Cambodia Peoples Party.

The villagers then tried to go to the court but were stopped on the way by the police, who ordered them to step off the trucks and return home. The villagers reached the court on foot, but the court closed its doors upon their arrival.

Somehow, after the perseverance of the villagers to reclaim their lands, the company promised to clear only the forest areas, and return the farm lands to the villagers. Until today however, the company operates as usual, without any indication of returning any portion of the land to the villagers.

Case 5: Bunong people and the Lower Sesan Dam II

Location: : Sesan River, Stung Treng province

The Lower Sesan 2 Hydropower Project (LS2HPP), also referred to as Sesan Kroum II, is a government project aimed at generating 400 megawatts of electricity by damming the confluence of the Sesan and Srepok rivers in Stung Treng Province. It is being built by a joint venture of Cambodia's Royal Group, China's Hydrolancang International Energy Co. Ltd, and the Vietnamese EVN International Joint Stock Company. When this project was approved in 2002 by the Council of Ministers, it was estimated that about 5,000 villagers would be affected.⁴³

The area is Bunong territory. The construction of the LS2 HPP dam will affect the affected indigenous peoples' livelihood and occupation, farmlands, crops, properties, education, sites of religious/spiritual and cultural significance, traditions, village infrastructure, community cohesion, natural resources and biodiversity.

The project started its operations by clearing forests for the water basin which is expected to have a total area of 36,000 hectares.

When the dam was being considered in 2002, villagers potentially affected by the project did not receive any specific information about the proposed dam, but only heard oral information about the project from local authorities. Information about the dam was only confirmed to the Bunong villagers in 2008 when a group of Vietnamese surveyors and their Khmer translators arrived with survey equipment at the Kbal Romeas ("rhino head") village, in the Kbal Romeas commune, Sesan District. It was only through persistent inquiries that the villagers were told that the group was surveying

43 Kuch Naren, "Lawmakers Approve Lower Sesan 2 Dam", The Cambodia Daily, February 18, 2013.

for the Lower Sesan Kroum II, a hydropower dam construction.

In early 2010, the representatives of a Chinese company and Cambodian authorities held a meeting with Phnom Reung villagers purportedly to make an environmental impact assessment (EIA). However, the purpose of the meeting was soon revealed to be about relocation. The villagers were offered small amounts as compensation for some crops in exchange for relocation. They were offered two options on the kind of house they wanted—either a wooden or a concrete house. The villagers chose concrete houses but rejected the relocation site due to its poor soil quality which was rocky and sandy, and unfit for agriculture. They asked for more fertile land for agriculture to enable to continue their livelihood, but their request was ignored. Following the meeting, land for housing and farming were measured for each family. The families were asked to put thumbprints on papers to prove their consent even though they disagreed. Although a consultation with a small number of people took place about the construction and its impact, compensation, and resettlement, the majority of villagers were not aware of the scale of the impacts. They later refused to leave their villages to move to the relocation areas.

The indigenous villagers in the dam development area do not possess any documentation of their ownership claims in the form of official land registration certificates. These areas had not yet been adjudicated, both for individual and collective land titles. Still, villagers believe that they are the real owners of the land, having taken over its care from their ancestors from one generation to the next.

Five Bunong villages in the Srekor and Kbal Romeas Communes are directly affected: the Srae Sranok, Kbal Romeas, Krabei Chum, Sre Pok and Srekor villages. However, according to independent researchers and community representatives, the impact area also includes Ksach Tmey, Svayraing, Talat, Sresamy, and Romport villages in Kalat Commune and Plouk Commune in the same district and the Sreongkrong Commune in the Konmom District in Ratanakiri Province. Affected peoples include not only the Bunong but also the Kreung indigenous people as well as Khmer and Lao villagers.⁴⁴

Because of the lack of information on which villages will actually be submerged, the villagers are faced with uncertainty over the future of their lives. They are also in the dark about mitigation measures, relocation and compensation plans.

44 This information was shared by IPHRDs working with the affected communities. Data so far gathered by IPHRDs indicate the affected as follows: 42 families in Chrob Village and another 128 families with 618 (314 females) in Kbal Romeas village, both in Kbal Romeas Commune; 127 families in Srae Sranok Village with total of 665 (281 females) individuals; around 149 families in Krabei Chum village.

In the SreKor, Kbal Romeas and Srae Sranok villages which were earlier informed about relocation, more families are demanding to halt the dam. However, the dam already is already under construction, and some families are opting to accept relocation but only on terms based on appropriate international standards, and if compensation is based on fair market values of their property. Villagers report that dam construction representatives have only discussed with them a relocation plan, but that they have not agreed to it. Until now, the villagers do not know how their properties are going to be assessed, or how they are going to be compensated.

The proposed Sesan 2 dam violates a number of inherent rights of the Bunong, Tom-poun and Prov villagers. First, the villagers were not consulted before measurements were taken on their land. Villagers to be relocated must not only be consulted about the project prior to its development, but they also should be consulted about resettlement solutions, and have a right to challenge judicial and administrative decisions pertaining to their relocation. In this regard, fair trial rights and access to justice are of vital importance. The absence of such processes violates the right of the affected indigenous peoples to self-determination through the exercise of free, prior and informed consent as provided by the UNDRIP Article 10.

The authorities and company are also violating Article 4 of the 2005 Sub-Decree No. 146 on ELCs, protecting owners or possessors of the land against involuntary resettlement, especially if such action makes the affected people worse-off in the relocation areas.

Moreover, forced eviction constitutes a violation of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, and work. Any development project that prejudices the enjoyment of these rights goes against Cambodia's obligation to protect the rights of indigenous peoples. Although the legal regulations on resettlement have not yet been fully developed in Cambodia, the Government is obliged by international law to conduct resettlement in a manner that respects human rights. Cambodia signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which protects the right of everyone to adequate housing and says that evictions should only happen as a last resort. Moreover, in its General Comment No. 4 (1991), the ICESCR Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. In Cambodia, evictions continue to illegally occur as a first, not last, resort.

The LS2 HPP and other ELC areas highlight the grave impact of development projects without the free, prior and informed consent of indigenous peoples.

Undermining indigenous land rights

Denial of the right to free prior and informed consent [FPIC] and access to justice

Although the state recognizes collective ownership of land by indigenous peoples, the right must be implemented through a title granted by the state. Without such title, indigenous land is classified as state owned and the presence of indigenous communities in their traditional land is labelled illegal.

Furthermore, the government seems to have interpreted the absence of a title as an exemption of its duty to undertake a consultation with the affected communities before granting an ELC over an indigenous territory.

In addition, in all the cases concerning ELCs and development projects in the provinces mentioned in this report, the IPs were neither informed nor consulted. They were not aware of the proposed ELCs, dams or mines until the bulldozers commenced land clearings.

Even though the Constitution states that “Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status”, this guarantee does not seem to apply to indigenous peoples, particularly in the Prame and Kong Yuk cases. Despite the availability of remedies to address these threats to their lands, indigenous peoples feel they will not get justice in the court system and thus have minimally resorted to it as recourse. As a matter of fact, they have become afraid of courts after being charged for defending their rights to their lands and resources.

In Prame, the Kui generally hesitate when asked⁴⁵ if they would file a lawsuit, saying they have limited knowledge of the court system, its procedures, and how it functions. They also expressed that court procedures are time-consuming and costly, having learned from other cases that court procedures can be prolonged. Moreover, they anticipate that court decisions will not satisfy the communities since they know that this institution is so corrupted and easily influenced by politicians. Courts had been unwilling to address land conflicts that are linked to government officials and companies. To begin with, they also have no little knowledge of the legal technicalities, like the Cadastral, which gives them diminished confidence to use available mechanisms to protect their rights.

45 As related by an IPHRD working with the Prame Kui, November 2013.

Theoretically, many means exist for settling disputes related to land and housing rights, including mediation, administrative bodies, and the court system. In practice, formal conflict resolution processes and institutions are often put aside or do not play their role. Indigenous communities are ignored when seeking justice or redress, even if villagers have undertaken several demonstrations before to the district and provincial authorities to appeal to stop clearing and destruction of their lands, and to demand action from authorities.

Conflicts often come to an end because indigenous peoples, who are normally the weaker party, are threatened, harassed or forced to accept sub-standard compensation. The main factor influencing land dispute settlement are the stronger party's ability to intimidate the weak, to monopolize support from various public authorities, and to manipulate the judicial system. The stronger party's influence over the different levels of government enables them to act with impunity. Many indigenous peoples, and other poor communities in Cambodia, lack access to effective remedies and do not trust the courts, which favour rich, well-connected individuals and companies.

This experience of indigenous peoples and others affected by land disputes was already the subject of studies as early as 2007, for example:

“There are no reliable data on the exact number of land disputes. Many disputes never reach the courts, either because they are settled by local authorities or the Cadastral Commission or because the families involved in the disputes lack the knowledge and resources to take their complaints to court. With the private costs for a court case reaching several hundred dollars, poor families are often unable to afford the process even if they borrow money or sell assets. Because of the weak institutional framework for land dispute resolution, it is also risky for individual families to engage in a formal complaint.”⁴⁶

This situation of lack of access to justice for indigenous communities in conflict with land concessions and landgrabbers is reiterated by the Special Rapporteur [para. 177]:

“...there are several non-judicial and quasi-judicial mechanisms for dispute resolution, including the various levels of the cadastral system. However, the time-consuming administrative and procedural burden, financial costs associated with submitting a complaint (there are not official fees, as with courts, but transportation, lost wages, and seeking legal assistance, are costly for individuals), and a lack of faith in the system amounts to these mechanisms being used inconsistently. Complainants report that decisions by such bodies are inconsis-

⁴⁶ United Nations Development Programme, *Insights for Action: Land and Human Development In Cambodia*, p.12 (2007).

tent, irregular and subject to political interference.”

In the Prame case, all levels of government and the company ignored all the indigenous communities’ demands, even before they could take any action in courts.

Disregard of domestic laws protecting collective rights to land

The Land Law provides indigenous peoples with the right to collectively register their lands and territories as “immovable properties” under article 26. However, this article is not implemented effectively. For example, the Kui of Prame Commune have applied for a collective land title but have only progressed to stage 1 after seven years. They have also opted to continue their collective land title application during the implementation of Directive 01. Under article 23 of the Land Law they are entitled to manage their lands following traditional customs until the registration process is completed.

In a statement issued in January 2014, the villagers cited the violations on their collective rights as follows:

“Prior to the approval of the ELC license issuance and clearance on indigenous areas, the relevant authorities and companies failed to execute the necessary procedures and to comply with the economic right of indigenous peoples;”

“Failure to conduct an appropriate consultation in public and without FPIC.”

As stated before, even before their land is registered, the law protects the rights of the Kui villagers to continue to manage their land according to their traditional customs (Art. 23). The Kui villagers are consistent in exercising this right by demanding for the cessation of all operations within the contested areas, the immediate issuance of their collective land title, and the return of all their lands from the ELCs. The community’s collective ownership includes all the rights and protection of ownership as private individual owners “except the right to dispose of any collective ownership that is state public property to any person or group”. The exercise of these rights and the conditions of land use should be decided according to customary decision-making process of the community (Art. 26).

In addition, protections under the 2002 Forestry Law of traditional rights of indigenous peoples to use forests in line with their customs, beliefs and religion (Art. 40), means that an ELC breaches the law if granted on indigenous peoples land and stops them from accessing traditional forests and spirit forests.

Meanwhile, article 4 of the ELC Sub-Decree requires five cumulative criteria—land classification, land use planning, impact assessment, resettlement, and compensation—before an ELC is granted. In practice however, these criteria are disregarded as few land use plans have been reviewed by the land management committees. The Special Rapporteur on Cambodia cites in his 2012 report the limited evidence to show that adequate consultations were done. He further reports that “(s)imilarly, in most cases, genuine environmental and social impact assessments have generally not been undertaken before the granting of land for investment, or have been undertaken in some cases.... impact assessments were done on three of 117 concessions granted, following official approval of the companies’ investment (after the company has already signed a contract with MAFF).”⁴⁷

Information on land classification is scarcely available, even though the Government has the responsibility to draw up maps for the whole country. Likewise information on reclassified land can also be very difficult to find, contrary to the provisions of Sub-decree 118 on State Land Management 2005. By 2012, over 50% of the arable land in Cambodia⁴⁸ had been parcelled out to ELCs, with many of these covering indigenous people’s territories.

The process by which a company obtains a land concession from the state is quick and non-transparent. In contrast, the process (See Table 2, page 26) for obtaining a community land title is extremely slow, tedious, costly, and not guaranteed. Furthermore, the procedure in place for collective land titling itself has undermined the concept of territory over the indigenous peoples’ traditional land.

By the end of 2013, less than a quarter of the indigenous communities (only 95 out of 455) have been provided with official letters of community identity from the Ministry of Rural Development (MRD). Out of the 95, 77 have obtained a legal entity status from the Ministry of Interior (MoI).

However, only eight communities have received collective land titles.

A number of indigenous communities with legal status have reached different steps leading to the last main stage of applying for collective land titles, including 16 in-

47 A/HRC/21/63/Add.1/Rev, Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, paras 115-116 (2012).

48 12th Permanent Forum on Indigenous Issues Joint Intervention: Tribal Link Foundation, Asia Indigenous Peoples Pact, Cultural Survival, College at Brockport May 22 12th session: New York, NY 20-31 May 2013 Agenda Item 7 (b) Dialogue with the Special Rapporteur on the rights of indigenous peoples.

Even a title is no guarantee: The case of the Orona community

The Bunong community of Orona in Keo Sema District, Monduliri Province is one of the eight indigenous communities in Cambodia that have received a collective land title. They secured what remained of their traditional land after land grabbing, illegal selling, and the grant of ELC over parts of their territory. With the support of NGOs and donors, the villagers started the process of collective land titling, and a total of 1800 hectares was delineated as their territory.

In 2011 however, 643.08 hectares of this traditional Bunong territory was granted without any consultation to the Rithy Kiriseima Company, as part of the latter's 5,000-hectare ELC. Early 2013, the remaining parts of the territory were titled as collectively owned, 648.05 hectares in all. The Senior Minister of Land Management, Urban Planning and Construction handed over the collective land title to the Bunong of Orona.

A visit in October 2013 by the German appraisal team (GIZ), accompanied by the ILO Office in Cambodia and by the Ministry of Land officials found that the Bunong reported serious problems related to their titled collective land. The community reported that 122.93 hectares of their reserved land for shifting cultivation was grabbed by the District Governor and by the Police Military.

The Bunong villagers have since filed a case in the Monduliri Provincial Court on 20 February 2014 for the return of their lands. Although all evidence are in their favour, only time will tell if the wheels of justice will roll in their favor as they are up against a system that does not favor the poor and powerless. It is hoped that the diligence of the assisting lawyer will pay off for the Orong Bunong collective land title holders.

indigenous communities that completed their unofficial mapping of their territorial boundaries and land use, and had their Internal Rules on Land Use and Management approved. Both steps are prerequisites for formal application.

In his seventh mission to the Country in May 2012, the Special Rapporteur on Cambodia reported exclusively on land concessions, including the situation of indigenous peoples affected by these ELCs. He mentioned that from 25 concessions known to have been granted in 2007, "at least 98 land concessions were granted on indigenous peoples' land" in 2012.⁴⁹ He declared that "[t]he granting of concessions on indigenous peoples' land affects the cohesiveness of the community, and therefore their ability to apply for communal land title, in turn affecting their livelihood and ability to gather food and forest products and to practice their cultural rights."⁵⁰

49 A/HRC/21/63/Add.1/Rev., p.38. Also see the annex in the same report of a list of land concessions granted in areas inhabited and traditionally used by indigenous communities.

50 Ibid., para 120.

Issuance of contradictory laws

The Prime Minister issued Directive No 01 on Improving Effectiveness of ELC Implementation on 7 May 2012 in response to increased criticisms that the granting of ELCs were the primary cause of land disputes between corporations and communities. This directive affects the earlier existing legal framework supporting the indigenous peoples' collective land registration process.

Directive No. 01 encourages indigenous peoples to acquire individual land titles, instead of collective land registration and communal land titling.⁵¹ This Directive was followed by a number of guidelines (called Instruction Circulars) for its implementation.

Directive 01 declared a moratorium on the issuance of new economic land concessions and stated that affected communities could get back their land. The provisions of the directive were backed later with Instruction Circular 15 issued on 4 July 2012 which "contained explicit provisions that aimed to secure indigenous peoples' entitlement to collective title as an integral part"⁵² of the new nationwide land titling campaign.

In reality, Circular 15 facilitated privatization of traditional communal lands through individual land ownership as a means to better control the indigenous territories. The indigenous community representatives who stood up and claimed back their communal lands, or who did not want individual land titles and individual land titling were subjected to threats and intimidation.

On 26 July 2012, two weeks after Instruction Circular 15 was issued, a contravening Instruction Circular No 20 was issued to halt and exclude indigenous land titles out of Directive No 01, specifically the option for collective land registration. Circular 20 resulted in the issuance of private land titles to some families in predominantly indigenous communities. Claims of individual titles created division and conflicts, eroding community cohesion and solidarity. Other communities already applying for CLT under the 2001 Land Law⁵³ were confused on how to proceed as this series of circulars tended to nullify ongoing processes for their titles. Moreover, some families who were among those applying for collective land titling opted for individual land titles. They did not understand that it would undermine their community's right to have collective land titles and that

51 AIPP, *Tilting the Balance: Indigenous Women, Development and Access to Justice* (2013), p. 69.

52 Jeff Vize and Manfred Hornung, *Indigenous peoples and land titling in Cambodia: a study of six villages* (2013).

53 Alison Rabe, *Directive 01BB in Ratanakiri Province, Cambodia*, April 2013.

they will give up their rights to be part of that communal land.

By February 2013, 26 of 79 indigenous communities⁵⁴ in Ratanakiri alone were affected by the implementation of the Directive No 01. Local officials vetted the process by putting pressure and forcing people to accept individual titling.

Officials also gave wrong information by telling people in Ratanakiri and Monduliri that “You can have collective rights later on your land. Now you can take individual ownership or no land”. Applicants for individual titles were made to resign membership of indigenous communities through a contract form⁵⁵ as an evidence for individual claims. The form issued by the Council for Land Policy as an Annex to Instruction Circular No 20 did not have any space to write any other information beyond names and personal information, and finally the date and thumbprint.

In his 2013 report, the Special Rapporteur on the human rights situation in Cambodia noted the regression in the promotion and protection of the rights of indigenous peoples:

“It appears that the Government, at least in the short-term, is only making slow progress in implementing the well-developed domestic legal framework which recognizes indigenous peoples’ right to collective land title. At least in the short-term, it seemed that the indigenous land titling programmes were being deprioritized, and resources diverted from the Ministry of Land Management, Urban Planning and Construction. There have been reports of intimidation, harassment and coercion of indigenous peoples in some cases, and in other cases confusion among some indigenous individuals who opted for private land title without fully understanding their rights to communal land title. Affected villages include those of the Suoy peoples in Kampong Speu province, the Jarai, Tumpoun, Krung and Kachak peoples in Ratanakiri province, the Phnong [Bunong] and Stieng peoples in Monduliri, and the Kuy [Kui] people in Preah Vihear.”⁵⁶

ELCs over indigenous territories

The granting of hundreds of thousands of hectares of ELCs in indigenous territories is a violation of the territorial integrity of the respective indigenous peoples. The lack of

54 NGO Forum, Press Release: “Indigenous Communities urged to accelerate Communal Land Registration”, 7 August 2014.

55 Manual of CLP issued for Directive No. 01 Implementation (2012).

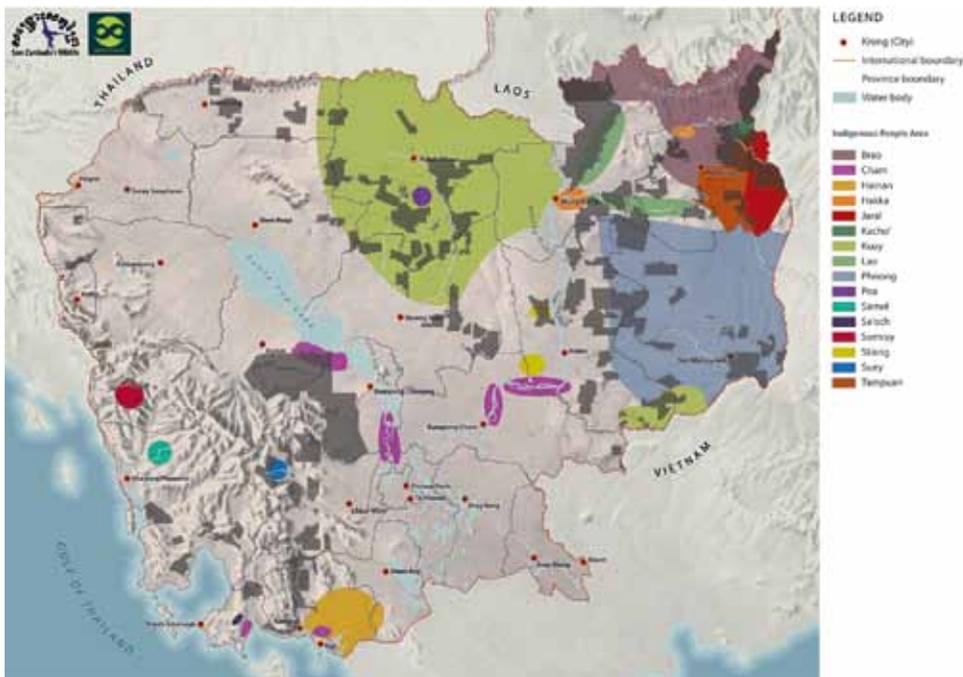
56 A/HRC/24/36, para. 27.

appreciation of the true coverage of indigenous territories which is necessary for traditional rotational farming, spiritual life and livelihoods has allowed the government to consider these as unoccupied land (officially, “state private land”), and thus free for wholesale distribution. This is clearly seen in the size granted to each ELC.

Article 59 states that land concession areas shall not be more than 10,000 hectares, and requires reduction if exceeding this size. The same article explicitly sets that “The procedures for reductions and specific exemptions shall be determined by sub-decree.” However, ELCs totalling up to 40,000 hectares have been approved. Concessionaires are able to circumvent this restriction by applying for several concessions in contiguous areas but operated as a single enterprise.

In the case of the Ruy Feng and Lan Feng concessions, as shown in the map below, the Lan Feng concession is 9,015 hectares, while Ruy Feng’s is 8,841. These two concessions combine to a total area of 18,856 hectares. However, as shown in Table 5 (next page), available information on the Ruy Feng and Lan Feng Companies reveals that

Map 3
Locations of Economic Land Concessions (ELCs -darkened areas) and indigenous peoples’ territories



Map source: Open Development Cambodia.

the only differences between the two concessions are the names, sizes and locations. All other information, including missing data, are the same. On the field in fact, the two concessions operate under a single management structure. Therefore, the Prame Kui see only one entity that has dispossessed them of their lands.

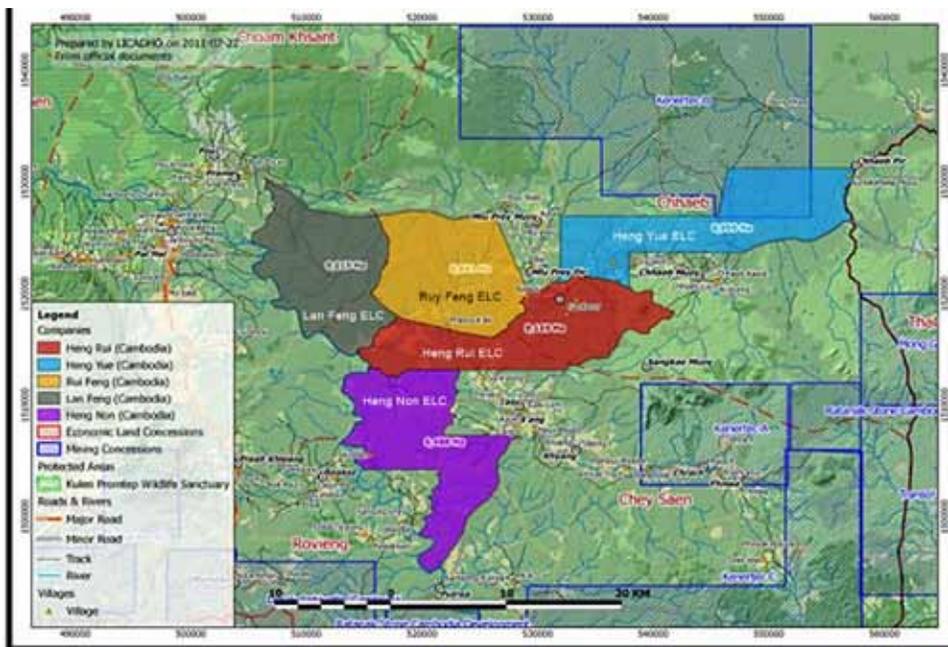
Officials have condoned powerful businessmen to simply set up different companies and apply for concessions in contiguous areas, even if their operations will be integrated as one without clear boundaries.

Also, some government officials have been able to benefit from concessions by owning shares or holding management positions, in breach of article 59 of the Land Law.

The government's routine granting of exemptions to ELC sizes has become the rule and has made the law meaningless.

While the Sub-Decree on Economic Land Concessions (Article18) states that “the prioritized method for granting [ELCs] is through competitive solicited proposals,” in practice, a substantial number of ELCs are granted through unsolicited proposals. Even if the law provides for unsolicited proposals, most of these do not fulfil the

Map 4
Location of the Ruy Feng, Lan Feng and three other ELCs near the Prame community



Source: Open Development Cambodia.

Table 5
Comparison of information on the Ruy Feng, Lan Feng ELCs

Concession name :	Lan Feng (Cambodia) International Company Limited	Ruy Feng (Cambodia) International Company Limited
Concession size:	9015 Hectares	8841 Hectares
Investment intention:	Rubber, acacia and Sugar cane plantation	Rubber, acacia and Sugar cane plantation
Purpose:	Agro-industry	Agro-industry
Duration:	Not found	Not found
Investor country:	China	China
Company Address:	Not found	Not found
Director Name:	Not found	Not found
Director nationality:	Not found	Not found
Registration:	Registered	Registered
Contract date:	Not found	Not found
Sub decree date:	06 Jul 2011	06 Jul 2011
Issue ministry:	MEF	MEF
Area name(s):	Not found	Not found
Land utilization plan:	Not found	Not found
Legal paper:	Not found	Not found
Status:	Not found	Not found
Measure of ministry:	Not found	Not found
EIA status:	Not found	Not found
Company Website:	Not found	Not found
Data Classification:	Government data complete	Government data complete
	Province(s): Preah Vihear	Preah Vihear
District(s):	Tbaeng Mean Chey, Chey Saen	Chhaeb
Commune(s):	Prame; Tasu	Mlu Prey Muoy; Chhaeb Pir; Sang-kae Pirr
	Reference(s)	Reference(s)
	Sub Decree No 144 (06 Jul 2011)	Sub Decree No 145 (06 Jul 2011)
	Lan Feng Cambodia International Company Limited in MAFF Statistic (08 Jun 2012)	Ruy Feng Cambodia International Company Limited in MAFF Statistic (08 Jun 2012)
	Sub Decree No 255 (17 Dec 2012)	Sub Decree No 157 (03 Jun 2013)
	Sub Decree No 375 (13 Jun 2013)	Sub Decree No 162 (05 Apr 2013)
	Sub Decree No 445 (24 Jun 2013)	Sub Decree No 255 (17 Dec 2012)

Source: www.opendevelopmentcambodia.net/company-profiles

criteria set out, including promising “to provide exceptional advantages to achieving the purposes of ELCs in situations such as [...]: the introduction of new technology, exceptional linkages between social land concessions and economic land concessions, [or] exceptional access to processing or export markets.”

Indigenous Peoples: Prime Targets for Land Grabs

A study conducted on indigenous peoples and land titling for the Annual World Bank Conference on Land and Poverty in 2013 identified certain factors that make indigenous peoples “prime targets for land grabs,” as follows: First, many indigenous communities sit on land rich in natural resources. In the case of Ratanakiri and Mondulakiri this land has been difficult to access until recently. With the improvement of Cambodia’s infrastructure, the country’s “final frontiers” have been increasingly targeted for development in the last decade. Most indigenous land holds great potential for industrial agriculture, particularly for rubber, which thrives in the highly-prized red volcanic soils of the northeast. Some of the land granted as an ELC to large-scale agricultural projects is home to luxury timber, which can be also logged and sold by the concession holder.

Second, due to a number of factors—including a relatively small population, a traditional lack of participation in national politics, cultural differences and the inability of many to speak and read Khmer—Cambodia’s indigenous communities lack political strength at the national level.

Third, and perhaps most critically, all of Cambodia’s indigenous peoples abide by the concept of collective ownership of property. This includes not only individual dwellings, but also areas of crucial importance for the preservation of the IPs’ ancient belief system and social fabric, such as burial grounds, “spirit forests” where religious ceremonies are practiced, and farmland used for swidden agriculture – large swaths of which are left fallow for years due to social and spiritual taboos. (Daum, 2011 and Leemann & Nikles, 2013).

The concept of collective ownership is central to the identity of all indigenous peoples in Cambodia. Their beliefs, cultural systems, and ways of living are linked to the land. In a very real sense, land is culture for Cambodia’s indigenous peoples.

At the same time, this way of life is fundamentally different from—even diametrically opposed to—the mainstream Khmer economic system. There is a prevalent perception among Cambodian authorities and decision-makers in the capital that indigenous peoples “waste” precious land that could be used to further the country’s economic development.

Leemann, Esther and Brigitte Nikles, “Giving up Fallows and Indigenous Swiddens in Times of Global Land Grabbing” in: Cairns, Malcolm (ed.) *A Growing Forest of Voices*, Earthscan, UK, 2013.

Chapter 5

Impact of land rights violations

Society

Land conflicts create and promote fragmentation and intra-village divisions among the indigenous peoples in Cambodia. The threats—the hydropower dam projects, the ELCs and Directive 01—are creating social conflicts among indigenous peoples. Confidence and trust between elders and community members are destroyed. The solidarity built through centuries among villagers and neighbouring communities is slowly eroding. Domestic violence is likewise rising. The arrival of non-indigenous migrants, company workers, and the concessions themselves, along with the incompetent and insensitive local authorities impose new burdens and tensions on the otherwise peaceful living of indigenous communities.

Impact on women

“Land clearing by concession companies makes indigenous women unable to do their routine work, such as searching the forest for products and medicine and catching fish.... They remove the forests and fill the lakes, so we are suffering from poverty and unable to send our children to school.” - Nuon Mon, A Kui woman IPHRD from Preah Vihear

Indigenous women bear the brunt of the impact of the occupation of their lands by ELCs, as communal land titles are granted extremely slowly and many indigenous communities who have requested them face extreme pressure and conflicts with local authorities. This has a disproportionate effect on women in different ways.

Local communities report increased domestic and other forms of gender-based violence against women from private company workers who restrict women’s freedom of movement. In addition, individual land titling increases pressure to move away from women’s roles in traditional sustainable methods of agriculture. Women are reduced to home-bound roles as, unlike men, they are less able to look for work outside the communities.

Land conflicts due to ELCs often reduce cooperation and solidarity in the communities which erode the support systems, particularly those that women depend on in times of crisis. Land disputes increased sharply in 2012 all over Cambodia, with women in both rural and urban communities often being in the forefront of protests and suffering abuse and imprisonment in addition to the loss of their land and livelihoods.

The roles and responsibilities of elders are becoming irrelevant and invisible as the local authorities and concessionnaires have taken over decision making for the indigenous communities. The state administration system has undermined traditional leadership and management practices, which have been powerless to solve ELC-related problems that involve the laws of the state. Furthermore, these new problems impose heretofore unknown pressures, and require other skills and knowledge, resulting in the disempowerment of traditional leaders over their constituencies.

Meanwhile, state officials are often facilitators of human rights violations against indigenous peoples by failing to implement laws and policies. In many cases, disregard of provisions of the Sub-decree on Land Concessions—on community consultations and environmental impacts assessment—demonstrates the impunity for violations of indigenous peoples rights to their lands, territories and resources.

Economy

The indigenous peoples in Cambodia, as in the rest of the world, rely on the land and natural resources for their subsistence and their local economic development. Forests are a crucial element in their living conditions, providing various kinds of food, medicinal plants, and materials for housing, fabrics and other needs. Indigenous peoples also find additional means to support their subsistence by selling non-timber forest products, such as vines, rattan and resin.

The arrival of ELCs push indigenous peoples to the bottom of the development ladder, making them poorer than ever by interrupting traditional economies and diminishing available land and forest resources. Companies prohibit traditional uses of lands, often enforced at gunpoint by guards. ELCs also take control over the more fertile agricultural lands and prevent access to other sources of income of indigenous peoples, resulting in the loss of livelihood and food insecurity.

Indigenous peoples, being used to subsistence production, are not used to wage labor. But even promises of work availability inside ELCs, indigenous peoples often remain unemployed since companies usually bring in workers when they take over the lands.

The villagers' legal battles also entail literal monetary costs since they have to spend time and money to attend court hearings.

Environment

Large scale deforestation and forest degradation by companies create deep impacts on environmental sustainability. Many ELCs are granted over community-managed forests sustained by indigenous peoples who have conserved important and rare endemic plants and animal species. These plants and animals are disappearing through the clearcutting the forests to give way to expansive monocrop plantations fed by extensive use of chemicals that degrade the lands. Watersheds, water sources and streams which communities use for drinking, domestic and farm use are also contaminated. Declining harvests from traditional food crops, forest products and other erstwhile free natural resources will now have to be bought from the market.

Climate-friendly indigenous practices cannot be practiced in plantations. To replace traditional agriculture, communities have to resort to growing labour and capital-intensive cash crops that further impoverishes instead of rescuing them from hunger.

Culture

“We are deeply concerned about this dam construction, and if it happens, our ancestors’ graves will be buried in the reservoir basin.... Relocating us means that our ethnic tradition and identity will be scattered and damaged.”⁵⁷ - Srey Lybe, Bunong IPHRD, and a villager affected by the Lower Sesan 2 dam project

Indigenous villagers are tightly-knit societies, having close relations in all aspects of their lives. People share their livelihoods, rituals, and events. Therefore, relocating to separate places would destroy these relations. Although most indigenous peoples in Cambodia are nominally Buddhists, religious rites are interspersed with traditional beliefs and rituals. Many are animists, believing and making offerings to the souls of ancestors and spirits in their surroundings.

Forests and other natural features of the land have a big role in the cultural life of indigenous communities in Cambodia. A spirit forest is where the people go to commune with their ancestors and nature’s spirits. They also have burial sites, and sites of ancient temples which are considered sacred.

Indigenous communities also derive a significant part of their diet from the wild, and thus the forest is considered a kitchen garden. Some plants from the forest are also important for certain rituals and medicines, supporting the lives of individuals and

⁵⁷ Daniel Pye and Phak Seangly, “Delay Sesan dam: villagers”, The Phnom Penh Post, 2 July 2014.

of the community as a whole. Healing rites are not only for sick persons but also for peace and harmony within the community and its surroundings.

Thus, the destruction of and denial of access to the forest is not simply a deprivation of the means of subsistence but will also result in the loss of their cultural traditions and heritage—a violation of cultural rights. Losing land to ELCs is not only a matter of no longer having the physical space for homes or farms, it also means the loss of the place that they have nurtured for generations, and on which their culture is linked, and identities rooted. Indigenous communities struggling against ELCs are defending their right to enjoy the use of these territories in line with their traditional livelihood practices, such as rotational farming, which are the main sources of subsistence and spiritual beliefs. The rice they harvest from rotational agriculture and the gathering of non-timber forest products have sustained communities for generations. These traditional occupations are integrated with their spiritual beliefs practised through ceremonies in spirit forests. The graveyards of their ancestors are sacred spaces that connect the living with the past.

Corollary to the destruction of natural resources is the threat to traditional wisdom related to the customary practices. For instance, shifting cultivation practices that are more sustainable and ecological are becoming unsustainable due to the loss of fallow land areas in indigenous territories. These are areas that are often considered as “unoccupied land”, which the state can sell to ELCs. However, these are part of the indigenous territory, referred to as “reserved lands”. The practice of shifting cultivation is based on community solidarity that is strengthened through rituals and the observance of taboos. The conversion of indigenous lands to ELCs results in the weakening of the indigenous culture.

The Prame Kui community hold a traditional ritual at the Preytoting forest.



Chapter 6

Responses of indigenous peoples and actions of the state

Complaints to authorities

The first recourse of communities is often to approach the village chiefs, and/or commune officials. Later, they also send complaints to the district and provincial authorities, including the police. However, most often, these authorities are complicit with the company. Many are also members of the ruling party to which they are beholden. Local authorities do not take action on ELC cases because the decisions on these are made at the national level by their political patrons.

Since these are not mechanisms for judicial remedy, complaints are often conveniently dismissed, ignored, or just endlessly promised action. Thus, no matter how often they return to the authorities, no justice can really be sought through such administrative offices. Secondly, the laws on ELCs do not provide for a complaint mechanism or

Table 6
Number of complaints sent by indigenous peoples
by type of government office

Violations	Complaints filed with				
	Local police station	Local Authority	National Offices	Local Courts	International mechanisms
Threats, harassment	2	1		1	
Violence against women	1	1			
Cultural and religious rights		1			
Land grabbing for government projects	1	2	1		1
Land grabbing by corporations or powerful individuals		22	10	4	4
TOTAL	4	27	11	5	5

Source: Factsheets collected by AIPP and its partners from January 2012 to June 2014.

oversight procedure. Sometimes the villagers are told that the land does not belong to them anymore. In some cases, complainants received threats when they lodged complaints.

In several cases, communities directly addressed or copied their complaints to the Prime Minister, the National Assembly and to relevant national ministries such as the Ministry of Agriculture, Forestry and Fisheries and the Ministry of Rural Development.

Table 7
Court cases and results

Case - Location	Action	Result of Action
Land grabbing - Pa Or village, Kichung Commune, Bokeo District, Ratanakiri Province.	Filed a case in the local court; petitioned the Ratanakiri parliament member; went on media to air their case and demands.	Local authorities claimed no basis for claims as there is no mapping of Tompoun lands. The company is still using community land, and there is no effort from court or local authorities to delineate the land of the Tompoun community. The company demanded a compensation of USD 100,000 from the villagers before they could get back their lands.
Land grabbing and threat, harassment - Prame Commune, Preah Vihear Province.	Filed a case in the Preah Vihear Provincial Court.	No action.
Land grabbing - Somrong Commune, Phnom Kravagn District, Pursat Province.	Lodged complaints with local court against company for fraudulent manipulation through use of fake documents.	Court sent subpoenas to company representatives in January 2012. The company left the commune; victimised households received land awards from local authorities, and community granted community forest with an area of 511 hectares.
Land grabbing - Kong Yuk, O'Yadao District, Ratanakiri Province [Keat Kolney case].	Filed case in provincial court.	Court issued order to stop land clearing but villagers must negotiate with the company. Countercharges filed against five IPHRDs when they refused the company offer. Their additional charges against perpetrator has not received any action from the court.
Land grabbing - Samuth Leu, Seda, Lumphat District, Ratanakiri Province.	Filed a case in the provincial court.	Company temporarily stopped ground leveling even without court action.

Source: Factsheets collected by AIPP and its partners from January 2012 to June 2014.

Court cases

Of the 45, only five cases (See Table 7) have been heard in court, but none of these has reached a national court or the Supreme Court.

Community experiences such as in the case of the Jarai land grabbing case by Keat Kolney (See Case 3 in Chapter 4) has aggravated the mistrust of indigenous peoples against the courts because instead of getting justice, they are further criminalised. Influential people in Cambodia use their power to further oppress the hapless poor.

In the experience of indigenous communities, the courts are seldom institutions that dispense justice. A court case is often seen merely as an expensive, time-consuming obligation that usually favours the land grabber, as decisions do not follow laws recognizing their rights. Political influence, wealth and national interests often defeat their claims.

When cases involve companies and/or powerful individuals with high-level connections, local officials and courts can be bought off or pressured into submission. In cases like these, villagers are then left with no recourse but to take action by themselves.

Community mobilizations

Indigenous communities have resorted to take action to confront authorities and companies when all their complaints, petitions, and other recourses through the state bureaucracy do not produce any solution. Often, community actions accompany their submission of complaints to the authorities.

The government has failed to provide reliable mechanisms for redress and effective responses forcing the communities themselves to confront the company officials. The failure of mechanisms to address issues arising from ELCs encroaching into indigenous territories leaves no option for communities themselves but to confront the company directly on site.

Communities have mobilized, initiated dialogues, and held demonstrations before government officials, offices and courts. They have also made citizen arrests of offenders, which, in some cases, were effective in stopping incidents not involving powerful interests. Actions of indigenous communities to take peaceful steps in demanding respect for their rights to land and natural resources are presented below.

- In Prame Commune, the villagers marched to save their farms and forests from being destroyed by the Lan Feng and Ruy Feng companies. They talked directly with company workers to stop their operations. The villagers documented the damage taking pictures of the cleared land, destroyed remnants of ancient temples, and spirit forests.

Table 8
Summary of indigenous communities' responses
and government actions on key cases in Chapter 4

People, location and case	Response/s of peoples	Action/s of government
Kui in Prame, Preah Vihear Province - land-grabbing from five companies.	In 2011, wrote complaint letter and petition and sent a delegation to local and provincial authorities, and protests of the villagers.	Officials never responded concretely to their demands, except to repeatedly promise that they are going to look into the matter.
Kreung and Ka-chok IP communities in Koh Peak Commune, Veurnsai District, Ratanakiri Province - illegal logging in 12 cases.	In 2012, Villagers collected illegally harvested logs and timber and delivered them to commune authorities.	The companies were fined, but the authorities then returned the logs and timber to the said companies.
Jarai villagers from O'yadao Commune - landgrabbing by fraud.	In 2007, they filed two complaints to reclaim their land, and to report the fake land sale documents. They also transmitted information to three Special Rapporteurs.	The case on the charges brought by the villagers against the officials is pending. Meanwhile, the Provincial Prosecutor charged five Jarai IPHRDs of infringing on the property, defamation, and inciting people to commit violence. The case is still pending.
Bunong people in Cheung, Srae Thmei and Choukreang communities in Ksoem commune of Snoul district, Kratie Province – ELC claims over their lands.	In 2012, undertook a traditional decision-making process to reclaim rights to their communal land and resources.	Local authorities and provincial officers refused to honour the community decision, saying it was against the Sub-decrees on economic land concessions and the government development plan.
Villagers from Ratanakiri and Stung Treng – relocation from Lower Sesan 2 dam.	In 2013, they submitted a petition to the National Assembly requesting to stop the construction.	The project was approved by Cambodia's Cabinet in November 2012, despite the dam's Environmental Impact Assessment report failing to meet international best practice. A law offering government guarantees to the project developers was approved in February 2013, despite "concerns" raised by some lawmakers and NGOs.

After having exhausted all channels among local and national authorities to submit complaints and reports, the villagers resorted to keeping watch over the territories, including assigning shifts to continually watch company operations. In addition, villagers have been holding protest actions several times inside the concession areas and at the district office to demand solutions but these were always ignored. Women and children suffer the most from the toll of land grabbing on their livelihood, health and community cohesion.

- In the Pa Or village case, the Tompoun villagers stopped the clearing machines after 1,570 cashew trees and 35 mango trees were felled. But then the company demanded USD 100,000 before it would agree to give back the land to the villagers.
- On 26 July 2011, several Prov villagers of Chrorb Village, Kbal Romeas commune, Sesan district, Stung Treng province were clearing a part of their community forest to prepare their swidden when Oeur Kimheng, the Forestry Administration Chief of Kbal Romeas and Sre Kor villages, asked them to stop. When the villagers explained that they had been practicing this livelihood every year and had never been stopped, Oeur threatened to burn their crops. Later, he filed a deforestation case against five Prov villagers at the Stung Treng Provincial Court. They were issued subpoenas to appear in court on 28 and 29 August 2011. The victims and the villagers asked ADHOC for legal assistance. They also reported to the media and went to complain to the Provincial Governor's Office. They also attended two days of court hearings. The defendants were released after the hearing, and the provincial court revoked the case. Oeur Kimheng was reassigned by his superiors to work at another place. Since then, the villagers are able to regularly work on their farms undisturbed.
- In the later part of 2011, a certain Mr Sam Yan allegedly grabbed 15 hectares of Kui community forestland in Ou Krak village in Siem Bouk Commune, Siem Bouk District, Stung Treng Province. The villagers were patrolling the community forest, when they saw Sam Yan's workers were cutting down big trees and destroying the forest. In January 2013, an IRAM member reported these acts to the village, commune chief and the police. She mobilized them, together with eight other villagers to inspect the area destroyed by Sam.

Earlier, the villagers planned to arrest Sam but he escaped to another province. Despite Sam's pleas by phone to spare his investments, the villagers told him that the decision was made by the community including the local authorities to stop his illegal activities. The group then put up warning signs that cutting trees is against the laws and decrees of the Royal Government of Cambodia which recognize indigenous land rights, warning that violators will face the law.

Indigenous women in the struggle

Violations against indigenous women not only breach the international obligations of Cambodia under the UNDRIP and the ICCPR, they also violate their specific rights under the International Convention on the Elimination of All Forms of Discrimination Against Women that Cambodia (CEDAW).

In many of the cases documented, indigenous women have been actively engaged in the defence of their lands, territories and resources. When they collect forest products for their families, women are often the ones to discover the destruction in their forests. Many women became leaders in their community actions against private companies and in negotiating with local authorities to claim their land rights.

For example, in Stung Treng and Kampong Speu provinces, women led their villages to get back their lands by working to obtain collective land titles. Ven Samin, a Souy indigenous leader of Kampong Speu Province was able to mobilize her community to action. Her community in Oral District in Kampong Speu Province is within the 9,985-hectare economic land concession of the HLH Agriculture Cambodia in granted in March 2009 for corn plantation. Through her painstaking work of consulting, encouraging, and networking among the different villages in her commune, they wrote letters to and conducted dialogues with the local authorities and company, they went to rally in the offices, and other non-violent ways from June 2009 – October 2010 which made them successfully recover the 9,985 hectares from HLH. Another regular task she does with other women and men from her community is to go on forest patrol to monitor illegal logging.

Commune authorities and the district governor questioned Ven Samin, an ethnic Suoy woman IPHRD, about her role in leading communities to defend their lands and resources. Indigenous women in Stung Treng, Ratanakiri, Kratie and Mondulkiri are also facing similar harassment.

Sam Yan nor his workers never returned since then and villagers continue to nurture their community for their own subsistence. The villagers prepared an agreement with Sam Yan's subordinates to stop cutting down trees, adding that if they were caught they would be arrested and sent to local authorities.

- Since 2008, indigenous peoples from seven Bunong villages from the Busra commune in Mondulkiri have been asking the provincial administration for intervention to stop the grabbing and destruction of their lands. Several families accepted private land titles, while hundreds others refused and insisted on collective land titles. The villagers then went to the provincial office to protest and claim for collective land titles. They are still waiting for an answer.
- In the Lower Sesan 2 dam case, once being informed of the plan to dam their river, the villagers appealed to the National Assembly requesting for the cancellation of the hydropower project in Stung Treng Province. However, up to now, there had been no response. On the other hand, the Ministry of Mines and Energy has

The Kui indigenous women of Prame commune organised a press conference, submitted petition letters, and negotiated with local authorities and companies. Prame women went around the village to update the households on developments about their case in order to mobilise them for the next action. They also led their community in keeping vigil in the company site in order to ensure that the destruction of their forests and lands are stopped.

In Kampong Thom, Kui women led the formation of a community forest watch group, including regular forest patrols. At the inter-village level, women always shared and learned from each other about advocacy tactics of other indigenous communities during meetings and workshops. However, women IPHRDs are increasingly experiencing pressure not only from the government, but also sometimes from their husbands. Local authorities often threaten IRAM women members while they are working for the protection of their members' lands and forests.

The first National Indigenous Women's Human Rights Training on Documentation and Advocacy in December 2013 gave participants a platform to cooperate on action for defending human rights and to defend their lands from encroachment. In the statement issued after the training, they called for the government to stop granting indigenous lands to companies and to implement the law. They also made specific demands related to cases where their rights as indigenous peoples were violated, such as stopping the activities of the Ruy Feng and Lan Feng companies in the Prame Commune. Cambodian indigenous women demanded for more than promises; they asked for an end to the delays in processing collective land registration while the ELCs have been easily granted to the corporations. They also denounced threats from SOCFIN threatening villagers in the Bousra Commune, (in Pichreada District, Mondulhiri), asking the government to investigate the violations that deny indigenous women and their families to meet their subsistence needs.

reiterated the government plan for its construction. The villagers, together with NGOs and civil society organisations, have never given up their effort to protest the construction of the dam. People held rallies before the National Assembly and the Prime Minister's office, initiated petitions and complaints, held press conferences, and blocked the national roads, demanding a solution from the government. Cambodia's Cabinet approved the project in November 2012, despite the dam's Environmental Impact Assessment report failing to meet international best practice. A law offering government guarantees to the project developers was approved in February 2013, despite concerns raised by some lawmakers and NGOs.⁵⁸

When the LS2 HPP affected villagers asked for a five-year moratorium on the dam construction to allow for the development of a comprehensive resettlement plan, Doung Pov, Stung Treng provincial administration director, replied: "The government does it for the benefit of all Cambodians, not for one person [sic]."

58 International Rivers Network, Lower Sesan 2 Dam at <http://www.internationalrivers.org/campaigns/lower-sesan-2-dam>.

Before approving the project, the government thought [about it] a lot. And we are not stupid enough to place the villagers in a location where they cannot farm.”⁵⁹ The EIA of the dam has been deemed below international best practice.

So far, they have been completely ignored. Government authorities have only come to their communities to tell them unclear information about relocation and compensation. As early as 2011, hundreds of representatives from affected indigenous and local communities from Ratanakkiri, Mondulakiri, Stung Treng and Kratie provinces have met to express their concerns about the dam. They learned about the impact of similar dam projects, including about experiences of the absence of consultation, information and participation from similarly affected communities. Most importantly, communities agreed that the dam project must be cancelled for the negative environmental, human rights, social and economic impact. The communities have sent letters to the Chinese ambassador in Cambodia in December 2013 calling on the embassy to intervene against Chinese investment in the dam project. In May 2014, a joint follow-up letter with civil society organizations was sent, after receiving no response at all from the ambassador. The same letters were sent to the project partners, Royal Group and Vietnam Electricity. Donor governments of Australia, Finland, Japan and the USA “called upon Cambodia to voluntarily submit the Lower Sesan 2 Dam to the Mekong River Commission’s ‘prior consultation’ process, which would allow for regional decision-making given the dam’s expected transboundary impacts.”⁶⁰

- The Royal Government of Cambodia granted an ELC the size of 9,224 hectares to Jing Zhong Ri Company for a rubber plantation in 2010. The ELC has created so much tension to the villagers that they were forced to take drastic measures in an act of desperation for fear of losing their livelihood and property.

In April 2012, about 150 Tompoun villagers from the villages of Samut Krom, Samut Leu and Thmey in Seda commune, Lum Phat district, Ratanakiri province went to the area cleared by the Jing Zhong Ri Company at Samut Leu village to stop the clearing of their community rice fields at the boundary of the company ELC. They disabled a bulldozer and disarmed soldiers acting as security guards for the company; and also arrested the soldiers, an environment officer and company worker.

- In the case of the Souy peoples in the Chiin Commune, Oral District, Kampong Speu Province, the HLH Company started clearing their community forest in the Kodontey, Putrea, and Tanil villages in June 2009 despite the protests of the Souy villagers. When they learned about this, the community members held a

59 Daniel Pye and Phak Seangly, *Ibid.*

60 International Rivers Network, *Ibid.*

meeting on how to deal with the company. They then went to meet a company representative but were stopped by the police, preventing them from receiving a response from the HLH Company. They then decided to hold hands and march in the rains to stop the machines from further clearing their land. They reported their case to the Minister of Environment who went to Kodontey Pagoda on 12 April 2010 to mediate between the Suoy villagers and the HLH Company representative. He recommended that HLH should avoid the Suoy community forest. The Suoy community and HLH Company agreed to delineate the boundary of the community forest which is not to be included in the ELC of HLH. But until now, both the HLH Company representative and the local authorities are still lobbying community leaders to sell their lands to the company.

Cultural responses

In addition to legal and other appeals to the government or mobilizing against the companies, indigenous communities also use traditional ceremonies to call the spirits for help in their struggles and to strengthen community solidarity. In the LS2HPP case, more than 500 villagers from Ratanakiri and Stung Treng held a traditional ceremony on February 2013, calling on the spirit called Takra Horm for intervention against the construction of the dam.

The performance of rituals to appease ancestral spirits, gods and to seek support for human action is commonly performed by indigenous peoples, who see no boundaries between the unknown and known, the seen and unseen, the living and dead, the Earth and sky. To them, all these exist in one universe. Indigenous peoples believe that what hurts people also hurts the spirits.

Their subsistence is also often communal, with mutual assistance or labor exchange between families and communities an essential part of farming and gathering. Thus, it is quite easy to forge solidarity with other communities when a threat arises. These human and spiritual relations hold communities together as they face violations against their rights, especially those that threaten their collective rights to live in dignity practising their own culture, determining their own priorities, deciding through their own governance systems, and respecting their relations with human beings and nature.



Support from other actors

The United Nations Office of the High Commissioner on Human Rights (OHCHR) field office in Cambodia sent communications to the government about cases involving indigenous peoples. OHCHR looked into these land issues after the NGO Forum in Cambodia released a report on IP land alienation in 2004 and 2005. Several cases were also shared at the international level, including to the annual sessions of the UN Permanent Forum on Indigenous Issues, and to the Expert Mechanism on the Rights of Indigenous Peoples. NGOs and IP organisations have also contributed to stakeholders report to the Cambodia Universal Periodic Review, the shadow report to the Committee on the Elimination of Discrimination Against Women (CEDAW), and sent communications to the Special Rapporteur on the Rights of Indigenous Peoples, the Special Rapporteur on the situation of human rights in Cambodia, and the Committee on the Elimination of Racial Discrimination (CERD). Various other NGOs and donors in Cambodia have time and again been raising issues on the rights of indigenous peoples to their lands, territories and resources. However, the Cambodian government has consistently ignored these matters.

For example, in response to the CERD request for compliance with the 22 July 2008 request from the the Special Rapporteur on the Rights of Indigenous Peoples to provide information related to the procedures for the registration of indigenous communal land, the Cambodian government had the following reply: The “sub-decree on procedure of the registration of indigenous community land ... was prepared with inputs from consultation with ‘relevant stakeholders, organizations, civil society and people from indigenous community’ ... This consultation was welcomed and approved by the senior political dignitaries having the background as indigenous people who are now the members of senate and national assembly, governors and deputy governors of Ratanakiri and Mondulakiri provinces as well. Therefore, civil society should not be concerned too much about this issue.”⁶¹

The documented cases show that many of the violations against the human rights of indigenous communities arise from the poor enforcement of laws governing economic land concessions: non-compliance with preparation requirements like environmental and social impact assessments and community consultations; outright the circumvention of procedures; and the absence of effective redress mechanisms for victim-communities. In 2007, the Cambodia OHCHR and the Special Rapporteur on the human rights situation in Cambodia reported that⁶²

⁶¹ CERD/C/KHM/Q/8-13/Add.1, para 7.

⁶² Special Representative of the Secretary-General for human rights in Cambodia, *Economic land concessions in Cambodia: A human rights perspective*, p. 1.

“The alienation of indigenous land through the grant of concessions is undermining the ability of indigenous communities to register their collective ownership of traditional lands, and enforce their rights to land under the Land Law... Instead of promoting rural development and poverty reduction, economic land concessions have compromised the rights and livelihoods of rural communities in Cambodia.”

In the same report, he noted that this has been a continuing problem:

“Since 1996, successive Special Representatives of the Secretary-General for human rights in Cambodia have expressed concern about the impact of economic land concessions on the human rights and livelihoods of rural communities. The concerns raised over the past decade remain the same today.”⁶³

As indigenous communities are pushed to the edge of existence, they are becoming more desperate, more despondent, and demoralized. Year by year, their land is lost to government economic priorities; they are being sacrificed in the name of national development.

Attacks against IPHRDs and their communities

In the several cases cited above, when villagers take actions to defend their rights to assume roles as human rights defenders, they are subject to further human rights abuses.

The Prame Kui IPHRDs took it upon themselves to educate their people on their rights and on the law regarding ELCs. When they spoke about these before the local authorities, the officials felt threatened because they themselves did not know these laws.⁶⁴

Later, two IPHRDs received warnings in September 2012 not to be “too smart” and veiled death threats from local authorities, the military and the local police. Because of these, they had to seek sanctuary support until the threats subsided. However, in January 2014 when villagers resumed their encampment, the threats intensified and forced the two to again seek sanctuary. Authorities have not taken action to address these threats, even though formal complaints were submitted.

63 Ibid.

64 CIYA fact sheet 2012.

In mid-2013, a Kui woman villager of Prame who participated in protest activities was found dead in the forest from bludgeons to the head. In early January 2014, a young male villager was hit by a car and killed. Local authorities investigated these incidents, but have not informed the victims' families of the findings.⁶⁵

The defamation and inciting people to violence charges against the five Jarai IPHRDs opposing Keat Kolney's land grabbing exemplifies how the law is used to intimidate poor, powerless IPRHDs and their communities.

The Kreung and Ka-chok IP communities in Koh Peak Commune, Ratanakiri, who were patrolling their forests against forest destruction, were threatened with arrest by the commune chief and district police. In addition, they also received death threats from company personnel. In May, 2012, villagers were again told by the commune chief and local police to stop conducting patrols as the forest belongs to the government and villagers have no right to do this. Later, from May to October 2012, company officials went around the villages to threaten each household.

The National Development Company, Ltd, has a 6,000-hectare, 99-year land concession astride 4, 677 hectares of lands of eight villages in Banteay Chhmar Commune, Thmor Phouk District, Banteay Meanchey Province and Ampel Commune, Banteay Ampel District, Ordor Meanchey Province. It threatened villagers by filing a case of destruction of property after a mirror of one of its bulldozers was reported broken allegedly as a result of a confrontation between villagers and company security guards on 24 February 2012.

Tensions began in November 2011 when the company started levelling their farms. In response, they asked the local authorities to stop the company's operations. However, despite the promise to solve the problem, the destruction continued. After villagers sent a petition in February 2012 to the King, the Prime Minister, the Cabinet and the National Assembly, district and provincial authorities went to the villagers to offer a compromise. Each family would be given three hectares of land for every five hectares that they owned, while at the same time being compensated by the company for the remaining two hectares.

Even if some villagers agreed to this proposition, the company continued clearing their lands causing the proposed compromise to fail. Fed up with broken promises, the villagers gathered on 24 February 2012 at the Banteay Chhmar clearing site to stop

65 CIYA fact sheet 2014.

the destruction of their farms, reserved lands, pasture lands, forests where they gather non-timber products, and spirit forests and especially traditional shrines, and wildlife sanctuary. During the confrontation, they were met by security guards who scolded them and fired three shots which fortunately did not hurt anybody. Until now, this issue has not been resolved.

When IPHRDs are threatened, their lack of knowledge and access to channels of redress, and the fact that the villagers are always powerless, allows violators escape accountability with impunity and encourages them to continue violating human rights.

Threats and killings of IPHRDs violate the Constitution of Cambodia which ensures under article 32 that “Every Khmer citizen shall have the right to life, personal freedom, and security”. Article 38 of the Constitution guarantees that there should be “no physical abuse against any individual.”

Threats and criminalization of IPs are in violation of the ICCPR of which Cambodia is a state party. Cambodia has the obligation to ensure that IPHRDs who are threatened, intimidated, or harassed are accorded protection and provided an effective remedy, especially since these violations were committed by authorities acting in official capacity (ICCPR Articles 2 and 3). The UN Declaration on Human Rights Defenders⁶⁶ reiterates the same rights for IPHRDs to be protected while they are defending their rights to their lands, territories and resources.

In the cases cited, public officials have acted as agents of the companies when they failed to act on complaints, made false promises, and issued threats, instead facilitating access to justice and remedies to the IPHRDs whose rights are violated. These actions are forms of obstruction to justice.

⁶⁶ The official full title of the Declaration for Human Rights Defenders is “UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (1998).

Community elder, activist



Kha Sors, a Kui indigenous woman from the remote Ton Song Village, Siem Bok Commune in the Siem Bouk District of Stung Treng Province, became a member of the Village Gender Committee in 2000. In 2004, she joined the Community Forest Committee. She can hardly speak, read or write the Khmer language, which lent her an air of insecurity when speaking to other people. She also lacked facilitating skills for her work with the community.

In 2007, a local community nominated her to be among the Indigenous Rights Active Members (IRAM), even though she hardly received any training and there was no action at the grassroots level. Since then, she had been

trained on human rights, relevant national laws, action planning and advocacy, documentation and facilitation skills. She also attended meetings with various organizations and networks in different provinces to learn about natural resource management, the struggle of indigenous peoples, and how other communities responded to problems they encountered.

She led her community action to retrieve land, which was taken by Mr Sam Yan, a soldier from the Siem Bouk Command Post under the Stung Treng provincial headquarters. Sam Yan grabbed 50 hectares of community land, affecting 10 families and cutting down 2,500 small trees belonging to 45 families in the three villages. Kha Sors was able to enlist the support of her community, IRAM, the Community Forest Committee, Prey Lang Network, as well as the village chief, commune chief, district governor, and the post chief of police.

During this action, she led villagers on 3 January in stopping five persons who were cutting down trees in 10 hectares of land. Community members then lectured these men on how they have maintained their community forest that they depend on for their living. Later, on 18 January 2013, she mobilized community representatives, local authorities, police officers and Community Forest and Prey Lang networks to go with women IRAM members to post signs stopping cutting down of trees. Their regular forest patrols allowed them to document the intrusions to their land, and submit these to the district governor for assistance.

Although she did not understand the laws used for indigenous people's rights advocacy, Kha Sors is an elder in the village who took seriously her responsibility to protecting their language, identity, traditions, culture and customs. Her activism springs from her desire to protect their land.

Chapter 7

Conclusion and Recommendations

Cambodia has the legal and policy frameworks for the respect, protection and fulfillment of the rights of its indigenous peoples, in particular their rights to land, territory and resources. However, in practice, the Government of Cambodia has failed to enforce and comply with its human rights obligations. It has violated its obligations by coming up with Directive 01, which undermines the 2001 Land Law on collective land registration for indigenous communities. Under the guise of speeding up the recognition of land claims of indigenous peoples, Directive 01 actually excluded collective land titling. It further caused confusion by not making it clear that individual title claims cannot be included in collective land registrations.

The government of Cambodia's issuance of ELCs over indigenous territories, even in areas already in the middle of collective land registration processes, is a blatant and wilful violation of its own laws and international obligations to protect and fulfil the rights of indigenous peoples to their lands. Even within the ELC laws, state officials did not comply with requirements to consult the affected communities through public consultations, environmental and social impact assessments, and plans for resettlement.

The government's national development plans have given rise to a barrage of complaints from indigenous communities at all levels of government, the courts, and to the media. Until now, the government has not come up with a sustainable solution to these land disputes, which essentially ask indigenous peoples to sacrifice their rights to land and identity.

The future for affected communities is bleak. With a worldview and lifestyle that flow outside the market economy, indigenous peoples are barely able to cope with the forced shift to wage labour in not having the necessary skills and language capacity. Nor do they have the knowledge of the government and market to be able to negotiate better work conditions.

In short, indigenous peoples have lost the power to decide on matters affecting their lives and their future.

Prior to this grim scenario, indigenous peoples' fundamental economic, social and cultural rights as citizens were already neglected in terms of receiving others including education, health, agricultural support, and other basic social services. There is no program to support education in the mother tongue.

The coming of ELCs and other large-scale land acquisitions has led to a crisis for indigenous peoples in Cambodia. At risk is the loss of indigenous traditions, cultures and identities for the next generation, which follows from the certain loss of their territories. If no effective and special measures are taken in the near future, their traditional occupations, beliefs, cultures, traditions, and ways of life are under threat of vanishing forever.

However, solutions do exist to address or mitigate this crisis since affirmative laws and policies can support the claims of indigenous peoples. However, the lack of access to justice and rule of law have worked to negate any protection or potential benefit for indigenous peoples within Cambodia's development plans.

Recommendations

To the Royal Government of Cambodia:

- Suspend the granting of any ELC contracts in indigenous territories unless the free prior and informed consent of affected indigenous peoples as defined in international law is sought and guaranteed. Where indigenous peoples give their consent to developments in their territories, compensation, relocation and other compensatory arrangements must be made according to international standards and best practices.
- Accelerate the process of granting indigenous communal land titling by reviewing existing procedures and policy to identify and resolve bottlenecks, and by providing sufficient resources, both human and financial, for implementation.
- Resolve with dispatch all issues arising from ELCs encroaching on indigenous territories according to rules and regulations already set in the law.
- Issue national legislation explicitly banning forced evictions, and stating clearly the steps for companies to take in order to obtain a free, prior and informed consent from indigenous communities.

- Adopt procedures to ensure an effective and meaningful participation and consultation with indigenous peoples as a way towards sustainable and inclusive development. Official segregated data of both indigenous peoples and communities should be made available. This should be made an urgent matter.

To the Indigenous Peoples in Cambodia:

- Take further steps to document their identities, identify traditional land boundaries, and other administrative procedures in order to benefit from legislation, policies, and other instruments related to the protection of indigenous peoples' human rights.
- Strengthen their capacity to comply with the requirements for their collective land titling as a step towards the protection of their rights.

To development partners of indigenous peoples:

- Support legal assistance and capacity building of the affected communities, focusing on preventive approaches to indigenous communities in Cambodia, aiming at the implementation of self-determined development programmes, projects and plans conceptualised by indigenous peoples.

To UN agencies working with indigenous peoples in Cambodia:

- Expand technical assistance to the government in order to ensure the implementation of indigenous peoples human rights in Cambodia, in line with international standards.
- Establish a Social Fund for indigenous community development in the framework of the UNDRIP.
- Lead in conducting an annual forum to strengthen and ensure the implementation of the UNDRIP and to promote a self-determined development of indigenous communities in Cambodia.

Bibliography

Publications:

Bues, Andrea (2011). *Increasing Pressure for Land: Implications for Rural Livelihoods: The Case of Cambodia*, submitted to Welthungerhilfe. Available at: https://www.welthungerhilfe.de/fileadmin/user_upload/Mediathek/Mediathek_int/HIntergrundmaterial/cambodia-increasing-pressure-welthungerhilfe.pdf.

Asia Indigenous Peoples Pact (2013). *12th Permanent Forum on Indigenous Issues Joint Intervention*; Tribal Link Foundation, Cultural Survival, College at Brockport, Dialogue with the Special Rapporteur on the rights of indigenous peoples, 12th session.

Asia Indigenous Peoples Pact (2013). *Tilting the Balance: Indigenous Women, Development and Access to Justice*. Accessed at: <http://www.aippnet.org/index.php/publication-sp-2697/human-rights/1266-tilting-the-balance-indigenous-women-development-and-access-to-justice/>.

Asia Indigenous Peoples Pact (2006). *Indigenous Peoples Human Rights Report in Asia-Cambodia, Thailand and Nepal: Towards Social Justice and Sustainable Peace*.

Cobo, R. Martinez Jose (1900). *Study on the Problem of Discrimination against Indigenous Populations*, Final Report submitted by the Special Rapporteur.

International Federation for Human Rights (2011), *Cambodia Land Cleared for Rubber Rights Bulldozed*. Available at: http://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf/.

International Labor Organisation (2007). *Support to Indigenous People Project in Cambodia, Indigenous Community by Law Development*. Available at: http://www.ilo.org/indigenous/Resources/Publications/WCMS_100917/lang--en/index.htm.

Lasimbang, Jannie and Luithui, Chingya (2010). United Nations Development Programme-RIPP *Natural Resource Management Country Studies: Cambodia Report*. Available at: http://asiapacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/democratic_governance/RBAP-DG-2006-NRM-Cambodia.pdf/.

Lawyers' Rights Watch Canada (2009). *Concerns about the Independence of Lawyers and Judges in Cambodia*. Available at: <http://www.lrwc.org/ws/wpcontent/uploads/2012/03/Cambodia.Independence.Jurists.Aug..26.09.pdf>.

Leemann, Esther and Nikles, Brigitte (2013). "Giving up Fallows and Indigenous Swiddens in Times of Global Land Grabbing" in: Cairns, Malcolm (ed.) *A Growing Forest of Voices*, Earthscan, UK.

NGO Forum on Cambodia (2006). *Indigenous Peoples in Cambodia*. Available at: [www.ngoforum.org.kh/docs/publications/IMRP_INDIGENOUSPEOPLESINCAMBODIA-final\(3\).pdf/](http://www.ngoforum.org.kh/docs/publications/IMRP_INDIGENOUSPEOPLESINCAMBODIA-final(3).pdf/).

US Agency for International Development (2008). *Cambodia program on rights and justice*, Final report, October 2003 through December 2008. Available at: http://pdf.usaid.gov/pdf_docs/Pdacq990.pdf/

Vize, Jeff and Hornung, Manfred (2013). *Indigenous peoples and land titling in Cambodia: a study of six villages*, Heinrich Böll Foundation, Phnom Penh, Cambodia.

United Nations referenced documents:

United Nations Cambodia Office of the High Commissioner for Human Rights (2007). *Special Representative of the Secretary-General for human rights in Cambodia, Economic land concessions in Cambodia, A human rights perspective*. Available at: http://cambodia.ohchr.org/WebDOCs/DocReports/2ThematicReports/Thematic_CMB12062007E.pdf/.

United Nations Development Programme (2007). *Insights for Action: Land and Human Development In Cambodia, Discussion Paper No. 5*. Available at: land-and-human-development-in-cambodiapdf-1260888550-phpapp02.

United Nations Economic and Social Council (2010). Permanent Forum on Indigenous Issues, Ninth Session, *Information received from Governments, Cambodia*. E/2010/43-E/C.19/2010/15.

United Nations General Assembly (2001). *Situation of Human Rights in Cambodia: Note by the Secretary General*. A/56/209.

United Nations Office of the High Commissioner for Human Rights (2013). *Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, A/HRC/24/36*.

United Nations Office of the High Commissioner for Human Rights (2012). *Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, A/HRC/21/63/Add.1/Rev.*

United Nations Office of the High Commissioner for Human Rights (2009). *Joint allegation letter from the Special Rapporteur on adequate housing, the Special Rapporteur on the right to food and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples*, A/HRC/10/7/Add.1.

United Nations Office of the High Commissioner for Human Rights (2009). *Written replies by the Kingdom of Cambodia concerning the list of issues* (CERD/C/KHM/Q/8-13) formulated by the Committee on the Elimination of Racial Discrimination relating to Cambodia's eight to thirteenth periodic reports. CERD/C/KHM/Q/8-13/Add.1.

United Nations Office of the High Commissioner for Human Rights (2009). National Report submitted to the Human Rights Council, A/HRC/WG.6/6/KHM/1.

Statements:

Cambodia indigenous women statement for human rights day (2013). Available at: <http://www.iphrdefenders.net/urgent-alerts-iphrd/375-cambodia-indigenous-women-statement-for-human-rights-day-2013>

CLEC Campaign (2007). Urgent action appeal. Available at: http://www.cambodia.ahrchk.net/docs/landcase_clec_jan2007.pdf/

First Indigenous People forum in Cambodia (2004). Excerpt from the Statement by Indigenous Peoples at the first Forum of Cambodia's Indigenous Peoples, Kampong Speu province.

Reclamation of the indigenous land illegally taken in Rattanakiri (2007). Available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=139>.

Factsheets:

Cambodia Indigenous Youth Association, factsheet 2014.

Cambodia Indigenous Youth Association, factsheet 2012.

CLEC&CCHR, Land alienation 2005 and indigenous communities fact sheet & case study 2012.

ICSO factsheets 2012 and 2013.

3S Rivers Protection Network and Mekong Watch (2013). Lower Sesan 2 Hydro-power Project, Northeastern Cambodia, factsheet. Available at: http://www.internationalrivers.org/files/attachedfiles/lower_sesan_2_factsheet_english.pdf

Online references:

Indigenous Community Support Organisation (2010). Indigenous People in Cambodia. Available at: <http://www.icso.org.kh/indigenous-people/indigenous-people-in-cambodia/>.

International Rivers website; <http://www.internationalrivers.org/campaigns/lower-sesan-2-dam>.

International Work Group for Indigenous Affairs website; <http://www.iwgia.org/regions/asia/cambodia/854-update-2011-cambodia>.

Open Development website; <http://www.opendevdevelopmentcambodia.net/maps/>.

Rabe, Alison (2013). *Directive 01BB in Ratanakiri Province, Cambodia*. Available at: International Land Coalition website, <http://www.commercialpressuresonland.org/research-papers/directive-01bb-ratanakiri-province-cambodia>.

Yale University website; <http://www.yale.edu/cgp/> “Cambodian Genocide Program | Yale University”.

Newspaper articles:

Harbinson, Rod (2013). *Fight on to keep dam from turning pristine paradise into ‘death valley’*; Bangkok Post.

Naren, Kuch (2013). *Lawmakers Approve Lower Sesan 2 Dam*; The Cambodia Daily. Available at: <http://www.cambodiadaily.com/archives/lawmakers-approve-lower-sesan-2-dam-10567/>.

Pye, Daniel and Seangly, Phak (2014). *Delay Sesan dam: villagers*; The Phnom Penh Post. Available at: <http://www.phnompenhpost.com/national/delay-sesan-dam-villagers>.

Theara, Khoun (2014). *Women minorities call land development a major threat*; Voice of America, Available at: <http://www.voacambodia.com/content/women-minorities-call-land-development-a-major-threat/1929463.html>.

White, Stuart and Tithara, May (2014). *Low ranking for rule of law*; The Phnom Penh Post. Available at: <http://www.phnompenhpost.com/national/low-ranking-rule-law/>.

AIPP at a glance

The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements as a platform for solidarity and cooperation. AIPP is actively promoting and defending indigenous peoples' rights and human rights, sustainable development and management of resources and environment protection. Through the years, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/networks and 35 local and sub-national organizations including 16 are ethnic-based organizations, five (5) indigenous women and four (4) are indigenous youth organizations.

Through our Indigenous Women (IW) programme, AIPP aims to empower indigenous women through networking, education and capacity building activities with the overall goal for indigenous women to assert, promote and protect their rights as women and as indigenous peoples.

Our Vision

Indigenous peoples in Asia are living with dignity and fully exercising their rights, distinct cultures and identity, and enhancing their sustainable management systems on lands, territories and resources for their own future and development in an environment of peace, justice and equality.

Our Mission

AIPP strengthen the solidarity, cooperation and capacities of indigenous peoples in Asia to promote and protect their rights, cultures and identities, and their sustainable resource management system for their development and self-determination.

Our Programmes

Our main areas of work among the different programmes are information dissemination, awareness raising, capacity building, advocacy and networking from local to global. Our programmes are:

- Human Rights Campaign and Policy Advocacy
- Regional Capacity Building
- Environment
- Indigenous Women
- Communication Development

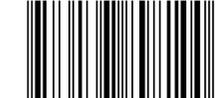
AIPP is accredited as an NGO in special consultative status with the UN Economic and Social Council (ECOSOC) and as observer organization with the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD), Green Climate Fund (GCF), Global Environment Facility (GEF) and the World Intellectual Property Organization (WIPO). AIPP is a member of the International Land Coalition (ILC).



The printing press has been established with support from the European Union's European Instrument for Democracy and Human Rights



ISBN 978-616-7898-10-0



9 786167 898100 >