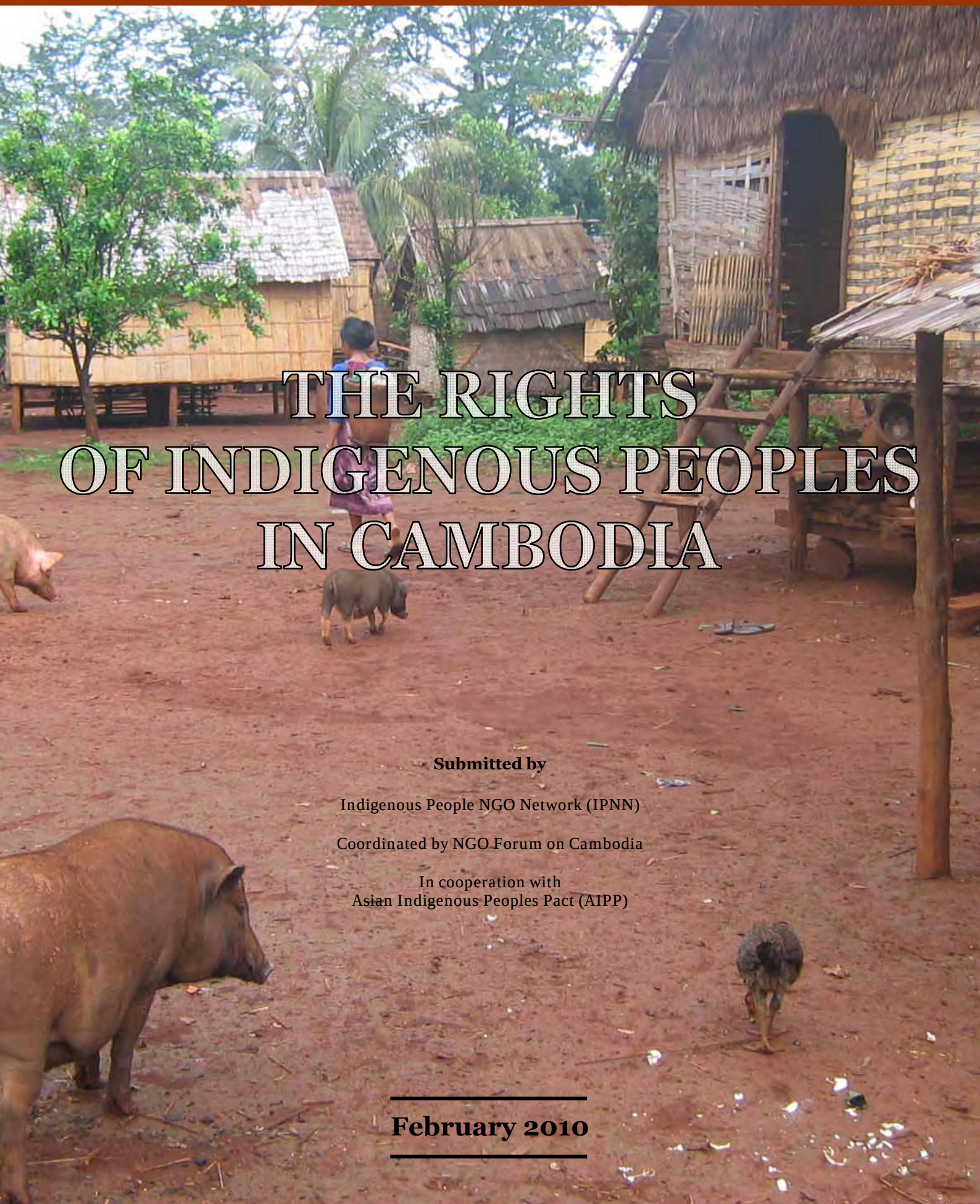
UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

(76TH SESSION 2010)



THE RIGHTS OF INDIGENOUS PEOPLES IN CAMBODIA

Submitted by

Indigenous People NGO Network (IPNN)

Coordinated by NGO Forum on Cambodia

In cooperation with
Asian Indigenous Peoples Pact (AIPP)

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Submission for Consideration of the Situation of Indigenous People of Cambodia under the International Convention on the Elimination of All Forms of Racial Discrimination.

Committee on the Elimination of Racial Discrimination
Eighth to Thirteenth Periodic Review

1 INTRODUCTION

1. A coalition of NGOs and community groups working with indigenous peoples in Cambodia submit this report to the Committee on the Elimination of Racial Discrimination ("the Committee") for consideration at its 76th Session.

2. In doing this submission, the definition of racial discrimination as set out in Article 1(1) of the International Convention on the Elimination of all Forms of Racial Discrimination ("ICERD") has been used: "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose **or effect** of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." We observe that the Committee has repeatedly affirmed that ICERD applies to discrimination against indigenous peoples[1] and "that all appropriate means must be taken to combat and eliminate such discrimination."[2]

3. We note that the Cambodian Constitution states that all Cambodians have the "same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status". We also sincerely thank the Cambodian government for its role in ending civil war in Cambodia, something that was a severe and extreme violation of indigenous and non-indigenous peoples' rights, and establishing this constitution based on equity.

4. There are, however, actions and laws which have ***the effect*** of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms of indigenous peoples. This submission explains that, despite provisions to safeguard indigenous peoples' land, customs, language and culture, discrimination against indigenous peoples in Cambodia, in effect, remains persistent and institutionalized. Specifically outlined in this report is the discrimination against indigenous peoples' groups that has resulted from removing rights through legislation and use of the judiciary; land and resource alienation resulting in forced displacement; limitations on the right to self-determination; inadequate provision of appropriate education; and unrealized rights to health.

2 INDIGENOUS PEOPLES IN CAMBODIA

5. The Cambodian government has made reference to indigenous peoples (literal translation: "indigenous minority peoples") in various laws and policies. Indigenous peoples are recognized separately to peoples such as the ethnic Lao living in northeastern Cambodia who are not generally considered "indigenous", nor are the Chams or Vietnamese. However, the concept of indigenous peoples is not that clear-cut and Khmers (the dominant ethnic group) living in some areas share many characteristics with indigenous peoples.

6. The total population of Cambodia is 13.5 million. According to the 2008 population census, about 1.34% of the total population (about 179,000 people) reported an indigenous language as a mother tongue. The total indigenous population is expected to be greater, as a number of indigenous people are not able to speak their people's language or do not yet feel confident saying they are indigenous.

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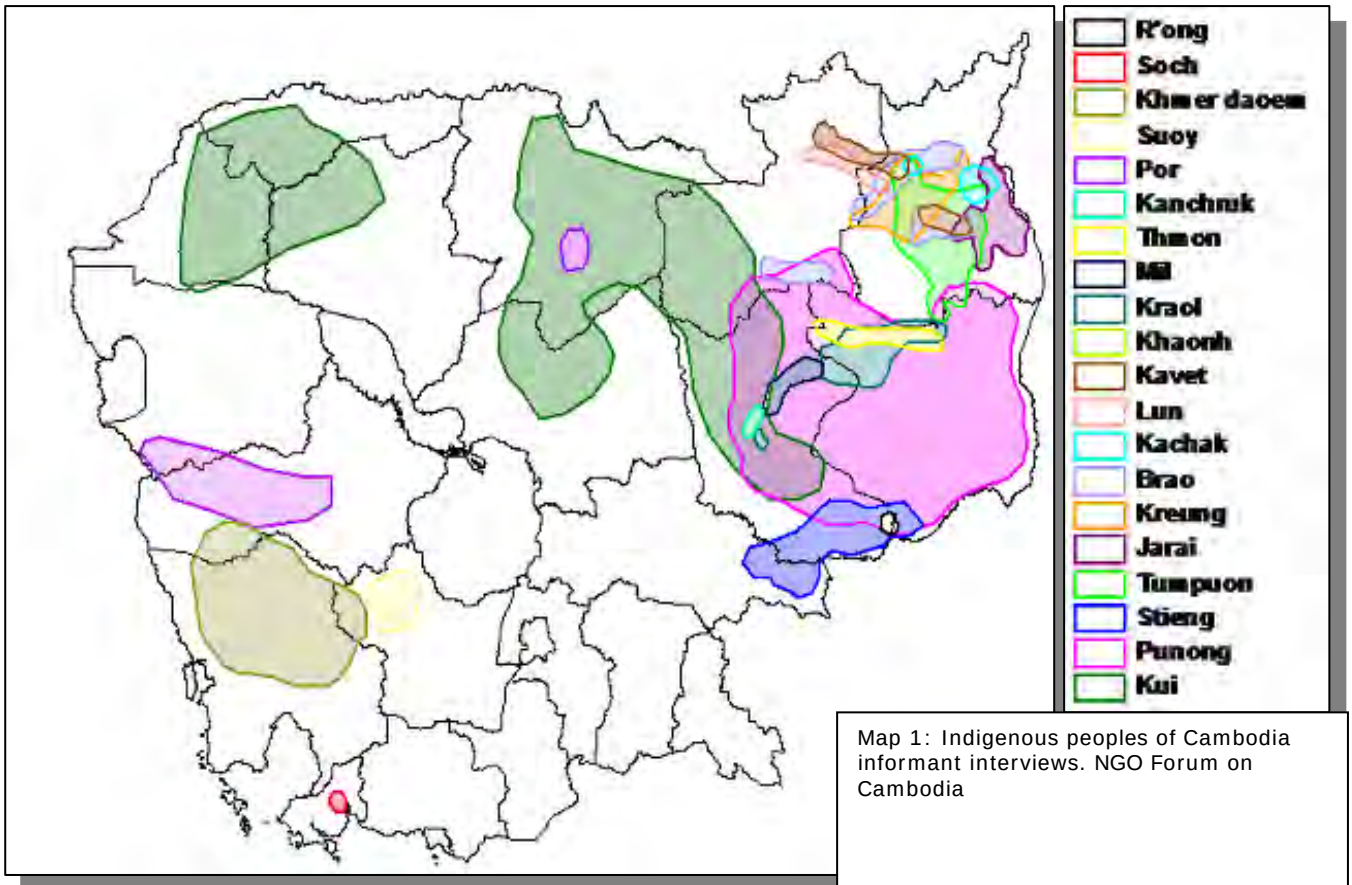
1 *General Recommendation XXIII on Indigenous Peoples*, adopted by the Committee on the Elimination of Racial Discrimination at its 51st session, 18 August 1997, at para. 1-2.

2 *Id*. at para 2.

7. Indigenous communities are located in over 15 provinces of Cambodia. A 2006 study of the indigenous population by the Ministry of Rural Development, National Statistics Institute and Commune Database found that indigenous groups are living in 10 provinces of Cambodia: (1) Mondulkiri – Bunong, Kreung, Jarai, Kaol, Steang, Thmoon, Kuoy, Tumpuon; (2) Ratanakiri – Bunong, Kreung, Jarai, Tumuon, Brao, Kavet, Kachak, Lun, Radaer; (3) Kratie – Bunong, Kraol, Steang, Thmoon, Kuoy, Mil, Khnong; (4) Stung Treng – Bunong, Kreung, Jarai, Kuoy, Tumpuon; (5) Preah Vihear – Kuoy; (6) Kampong Thom – Kuoy; (7) Koh Kong – Por; (8) Pursat – Por; (9) Kampong Speu – Suoy; and (10) Sihanoukville – Saoch. In fact, there are five more provinces that indigenous people are living in, including (11) Battambang, (12) Banteay Meanchey, (13) Oddar Meanchey, (14) Kampong Cham and (15) Siem Reap. A majority of these indigenous communities are Kuoy, Stieng, Por, or Saoch

8. Because of the discrepancies in data the NGO Forum on Cambodia, with its members, has prepared a draft map of indigenous peoples in Cambodia (map 1).



Map 1: Indigenous peoples of Cambodia informant interviews. NGO Forum on Cambodia

9. In 2004 the first ever gathering of indigenous representatives from 14 provinces discussed what it is to be indigenous. In a statement they produced during this forum they described what it means to be indigenous in Cambodia (see appendix 1).[3]

3 OVERALL LEGAL FRAMEWORK

10. The Cambodian Constitution (1993) states that all citizens have the same rights, regardless of race, colour, language or religious belief. Indigenous peoples are regarded as citizens of Cambodia, and this is positive position compared to some other countries in the region and world.

11. Article 31 of the Constitution states that Cambodia shall recognize and respect UN rights covenants. Cambodia is a signatory to a number of international instruments that protect the rights of

[3] See Annex I

indigenous peoples,[4] as well as the Convention on Biological Diversity (1992), which recognizes the role of indigenous people in protecting biodiversity. In 1992 the Cambodian Government ratified the International Covenant on Economic, Social and Cultural Rights. This includes the rights to practice specific culture and the right to means of livelihoods.

12. In addition, the Cambodian Government voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the UN General Assembly. This was very much appreciated by the indigenous peoples of Cambodia. It is noted too that the ICERD committee states that the UNDRIP is the appropriate interpretative tool for analyses of the rights of indigenous peoples. This report is very much an analysis of the implementation of indigenous peoples' rights, as expressed in UNDRIP.

4 EDUCATION

13. Article 5(e) of the ICERD commits Cambodia to ensuring the enjoyment, on an equal footing and without discrimination, of economic, social and cultural rights, in particular the right to education and training, which under Article 13 of the ICESCR includes the provision of free primary education irrespective of gender, ethnicity or any other consideration. Article 13 further commits the State Party to make secondary education generally available and accessible to all, including through the progressive introduction of free education, and to working towards the provision of equal access to tertiary education, including through the provision of free secondary education. Article 14 of the ICESCR commits the State Party to establishing a concrete plan towards the realization of the right to education.

14. Civil society recognises the Government's efforts to introduce bilingual education into 20 government-run community primary schools in the three north-eastern provinces: Stung Treng, Mondulkiri and Ratanakiri. The Ministry of Education in 2009 has commenced bilingual education in 5 state schools in Ratanakiri Province with plans for expansion. The programme will also include 80 readers in different languages to be used in formal education.[5]

15. However the situation for indigenous peoples in Cambodia with regards to access to education remains very difficult. A recent study in Mondulkiri Province found 97% of Bunong women and 86% of Bunong men were unable to read or write.[6] There is an urgent need to address such divides in access and provision of education in indigenous peoples' areas. The committee on ESCR also emphasized in one of its 2009 recommendations that the Education Law should be extended to cover all Cambodian children whose first language is not Khmer.

5 NATURAL RESOURCE MANAGEMENT

16. Indigenous peoples' representatives adopted a statement on September 12, 2004 that emphasizes the cultural and other significance and importance of indigenous management of land and natural resources.[7] However, indigenous management systems are under severe pressure.

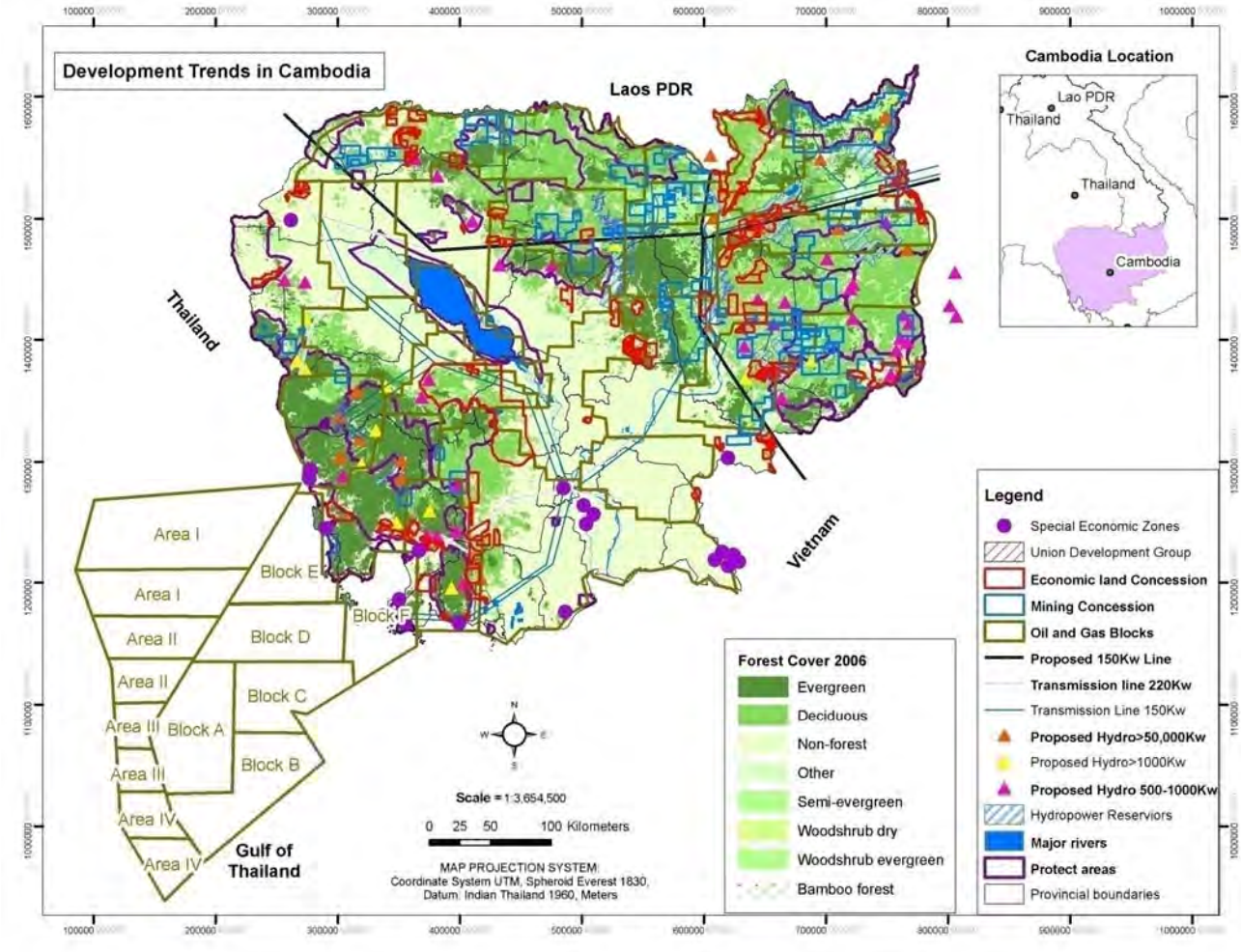
17. Undoubtedly Cambodia is experiencing rapid economic growth, and this trend in recent times has seen the proliferation of concessions being granted for the exploitation of natural resources. Concessions have been for developments such as commercial plantations, extractive industries, including minerals, oil and gas, water diversion, irrigation and hydropower dam projects; along with special zones being earmarked for infrastructure developments to facilitate large scale tourism projects. The precise number of concessions is still unclear, but, as map 2 shows, the problem is extensive.[8]

[4] This includes the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the United Nations Declaration on the Rights of Indigenous People and more generally the Universal Declaration of Human Rights.
[5] Civil Society Submission to the UN Committee on Economic, Social and Cultural Rights in Cambodia, 2009.
[6] International Cooperation Cambodia, 2003: An Assessment of Khmer Language Skills and Literacy Levels within the Adult Hill tribe Population of Mondulkiri Province. International Cooperation Cambodia, Phnom Penh
[7] See Annex I
[8] Maps available from www.sithi.org.

18. Projects listed on this map are only those for which information has been made available in the public domain. Many other concessions are thought to have been issued and there are many examples of large private land grabs.

19. Comparing this map with the geographical locations of indigenous groups it is clear that a disproportionate concentration of projects have been granted on indigenous peoples' lands. Documentation of projects currently being developed, predominantly economic land concessions and mineral concessions and large-scale hydro-electricity projects, have revealed violations under Cambodian law[9] and displacement and evictions of indigenous communities in the regions. Examples of these are given in the appendices attached.

20. NGOs and civil society have noted that, as a result of the increasing number of concessions allocated, the situation regarding land security of indigenous people has regressed. From a progress report for Key Trigger Indicators of the Poverty Reduction and Growth Operation Programme (PRGO) Round 1 to 2 it is clear that the problem has reached the stage where major donors have withheld substantial funds to Cambodia. Contention around insecure land tenure for indigenous people is only indicative of the severity of the broader situation and, even if only a small proportion of these projects go ahead, it could contribute to overall environmental, social and economic instability in the country.



Map 2: Large scale development projects in Cambodia - mapped from publically available information

5.1 Forestry Issues

21. The Law on Forestry (2002) mandates that all forests are property of the state, whether natural or planted, and only recognises and ensures traditional user rights for the purpose of traditional

[9] NGO Forum on Cambodia (2008) *NGO Position Papers on Cambodia's Development in 2007-08: Monitoring the implementation of 2007 CDCF Joint Monitoring Indicators and the National Strategic Development Plan 2006-10.* Phnom Penh, Cambodia. See also www.sithi.org .

customs, beliefs, religions and living.[10] ICERD has stated that the United Nations Declaration on the Rights of Indigenous Peoples should be the tool for interpretation of indigenous peoples' rights. Under the UNDRIP, indigenous people have the right to the ***territories*** they have traditionally owned or otherwise occupied or used, including the lands, waters and other resources therein. They further require that states shall recognize, secure, guarantee and protect these lands, waters and other resources.[11] In contravention of these obligations, the Forestry Law deprives indigenous peoples of these basic rights and this is further compounded by the Land Law (2001), which fails to include larger areas of forest estate in indigenous communal land titles, further reducing the nature and scope of indigenous peoples' ownership rights to their territories.

22. As forests are considered to be publicly owned by the State, this has allowed the Government to convert these lands into "state private lands"[12] and this has greatly facilitated the ease of granting economic land concessions and promoting other forms of development in areas traditionally managed by indigenous peoples, with minimal consultation. This has resulted in numerous land tenure conflicts in indigenous regions of the country, as described below in the section entitled 'land'.

23. One key example of disenfranchisement of indigenous peoples from forest they traditionally owned is Prey Lang Forest. Covering at least 200,000 hectares and straddling four central-north provinces, it is the last remaining lowland dry evergreen forest of its kind in the Indochina Peninsula. It is inhabited by a large proportion of Kuy indigenous people, who have occupied the land for centuries, practicing a subsistence lifestyle derived from the rich forest resources (see case study in Appendix 6).

24. Prey Lang is classified as state public land, and the Kuy people of the region have been subjected to an array of land alienation and encroachments, including illegal logging and wildlife trade, commercial plantations, hydropower investments and a proliferation of mineral activities and exploitation concessions. Citing the right to self-determination, the UN Committee on Economic, Social and Cultural Rights raised concerns about this situation in May 2009, observing with concern the continuing "destruction of the Prey Lang Forest in Northern Cambodia" and noting that 29% of the primary tropical forest therein had been lost since 2004.[13] The Committee further observed that this has also resulted "in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival."[14] All of this is in direct contravention of Articles 5 and 6 of the ICERD and is by no means an isolated occurrence in Cambodia.

25. It should also be noted that the legality of issuance of these commercial concessions is also in question. This is discussed in more detail in the following sections relating to land concessions.

5.2 Protected Areas

26. The Protected Area Law (2008) designates large areas to the jurisdiction of the Ministry of Environment, supposedly for protection. It is another law which provides indigenous peoples only with user rights as opposed to ownership or strong co-management rights. In addition, the text only allows for customary user rights in specific "sustainable use zones" or "community protected areas" determined by the Ministry of Environment, and furthermore specifies that "local communities and indigenous people cannot obtain land title over farm land in community protected areas"[15] - a provision that is in direct conflict with the Land Law which provides for some state public land to be included in communal land titles of indigenous peoples.

[10] Law on Forestry (2002). Article 40.

[11] United Nations Declaration on the Rights of Indigenous People: Article 25, Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard. Article 26.1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

[12] State Private Land is a category of land left after recognition of State Public land, private land, and community-owned land. It is the only category of land that can be legally issued as concession.

[13] Cambodia: E/C.12/KHM/CO/1, 22 May 2009, at para. 15

[14] *Ibid*.

[15] Protected Area Law (2008), Article 26.

27. As indigenous people are heavily reliant upon forest and the environment, concentrations of indigenous peoples reside predominantly in heavily forested areas to the north, northeast and southwest of the country. According to this law, creation of biodiversity conservation reserves should be beneficial to local indigenous communities. However the alienation of indigenous communities from these regions has resulted in displacement from their cultural lands and resulted in an increase in forest degradation, due to the absence of indigenous peoples' stewardship, monitoring and management.

28. A poignant example of where these laws have contravened the rights of indigenous people is the Virachey National Park located in the northeastern most tip of the country. This park, the first to be created in Cambodia, in 1993, resulted in the displacement of the Brao indigenous people without due process and adequate compensation.[16] Consequently the protected area status of the park alone has played a role in preventing its protection – as, in the absence of indigenous peoples' stewardship, monitoring and management, clearing along the border of Vietnam became rampant and much of the forest has been degraded or granted for mineral concessions.

29. It is also important to note that lands are being excised from "Protected Area" to be converted into agro-industrial concessions. During 2009, a number of sub-decrees transferred "Protected Area" to state private land and on to agro-investment. Two are listed below. Both concessions severely affect indigenous peoples (see Appendix 7 for the example of the O Ral concession)

- Sub-Decree #48, March 30, 2009 transferring 9,985 hectares of O Ral wildlife sanctuary to HLH Agriculture for a term of 70 years for investment development of the agro-industrial sector.
- Sub-Decree #120, August 4, 2009 transferring 5,000 hectares located in Boundary of Snuol Wildlife Sanctuary in Keo Seyma District of Mondulkiri Province for investment and development relating to the rubber crops plantation sector, agro-industrial crops and agricultural crops

5.3 LAND

30. The Land Law (2001) provides for collective land titling of indigenous lands. This is a positive inclusion and the Cambodian Government should be applauded for this.

31. However, additional legislation (sub-decree) to title indigenous land was not adopted until 2009. It is considered by many to be overly bureaucratic, inconsistent with the rights provided in the Land Law, and containing clauses which undermine indigenous rights to collective land recognized under international norms. No indigenous community has yet received their collective land title.

32. The Land Law mandates that indigenous "communities" be recognized as legal entities *prior to receiving collective title.* However the sub-decree on registration of land states that legal entity is required before that community may *lodge an application*. Also, obtaining legal recognition as a community is under the Ministry of Interior's (MOI) jurisdiction, and the legal framework for this process has not yet been adopted. As a result, the requirement for recognition and registration of "indigenous" identity and legal entity becomes, by default, a decision of State authorities, and can be regarded as a direct violation of the rights of indigenous peoples to self-determination and to juridical personality.[17]

33. The above-mentioned Sub-Decree on registration of indigenous communal land, and a related policy on registration and rights to the use of indigenous land, takes the approach that indigenous "communities" are temporary and that they will be assimilated into future mainstream society. Their clauses will prohibit swidden farming in the near future.[18] NGOs and other civil society groups believe these policies demonstrate the government's unwillingness to accept self-identification, cultural

[16] Baird, I . (2009) *Spatial (re)organisation and places of the Brao in southern Laos and northeastern Cambodia.* Singapore Journal of Tropical Geography **30,** 289-311.

[17] See for instance Inter-American Court of Human Rights, *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs.* Judgment of 28 November 2007. Series C No. 172 (discussing the rights of indigenous and tribal peoples to juridical personality, including recognition as peoples, for the purposes of the recognition and exercise of their collective rights). Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf.

[18] See Policy on Registration and Rights to Use of Land of Indigenous Communities in Cambodia, April 24, 2009, Published by Council for Land Policy; under the Objectives and Vision of the policy.

traditions and self-determination of Cambodia's indigenous people. Additionally, the Sub-Decree on registration of indigenous peoples' lands limits the amount of spirit forest and burial grounds[19] which can be included in collective titles to only 7 hectares each,[20] and doesn't provide for other forms of indigenous ownership and use of forest. It thus directly contradicts the Land Law, which states that the boundaries of the immoveable property of indigenous communities are to be determined by *the actual situation* (i.e. they are not limited arbitrarily and must be grounded in occupation and use).

34. The combination of the Land Law and Sub-Decree is seen to hold little protection for indigenous people's land due to the above reasons. They also do not include tenure over substantial forest and water resources within the traditional territories of indigenous peoples. They do, in theory, provide protection against violations of the agricultural lands of indigenous minorities in the interim period before titling of that land. However, as noted in a number of reports and in the case studies attached, this interim protection has been severely undermined.

35.

Extract from:
Land Alienation in Indigenous Minority Communities - Ratanakiri Province, Cambodia
NGO Forum on Cambodia, August 2006.

- *In accordance with the 2001 Land Law, participants of the "Workshop to Seek Strategies to Prevent Indigenous Land Alienation" in March 2005 publicly acknowledged that both selling and buying of Indigenous Peoples' land is illegal. Participants included provincial governors, representatives from the Ministry of Land Management & Urban Planning, and commune councils. The illegality of the vast majority of land sales in Ratanakiri has also been confirmed by national and international legal experts.*
- *In spite of a Prime Ministerial Order and a Provincial Deika in support of the 2001 Land Law and the 2002 Forestry Law, the majority of these problems have arisen as a result of a lack of law enforcement. NGOs and communities express a strong concern at the apparent lack of commitment to governance, which appears to be the main barrier to resolution of these problems.*
- *The problem has progressed to the stage where some communities have disintegrated. There has already been a severe loss of cultural and social resources.*

36. Another aspect of this is that the courts will often not adjudicate cases concerning indigenous community rights until those rights and title have been registered (and legal personality conferred), thus hindering indigenous peoples' ability to find resolution for land issues via the judiciary, contravening Article 6 of ICERD. The submitting organizations believe that difficulties in obtaining legal community recognition and land titling under the above legislative mechanisms is in direct breach of Article 2(1)(c) of CERD that requires State Parties to rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination, and among others Article 5(d)(v).

37. In 2009, the Committee on Economic, Social and Cultural Rights "notes with concern that the 2001 Land Law that provides for the titling of indigenous communities' communal lands has not been implemented effectively and that so far, no indigenous community has received any land title." The Committee "urges the State Party to implement the 2001 Land Law without further delay and to ensure that its policies on registration of communal lands do not contravene the spirit of this law."[21] This situation is ongoing and the submitting organizations urge the Committee to reiterate and elaborate upon the concerns and recommendations adopted by the Committee on Economic, Social and Cultural Rights.

[19] Spirit forest and burial grounds are considered to be an essential aspect of indigenous culture and agricultural/livelihood systems.
[20] See Sub-Decree on Procedures of Registration of Land of Indigenous Communities (2007), Article 4.
[21] Cambodia: E/C.12/KHM/CO/1, 22 May 2009, at para. 15.

5.3.1 Land concessions

38.

Extract from
Economic Land Concessions in Cambodia, A Human Rights Perspective
Special Representative of the Secretary-General for human rights in Cambodia, 2007.

"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….

At the root of these concerns is poor enforcement of and compliance with the requirements of the Land Law and Sub-Decree on Economic Land Concessions, which govern the grant and management of economic land concessions. Essential pre-conditions to the grant of concessions, such as the registration of land as state private land and conduct of public consultations and environmental and social impact assessments, have not been met…"

The report raises particular concerns about the impact of economic land and other concessions on indigenous communities, whose rights to collective ownership of land are protected under Cambodian law. 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.

39. More recently, in its 2009 Concluding Observations on Cambodia, the Committee on Economic, Social and Cultural Rights writes that it is "concerned about the reports that the rapid increase in economic land concessions in the last several years, even within the protected zones, is the major factor for the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival."

40. Regardless of the protection offered by the Land Law, indigenous communities are increasingly under pressure from land alienation and restrictions on their access to natural resources. Military or law enforcement occupation of land restricting access to resources has also escalated and in some cases companies have been reported to have requested armed protection from the Royal Cambodian Armed Forces (RCAF) to guard their investment.[22] Consequently these armed forces have been extremely opportunistic by charging local communities access rights to natural resources and then taxes upon extraction of non-timber forest products all of which is in violation of the Forestry Law and other indigenous rights policies in Cambodia; including the Constitution.

41 These concerns are clearly illustrated in Appendices 3, 4, 5 and 7. Again, Map 2 shows that these cases are not isolated and are part of a broader pattern of alienation, affecting indigenous and non-indigenous communities, but with a disproportionately high impact on indigenous peoples.

5.3.2 Forced displacements and intimidation

42. Cambodia has supported the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), by voting in favour of its adoption by the UN General Assembly in 2007. While the UNDRIP is not a treaty and does not have legally binding effect as such, it is generally acknowledged that the Declaration reflects the current state of international law pertaining to indigenous rights and many elements of the

[22] Letter sighted addressed to provincial authorities and the Forestry Administration requesting armed guards to protect a site in Kratie for rubber plantation development.

UNDRIP reflect provisions in international treaties that Cambodia has ratified (ICERD, ICESCR, ICCPR, CEDAW and CBD), as interpreted by relevant treaty bodies. The Declaration recognizes and sets out in detail the rights of indigenous groups to preserve their culture and direct their development according to their own needs. Article 10 expressly forbids forced evictions and states that any relocation must be the result of free, prior and informed consent.[23] The Declaration states that indigenous peoples have the right to practice their traditions and customs,[24] including spiritual, religious and ceremonial practices.[25] Crucially, the Declaration states: "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."[26]

43. Disregarding the preceding norms and Cambodia's obligations under the ICERD and ICESCR, illegal land transfers and land grabbing have continued unabated over the last several years. A large proportion of these incidences have involved evictions of indigenous people from their land, some forceful, others involving coercion, illegal contracts and the undermining of community cultural processes. In most of these cases the perpetrators are influential and powerful people, connected with government officials, military or police forces. One high profile case, Kong Yu village in Ratanakiri province, involves a person who is the sister of the Minister of Economy and Finance and wife of the Secretary of State for Land Management. This case continues to be unresolved after more than five years of litigation on behalf of the affected community (see Appendix 2).

44. Incidences of coercion and intimidation are common in these land disputes. The case of Busra Commune, Mondulkiri province (detailed in Appendix 3) describes how a 10,000 ha rubber plantation is evicting indigenous community members. Some community members reported being forced to "sell" their land to the company. Indigenous people in this case and others report that they are frequently told by Government officials that the land under dispute is state land (even their agricultural land), that they have no rights to it, and they have two options – settle now, or risk losing it in the future without any compensation.[27]

45. Involuntary or forcible resettlement "is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities."[28] The Committee on Economic, Social and Cultural Rights frequently expresses concern about forcible relocation and has urged states to abandon the practice as incompatible with the obligations assumed under the Covenant.[29] In its General Comment on the Right to Adequate Housing, for instance, the Committee stated that it "considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."[30]

46. In 2009 the Committee on ESCR "urges the State Party to implement a moratorium on all evictions until the proper legal framework is in place and the process of land titling is completed, in order to ensure the protection of human rights of all Cambodians, including indigenous peoples." [31] In this respect, it is also important to highlight the Committee's General Comment No XXIII, which calls upon the State Party to take steps to return those lands and territories which have been inhabited or used without their free and informed consent to indigenous people whilst continuing to ensuring that

[23] UN Declaration on the Rights of Indigenous Peoples, Article 10.
[24] UN Declaration on the Rights of Indigenous Peoples, Article 11.
[25] UN Declaration on the Rights of Indigenous Peoples, Article 12.
[26] UN Declaration on the Rights of Indigenous Peoples, Article 26.
[27] NGO Forum on Cambodia (2008): Progress Report for Key Trigger Indicators of the Poverty Reduction and Growth Operation Programme (PRGO), Round-2.
[28] Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Final report submitted by Mr. Theo van Boven, Special Rapporteur. UN Doc. E/CN.4/Sub.2/1993/8, at 10.
[29] General Comment No. 4, The Right to Adequate Housing (Art. 11(1) of the Covenant), adopted at the Committee's Sixth session, 1991. In: Compilation of General Comments/Recommendations supra note 7, pps. 22-27.
[30] Id., at para. 18. See, also, General Comment No. 7, The Right to Adequate Housing (Art. 11(1) of the Covenant): forced evictions, supra note 7, at para. 1.
[31] Cambodia: E/C.12/KHM/CO/1, 22 May 2009.

members of indigenous peoples are provided "with conditions allowing for the sustainable economic and social development compatible with their cultural characteristics." [32]

47. Often 'national economic development' is invoked as the justification for the acquisition of the lands regardless of who may be harmed by the development. The non-transparent nature of these developments contributes to the Government's continued failure to meet Poverty Reduction and Growth Operation Programme (PRGO) trigger indicators regarding land and natural resource management, restricting government income, failing to uphold the State's obligation to be accountable to all Cambodian citizens.[33] It is also noted that the mass conversion of indigenous peoples' lands to agro-industrial developments could, in theory, limit government income through programs related to climate change.

5.3.3 Failure of Conflict Resolution

48. Land disputes remain the single most contentious issue of indigenous people in Cambodia. Conciliation of disputes related to untitled land, by sub-decree, fall under the responsibility of the Cadastral Commissions (CC). Complaints received by the Cadastral Commissions are first submitted to the district/khan (DKCC), then, if there is no resolution, to the provincial/municipal (PMCC) and then (if still no resolution at the provincial level), finally to the national (NCC).[34] Once at the NCC, if there has been no conciliation to the satisfaction of a party, they may complain to the court for judicial review.[35] (Criminal charges that arise out of a land dispute may be referred directly to the provincial prosecutor. Contractual or other civil disputes arising out of a land dispute may be referred directly to the courts.) Unfortunately NGOs have noted with concern that the Cadastral Commissions have been ineffective in resolving high profile land disputes; due to improper referral of their complaints to the municipal courts and continued backlog of cases since its establishment.[36]

49. Once the complaint has reached the court however it is the court's responsibility to decide whether the correct procedures were followed, if there was a conflict of interest, or if the Cadastral Commission acted beyond its power, and, if so, the Cadastral Commission must take action in line with the court's directions.[37] Unfortunately the lack of independence of the courts has often led communities to take their complaints directly to the Prime Minister.[38]

50. Articles 5(a) and 6 of the ICERD stipulate equal treatment before the tribunals and all other organs administering justice and the right to access effective remedies. The lack of governance and perpetual corruption has absolutely contributed to the lack of independence of the courts. Concerns about the absence of an independent judicial system have been raised repeatedly at the Human Rights Council, which noted that the court system has been used as a tool by land-grabbers to legitimize forced evictions and falsely prosecute housing rights defenders.[39]

51. The Asian Human Rights Commission also reported that the judicial system is being misused to silence any persons from voicing critical opinions of the Government. Consequently there has been a recent increase in the number of charges for defamation, incitement and disinformation made against activists. Threats and intimidation against both indigenous and non-indigenous community members trying to protect their land and natural resources have increased. Five recent cases reported in the NGO Forum on Cambodia (2008): Progress Report for Key Trigger Indicators of the Poverty Reduction and

[32] General Recommendations XXIII on Indigenous Peoples13, CERD, contained in document A/52/18, Annex V.
[33] NGO Forum on Cambodia (2008): Progress Report for Key Trigger Indicators of the Poverty Reduction and Growth Operation Programme (PRGO), Round-2.
[34] Sub-decree No 47 on Organisation and Functioning of the Cadastral Commission 2002.
[35] Article 23, Sub-decree No 47 on Organisation and Functioning of the Cadastral Commission 2002.
[36] NGO Position Papers on Cambodia's Development in 2007-8.
[37] Article 23, Sub-decree No 47 on Organisation and Functioning of the Cadastral Commission 2002.
[38] Losing Ground: Forced evictions and intimidation in Cambodia, page 71.
[39] See Joint submission by Centre on Housing and Evictions (COHRE), Bridges Across Boarders South-East Asia (BABSEA) and Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and A/HRC/WG.6/6/KHM/3.

Growth Operation Programme (PRGO Round-2), are indicative of broader trends. Other examples have been documented in the report 'Losing Ground: Forced Eviction and Intimidation in Cambodia'.[40]

52. One prominent case demonstrating this situation is in Snoul District, Kratie Province where, with no effective public consultation, an economic land concession for a rubber plantation was given to CIV Development Agro Industry Company, even though it overlapped with indigenous land (See Appendix 4 and 5 Snoul Case Study). When community representatives protested the company's encroachment on their land, four indigenous Stieng men were summoned to court by the prosecutor after the company filed criminal complaints. However in the view of the NGO lawyers representing the villagers, there is insufficient evidence to support these serious charges, and the company and prosecutor are using judicial mechanisms to intimidate the villagers. Indigenous villages themselves reported the impacts of these charges, saying they now live in fear [41].

53. Article 6 of the CERD requires that rights to tribunals are just and adequate for reparation or satisfaction for any damage suffered as a result of discrimination. As described above, the Government has continually proved ineffective in resolving land disputes and this is true also of the courts. Neither has adequately respected the rule of law with regard to protecting indigenous peoples' rights. This has led to the certain infringements of the civil liberties provided to all citizens under the Constitution and international treaties ratified by Cambodia, as discussed above. Recently, an escalation of restrictions in freedoms of speech, movement and assembly have been institutionalised in new or draft legislation, in violation of the ICERD. With a disproportionately high level of industrial developments being issued and pursued on indigenous peoples' territories, it is thought that these trends disproportionately affect indigenous communities (though there have also been many severe violations of non-indigenous people's rights).[42]

54. The Committee on Economic, Social and Cultural Rights also raised concerns about the culture of violence and impunity prevalent in the State and continued repression of human rights activists defending economic, social and cultural rights citing that the lack of protection via an independent and effective judicial system coupled with widespread corruption has continued despite the efforts undertaken by the State.[43] It recommended that the State "adopt its draft Anti-Corruption Law without delay, and intensify its efforts to modernise and improve the work of the judiciary, including through a revamped Plan for Judicial Reform".

5.4 MINING

55. Mineral resources are deemed property of the state, and governed by the Law on Mineral Resource Management and Exploitation (2001). This law provides for licensing of exploration and exploitation under the jurisdiction of the Ministry of Industry, Mines and Energy (MIME). Although the extractive industry is a relatively under-developed sector, nearly 100 known mining concessions have been given throughout Cambodia; many in protected areas or overlapping with indigenous peoples' lands,[44] sometimes breaching the rights of Cambodia's indigenous people enshrined in the Land Law. Any exploration or mining license granted on traditional indigenous land that impedes the community's ability to continue to manage the land according to their customs could be considered in violation of the law, particularly if consultation has been lacking.[45]

56. The current law on Mineral Resource Management has a number of gaps, such as the lack of provisions for those displaced by mining operations. The law only states that before entering any privately owned land for exploration or mining, the concessionaire must compensate the "private land

[40] *Losing Ground: Forced Eviction and Intimidation in Cambodia,* Cambodian Human Rights Action Committee, September 2009. Available at http://www.chrac.org/eng/CHRAC%20Statement%20in%202009/Losing%20Ground%20FINAL.compressed.pdf
[41] *Losing Ground: Forced Eviction and Intimidation in Cambodia,* Cambodian Human Rights Action Committee, September 2009. Available at http://www.chrac.org/eng/CHRAC%20Statement%20in%202009/Losing%20Ground%20FINAL.compressed.pdf
[42] ibid
[43] Cambodia: E/C.12/KHM/CO/1, 22 May 2009.
[44] NGO Position Papers on Cambodia's Development in 2007-2—8: Monitoring the implementation of the 2007 CDCF JMIs and the NSDP, November 26, 2008. Annex on the Environmental and Social Impacts of Expansion of the Extractive Industries Sector.
[45] 2001 Land Law, Article 23

owner" for any inconvenience and damage to the land.[46] This discriminates against those without legal title - currently all indigenous peoples and their communities - from receiving fair compensation for their lands.[47] The submitting organisations believe that this is a matter for ICERD consideration as the UNDRIP, Article 32(2) provides that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources and shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact."[48]

57. The Mining Law alarmingly includes strong confidentiality restrictions, stating that all application forms, reports, plans and notices are confidential until the termination of the license or approval of the license holder to release them. Only at the discretion of the Minister responsible may information related to environmental and social issues be released to the public.[49] This not only creates a significant barrier to the investigation of a mining operation's compliance with the law, but also nullifies indigenous people's rights to effectively participate in, understand and give their free, prior and informed consent to projects conducted upon their land.[50]

58. The mining regulations also can be said to contradict the forestry and environment laws of Cambodia. The Environment Law[51] includes a section on Public Participation and Access to Information, which states that the Ministry of Environment (MOE) shall provide information on its activities and *encourage public participation in environmental protection and natural resource management*.[52] This public participation is to be set out in sub-decree.[53] According to the law, the MOE should play a key role in the EIA process of any development project likely to have significant environmental and social impacts. However under the Mining Law, EIAs are only required if a project progresses from exploration to exploitation. This has contributed to lack of transparency and accountability and there are numerous reports of companies with exploration licenses moving on to extraction activities in indigenous areas before the legal process (including the EIA) has been fulfilled.[54]

59. In addition to the domestic legal framework, Cambodia also has international legal obligations, which may be (and likely often have been) violated by granting mining rights over indigenous peoples' lands. Cambodia is a State Party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which both protect the right to self-determination, including the right to "freely pursue [peoples'] economic, social and cultural development."[55] As a party to these treaties, Cambodia has the obligation to respect, protect and fulfill this right, amongst others. (Article 31 of the Constitution states that Cambodia shall recognize and respect UN rights' covenants.) Mining operations which deprive indigenous peoples of their access to traditional lands, including burial and spirit forests, violate this internationally recognised human right.

60. An example of this is the case of the Kuy indigenous people in five communes in Rovieng District, Preah Vihear (see Appendix 6), who have been and are seeking recognition of their right to their

[46] 2001 Law on Management and Exploitation of Mineral Resources, Article 7 & 25. Private land ownership refers to those with title on the Land Registry. Those with possession rights are normally not interpreted to meet the conditions of Art. 7 of the Law on Mineral Resources until they have transformed their possession rights into a title (based on Article 39 of the Land Law), neither are indigenous communal land titles included in "private land ownership".

[47] Those without legal title and indigenous communal land title should still be protected because the RGC has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) which includes the obligation to respect citizens' right to adequate housing and forbids the destruction of land necessary for subsistence.

[48] See inter alia General Recommendations NO XXIII, which calls on states parties to "Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;" and, Ecuador, 21/03/2003, CERD/C/62/CO/2, at para. 16.

[49] Mining Law, Article 20.

[50] UN Declaration on the Rights of Indigenous People stating Article 32 and www.sithi.org

[51] Environment law in is used in this context to include *Law on Environmental Protection and Natural Resource Management* of 1996

[52] Law on Environmental Protection and Natural Resource Management 1996, Article 16.

[53] Law on Environmental Protection and Natural Resource Management 1996, Article 17.

[54] "*Extractive Industry Mining Study, Social and Environmental Impacts in Ratanakiri and Mondulkiri*", DPA June 2008.

55 The International Covenant on Civil and Political Rights, Article 1 & the International Covenant on Economic, Social and Cultural Rights, Article 1.

ancestral lands affected by grants of exploitation, use and development concessions.[56] Local businessmen, backed by high-ranking officials, have recently taken over land for gold mining, thus affecting Kuy people's livelihoods, blocking traditional artisanal mining and restricting access to forest products. The mines are considered unsafe and hazardous to the environment. To establish their gold dig, mine operators cut large swaths of old growth forest. The trench mines are often poorly supported and vulnerable to collapse. According to local residents, the cyanide used to leach gold from base rock is believed to be contaminating both local water supplies, contributing to illness in people and death of livestock. Under the international treaties mentioned above, these communities have the right to claim collective land title, the right to free, prior and informed consent in regard to development activities, and access to effective and prompt resolution processes that would provide fair compensation should they be displaced. These right, however, have been denied.[57]

61. With regard to mining and indigenous peoples, in its Concluding Observations of 2009, the Committee on Economic, Social and Cultural Rights "notes with concern, the adverse effects of the exploitation of natural resources, in particular mining operations and oil exploration that are being carried out in indigenous territories, contravening the right of indigenous peoples to their ancestral domains, lands and natural resources." The Committee also "emphasizes the need for carrying out environmental and social impact assessments and consultations with affected communities with regard to economic activities including mining and oil explorations, with a view to ensuring that these activities do not deprive the indigenous peoples the full enjoyment of their rights to their ancestral lands and natural resources. The Committee encourages the State Party to consider ratifying ILO 169, the Convention on Indigenous and Tribal Peoples."[58]

5.5 HYDROPOWER DAMS

62. Many proposed hydropower dam projects are located along rivers inhabited by the country's indigenous peoples, posing a direct threat to their culture and livelihoods. The proposed dams are largely located in the following three areas of Cambodia: along three tributaries of the Mekong in the northeast (the 3S rivers: Sesan, Srepok, and Sekong), along the Mekong River mainstream, and in the southwestern mountains of the country.

63. In the northeast, beginning as early as 1996, members of more than 10 indigenous groups in Ratanakiri, Mondulkiri and Stung Treng provinces have experienced devastating socio-economic, cultural and environmental impacts from a cascade of hydropower projects being built and operated on the rivers upstream in Vietnam and Lao PDR. The cross-border impacts continue unmitigated, unremedied and unresolved. In May 2008, a new project development agreement was signed between the Lao Government and the Malaysian company Mega First Corporation Bhd. to build the 240 MW Don Sahong dam located on the Mekong mainstream in Laos, near the Lao-Cambodian border, which would have devastating impacts on indigenous peoples in Cambodia's northeast.

64. Seven additional large dams are currently being studied on the northeastern rivers inside Cambodia. In 2009, the EIA for the planned 480 MW, 75 meter high Lower Sesan 2 dam on the Sesan River in Sesan district, Stung Treng province was approved by the Cambodian government despite opposition by local communities and what many regard to be inadequate public consultation. The dam is of particular concern given the widespread impacts it will have on fisheries. It will also involve the relocation of approximately 5,000 people (including indigenous communities), and is expected to affect negatively tens of thousands of people in the broader area. The proposed resettlement locations are located far away from the rivers in areas of poor agricultural land and in the midst of land concessions, thus posing a threat to people's livelihoods which revolve around rice production, fisheries and NTFP

56 Exploitation, use and development concessions can cover mining activities but can be used for multiple purposes. This means that the concessionaires can claim broad areas of land around mines for development in other ways.

57 See Appendix 6 Rovieng District case study.

58 Cambodia: E/C.12/KHM/CO/1, 22 May 2009.

collection. A study of the dam[59] found a high level of opposition among local communities, with people saying that no level of compensation would adequately compensate for anticipated impacts of the dam. The study found that at least 38,675 people living in 86 villages along the Sesan and Srepok rivers, including a large number of indigenous peoples, would lose access to most of their fisheries resources. The EIA has been criticized for not including upstream and downstream affected villages, and the dam as currently planned is expected to increase poverty and malnutrition over a wide area in Cambodia.

65. Along the lower Mekong River mainstream, feasibility studies are currently underway for the Sambor (2,600 MW) dam in Kratie province and the Stung Treng (980 MW) dam in Stung Treng province by Chinese and Vietnamese companies respectively. These dams will likely change the ecosystem of the Mekong River, and negatively impact the rich fisheries of the Mekong River and Tonle Sap Lake (a major protein source to all of Cambodia). The Sambor dam project is expected to resettle approximately 19,000 people, including some Kuy villages. The Stung Treng dam project is expected to resettle around 9,000 people, including Kuy and other indigenous peoples. It is also likely that resettlement of people affected by the dams will impinge on indigenous peoples' lands in other areas.

66. In the southwest, five hydropower dams have been approved since 2008, for construction by Chinese companies, many of which are located in highly sensitive eco-system areas and territories of various indigenous groups who depend on agriculture and non-timber forest products for their livelihoods. Of these dams, the Stung Atay (120 MW) dam project in Koh Kong Province will have a 6,000 Ha reservoir and involve resettlement of 430 people, who are mainly indigenous, and flood part of the cardamom forests important to this community's identity and belief systems. The planned Stung Cheay Areng (108 MW) dam in Pursat province is also of concern as its reservoir site is home to approximately 1,500 indigenous people in nine villages and will resettle nearly 900 people. The EIA for this dam was approved by the Government in 2009 despite concerns about its quality.

67. Civil society groups have asked the Cambodian government to resolve past and present trans-boundary water disputes on the Sesan and Srepok rivers, ensure information regarding hydropower planning is transparent and accessible to the public, strengthen compliance and regulatory bodies and ensure public participation in project planning and decision-making processes. There have been requests to allow Cambodia's indigenous peoples to practice their right to free, prior, and informed consent in decision-making related to hydropower dams and to consider viable alternatives to the large-dams, such as decentralized sustainable energy options. The response has been disappointing.

6 HEALTH

68. Rights to adequate health are provided for in both the ICERD and the ICESCR, and require that citizens are provided with equal access to public health, medical care, social security and social services without discrimination. However the health status of indigenous peoples and ethnic minorities in Cambodia remains below the national average. For instance, under-five mortality rates in Mondulkiri and Ratanakiri provinces, both having majority indigenous populations, are at 165 deaths per 1,000 live births compared with the national average of 83 deaths per 1,000 live births.[60]

69. The right to health and well-being, according to the World Health Organisation (WHO), not only means being free from disease but also having access to preventive health education and counseling.[61] Here, language barriers and cultural discrepancies between indigenous people and the public health service providers form major obstacles. Money, transportation, language, discrimination, low levels of

[59] Best Practices in Resettlement and Compensation for Large Dams: the case of the planned Lower Sesan II hydropower project in northeastern Cambodia, Ian G. Baird, 2009.
[60] Cambodia Demographic and Health Survey (CDHS 2005)
[61] Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

education and traditional beliefs/obligations have all been cited as the barriers to accessing health services and information.[62]

70. There is still a significant imbalance in the distribution of public health service staff, with most staff in these provinces coming from the majority population. An obvious impact of this imbalance is the continued restrictions on access to health services and information. Observations in Ratanakiri Province also indicate that some of the previous indigenous staff in health centers have been replaced by majority Khmer staff.[63] In Mondulkiri Province, where the Bunong make up a majority of the population, only 27 of 121 health service staff are Bunong, and most of these are employed as "floating staff", not necessarily in full-time employment, at the health facility.[64] All of this is in contravention of the right to equal employment opportunities, as enshrined in the Cambodian Constitution and contributes to greater barriers to appropriate healthcare for indigenous peoples.

7 CONCLUSION AND RECOMMENDATIONS

71. The indigenous peoples are facing many limitations to the enjoyment of their rights. Of the most urgent, major concerns are problems related to the protection of the territories of indigenous peoples.

72. In the light of the information provided herein, the submitting organizations respectfully request that the Committee recommends that Cambodia:

73. Takes immediate steps to ensure that the territories of indigenous peoples are protected in the interim period prior to the completion of the titling of indigenous peoples' lands required under the 2001 Land Law, including actions listed below.

    i. Rapidly recognize the indigenous identity of people who self-identify as indigenous peoples through official census, accepting that indigenous *communities* may also exist within geographic villages (therefore not all residents in a village need to be indigenous to be recognized as "an indigenous community").

    ii. Amend the Forestry Law to ensure that indigenous peoples are recognized as traditional owners and managers of the forests they have traditionally used and managed, with at least inherent co-management/ownership rights.

    iii. Ensure that no further concessions are issued or land transferred in areas with indigenous peoples, regardless of whether or not indigenous communities are registered with government.

    iv. Suspend land, tourism, mining and other concessions and other large-scale development projects (such as large hydro-electric dams and highways) in indigenous peoples' areas until such time as registration of lands under the 2001 Land Law has been completed.

    v. Ensure that respect of the right of free prior and informed consent is applied to any activities to be undertaken on indigenous peoples' lands and territories.

    vi. Ensure the proper and just resolution of cases of alienation and loss of customary lands in indigenous peoples' areas, including through restitution of lands taken without indigenous peoples' free, prior and informed consent, and the effective prosecution of offenders, including people of power and influence in Cambodian society and the authorities involved in promoting, endorsing, supporting, or benefiting from land transactions in areas of indigenous peoples' communities.

    vii. Ensure that claims of intimidation of indigenous peoples attempting to protect their rights are independently investigated and proper action taken to ensure that indigenous peoples may feel free from fear and intimidation.

[62] Personal communication with Health Unlimited staff, Ratanakiri provincial office
[63] Ibid
[64] Personal communication with Healthnet International staff, Mondulkiri provincial office

viii. Establish a mechanism whereby indigenous peoples who have lost their lands due to the creation of economic land concessions, mining permits, the sale of lands to or by politicians, or any other means, can attain full restitution of their lands and rehabilitation of lands negatively impacted by subsequent development.

ix. Address the rights of indigenous peoples, as outlined in the UNDRIP, within the legal framework related to mining in Cambodia.

74. Ensures that the draft Sub-Decree on Procedures of Registration of Land of Indigenous Communities is consistent with indigenous peoples' rights as defined by international covenants, conventions and declarations. In particular, ensure that registration requirements are not a barrier to indigenous peoples' self-identification, self-determination and juridical capacity, and that lands in addition to those used for residential or agricultural purposes are included in the titling;

75. Takes concerted action to ensure that the titling of indigenous peoples' lands under the 2001 Land Law takes place quickly and effectively, with the full and effective involvement of the traditional authorities of the concerned indigenous peoples and in accordance with the relevant norms of applicable international covenants, conventions and declarations;

76. Continues to develop and expand bilingual and inter-cultural education for indigenous peoples;

77. Provides immediate political and financial resources to establish an effective health outreach programme in rural and remote areas of Cambodia, including the provision of culturally appropriate services in the languages of the indigenous peoples of Cambodia; and

78. Takes immediate steps to recognize, empower and build the capacity of traditional and customary authorities to participate effectively in local and national decision-making processes relevant to indigenous peoples, including the drafting of laws and regulations on issues affecting indigenous peoples' communities.

ANNEX I

Statement by Indigenous People

made in Trang Village, Chh'en Commune, Oral District, Kompong Speu Province
September 12, 2004

Indigenous People and Indigenous Communities

- *We, the indigenous people in Cambodia, like other citizens of Cambodia, are happy to fulfill our role as citizens of Cambodia.*
- *We have discovered that all of the different indigenous communities have a lot in common.*
- *We, the indigenous people are those people with an indigenous identity that comes from our ancestors, and we all respect our traditions and way of life.*
- *It is indigenous people, especially elders and village headmen, who can define in more detail who are within indigenous ethnicities and indigenous communities.*
- *Some of our indigenous peoples have lost some parts of our traditions. Some of us no longer speak our traditional languages. This does not mean that we are no longer indigenous people. We still retain many other parts of our indigenous identity.*
- *Our communities are generally defined by a common belief in a village Neak Ta or Arak. Ceremonies to these Neak Ta or Arak are generally performed on an annual basis with many variations and similarities between indigenous groups.*
- *Our indigenous communities have a traditional form of management that is different from the new structure that includes village and commune authorities. Traditional structures are usually characterised by traditional leaders, elders and often involve participation by the entire village in decision-making.*
- *The new structures imposed from the outside have been eroding the role of traditional structures and systems and this is of great concern to our communities.*

Indigenous Management of Land and Natural Resources

- *We traditionally manage and use a very wide range of land and other natural resources including forest lands, agricultural lands, water resources, etc.*
- *Most of our indigenous communities have been conducting rotational swidden agriculture for a very long period of time and in most cases it is an integral part of our culture.*
- *The traditional boundaries of our forests and community lands are generally defined by agreement with neighbouring communities, elders playing a significant role in this defining work.*
- *In most areas, these traditional boundaries are clearly defined by mountains, streams, ponds, etc.*
- *Sometimes traditional village areas involve areas of forest of joint management between more than one community or have multiple village user rights.*
- *All of these lands that indigenous communities have traditionally used remain important to our indigenous peoples' livelihoods and culture.*
- *Traditionally we do not sell land to people outside of our ethnicity. This is considered to be a serious violation of indigenous culture and is not allowed.*
- *We allocate individual user rights to families within our communities. This is generally done following the traditions and customs of each ethnicity.*
- *Those individual rights over community land do not include the right to sell. Land is considered to be community property. It is allocated to families or individuals within the community for use but not for sale.*
- *Individual and family rights over community land can be passed on to younger generations within the same family and can be transferred to others in the community.*
- *If our community sells land to outsiders, we believe that this will create great problems for the life and future of our indigenous communities.*

Appendix 2:

Case study - Kong Yu, Ratanakiri Province

Powerful Individuals Grab Land

Ratanakiri

Indigenous Jarai people from Kong Yu and Kong Thom villages wait in front of the Ratanakiri Provincial Court. They claim that their land was taken from them in 2004 through deception and threats. In January 2007 they filed legal cases against the offender. In January 2010, they are still awaiting justice.

The Case: Kong Yu and Kong Thom Village

- The issue: Powerful individuals allegedly illegally acquire land of indigenous community.
- Development plan: Rubber plantation by the sister of the Minister of Finance who is the wife of Secretary of State in the Ministry of Land Management.
- Date and Size: 500 hectares of indigenous land was acquired by a powerful person on August 20, 2004.
- Area affected: Two villages in Pateh commune, O'Yadao district, Ratanakiri province.
- People affected: About 145 families in two ethnic Jarai villagers – Kong Yu and Kong Thom – that have indigenous rights to the land.

Case Description

The Kong Yu and Kong Thom case in Ratanakiri is one of the most glaring examples of land grabbing and impunity in Cambodia. Through a series of alleged bribes, lies and intimidation, two indigenous communities have been divested of their ancestral land by a member of Cambodia's powerful elite – in this case, the sister of the Minister of Economy and Finance, who is also the wife of a Secretary of State in the Ministry of Land Management. Sadly, this general story has been told often in recent years in Cambodia. However, in this case, the indigenous people are fighting to get the land back.

Kong Yu and Kong Thom villages are located in Pateh commune, O'Yadao district, in the eastern zone of Ratanakiri province. They are located 43.3 km from Banlung. Like other villages in O'Yadao district, Kong Yu and Kong Thom are comprised of indigenous Jarai people. Very few villagers in Kong Yu or Kong Thom speak Khmer, and even fewer are literate. As with many other indigenous communities in Cambodia, the Jarai of Kong Yu and Kong Thom practice traditional swidden (rotating) agriculture and have family farms (chamkas). In short, the people are highly dependent upon access to land and natural resources for survival and socio-religious purposes.

Approximately forty-five families live in Kong Yu. Some one hundred families live in Kong Thom. Water is taken from either a well or nearby spring, and a few homes have gasoline generators for electricity. One of these villages' greatest assets – and perhaps now its greatest curse – is that it lies in the zone of the "red soils" of Ratanakiri, an area of volcanic soil that is highly prized for its fertility and agricultural potential.

Dispossession of the Land and Corruption

The land conflict began with a focus on Kong Yu village. In March 2004, village and commune officials met with Kong Yu villagers in front of the village chief's home.[1] The officials attempted to persuade villagers to sell communal land[2] to a person from Phnom Penh. The villagers refused. A second meeting was held to again persuade the villagers to sell their land, but the proposal was rebuffed again. The villagers made clear that they wanted to keep their land for farming and their future. At a third meeting, a person from Phnom Penh and local authorities met with the villagers. This time, officials

claimed that the land was state property. Authorities further explained that the expropriation was necessary to provide land to disabled soldiers from Prime Minister Hun Sen's army – a story specifically designed to both deceive and threaten the villagers.

These meetings took on an increasingly hostile tone, and the villagers were fearful. Like many small minority communities, the people of Kong Yu fear exploitation by authorities, and are unfamiliar with government institutions and practices. Understanding that they had no choice but to give the land to the government and its "disabled soldiers", villagers agreed to give land from Road 78 (formerly Road 19) to a small hill (approximately 50 hectares).

Following this meeting, the 'deal' was closed through a party organized by the authorities on August 20, 2004. Officials supplied two cases of beer, two large jars of traditional rice wine (sraapeng), bottles of soft drink, and approximately 40 kg of pork. At around 10 p.m., after many of the villagers had become drunk, the authorities had the people thumbprint a paper listing the

[1] *Former village chief Puh Svanh*
[2] *Chamka land roughly 1.5km from Kong Yu village.*

names of the villagers. It is reported that authorities also placed thumbprints on the paper for those not present. None of the villagers read the contract (nor is it likely they were able to read or understand the Khmer script) — they merely assumed it was to facilitate their gift of land to the government. No copies of the documents were provided to the villagers.

On August 27, 2004, the district governor, Pateh commune chief, Kong Yu village chief, and the company head[3] met with villagers to distribute gifts including sarongs and envelopes containing money. The villagers believed that they were given these gifts as thanks for their donation of land to the government. The villagers again thumb printed documents before receiving the gifts. Following distribution of envelopes containing money, the village and commune chiefs took back all the envelopes, and together with the authorities ordered all villagers to say that the deal was done before 2001[4], and that the land sold was not forested land, but farmland. This event was video-taped by the company.

The next day, commune authorities gave each family in the village US$400. However, later the villagers also learned that the deal gave the land to the company — it did not go to the government or Hun Sen's disabled soldiers. They also learned that the transaction involved 500 hectares of communal land, not the previous 50 hectares "agreed".

On October 25, 2004, representatives of Kong Yu village filed a complaint with ADHOC (a local human rights organization) and the court asking for cancellation of the land sale contract, and demanded the return of the 500 ha of communal land. They further requested that the company stop bulldozing the land. Three days later, village representatives filed a complaint with the local administrative office in Ratanakiri asking to dissolve their commune council. On March 2, 2006 villagers requested assistance from Legal Aid of Cambodia (LAC). LAC filed a complaint with the cadastral commission, but no action was taken.

Intimidation – Restrictions on Freedom of Assembly and Expression

Upon completing the transaction, bulldozers cleared approximately 270 hectares of communal land, and company workers planted rubber trees on almost all of this area. The clearing destroyed several crops planted by villagers, including cashew trees and cassava. Company representatives did not allow villagers access to the land (in addition to crops, villagers had previously used this land for cattle grazing).

Upset that they were prevented from planting crops during the previous rainy season, on February 11, 2006, approximately 200 villagers gathered at the Pateh commune office to voice their concerns. Villagers requested information about the company clearing their land, and also asked that they be able to cultivate their crops. The authorities, in turn, accused the villagers of holding a demonstration and causing problems.

The next day, military police issued 'invitation'

Village representatives meet to discuss the case.

[3] *Sister of the Minister of Economy and Finance and wife of the Secretary of State for the Ministry of Land Management.*
[4] *The Land Law, which contains provisions protecting indigenous lands, came into effect August 2001.*

letters to seven representatives in Kong Yu and Kong Thom village to clarify the protest. The representatives went to the commune office to explain the previous day's actions, but were immediately threatened with jail, particularly if any further demonstrations were held. They were told that their resistance was like "throwing an egg against a rock" – they would be crushed if they persisted. Faced with these threats, villagers refrained from carrying out any actions for approximately one month. After that time, villagers approached Legal Aid Cambodia (LAC) for help.

Investigation and Legal Strategy

The case has gained notoriety as one of the most flagrant examples of a recurring pattern of land grabbing in ethnic minority areas: powerful individuals identify desirable lands, and then work through corrupt local officials to illegally acquire the land. Several NGOs focusing on indigenous peoples' rights have worked intensively to assist the Kong Yu villagers and others to understand their rights under Cambodian law. As a result, the indigenous people in Ratanakiri have begun to take their concerns to the authorities and to the media, and are trying to generate publicity about the problem.

In mid-2006, Community Legal Education Centre (CLEC), took legal action to assist the Kong Yu community. CLEC made several investigative trips to the site, and affected residents in both Kong Yu and Kong Thom villages requested CLEC to assist with formal legal representation.

In addition to the approximately 270 hectares that was already cleared and planted, the company threatens to clear another 180 hectares or more. This newly threatened land is in fact traditionally managed by Kong Thom residents who use it for their farms; thus in addition to virtually all Kong Yu families, some 25 families from Kong Thom (those whose farms are directly affected) are legally represented by CLEC. In fact further clearing has already occurred. A firebreak was cleared despite a court order to cease all clearing activities

Incredibly, in meetings between commune council officials and NGOs, officials freely admitted that they received payments for facilitating this deal. They disavow any dispute over the size of the land that was sold. Documents obtained also indicate crude attempts to alter dates of ownership transfer.

Since 2006, CLEC has frequently visited the site to meet its clients and to conduct some training regarding upcoming advocacy activities. However local authorities repeatedly attempted to block CLEC lawyers' access to the site and to the people. In some instances these stand-offs have been intense, involving interaction with armed forces, local authorities and provincial officials.

In January 2007 communities and their lawyers filed civil and criminal cases against the principals of the company. These cases demand the cancellation of the contract on the grounds that it is fraudulent. These complaints also expose the illegal, corrupt activities of local officials whose "facilitation" of this land grab was key to the intimidation, lies and tricks that ultimately led to this divestment of indigenous lands.

While this case is disturbing in its own right, it also indicative of the way in which land is being seized from local communities by powerful interests in Cambodia today. Thus it is significant that filing this case was done in collaboration with a host of various NGOs, and with the strong support of the indigenous peoples not only from Kong Yu and Kong Thom, but from throughout Ratanakiri and elsewhere.

As of February 2010, the case has not been heard in court, no land has been returned and the intimidation continues.

The rubber plantation continues to grow as the case remains unresolved.

Appendix 3:

Case study - Bousra, Mondolkiri Province

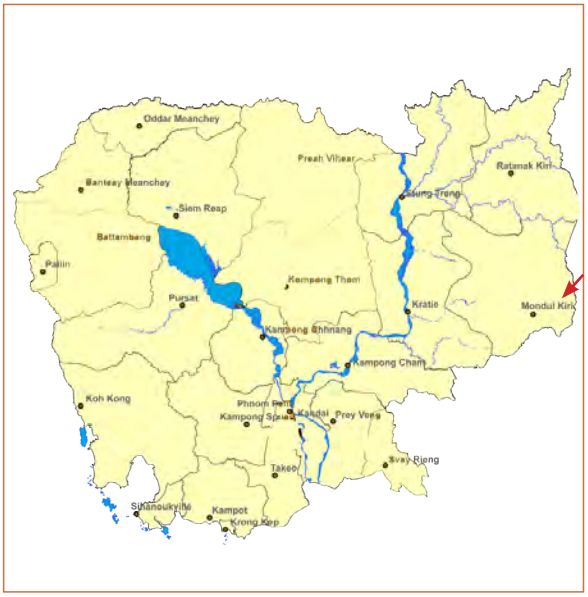
Rubber plantation

Mondolkiri

In April 2008 land clearing started in Bousra commune. The joint venture between a Luxembourg-registered company and a Cambodian company was granted concessions over the lands and forests of indigenous Bunong people.

The Case: Bousra Commune, Mondolkiri

- Concession: Land Concession/lease for a rubber plantation, granted by the government for 70 years.
- Size: around 10,000ha, in three concessions, the first one issued October 2008 by the Ministry of Agriculture, Forestry and Fisheries.
- Company: Joint venture between Luxembourg-registered company, Socfinal and Cambodian company, Khaou Chuly Development (KCD), named "Socfin-KCD".
- Development Plan: Rubber plantation with a request to AFD to support family rubber plantation adjacent.
- Area: Bousra commune. Red soil highland areas to the eastern side of Mondolkiri, near the Vietnamese border.
- Communities affected: on land occupied by indigenous Bunong people. Some 300 families (7 villages) affected.



The battle of David against Goliath

The Bunong of Bousra commune were catapulted into the media limelight on 22 December 2008, after 400 demonstrators had set fire to tractors and excavators belonging to Socfin-KCD company. The joint venture was set up between an important group of planters operating among others in Africa and Indonesia – and which parent company, *Socfinal*, is registered in tax haven Luxembourg – and Cambodian company Khaou Chuly Development (KCD). It was granted an economic land concession by the Cambodian government to start a rubber plantation in Mondolkiri that partly overlaps with the land of the Bunong indigenous community of Bousra (see information below re legality of the concession). "Socfin [whose director is French] provides the funding, experts and equipment," the commune chief summarized. "As for Khaou Chuly, they are the coordinators. Both work together. Khaou Chuly cooperates with high-placed people in the government."

The December incident was the result of accumulated incomprehension, humiliation and anger. Eight months earlier, in April 2008, Khaou Chuly bulldozers started clearing land without the villagers being notified first, neither by the company or the local authorities. The provincial governor was called for help by the Bunong, who have been living on the land for generations. A few weeks away from national elections, the authorities sought to appease the villagers. The National Authority for Land Dispute Resolution promised that some of the land would be returned, but the promise was left unkept.

Timeline

- 2006: Study by Khaou Chuly Development (KCD) to determine the suitability of the concession site for a rubber plantation.
- April 2008: Socfin-KCD company starts clearing land in Mondolkiri, near Bousra commune (7 villages).
- May 2008: Demonstration at the office of the provincial governor. Two days later, officials of the National Authority for Land Dispute Resolution promise that the land will be returned to the community.
- June 2008: Socfin-KCD agrees to pay compensation to those recognized by the authorities. But villagers talk about threats.
- October 2008: First concession contract signed.
- December 2008: Demonstration of Bousra villagers. They break and set fire to tractors.
- January 2009: Three demonstrators are arrested. Following pressure, the three are released a few hours later. Charges are still pending but not activated.
- February 2009: A sacred forest is razed. Operational management is transferred from Khaou Chuly Development to its partner Socfin.
- May-September 2009: Planting of rubber trees on the first part of the concession. Clearing continues. Village residents request legal advice from NGOs.
- November 2009: NGOs provided a memo to community and to company assessing legality of the concession under national and international law.
- December 2009: Socfin halt land clearing and request a company-government-community committee to negotiate.

[1] *Names were changed to protect the identity of the persons requesting anonymity*

Aggressive methods

In Bousra, anxiety was growing. "If you don't sell now, the company will take your land anyway," several villagers reported being told. With the support of armed forces who maintained pressure, Khaou Chuly quickly earned a reputation for violence and unscrupulousness. "Khaou Chuly took our land, which is 1h30 walk from here," said Mrs Lon[1]. "They didn't give us any financial compensation. They threatened to send us to prison if someone protested." She added contemptuously: "Do you know what Khaou Chuly offers for compensation? 50, 100 dollars… I don't even want to talk with these thieves!"

Early 2009, when Socfin moved aside its partner for form's sake to handle the problems in Bousra itself, the name of Khaou Chuly disappeared from the official discussions. The amount of compensation varied then between 200 and 300 dollars per hectare. "That is not enough," a villager said. Another explained one hectare of land in Bousra itself, near the planter's office, sold for 1,000 dollars in May 2009.

Many families took the financial compensation. It was not the only solution offered by Socfin, but the trust was broken. The two other options were to obtain plots of land of equivalent size elsewhere, either to cultivate crops as people used to, or to cultivate rubber, as part of a project of family rubber plantations. They were not understood notably because many meetings took place in the Khmer language and not in the Bunong language, which meant the discussions were out of reach for most villagers. Bousra residents worried about being moved to the land of other Bunong villages or unknown owners with whom they did not want any trouble. They also had no guarantee as to when exactly they would receive new plots of land, so they declined to be resettled and preferred financial compensation.

Conflicts over land measurement

Whether it was for financial compensation or relocation to another plot, land measurement prompted heavy disagreements: all the fallow land kept in reserve for future rotational farming was not taken into account despite the fact that the Bunong practice rotational farming over a longer period of time and various laws say they have the right to do so[2] . Only fruit trees in a field were compensated for, but not resin trees for example, despite the great value they have for the Bunong[3].

What land and which family are included in the demarcation process is crucial. Tensions resulted from the process. For Pal, that was the last straw in December 2008 when Khaou Chuly was clearing land: "They would cut down our old land and measure only around the (fruit) trees, instead of taking the whole area into account." "The local authorities first claimed that my land was not mine," Lin recalled. "Then, when we went to measure it a few days later with the police and the company, they only measured the land around the banana trees and other fruit trees. I was very, very angry." Pal fiercely protested: "We went to protest to local authorities of our own accord! No one told us to do it."

As a result of the revolt, the vice-governor came in person to explain the options offered by Socfin and the importance of the development the company was going to bring to the commune, the district and the province.

To the Bunong, grave sites are integral to their connection to the land. A number were cleared by the company.

[2] *Including the Cambodian Land Law 2001 and Forestry law 2002*

[3] *A number of different trees produce a resin that can be collected and sold. Resin collection is an important income for Bunong people and has been practiced for centuries.*

The Long Wait

For those who chose to receive land, it was a long wait. "Talk about development…", Pal commented. "It is development for the company, not for the villagers since they no longer have any land…" Pal said he had no problem with Socfin since the company gave him a paper guaranteeing that he would receive a new plot of land. And yet… "I have been waiting for almost a year. I have only a tiny rice field left." There would be a shortage of rice if he were unable to resume farming while he has over ten people to feed in his household. "I ask Socfin not to take any more land." Around him, his neighbors and family approved. "I used to have 2.5 ha of land. I signed to be resettled by planting rubber trees, but I am still waiting to find out where the new land will be," Kob explained. The company proceeded with part of the resettlement to the locality of O'Ret, but that did not meet the needs of all those deprived of their land.

"People are asked to wait for a very long time," Van added. "But with no land, we don't have anything to eat. Not to mention that Socfin has destroyed crops while rice was growing. It is unfair. If they want to develop the village, they should take the old land and give new ones immediately! If they want to call it development, they should ask people if they agree or not to change land."

"Now, there is a lot of money, motos, medicine, big houses. People use machines and sell their cattle. Money is important and development for Bousra is good. But what will become of us if we have no land?", wondered Lon, who was still waiting to be resettled.

Impact on livelihoods

Land loss affected a number of the families in Bousra, but the forest clearing concerned more people. It was encroached upon a little more everyday. Company men bulldozed the forest, moving towards Nam Lear mountain, for a monthly salary of 200 dollars. "We need this forest," Pal insisted. "Myself, I continue to go to the jungle to look for vegetables, plants and resin. No one in my house is working for the company. If I don't have that [the forest], I am doomed to poverty." On her side, Reng does not see the forest anymore but instead sees the company which cleared it and took the place. "There is no forest so it isn't possible to get resin which was an important part of our livelihood. Now we live like a bird without a nest."

Ny's husband refused to work for the company. "Those who work for Socfin get up at 5am. They go to the plantation where they work until 5pm, with a break for lunch. They are paid five dollars a day. My husband goes to collect resin, which he sells for 10 to 15 dollars and he brings back vegetables and fruit we can eat. We save the money he has earned. If he worked for the company, we would have to buy everything: rice, vegetables… We would have nothing left."

As for her, San found life a little easier with her monthly salary of 150 dollars. She was the leader of a group of workers who cut grass on the plantation. She had enough to buy food every month, not more. Nevertheless she missed her land. "I am waiting for Socfin to resettle me. I would like to get my land back and grow rice."

Photo: Arantxa Cedillo

Betrayed by the local authorities

For a large number of people in Busra, the future is inconceivable without land. Yet, in their struggle to preserve their land, they are very much alone. Since it arrived, Socfin-KCD company chose to rely on the local authorities. In particular, it delegated to the latter the survey of land occupiers, perhaps knowing it could be incomplete or rigged.

Testimonies abound on the complicity of village and commune chiefs. Lon sought to submit to the village chief the list of the plots of land for which she wanted resettlement, following Socfin's instructions. "You have already taken the company's money. You won't receive anything more!", the village and commune chiefs responded.

The unpleasant episode reminded her of the first information meetings organized by the local authorities on Socfin's project: "At the first meeting, people disagreed with the project. At the second, people still disagreed. At the third, they were told that if they persisted in their disagreement, the company would take their land because the government had given it as a concession."

".... if they persisted in their disagreement, the company would take their land because the government had given it as concession."

"When Socfin would ask the village chief to inform a family they were going to go and measure their land, the village chief would call someone else, a relative, and sell the land to the company and get the money," related a resident. Phan, a tired woman in her fifties, experienced it herself. Speaking only Bunong, she cowered like a scared animal. "My land was sold by other people. I complained to the commune chief, but he told me that it was not my land. 'If you need your land, watch out that someone doesn't kill you.'" Since then, she has never protested.

Various stories circulated on how villagers were pressured to sign papers they did not know or understand the contents of. In June 2008, an incensed Bunong woman related: "They played a trick with us. They made people sign a blank paper, which was then turned into a sale contract. The authorities also offered us an agreement for one hectare per family, but we refused. That is not enough. You can't make a living with one hectare. There is a lot of land further away. Why didn't they take that land? We know that the commune is involved and so is the district. We don't want to blame them because we know they have received pressure from the top, the company, the powerful people, and they don't dare to talk. But we have no alternative, so we will struggle until we die for our land, our future and our children!"

"Indigenous Peoples' Land – Impacting prohibited". Requests for protection of Indigenous Peoples' Land and sacred sites have been repeatedly ignored.

Bousra turns into Socfin City

The woman did not suspect then that in less than a year, the motto "divide and conquer" would yield results. Socfin-KCD rallied those it saved from the extortion or scams by the local authorities, those it employed at unbeatable salaries and it took advantage of dissensions that existed before it arrived in Bousra.

A village chief acknowledged that relations were tense and complicated but stressed that scams went both ways. Some sought to sell their land to the company several times, which other villagers confirmed. "Given the amount of the compensation, that is fair enough," commented some, amused. However, the realization prompted the company to create files including fingerprints and identity pictures for the Bunong who came and claim their due. Similarly, Socfin-KCD only hired people with identity papers. "Before control was by local authorities, now everything is controlled by the company" insisted Dooit. Ngell has her own experience to confirm this point of view: "My farm tools have been confiscated by the company. You can only work on the company land."

In the last six months of 2009, Socfin's image has noticeably improved with the local population. Bunong staff facilitate the contact with the villagers, meetings are now held in the Bunong language, the company consults the elders. It pays for the teachers at the two schools in Bousra commune so they remain at their post instead of working at the plantation. It renovates school buildings, works on a hospital project, supports the dance and music group and some local NGOs. All the debates on the legality of the concession, on the rights of ethnic minorities protected by many domestic and international laws, and on the protection of their land, have fallen through the cracks.

The concession appears to infringe Cambodian law, international law and does not fulfill the international standards that are required by the company's status

Outlaw

Concerned villagers requested help. A draft legal memorandum, prepared by a group of legal rights NGOs, states that the concession appears to infringe Cambodian law, international law and does not fulfill the international standards that are required by the company's status and by its potential partners. Amongst others the Cambodian Land Law 2001 would have been violated and the International Covenant on Economic, Social and Cultural Rights and also the United Nations Declaration on the Rights of Indigenous Peoples. According to these laws and policies, the Bunong people should be considered as an indigenous community, with rights to cultivate and manage their land, in accordance with their traditional customs. But the government has appropriated this land supposedly protected by the law and has changed it into an economic land concession, which appears contrary to the laws.

One of the legal problems raised concerns the Environmental and Social Impact Assessment that needs to be completed for such a main project prior to granting of the economic land

"Corporate Responsibility?"

Human Rights responsibilities of companies

The Special Representative of the United Nations Secretary-General on Human Rights and Business, John Ruggie, developed a framework to regulate the activities of companies worldwide. The framework is strongly supported by government members of the UN Human Rights Council in Geneva and by leading companies, and reflects legal and societal expectations towards companies.

The framework notably recognizes corporate responsibility to respect human rights, which in essence means to act with due diligence to avoid infringing on the rights of others.

Acting with due diligence means considering human rights challenges in a specific country context; the human rights impacts of a company's operations; and whether companies might contribute to abuses through relationships with other stakeholders, such as authorities.

Should Socfin-KCD have known?

Should Socfin-KCD have checked to ensure that a concession recieved from the Cambodian government was in line with national and International law? Could they have known about the legality or otherwise of granting land concessions in Cambodia?

In June 2007 the UN Special Representative of the Secretary General for Human Rights in Cambodia published a report which stated: "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."

"At the root of these concerns is poor enforcement of and compliance with the requirements of the Land Law and Sub-Decree on Economic Land Concessions, which govern the grant and management of economic land concessions. Essential pre-conditions to the grant of concessions… have not been met."

'Protect, Respect and Remedies: A Framework for Business and Human Rights', Report A/HRC/8/5

concession. The Socfin manager stated that a study had been conducted before the ELC was granted. That, however, means very little. According to a Socfin official, instead of 200 pages of documents with maps, a short and cursory note could pass. With regard to the legality of this, the Socfin manager, says "Cambodia is an independent country, so if this zone is granted as an economic land concession, Socfin does not contest that."

However, in order to convince potential partners as the development agencies like Agence française de développement (AFD) to join and to support the rubber plantation project, an in-depth impact assessment is necessary. So Socfin financed a group of experts in charge of this impact study - but one year after the clearing of the land had started and when the first part of the concession (one third) was ready for planting. The company has been asked by Bunong village residents to stop clearing, without success. "We would have to fire 1,000 people to do this" answered the Socfin manager in a meeting in November 2009, "but then we would be accused of being outlaws."

This is an argument that Ding can not agree with. Too many times she has seen how the law was not the same for everybody. "Why, when we go to the forest, the environmental officials say this is illegal, but when the company clears the land and catches animals this is legal? According to the Forestry Law, we have to protect the forest. Do the foreigners have such laws? We need to keep the land from O'Ret to Nam Lear mountain for the next generation. Will the next generation not know or see what is the forest?"

"Will the next generation not know or see what is the forest?"

In the absence of implementation of the law in a country, where it has so little credit, the Bunong are looking for a solution on their own. Khlœuk, the highly respected former commune chief and local CPP (Cambodian People's Party) chief, envisages retrieving land that used to belong to the community, those the Bunong from Bousra occupied before the Khmer Rouge arrived.

Until the next economic land concession…

United Nations Declaration on the Rights of Indigenous Peoples

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Article 32

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

“Maybe we are going to disappear”

In November, while crops were growing in the fields and the rice celebrations were in full swing, some of the Bunong were haunted by a fear. “We are going to lose our traditions because if we don’t have land, we won’t be able to have the rice celebrations as we are this year. Maybe next year, there won’t be a ceremony…”

These celebrations present the chance to share the famous jars of wine and the meat offering to the rice spirits, but they also represent a time to listen to each other during which many of the community’s problems are discussed and resolved. The land, which these men and women have a visceral attachment to, was at the heart of all the conversations. So was the forest.

Cemetery profanation

“With such a long concession, they are going to destroy the forest! For us, the forest is the place to hunt animals, collect rattan, resin, wood for cooking, gather koreh [a edible plant], teak tchott [honey], phlae polong [fruits]. But today, we have to go further and further and with their engines, they are going to scare away the animals,” Phon lamented, thinking about everyday life. As for him, Gno suspected that “without the forest, there will be no more rain. It will be very bad for our crops.”

“The company has cut down sacred forests,” recalled the former commune chief. “I am worried that we don’t have a place any longer to bury our dead, even if I’m very happy with the development of the village.” Others were more bitter and remained shocked that the company delivered animals to be sacrificed during a ceremony to apologize to the spirits, without bothering to send a representative to show respect to the Bunong and their dead. Their words spoke volumes on the violence of the insult: “You wonder how the plantation’s director would react if we went and dug up his mother’s corpse…” Neither can they forgive the fact that this “mistake” by Socfin was repeated several times.

“You wonder how the plantation’s director would react if we went and dug up his mother’s corpse…”

Discrimination

The lack of respect for the Bunong, the ignorance about their culture, the determination expressed by the director of Socfin to “bring civilization” to them – as reported by several interviewees in Sen Monorom – translated initially into a preferential recruitment which many villagers reported. “They hire Khmer people coming from other provinces. There isn’t work for everybody,” noted the former commune chief and local CPP representative. “With no work and no land, it

is difficult to live." "There is not work for everybody at Socfin. Before, with our land, we used to have a lot of rice and we could barter it," remembered Pal.

Socfin-KCD's first steps came along with stigmatization against some of the employees. "You do not have land because you are Bunong." Those were the words spoken by some of Socfin's staff to villagers. "When I demanded the financial compensation for my land to the company, the people told me: 'It is Prime Minister, Hun Sen's land." Months later, Mrs So still has not digested that dismissal. Later, while the company cleared and prepared the land for the plantation, some Khmer workers told their colleagues: "You are Bunong. You can work more than us."

The salary scams used by some group leaders did not contribute to pacifying the mood. Recently, the company, Socfin-KCD, had to establish two recruitment lines in front of its office: one for the Khmer, another for the Bunong. Even though the company has stopped recruiting only Khmer people specifically, the attractive pay (five dollars a day for day laborers) has turned Bousra into a land of in-migration.

An overwhelming change

There is no shortage of texts protecting the rights of ethnic minorities or indigenous communities, in particular their right to use the land they occupy: Cambodian circulars, sub-decrees, the Land Law, international conventions… That did not prevent the Ministry of Agriculture and the Cambodian government from granting the 10,000 ha economic land concession. It also did not prevent the joint venture from continuing its business. The boss of Khaou Chuly Group has even told the Phnom Penh Post newspaper on April 8, 2009 he was aiming for 20,000 ha.

Under the pretense of development, roads, access to health, education, employment have come. Some Bunong of Bousra fear it may be at the expense of part of their identity. "I don't know what tomorrow will bring. If we stay a long time with the company, maybe we are going to disappear. Maybe we are going to lose our habits, our traditions, our beliefs…", despaired Po. Not everyone paints a black picture. Owning a wooden house or a mobile phone is not incompatible with being Bunong. However, without being adequately consulted, the options were not really a choice for them. They were part of the economic model imposed by Socfin-KCD.

Under Socfin-KCD's impulse, the farming methods of the Bunong might change. They might switch from a farming mode with core principle to meet the needs of their families to one based on the notions of productivity, profitability and international markets. The company that uses the same methods as in the industrial revolution era will become the centre of their world. Those who will grow rubber trees will sell their rubber to the company without knowing anything about much of the exploitation's juicy profits, which will disappear into the tax haven of Luxembourg.

How will the Bunong make their way through such a reconfiguration of their daily lives? In the future how will their language, their words, which are so deeply rooted in the land, the forest, the rice, reflect such an overwhelming change?

"When I demanded the financial compensation for my land to the company, the people told me: 'It is Prime Minister, Hun Sen's land."

Appendix 4:

Case study - Snoul, Kratie Province

Extracted from

Losing Ground: Forced Eviction and Intimidation in Cambodia, Cambodian Human Rights Action Committee, September 2009.

Available at http://www.chrac.org/eng/CHRAC%20Statement%20in%202009/Losing%20Ground%20FINAL.compressed.pdf

Rubber Plantation

Kratie

Village residents were surprised in July 2008 when they found their farmland in Snoul district was being cleared for a rubber plantation they knew nothing about. They protested and company workers dismantled the site. The case is now at the provincial criminal court.

The Case: Snoul district

- Type and purpose of concession: Economic Land Concession for agro-business.
- Development plan: Rubber plantation company by CIV Development Company.
- Date and size: The 769 hectare concession was signed by Kratie's governor on May 27, 2008.
- Area affected: Four villages in two communes of Snoul district, Kratie province.
- People affected: About 250 families in four ethnic Stieng villages – Meancheay, Krobai Cholroung, Kbal Lumpov and Dey Krahom – that have indigenous rights to the land.

Living in Fear

Life's never been easy in this hardscrabble corner of Kratie province near Vietnam, but until last year Saren Keth and his wife had about everything an indigenous farming family would expect: a wood home, fruit trees, a river nearby and lots of communal land to ensure a future for their five children and their village.

Now he lives in fear of arrest or murder over a land dispute that is becoming increasingly frightening to him and his family.

Everything changed in his village in the 2008 rainy season when Mr. Keth and his neighbors found a big surprise in one of their fields: large yellow excavators clearing their cassava.

Without their knowledge, 769 hectares of their forest and farmland had been leased in May 2008 by the provincial governor to an agro-industrial company planning a rubber plantation. The governor signed away their livelihoods and their future in an Economic Land Concession without informing the 270 families in four villages with legal rights to the land.

Mr. Keth, 48, sat cross-legged on the wood bed beneath the home he and his wife built two decades ago and explained the community strategy. He became the leader because he had received training in Cambodia's Land Law while working as a community forestry activist. When the residents saw the bulldozers he moved quickly to plan a strategy to regain control of their lands and called a meeting of four Stieng villages. He believed that if they stuck together they could fight the concession and win. He said one of the provincial officials offered him money to stop his activities. "The powerful people will try to break our solidarity one by one. Our struggle is for the benefit of the people, not money."

Divide and conquer

Bung Bho, 68, survived the Khmer Rouge, but said there had never been such a big problem in Meancheay village: "If they take the land, it's like taking the cooking pot away so we are united to ask for our land back. We will struggle until we win. I will die soon, but what will happen to the children?"

But after 10 months of meetings with village leaders, commune leaders, district officials and provincial leaders, several civil protests and letters to the national government, the residents of the villages have stalled the land clearing, but gained no ground in the battle to reclaim their fields. Worse still, Mr. Keth and three other men from another village face a criminal complaint of robbery and destruction of property charges filed against them by the company at the provincial court. The company also appears to be pursuing a

Left: *Saren Keth took on the lead role of organizing four indigenous villages in Snoul district to fight to get their 776 hectares of farm land returned to them.*

Right: *Rath Kowet, one of five people originally accused of criminal charges following the joint village protest. He says he has no idea why he was summoned to court. Friends and neighbors said his name was picked at random.*

strategy to divide and conquer by refusing to negotiate with all four villages at once. This is a common strategy employed by private interests and local authorities in land disputes, according to lawyers for the Community Legal Education Center (CLEC).

Because of his lead role in the protests, Mr. Keth no longer sleeps at home: he is afraid he could be arrested or killed. "I worry that there will be a moto accident or that a burglar will come to the house at night." Such "accidents" have happened before to activists in Cambodia.

"I am making myself sick and anxious. I think and I think of how to solve this problem," he said. "I shouldn't have to be doing this all myself. It is the village chief and the commune leaders who should fight for us."

Village and commune officials around the country complain that they often don't, or can't, get involved because they are beholden to the political party.

The company made the two biggest of the four villages an offer in March 2009 to return about 300 hectares, but the residents received nothing in writing and doubt the sincerity of the offer. Although the CLEC represents them on the criminal charges, there is no one to advise them in negotiations. Lawyers say that unless the land issue is resolved the criminal charges likely will hang over the men for years.

"It's a real concern. These criminal charges in civil land disputes are becoming common. It's a new way of intimidating and threatening village residents," said Yeng Virak, CLEC executive director.

The four men's lives are on hold. They live in fear of arrest. And no one is sure how long the four villages can withstand the pressure from the company and court.

Besides Mr Keth, there are three other accused, being Van Vy, 36, Rath Kowet, 23 and Chheun Chan, 32.

Mr. Kowet said he used to travel freely around the district taking odd jobs but is now afraid to leave for fear of the police and the legal system – the very system that is meant to uphold protections for people. He spends his days hanging out in his tiny village watching others play volleyball. He is engaged to marry, but is unsure of the future. He lives with his parents and is unclear when that might change. "I am worried because I haven't made any mistakes. I just went with other villagers to stop the bulldozers and then they accused us," said Mr. Kowet.

Rubber boom

Rubber trees thrive in the red soil of northeast Cambodia and in recent years plantations owned by foreign and local investors have cropped up all along the main highway leading north from Kampong Cham to Laos.

The Kratie Governor signed several Economic Land Concessions in 2008, after the national government authorized provincial authorities to sign relatively small land concessions under 1,000 hectares. This right has since been removed, and provincial governors no longer have the authority to issue concessions.

The Governor leased 769 hectares of indigenous lands in four villages to CIV Development Company on May 27, 2008. The ELC did not comply with either the 2001 Land Law or later sub-decrees that protect indigenous lands and was illegal on multiple grounds, said CLEC lawyers.

They said the ELC violates the provisions of the Land Law that protect indigenous lands by barring their conversion to private land. It also violates provisions of the 2005 Sub-Decree on ELCs that are supposed to protect indigenous people's rights to their ancestral lands by including them in the consultation process and conducting social and environmental impact assessments before a concession is granted.

The company's impact assessments consisted of consulting only with officials, not the residents, according to the village people and their lawyers.

The lawyers said the criminal charges of robbery and

destruction of property against the three men were fabricated, but will no doubt remain on the books, hanging over the men as a threat until the land dispute goes away, which could take years.

The UN Office of the High Commissioner for Human Rights and Amnesty International are tracking the case, and Cambodian human rights NGOs have sent monitors several times since July 2008 to monitor events.

A deputy secretary of the Kratie provincial cabinet defended the land concession, saying the government would like the indigenous people to give up their land, integrate economically and work for the new rubber plantation.

"We want them to work with the companies in their areas. But the villagers have a habit of not wanting to be laborers. So the workers for the companies usually come from elsewhere," the official explained.

The Snoul villagers don't believe they would be offered jobs, but regardless they want to keep the land that they are legally entitled to. "According to the experience from other places they promise [jobs] at the beginning, then they give work to others, including the Vietnamese," said Red Earth village Chief Yochtha.

Heang Foukhay of the CIV company said in an interview he wants to settle the dispute and although he would rather buy the land from the villagers, he would agree to let them keep a certain amount of their "old fruit trees." He blamed the problems on Kratie provincial officials for understating the number of families living on the land. The contract said only 48 families lived there, when 250 families live there.

He said he also represents a Korean investor (Grow West Group) that received a much larger concession from the Ministry of Agriculture, Forestry and Fisheries: 9,996 hectares for a rubber plantation across the highway from this one. He said he wants this case resolved so he can move ahead with the larger project, which he said may also lead to disputes.

The village residents staged their first protest in October 2008, three months after first finding bulldozers on their land in July. Before this, they followed all the conventional channels of requesting meetings: first with their village chief,

then commune, district, provincial and national officials, before holding their first civil protest at the site. Five monitors from human rights NGOs (ADHOC, LICADHO and Sor Sor Troung) were present. The charges from the company were filed a few days after Mr. Keth spoke at a news conference in Phnom Penh about the loss of their land.

Criminal charges

Although there was no indication that villagers touched the company's property, on October 18 five men were initially summoned.

One was a ghost name, someone who did not exist; another was a man who neighbors said was home with his wife who was giving birth the day of the protest, and the others were: Mr. Vy, accused because he agreed to write a list of the people attending the protest; Mr. Saren, because he was known to be the leader, and Mr. Rath, who his neighbors think was chosen at random.

The robbery charge stemmed from the company's claim that the villagers stole 10 million Cambodian riel ($2,500) stuffed in a bag hung from the roof of one of the tents.

About 200 villagers made the hour long trip to the court with Mr. Vy, Mr. Saren and Mr. Rath, but the court shut the doors when they arrived and cancelled the hearing, and provincial officials refused to meet them.

"Criminal charges in civil land disputes are becoming common. It's a new way of intimidating and threatening the village residents."

Yeng Virak, CLEC executive director.

The court prosecutor said he couldn't meet with hundreds of people. "They can come to court with their lawyers," he said. But a representative from ADHOC said the risk of arrest is very high if villagers go alone without the support of others in the community. "It has been the case when they call villagers to explain [charges] they put them in custody."

The prosecutor denied the charges were brought to intimidate the residents, but said the robbery charge sounded peculiar to him because no one would keep "this much money in a small bag." He indicated the charges could be lessened or dropped.

However, he no longer handles the case; it has moved up the legal chain to the investigating judge, who can reactivate it at any time.

Company work sites in Snoul district where a rubber plantation developer received an Economic Land Concession from the provincial governor in 2008 without the knowledge of residents.

Unwritten Rules

Van Vy squatted on the wood floor of the open air community center in this mud caked village called Dey Krahom, or "Red Earth," and pointed to the bamboo drum hanging from the rafters. His neighbors will bang the drum if police come at night to arrest him for interfering in plans for the new rubber plantation on the village's land.

The 36-year-old farmer – who married a Stieng tribe woman to become an "indigenous spouse," as he calls himself – is a target in one of Cambodia's dozens of land cases in which authorities are now using criminal charges to pressure village residents to give up when their land is earmarked for agro-investment.

Although he faces being jailed for joining a peaceful village protest in October 2008, he and the villagers hope their solidarity will see them get their land back.

"If they try to arrest him they will have to arrest all of us," said one of his neighbors. The 595 residents of the village are outraged over his predicament.

"Because the other villagers didn't know how to read or write, they asked Mr. Vy to write down their names on the list of protestors," said Aek Lay, 65. "Nobody appointed him a leader [of the protest]. They just asked him to write down the names."

Village chief Yoch Tha said he can't attend protests himself because it would get him in trouble with provincial authorities. But his wife participates. "The people will help him [Mr. Vy] because the land belongs to all of us," he said.

Deep in the bush on a rutted dirt road far off the main highway, the village is six kilometers from Vietnam, which is investing heavily in rubber in Cambodia. Mr. Vy moved to the district to work on a rubber plantation and came to the village when he married his wife, an ethnic minority Stieng woman two years younger than him. They have three daughters. "We are poor. Some of the villagers don't have any land. That's why we have to protect what is ours," he said. "The authorities don't understand about the indigenous people who don't have education and opportunities and just live in the forest."

The indigenous people don't want to work for a rubber plantation, he said.

Mr. Vy wants to increase his crops to include potatoes, but almost half his village's land, which is indigenous communal property, has been cleared. "The World Bank has $20 million to give Cambodia to reduce poverty, but the government is making poverty worse than before. I would like the donors to have a look at the rural areas to see the money is making them poorer and poorer. Before we were owners of land; now we will become slaves to it," he said.

Van Vy and his family at their home in Snoul district.

His father-in-law, Yoich Soot, 67, said the village is solidly behind his son-in-law. "We have very good solidarity since our ancestors' time. This is our tradition as a minority group. The people who live here are the same as when we grew up."

Even though the residents' land has not been titled yet, Cambodia's Land Law has provisions to protect the rights of indigenous people to manage their traditional lands free from outside interference before registration. However these management rights are not respected by authorities and companies, thus making indigenous lands susceptible to unlawful land grabbing, explain lawyers at the Community Legal Education Center.

Appendix 5:

Case study - Snoul, Kratie Province – Update

January 2010

The Stieng people of Snoul District have two big and current concerns: a land concession of 970 hectares issued by the provincial government to CIV Company, and a nearly-10,000 hectare concession to Grow West Building Trading Company, issued by the national government.

The CIV Company

In August 2009, Sre Cha community people lodged a complaint with the national government about the CIV company concession. The story was also published in Losing Ground: Forced Eviction and Intimidation in Cambodia (Cambodian Human Rights Action Committee, September 2009). Little or nothing was done to address their concerns. In April 2009, CIV made an offer to two of the villages to return some land. Village residents report in January 2010 that this promise has not eventuated.

Also, in January 2010, a tractor was spotted clearing boundary contrary to agreements that had been made and approved by the commune council. As a result 40 people protested in January 2010 and the communities are preparing another complaint and meeting with district authorities. The district authorities have promised to bring this issue to provincial authorities in order to seek resolution, but there has still yet to be a result (as at 31 January 2010).

Grow West

In the attached report on the CIV case, Heang Foukhay, the Managing Director of the CIV Company said in an interview that he also represents a Korean investor (Grow West Group) that received a much larger concession from the Ministry of Agriculture, Forestry and Fisheries: 9,996 hectares for a rubber plantation across the highway from the CIV concession. He said he wants this case resolved so he can move ahead with the larger project, which he said may also lead to disputes.

An excavator operating for CIV Company cleared a boundary ditch in an area previously agreed to remain as community land. CIV Company said it will still take 970 hectares of land.

Community members inspect the boundary drain being made by CIV in January 2010. They claim the boundary encompassed lands earlier agreed to be excluded from the concession area.

This concession covers not only Sre Cha commune but also extends into Snoul commune. It affects communities, 50% indigenous Stieng and 50% Khmer. Many of the people in the area have had their own rubber and cashew nut plantations since the 1980s.

In mid-January, company workers came to delineate lands. Five hundred community people went to the Sre Cha commune to register their protest. Since then there have been other meetings, one at Snoul commune office, where district and provincial officials attended. At one stage officials told community people that the land was the company's land but they could buy it back for $1,500 per hectare.

As one elderly Stieng man said "We don't want money. We want our land. If they offer no land, we prefer to die".

Hai Yong Investments

Also in Snoul District another concession is noted further to the south – Hai Yong Investment Agro Industry Company. This company was granted a rubber plantation overlapping with the farming land of local villagers in Pii Thnou commune, Snoul district. In December 2009 the community reported that the company had started clearing farming land. The company backed off but no resolution was found.

Appendix 6:

Case study - Rovieng, Preah Vihear Province

Mining Enters Indigenous Lands

Preah Vihear

Iron ore extraction in Rovieng District, Preah Vihear, by Ratanak Stone Kenertec Co. Ltd., a joint venture between a Cambodian and Korean company. The concession is 36km2 in total and has already claimed the land of indigenous Kuy people, including agricultural, spiritual and burial forest, and grazing lands. The site is guarded by a heavy military presence.

The Case: Rovieng district

- Illegal gold mining by multiple unknown influential businessmen monopolising mineral resources on Kuy indigenous lands for personal interest.
- Date and size: Since November 2007 conflict between communities and influential businessmen, who allegedly have mineral concessions, over 50 hectares of mineral resources.
- Area affected: Five communes (Romtom, Romoniy, Robieb, Rung Toeang and Rohas) in Rovieng district, Preah Vihear province.
- People affected: About 5,000 families in total. Approximately 1,000 ethnic Kuy indigenous families that have indigenous rights to the land.

Mineral Resource Conflict

Artisanal gold mining by the indigenous Kuy people has been a traditional practice for generations. In Rovieng District in the northern province of Preah Vihear, traditional methods for extraction are extremely labor intensive with low yields. But many indigenous Kuy minorities have been reliant upon this mineral resource as an additional source of income, to complement farming of rice and harvesting of non-timber forest products. The mining has contributed to a self-sustained livelihood. For the Kuy, this traditional stewardship is consistent with traditional customs and intertwined with their natural environment. Residing on the periphery of the Greater Prey Lang Forest these communities have managed and sustained their natural resources effectively for centuries.

Indigenous Resources

Under the current Cambodian Land Law (2001) there are no provisions for indigenous peoples' claims over mineral resources. This is reiterated in the minerals law which states clearly that the ownership of all minerals under the earth is property of the state. Yet Articles 24 to 26 of the United Nations Declaration on the Rights of Indigenous Peoples says that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Furthermore Article 32 specifically states that free and informed consent is required "prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

In Rovieng, Kuy indigenous villagers were effectively not consulted by the authorities or companies regarding the granting of their lands to mining. They are still unable to obtain clear information regarding the concessionaire's identity or activities. Consequentially, an exploration or mining license granted on traditional indigenous land impedes the community's ability to continue to manage the land according to their customs, breaching the rights of indigenous people provided for in the Land Law.

Methods used by concessionaires are reported to be extremely harsh on the surrounding environment and upon the health and safety of workers. Local villagers claim that this has lead to irreversible impacts upon the environment, health and safety of the villagers.

And it appears illegal. Many of these companies or individuals running the mining concessions had obtained the land illegally and were currently operating mines against Cambodia law. After continued violations of indigenous peoples' rights and adverse environmental impacts upon natural resources, affirmative action was undertaken by local authorities (including the district chief, police, and soldiers) against these businessmen. On November 14, 2007 officials contacted the company running illegal and polluting gold mining operations, to request that they cease their operations – as chemical runoff from the holding tanks containing arsenic, mercury and cyanide was seeping into ground water and rivers, and reportedly killing agricultural crops and cattle. After no response from the culprits they sent another request on December, 5, 2007 – again without success.

On January 10, 2008, military police and police tore down a 2m x 2.5m wooden tank used to store the chemicals. Other local authorities confiscated equipment, including one grinding machine, and burned stored chemicals. Despite all these enforcement activities, the people running the operations continued unabated. Similar action was taken on January 26, 2008 when 205 members of local communities, together with police, village and commune chiefs tore down a tank holding chemicals at a site called Prey Toteung. Community members also confiscated equipment and took it to the district police station for processing.

Following these activities, the businessmen running the operation pressed armed robbery charges against eight community members. Despite affirmative advocacy – supported by local authorities and police – attempts to overthrow the charges were thwarted, displaying the intimidation used in such cases. Fortunately these charges were never proceeded with but the area continues to have a high number of opportunistic businessmen operating mining sites with sub-standard mining practices.

More recently, on December 2, 2009 the collapse of a mining shaft injured two or three villagers, and local authorities closed access to the mine to all parties, citing health and safety reasons. The businesses, however, have continued to mine unchallenged at night-time, whilst communities wanting access to the site during the day are denied and are often harassed by military guards firing warning shots.

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[1] *2001 Law on Management and Exploitation of Mineral Resources, Article 2. (This law does not cover oil and gas, which come under a separate law).*
[2] *2001 Land Law, Article 23.*

On December 5th, 2009, indigenous representatives from the same region met with their local officials to arrange for a meeting with all stakeholders involved in the dispute. The offending businessmen are newcomers and are said to have the backing from an unknown high level official.

The meeting took place on December 8th 2009 with 530 people from 5 communes (Romtom, Romoniy, Robieb, Rung Toeang and Rohas). People met in Romtom commune, Rovieng district, Preah Vihear to open dialogue regarding mining of the Prey Totuem area. Officials from the Provincial Governor, his deputy, the District Governor, Commune Councilors and Village Chiefs helped to facilitate the discussions. The mining businesses, only identified by two affluent businessmen, were also present during the meeting. Little information was disclosed about the company(s)/ individuals involved and there was little information regarding the status of the mining operations.

Eventually communities were promised that they would be allowed back into the area, to continue their subsistentce artisanal mining. No official documentation or formal agreement was signed by any of the parties.

The next morning, December 9th 2009, community members returned to the Prey Totuem area to continue their mining - but were again prevented from entering the site by military soldiers guarding the site. Fifty-one community members then took their complaint directly to the Governor's office in the Tbeng Meanchey. They congregated in front of his office and waited to meet with him for six hours. Upon eventually meeting with the governor he informed them to return to their homes and promised to send an expert to re-investigate the case. Communities did as they are told, but as of the start of February 2010, no-one has yet come to investigate or help resolve the problem.

Over 400 local community people have commenced a petition to request the assistance of the Prime Minister for a resolution of the resource conflict.

Mineral Abundance

Geological surveying of central Preah Vihear province has revealed optimal deposits of minerals from gold, iron, coal and copper. The abundance of minerals in the region has led to as many as 13 known concessions being granted to 7 companies. To the extent that information is available, community people report multiple business interests

Chemical store tubs for extracting gold from ore.

[3] *See "P Vihear Villagers Protest Mining Ban, Doubt Officials' Intentions." Cambodia Daily December 7, 2009.*

headed by influential and wealthy business tycoons who have entered the area to exploit gold resources. They are often backed by high profile government interests.

Two main individuals have been identified during this latest dispute; both allegedly were granted by provincial authorities the rights to mine 50 m2 plots over approximately 50 hectares of land. They have a large number of workers, two heavy earth-moving machines and three transportation trucks. Their concession sites are guarded twenty-four hours a day, seven days a week by between 10-20 military personnel under the command of a general. The general is said to come from a military containment in the Phnom Deak area where other mining operations are also guarded.

Since the commencement of these larger scale operations in the area, communities have reported truck loads of earth moving from the mine site to a processing site 7 km away.

As far as community people know, no social-environmental impact assessment has ever been conducted but the mining may have links with Delcom Cambodia Pty Ltd; a Malaysian/Cambodian joint venture, that has a 46,000 hectare concession just south of Prey Totuem in Phnom Deak. The entire region, including two other neighbouring districts, Chey San and Chhaeb, have also been inundated with other company operations, listed in Table 1 below. All of these companies are situated on the periphery of the Greater Prey Lang Forest, the largest remaining lowland evergreen forest in South-East Asia. Nearly all of these mineral projects are in or overlapping with the indigenous lands traditionally used and managed by the indigenous Kuy people of the region.

Table 1: Known mining concessions in Preah Vihear province. Note the concession regarding this case is not listed as there is no official information regarding these projects. Source: www.sithi.org

COMPANY	LOCATION	DISTRICT	PROVINCE	EXPLORAT	HA	NATIONALITY
Chhong Kor Chhean Pean Co. Ltd	Phnom Ker	Rovieng	Preah Vihear	Metalic minerals exploration	6,000.0	
Delcom Cambodia PTE. LTD	Phnom Deak	Rovieng	Preah Vihear	Metallic minerals exploration	46,000.0	Malaysian Cambodian
Kenertec Co. Ltd. (A)		Chey San, Chhaeb	Preah Vihear	Iron ore	11,522.6	Korean
Kenertec Co. Ltd. (B)	Ou Khlong	Chhaeb	Preah Vihear	Iron ore	41,383.1	Korean
Kenertec Co. Ltd. (C)	Phnom Thnot	Chey San	Preah Vihear	Iron ore	23,973.4	Korean
Kenertec Co. Ltd. (D)	Phnom Charei	Chhaeb	Preah Vihear	Iron ore	18,445.7	Korean
Kenertec Co. Ltd. (H2)	Phnom Natong	Chey San	Preah Vihear	Iron ore	20,643.6	Korean
Kingdom Resources Co. Ltd.	Phnom Ta Bus	Sangkom Thmei	Preah Vihear	Iron, Copper	29,039.2	Singapore, Cambodia
Ratanak Kenertec Resorurces Co. Ltd	Phnom Thmor	Rovieng	Preah Vihear	Iron mineral exploration	375.0	Cambodian Korean
Ratanak Stone Cambodia Development Co. Ltd	Phnom Kos Keo	Rovieng	Preah Vihear	Iron mineral exploration	3,200.0	Cambodian
Ratanak Stone Cambodia Development Co. Ltd		Chey San, Chhaeb	Preah Vihear	Metallic minerals exploration	3,600.0	Cambodian
Mong Good Luck Mining Co. Ltd.	Thalabari wat	Chhaeb, Thala Barivat	Stung Treng/PVH	Ilmenite	9,000.0	Chinese
Titan Mineral Group Co. Ltd.		Chey San, Thalla Barivat	Stung Treng / Preah Vihear	Metallic Ore	20,4000.00	

THE GREATER PREY LANG FOREST

Prey Lang is the largest primary lowland dry evergreen forest remaining both in Cambodia and on the Indochinese Peninsula. Prey Lang and its border areas support roughly 3,600 square kilometers of forests, including a nearly pristine 80,000-100,000 hectare core area. The forest includes seven distinct kinds of ecosystems including unique, primordial swamp forests as well as dry evergreen, semi-evergreen, and deciduous forests.

Prey Lang's biodiversity values are exceptionally high. It is populated with rare species endemic to Cambodia, including giant luxury timber trees, more than 20 endangered plant species, and as many as 27 endangered animal species.

As a primary watershed, regulating water and sediment flow to the Tonle Sap Basin and as an important spawning area for fish, Prey Lang is vital to Cambodia's long-term environmental sustainability and people's food and water security.

Prey Lang is arguably the largest, intact area of indigenous land left in Cambodia. Located between the Mekong and Stung Sen Rivers in north central Cambodia, the forest straddles four provinces (Preah Vihear, Kampong Thom, Stung Treng and Kratie). About 200,000 people live in 339 villages in six districts on the periphery of the forest. This includes a large number of Kuy and other indigenous groups, who have served as the customary custodians of the forest and who are dependent on it for their livelihoods. Spiritual and social traditions are shaped by the forest and their relationship to it.

Even considering the large number of resident indigenous people and their long history in the area, the Kuy's legal claims to the forest are not recognized. To date, there has been no formal consideration of the Kuy people's collective, customary right to sustain and manage the forest. This disregards both Cambodian constitutional provisions and rights guaranteed under international treaties, namely the United Nations Declaration on the Rights of Indigenous People.

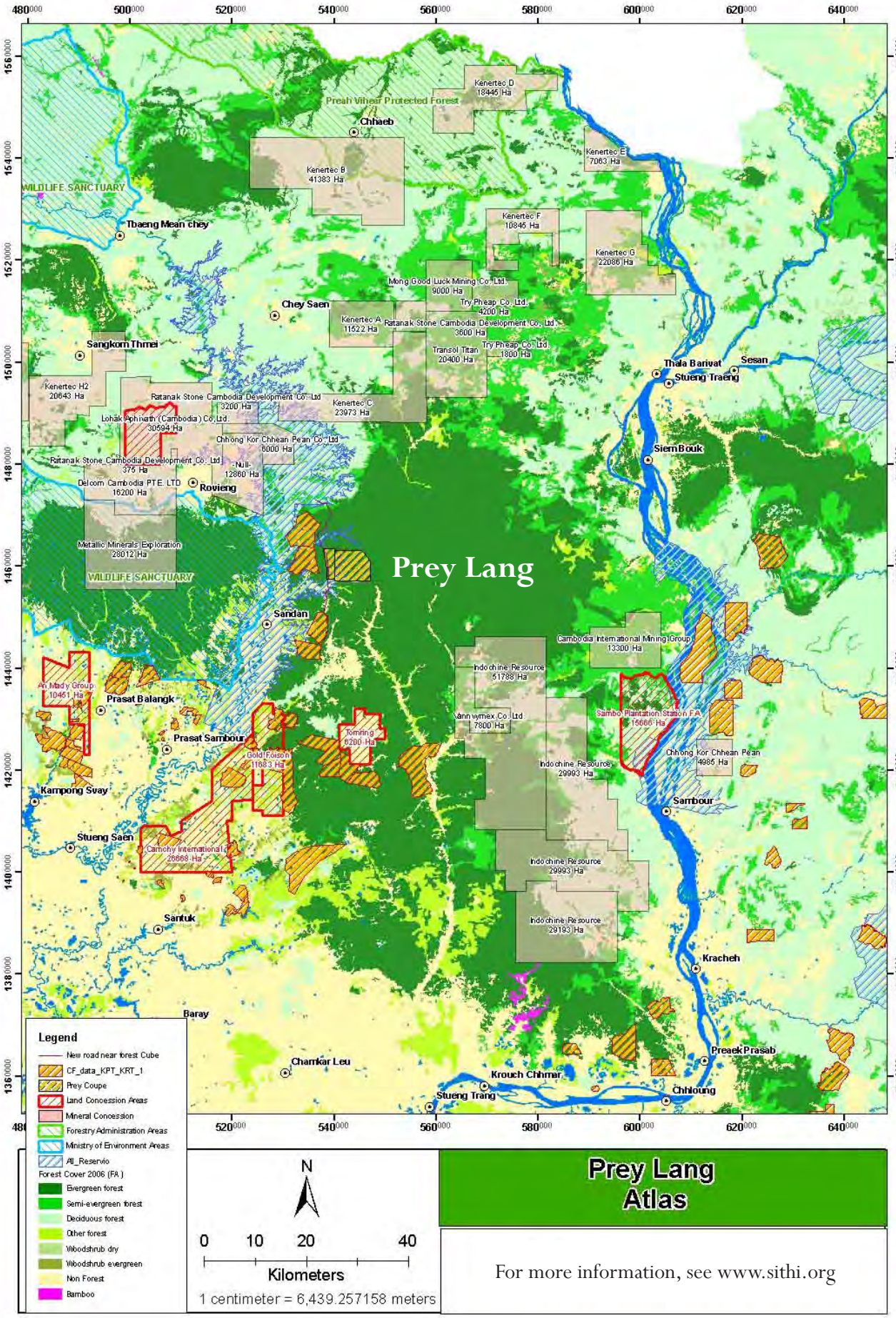
Previously classified as state forest, the government has reclassified much of the broader forest area as State Private Land, making it available for land concessions. During the 1990s, the entire forest was divided into logging concessions. In 2003-2004, after public outcry and donor pressure over unsustainable logging throughout the country, most of Prey Lang's remaining logging concessions were suspended.[1]

More recently, concessions for mines and agro-industrial plantations threaten the viability of the forest, as more areas are converted to industrial purposes. As of early 2010, at least 27 mineral exploration licenses and concessions were known to have been awarded for the greater Prey Lang area. Rubber plantations are also being expanded from the southeast and southwest. None of these projects has been undertaken with the full free, prior, and informed consent of the indigenous people whose customary lands will be affected by new developments.

In August 2009, Prey Lang communities petitioned the Cambodian government to preserve the forest intact. Cambodia's Forest Administration and conservation groups have identified Prey Lang as an area important to conserve, with high potential for carbon credit payments. Feasibility studies for some kind of REDD[2] project are believed to be underway.[3] This and other payments-for-ecological-services could effectively halt encroachment on Prey Lang, thus saving the forest.

Whatever development path is taken for Prey Lang, there is a need to ensure that the communities and their culture are protected under a management plan concerned with their preservation. While this can be done as part of a REDD program, it is not a foregone conclusion. Concerted efforts need to be made to ensure this occurs.

[1] *Those concessions already mostly logged were actually cancelled.*
[2] *REDD = Reducing Emissions from Deforestation and forest Degradation in developing countries.*
[3] *Much of the forest has high level of peat, which currently acts as a high value carbon sink.*


Prey Lang
Preah Vihear Protected Forest
WILDLIFE SANCTUARY
WILDLIFE SANCTUARY
Chhaeb
Tbaeng Mean chey
Chey Saen
Sangkom Thmei
Rovieng
Sandan
Prasat Balangk
Prasat Sambour
Kampong Svay
Stueng Saen
Santuk
Baray
Chamkar Leu
Stueng Trang
Krouch Chhmar
Chhloung
Preaek Prasab
Kracheh
Sambour
Siem Bouk
Thala Barivat
Sesan
Stueng Traeng
Kenertec D 18446 Ha
Kenertec B 41383 Ha
Kenertec E 7063 Ha
Kenertec F 10845 Ha
Kenertec G 22086 Ha
Kenertec A 11522 Ha
Kenertec H2 20643 Ha
Kenertec C 23973 Ha
Mong Good Luck Mining Co. Ltd. 9000 Ha
Try Pheap Co. Ltd. 4200 Ha
Ratanak Stone Cambodia Development Co. Ltd. 3600 Ha
Transol Titan 20400 Ha
Try Pheap Co. Ltd. 1800 Ha
Ratanak Stone Cambodia Development Co. Ltd 3200 Ha
Lohak Aphiwath (Cambodia) Co. Ltd. 30594 Ha
Chhong Kor Chhean Pean Co. Ltd 6000 Ha
Ratanak Stone Cambodia Development Co. Ltd 375 Ha
-Null- 12860 Ha
Delcom Cambodia PTE. LTD 16200 Ha
Metallic Minerals Exploration 28012 Ha
Cambodia International Mining Group 13300 Ha
Indochine Resource 51788 Ha
An Mady Group 10451 Ha
Annwymex Co. Ltd 7800 Ha
Sambo Plantation Station FA 15666 Ha
Tomring 6200 Ha
Gold Poison 11083 Ha
Indochine Resource 29993 Ha
Chhong Kor Chhean Pean 4985 Ha
Camchay International 26668 Ha
Indochine Resource 29993 Ha
Indochine Resource 29193 Ha
Legend
New road near forest Cube
CF_data_KPT_KRT_1
Prey Coupe
Land Concession Areas
Mineral Concession
Forestry Administration Areas
Ministry of Environment Areas
All_Reservio
Forest Cover 2006 (FA)
Evergreen forest
Semi-evergreen forest
Deciduous forest
Other forest
Woodshrub dry
Woodshrub evergreen
Non Forest
Bamboo
N
0 10 20 40
Kilometers
1 centimeter = 6,439.257158 meters
Prey Lang Atlas
For more information, see www.sithi.org

Above: Prey Lang, the largest primary lowland dry evergreen forest remaining both in Cambodia and on the Indochinese Peninsula. Prey Lang forest represents a massive store of carbon and biodiversity. It is arguably the largest intact area of indigenous land left in Cambodia.

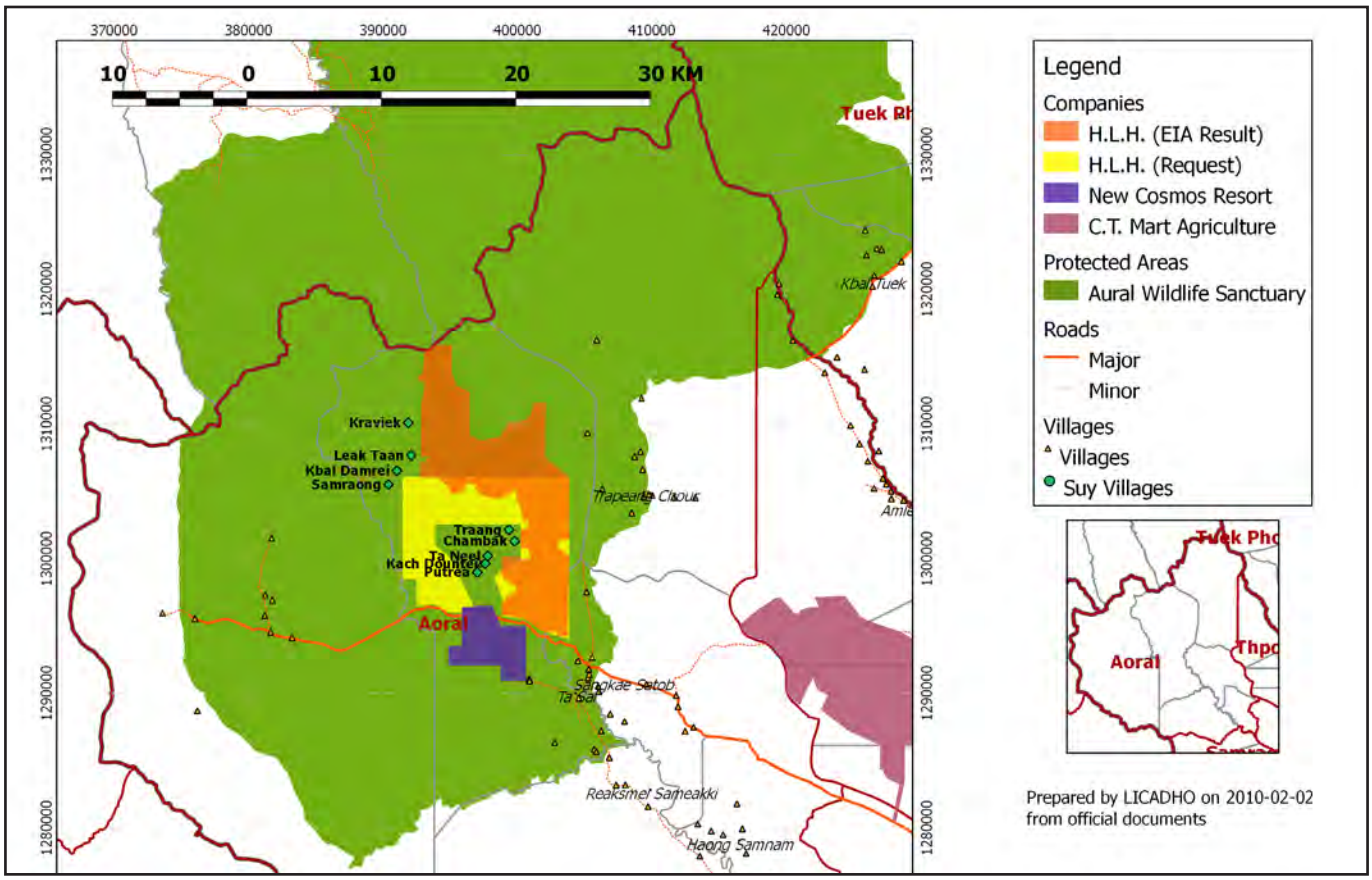
Right: Indigenous Kuy people have lived with and managed Prey Lang for generations. They wish to preserve that relationship.

Appendix 7:

Case study - O Ral, Kompong Speu Province

The end of the Suy people?

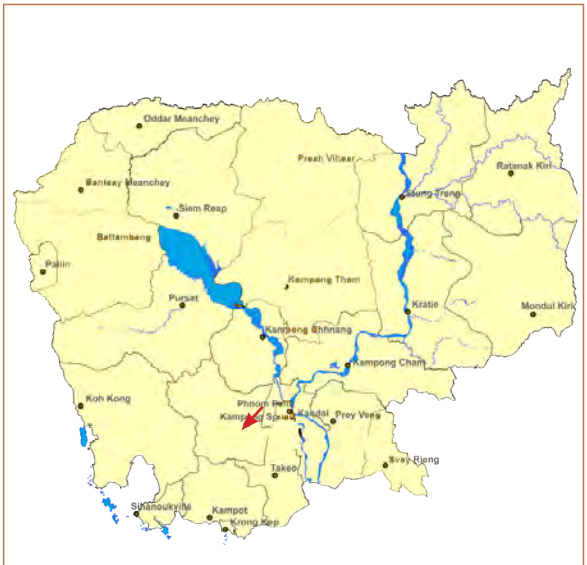
Kompong Speu



The HLH concession and other concessions. This map shows the original area requested by HLH (yellow) and the final area after the EIA. In mid-2009, before the EIA was done, HLH had demarcated the yellow area with cement poles, surrounding the five core Suy villages. The poles remains ungrounded to this day. Information for both areas comes from the EIA document.

The Case: O Ral district and the Suy people

- Type and purpose of concession: Economic Land Concession for agro-business. Tourism Concession.
- Development plan: Corn plantation by HLH Group Limited. Other concession to other companies.
- Date and size: A 9,985 hectare concession to HLH Group, A 900 hectare tourism concession to New Cosmos. Land concession to CT Mart, in neighbouring areas.
- Area affected: Two communes in O Ral district, Kompong Speu Province.
- People affected: Effectively all the indigenous Suy people remaining in the world. Many mixed and non-indigenous communities also affected.



The Suy people have one of the lowest populations of any indigenous groups in Cambodia, numbering only an estimated 1,200 people. According to Suy informants, there are only ten Suy communities in Cambodia and thus only 10 in the world.[1]

Historically, it appears that Suy people were distributed over a large area, along the base of Mount O Ral, but were assimilated into the dominant Khmer population and displaced during the decades of conflict that began in 1970. The Khmer Rouge controlled the Suy people's ancestral lands until 1996, when diminished Khmer Rouge presence made it possible for them to return.

The majority of the Suy people, about 900 people, live in five villages in Trapeang Chor commune, O Ral District, Kompong Speu Province. Those villages are: Putrea, Ta Nel, Kao Doun Tei, Traang, and Chambak. The five villages formerly constituted Chh'en commune. However due to its relatively low population, the Cambodian authorities decided to incorporate the commune into Trapeang Chor commune, whose population is primarily Khmer, the dominant ethnicity of Cambodia. This administrative arrangement has diminished the self-determination the Suy might otherwise have had.

Traditionally the Suy people have based their livelihoods on non-timber forest products and swidden (shifting) cultivation. The Mount O Ral Wildlife Sanctuary, established in 1997, includes the five core villages, along with their agricultural land, resin trees, and other customary-use forest. Also located within the Sanctuary were four Suy spirit forests and a sacred hot springs, home of the Suy goddess Yeay Te, whose powers are recognized by Suy and Cambodians alike. The Suy have built a statue of Yeay Te at the springs and hold regular ceremonies to honor her. In early 2004, an NGO began discussing the development of a community-based eco-tourism to manage the hot springs and generate community income. A conservation NGO and the Ministries of Environment and Tourism, were also involved in the project.

"If the company continues, it will be the end of we Suy people"

In spite of this, in May 2004 the Cambodian government granted a 75-year, 900 hectare tourism concession for the hot springs and surrounding area to a Chinese company named New Cosmos. Although the concession was described as an eco-tourism project, the company was to develop a large modern resort and golf course. In October 2004 the groups involved with the community-based eco-tourism project were ordered to stop their activities.[2]

Partly in response to these developments, two national land forums were organized in the communities, with indigenous people from around the country participating. The environmental impact assessment (EIA) prepared by the company was criticized by Cambodian and international NGOs. The communities tried to resist the concession. In late 2004, the five communities petitioned the government to return the land. There was no response.

In 2007, the Special Representative of the Secretary-General for human rights in Cambodia wrote of the New Cosmos concession:

"*The land surrounded the natural hot springs … is an area of cultural and spiritual importance for the Suy. On several occasions, the company and local authorities tried to remove the statue of the Suy goddess, Yeay Te, from its location near the hot springs, and Suy elders now maintain a permanent presence by the statue to prevent its removal.….Since the grant of the New Cosmos eco-tourism concession in O Ral district, Kompong Speu province, Suy indigenous communities have faced land alienation and increased pressure on land available for their use. ….Only a small area of reserved land now remains and this has become a source of conflict within the community, as there is now insufficient land to meet the needs of all families. ….Suy community representatives expressed concerns about their future, as most of the land traditionally used by their community is now gone*." [3]

Community leaders continued to speak out. Elders guarded the statue of Yeay Te, so that the company wouldn't remove it. Community members, especially leaders, were subsequently threatened. Community members at one time stood in front of a company truck to block the development of the concession.

After the death of the company director, and perhaps in-part as a result of community advocacy, in 2005, New Cosmos suspended its operation; company equipment and workers were removed from the site. However, the concession agreement itself was never rescinded and has remained a threat hanging over the Suy people. Then, in

[1] *The so-called Suoy people of Thailand and Laos, known also as the Kui, are a different people.*
[2] *Economic Land Concessions in Cambodia: a human rights perspective. Special Representative of the Secretary-General for human rights in Cambodia. 2007.*
[3] *ibid*

September 2009, according to villagers, New Comos resumed activity on the land - mainly fencing area due to fear that a new company, HLH, would clear some of its land.

"We did not know about this concession and were not consulted before it started."

Suy Community Representative

This relates to, in 2009, a new and even more ominous threat which reared its head. A broader area of 9,985 hectares surrounding the five Suy villages was granted as a concession to the Singaporean company HLH Group Limited. The concession, for a period of 70 years, was granted for "investment development of the agro-industrial sector". A government sub-decree, dated March 30, 2009 transferred the land from State Public property to State Private Property, effectively removing it from the O Ral Wildlife Sanctuary. The concession, as proposed, also affects four small mixed Suy and Khmer villages, entirely surrounds the five core Suy villages, and affects at least ten other Khmer communities. HLH says that it plans to use the entire concession area for producing and processing genetically modified corn.

When the company began clearing forest in June 2009, more than 400 Suy community members, the majority women, blocked the tractors, causing the company to pull-out of the area temporarily. Since that time, community members have repeatedly attempted to stop tractors but have been ultimately unsuccessful. The company has continued clearing forest, built roads and facilities, and brought in large farm equipment. According to local informants at least 500 hectares have already been planted in corn with at least one crop already harvested.

Since the inception of concession activities, two Suy villages have lost at least 25 hectares of recognised community forest to company clearing. Some have also been prevented at times from entering their forests, and so have been unable to access the non-timber forest products that are critical to their livelihoods. This is in violation of the Cambodian Forestry Law and Article 31 of Cambodia's Constitution (Cambodia shall recognize and respect UN rights covenants).

Suy communities have continued to resist company encroachment on their traditional lands. On 21-22 December 2009, more than 100 Suy community members requested that the company cease road construction that would cross Suy land and violate their forests. Villagers arranged a night watch - to prevent the company from clearing land. The next day, an O Ral District deputy governor intervened and the company withdrew to another area.

In late December 2009, government officials, including an officer from the district's Women's Affairs Office and a representative from the Ministry of Agriculture, met with the communities to urge them to cooperate with HLH and accept some form of compensation. The communities refused, asserting their legal rights to their traditional territory.

Although an environmental impact assessment was commissioned by the company, significant activities, such as meetings with local authorities and community members, were undertaken only after the company had already begun operations. The impact assessment was completed only in December 2009 and released to NGOs

The Suy people and others will soon be surrounded by a sea of corn - an agro-industrial model that is consuming their lands and forests.With the level of mechanisation expected, it is unlikely that it will create many culturally appropriate jobs for local people.

for comment in January 2010, when significant areas of forest had already been cleared and corn planted. The EIA report makes clear that local authorities (including the deputy provincial governor and representatives of provincial government departments) and participating community members raised concerns about loss of community members' land, loss of a community forest, loss of natural resources critical for Suy livelihoods, impacts on sacred sites, and anticipated stress on water resources. The report cites a meeting held in November 2009 in which these government officials and authorities asked for these problems to be resolved.

In reflecting on the EIA report, Suy community advocates said that the company under-represented many of their concerns. For instance, in the entire report, the "Suy" are only mentioned once in regard to a one-hectare spirit forest. The report fails to acknowledge that the majority of those affected are the last cluster of Suy people in the world.

As the company pushes forward with its development, a concern for the Suy communities is water availablity. Even before the concession the area had suffered water shortages. Because the concession encompasses all 23 streams which feed local farms, communities fear that they will have inadequate water for their own use. In fact, the company's own EIA indicated that water availability is low and that they expect to divert water from the largest streams. Community fears began to be realized in late January 2010, when the company constructed an irrigation channel diverting water from a stream which feeds Suy farms. Seventy-nine Suy community members, accompanied by commune officers, confronted the company, demanding that they halt work on the irrigation channel. Police ordered the protesters to return home.

"The Suy people are at the end of the road. We are devastated."

Although HLH's EIA report indicates that company will hire more than 1,000 people as farm labor, to date no one from the Suy villages appears to have been employed. According to local informants, farm labor appears to have been brought in mostly from other areas, with many of them housed in concession dormitories.

Other concessionaires too remain active in the area. A third large concessionaire, CT Mart, is active in the neighboring district to the east and other small concessions dot the area. In combination, these concessions will undoubtedly transform the landscape of the region and may spell the end for the Suy people.

Who is HLH?[4]

HLH describes itself as "the grower you can trust". The Company was listed on the mainboard of the Singapore Stock Exchange under the name "Hong Lai Huat Group Limited" in June 2000, before eventually renaming itself HLH Group Limited in 2007.

The Company has interests in property investments, building construction, corn plantations for corn starch, corn oil and ethanol, trading of agriculture and biotechnology products.

"We are motivated to play an active and objective role in contributing to the society, in particular, the rural communities in third-world countries."

According to HLH, Cambodia is exceptionally rich in natural resources, with a cheap and efficient labour force, and has vast tracts of uncultivated land.

It is usual for outside companies to have business associates in Cambodia to help smooth the agreements and contracts. Community contacts have said that people associated with very highly-ranked officials have been publicly linking themselves with HLH.

In the television coverage of the project (on the HLH website) it is stated that Cambodian Government is allocating 7 million hectares of land to agribusiness development. Cambodia is a country with 4.5 million hectares of arable land, implying that forest areas will be cleared. At the same time the Cambodian government's National Forest Programme and Millennium Development Goals state that 60% of Cambodia will remain as forest.

[4] *Information from HLH website: http://www.hlh.com.sg/default.asp*

Appendix 8:

Case study – Yeak Laom Lake, Ratanakiri Province

An Indigenous Icon Under Threat

Ratanakiri

The idyllic Yeak Laom Lake is an indigenous icon. It is the home of the Tampuen people whose commune takes its name from Yeak Laom, meaning "Giant's Lake". In 1997, the management of the lake was handed back to the local community with a 25-year lease signed by the provincial governor. Now there are repeated attempts to reverse this and hand the lake to tourism developers.

The case: Yeak Laom Lake

- The issue: Provincial Authorities wish to issue a tourism concession to Yeak Laom Lake which is currently under community management.
- Development plan: Plans presented to community people have included a road around their lake and other tourism infrasrtucture, to be built by a private tourism company. A concession in a neighbouring area suggested plans for a "cable car from one place to another place".
- Date and Size: 300 hectares of the Yeak Laom Lake core area.
- Area affected: Five villages in Yeak Laom commune, Ban Lungo district, Ratanakiri province.
- People affected: Tampuen people in 5 villages of Yeak Laom.

Yeak Loam is the name of both the community and the picturesque lake located in Ban lung district, Ratanakiri province, Cambodia. Yeak Laom Lake is well known throughout the whole of Cambodia, and is the key feature of indigenous identity.

The Tampuen people of the Yeak Laom commune in Ratanakiri have always regarded the lake as a sacred place; a lake dug by a giant spirit ("Yeak Laom" means "giant's lake"). Yeak Loam is part of the Tampuen heritage. The lake is a special meeting-place, home to the spirits of the land, water and forest. Fabulous aquatic beings dwell in the deep waters and the surrounding forests. The lake is also the privileged home of some spirits. Buildings and the cutting of trees around the shore have always been forbidden.

Contrary to this, in the 1960s a chalet and other structures were built on the shores; these were destroyed in 1970 during the war between the Khmer Rouge and Lon Nol forces. In 1993 the private sector took the lake from the Tampuen community in order to "develop the area". They built karaoke bars and structures around the lake as places to take prostitutes. In 1996 the International Development Research Centre (IDRC) carried out some research on the lake. The research showed that in a short time the lake environment had deteriorated, had no rubbish collection and had no sanitation, which had affected the water quality.

In 1997, with the support of IDRC and UNDP, the lake was handed back to the indigenous Tampuen people of Yeak Laom. IDRC encouraged the provincial government to work with a Yeak Loam Committee (YLC). Five more committees were also developed, one in each village. The committees received lots of support, training and capacity building for two years.

On 6th September 1998 the government recognized and signed the contract lease to the 5 communities for management rights for 25 years. The government and private sector moved out from Yeak Loam as they agreed that the community committee had the ability to independently manage the lake.

Subsequently with assistance from UNDP/IDRC the Yeak Laom Lake Committee received training in bookkeeping and administration, and has been operating to a standard approved of by UNDP. The committee was recognised by the Provincial Rural Development Committee and the Governor of Ratanakiri.

As well as managing the Lake, the Tampuen lake committee also supports local handicraft sales at the lake. A number of indigenous women weave cloth for sale at the lake. The income is important, especially as their land base has been much diminished by land grabs.

In spite of securing management rights, the Yeak Laom community are facing massive challenges. In 2007 and 2008 the Yeak Laom community lost a large part of their land. This has massively reduced their ability to carry out their traditional agriculture. Land grabbing, coerced sales and land selling is rife in Ratanakiri, due to greed for its forests, fertile soils and the precious stones beneath the surface.

The Yeak Loam commune is especially sensitive to these changes due to the rapid expansion of Bang Lung town. Swidden farms are rapidly being lost. Today villagers do not have enough farm land to grow sufficient crops.

Now Yeak Laom Lake is under threat from developers. A mountain area nearby the lake, Youl Mountain, has been given as a provincial concession to a company rumoured

[1] *Names changed to protect identities.*

to be owned by one of the provincial governors. The request letter from the company, which was approved by the Governor, stated that the request is in line with the development policies of the Cambodian government. The community refutes that.

Most recently, on Friday 28th January 2010, two provincial deputy governors and one Bang Lung District governor called a meeting with the Yeak Loam Lake Committee Chief. The meeting lasted half an hour. One provincial governor said that the community committee must give the lake to a company. There have been five of these meetings. Many villagers fear that if they do not hand over the lake now, the lake will simply be taken off them anyway. They do not know the name of the company nor if the company will carry on employing the current indigenous staff.

"Yeak Laom Lake is our heritage. It is something we inherited from our ancestors, and it is our role to protect it for future generations. It is what we are proud of. It is not something to give away."

Ngel[1], a Tampuen man from Yeak Laom, says: "For years we have kept the lake as a natural attraction. Yeak Laom Lake is an indigenous icon and is loved by indigenous peoples. The government talks about sustainable development and proper management of natural resources. It is us, Tampuen people, who are already implementing government policy."

"We have a 25 year agreement with the provincial government. It was signed by HE Kep Chuktema, now Governor of Phnom Penh. The agreement was that we had the right to management and protect the lake for at least 25 years. We had a promise from the Prime Minister that this would be respected."

The plans for the nearby Youl Mountain area are to have a 5-star hotel, a 3-star hotel, a games/gambling facility and a cable car "from one place to another place". Since the issue of the concession, the Lake Committee has been called to the province to be told that the lake will also be given to the company, with plans for a cable car around the rim of the crater, car access around the lake itself and karaoke facilities.

"This is very disrespectful of indigenous culture and community management" says Mr. Sam. "We are not in favour of this. Yeak Laom Lake is part of all indigenous peoples' identity. It is simply not something to be given to a private company."

"They say we do not make enough money at the lake the way it is. But that is not true – people come to Ratanakiri to see our lake that is kept in its natural state. Those tourists come and spend money in Ratanakiri. We get some money and businesses get some. The most important thing is that we keep our lake".

Hait, an older man also from Yeak Laom says, "there has been massive illegal land alienation in Ratanakiri. They have taken so much already. When is enough? Why do they keep trying to destroy indigenous peoples? This attempt to take Yeak Laom is very greedy."

Mrs Arng says: "Yeak Laom Lake is for all indigenous peoples. In Ratanakiri there are Jarai, Kreung, Brao, Kavet, Tampuen, Kachok and Lun people. It is the Tampuen people of Yeak Laom who must keep the lake for all indigenous people. It is where non-indigenous people can go to learn about indigenous culture and the environment. It should stay with the Yeak Laom Lake Committee."

A legal memo from an NGO says: "There are three legal reasons why it is unlawful for the Ratanakiri provincial

Will the children of Yeak Laom be able to manage their lake?

Infrastructure development has already started in a concession given over Kowl and Youl Mountains, the spirit forest areas of Yeak Laom people.

authorities to give management of YLC land to the private company for 90 year investment". The memo goes on to explain that the provincial government signed a 25 year agreement with "Yeak Laom Lake Conservation and Recreation Committee" to manage the lake, including management and conservation of the natural resources in the "Core Zone of the Yeak Laom Protected Area" with an area of approximately 300 hectares, which includes the Yeak Laom Lake and its outer banks. The contract has been 10 years under implementation. Therefore, the continuance of another 15 years of the contract is still valid.

The memo also explains that the communities managing the lake are indigenous communities with a clear right under law. The issuance of a concession is simply not in line with Cambodian laws. Already, however, other concessions have been issued to nearby areas which have included spirit forest areas, and infrastructure works have proceeded.

The youth of Yeak Laom are also concerned. A representative of a youth group to support the lake says: "To us, Yeak Laom Lake is our heritage. It is something we inherited from our ancestors, and it is our role to protect it for future generations. It is what we are proud of. It is not something to give away."

The matter should also be a concern to donors and NGOs. A number of donors, led by the World Bank, are currently providing budget support to the Cambodian government with the condition that there be 'implementation of interim protective measures for indigenous peoples land' and improvements in the transparency and legal compliance of economic land concessions.

While everyone deliberates, the people of Yeak Laom face ongoing intimidation as others attempt to get their lake.

Traditional gongs on display at the Yeak Laom Lake Environment and Cultural Centre. The centre allows indigenous people to educate others about indigenous culture and history.