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ការិយាល័យនៃឧត្តមស្នងការទទួលបន្ទុកសិទ្ធិមនុស្សប្រចាំកម្ពុជា



A Human Rights Perspective on Economic and Other Land Concessions in Cambodia

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There are estimated to be 17 main indigenous groups living in 15 provinces of Cambodia. A large number live in densely forested highland areas, such as the north-eastern provinces of Monduliri and Ratanakiri, where indigenous peoples form the majority of the population.¹ These highland areas are rich in natural resources, and have increasingly become the focus of proposals to ‘develop’ the land. This has led to rapid land alienation, with significant social, cultural and environmental consequences for indigenous populations.

Land and forest resources are central to the livelihoods, culture and traditions of Cambodia’s indigenous peoples. Their livelihoods depend upon swidden or shifting agriculture, and access to forests to collect non-timber forest products. Forested areas are central to spiritual and cultural life, and contain spirit forests, sacred areas and traditional burial grounds.

Rapid land alienation, including through the grant of economic and other land concessions, poses a significant threat to the survival and cultural integrity of indigenous communities in Cambodia, and impedes the ability of indigenous communities to register collective title over traditional lands.

Indigenous rights to land and natural resources in Cambodia

International law provides protection for the rights of indigenous peoples, and recognizes their special relationship with land and natural resources. Both the International Labour Organization Convention 169 concerning indigenous and tribal peoples and the Declaration on the Rights of Indigenous Peoples specifically recognize the right of indigenous communities to collective ownership of land, and note the responsibility of governments to protect these rights.

Cambodian law explicitly recognizes the rights of indigenous communities to collective ownership of their land and to traditional use of forest resources.

The Land Law of 2001 recognizes the right of indigenous communities to collective ownership of their lands, including land used for residences and traditional agriculture. Agricultural land encompasses land actually cultivated and land reserved for shifting cultivation. This is an important recognition of the ownership rights of indigenous communities over their traditional lands, which will be formally recognized through the registration of collective land title. The Land Law states that indigenous communities shall continue to manage their communities and land according to traditional customs, pending the finalization of legislation to register indigenous communities as legal entities, which in turn will enable them to apply for the registration of collective title.

¹ Other provinces with indigenous populations include Kratie, Stung Treng, Kompong Thom, Preah Vihear, Kompong Speu, Koh Kong and Pursat.

The Forest Law of 2002 recognizes the traditional user rights of local communities (both indigenous and non-indigenous) to collect and use forest products and by-products. Traditional user rights include grazing for livestock and the sale of forest by-products. No permit is required to exercise these rights.

Land concessions in Cambodia

The Land Law provides that economic land concessions may be granted over state private land. These concessions do not give rise to ownership rights, but create rights to occupy and use land for industrial agricultural exploitation for a period of up to 99 years. Land concessions shall not exceed 10,000 hectares, and existing concessions that exceed this limit shall be reviewed. An exemption to this requirement may be granted where the concession was granted prior to the effective date of the Land Law, and a reduction in size would compromise exploitation already in progress at that date.

Other kinds of concessions, such as mining and tourism concessions, do not fall within the scope of the Land Law. Licenses for the exploration and exploitation of mineral resources are granted by the Ministry of Industry, Mines and Energy, and tourism concessions are granted by the Council for the Development of Cambodia.

The Sub-Decree on Economic Land Concessions was finally adopted in December 2005 and sets out the criteria and procedures for granting economic land concessions. The sub-decree specifies that an economic land concession may only be granted when all the following criteria have been met:

- (i) The land has been registered and classified as state private land;
- (ii) A land use plan has been adopted by the provincial or municipal state land management committee, and the land use is consistent with the plan;
- (iii) Environmental and social impact assessments have been completed;
- (iv) There are solutions for resettlement issues, and there will be no involuntary resettlement; and
- (v) Public consultations have been conducted with territorial authorities and local residents.

Proposals for economic land concessions are to be evaluated against criteria that include the promotion of people's living standards, perpetual environmental protection and natural resource management, and the avoidance or minimization of adverse social impacts.

The Ministry of Agriculture, Forestry and Fisheries is authorized to grant economic land concessions that exceed 1,000 hectares or a total investment value of 10,000,000,000 riels (approximately \$2,500,000).² Provincial and municipal governors are authorized to grant concessions that do not exceed either of these limits. Economic land concessions shall be granted through competitive solicited proposals, and unsolicited proposals are to be considered only in exceptional cases. In practice, most concessions are granted in response to unsolicited proposals.

According to the Ministry of Agriculture, Forestry and Fisheries, as of 30 November 2006, a total of 60 companies had been granted economic land concessions over a total of 987,769 hectares of land in 14 provinces. Provincial authorities have granted a number of economic land concessions not exceeding 1,000 hectares, but information is not available on the number, location and details of concessions granted at the provincial level.

Compliance with the Sub-Decree on Economic Land Concessions

The systematic mapping, classification and registration of state public and private land have not yet taken place. However, economic land concessions continue to be granted prior to a determination of

² Note that in the English translation of the Sub-Decree, the limit is stated to be 10,000,000 riels (approximately \$2,500).

whether the land is in fact state private land, and not privately or collectively owned or possessed in accordance with the Land Law. Other essential criteria, such as public consultations with local communities and the conduct of adequate environmental and social impact assessments, have also not been met prior to the grant of economic land concessions.

Thus the pre-requisites specified by the Sub-Decree on Economic Land Concessions have not been fulfilled, and the grant of concessions has failed to consider the existing ownership, possession and use of land, and to respect the ownership and traditional user rights recognized by the Land and Forest Laws.

As a result, economic land concessions have been detrimental to the livelihoods, traditions and survival of rural Cambodian communities, both indigenous and non-indigenous. For indigenous communities, their cultural and spiritual connections to traditional lands add a further dimension to the impact of economic land concessions.

Impact of land concessions on indigenous communities

According to the information available, sixteen economic land concessions affect indigenous land in Kompong Thom, Kratie, Mondulhiri, Oddar Meanchey, Ratanakiri and Stung Treng provinces. Eco-tourism concessions affect indigenous land in Kompong Speu and Mondulhiri, and a number of mining licenses encompass indigenous land in Mondulhiri, Pursat and Preah Vihear.

Encroachment upon land and forested areas

The most commonly voiced concern of both indigenous and non-indigenous communities is the encroachment of economic land concessions upon land and forested areas which are the basis of their livelihoods and survival. These concessions have led to destruction of their agricultural and grazing land, and loss of access to non-timber forest products.

In Sambo district of Kratie province, concessions covering over 29,000 hectares were granted on 15 March 2006 to three foreign-owned companies, Global Agricultural Development (Cambodia) Co Ltd, Asia World Agricultural Development (Cambodia) Co Ltd and Green Island Agricultural Development. Current company activity in the area has encroached upon the land of Phnong, Mil and Kuy indigenous communities in Kbal Damrei commune, whose livelihoods depend upon the cultivation of rice and seasonal crops, supplemented by the collection of non-timber forest products. Since mid 2006, the companies have been clearing land and forested areas to create road access and teak plantations, and in so doing have destroyed rice fields and farm land belonging to villagers, and cleared dense forest. Villagers are concerned about their sources of livelihoods and wonder how their communities will survive in the future. Three other concessions granted in Sambo district affect indigenous communities in nearby communes.

In Prasat Balaing district of Kompong Thom province, the An Mady Group concession has encroached upon the land of Kuy indigenous people, who make up 65 per cent of the population in Sala Visai and Toul Kroeul communes, and depend upon rice cultivation and the collection of non-timber forest products. In late 2004, before the concession contract was signed on 9 May 2005, the company began clearing land, destroying rice fields, other farm land and forested areas. Villagers have reported food shortages, and 30 Kuy families have been displaced from their homes and relocated to small plots of land along the road, which are too small for cultivation. Some villagers received small amounts of compensation. Since the families no longer have access to farm land or non-timber forest products, many have had to resort to daily labour in order to support themselves, while others have moved further into forested areas to clear land for farming.

These two examples illustrate the detrimental impact of economic land concessions on the livelihoods of indigenous communities, and the threats to their customary ways of life. This is contrary to the

intent of the Land Law, which seeks to protect indigenous land and ways of life through the registration of collective title.

Impact on areas of cultural and spiritual importance

The encroachment of concessions upon traditional lands, particularly forested areas, also affects areas of cultural and spiritual importance to indigenous communities.

In Mondulakiri province, the activities of the partly foreign-owned Wuzhishan L.S. Group Co Ltd have affected Phnong indigenous communities in O'Reang district since 2004, although the concession contract was only signed on 30 December 2005. The concession encompasses grasslands and dense forest, and the spirit forests and ancestral burial grounds of the Phnong communities. The Phnong indigenous people are animist and their beliefs centre on spirits that control life at home, in the forest and in their fields. Offending the spirits can bring misfortune to the communities, such as poor harvests, sickness and death.³ During the process of clearing and planting, ancestral burial areas and spirit forests were desecrated. This cultural desecration, as well as encroachment upon grazing and farm land, has been a major source of concern for Phnong communities.

In Aural district of Kompong Speu province, New Cosmos Development (Cambodia) Co Ltd was granted an eco-tourism concession in May 2004 over an area of 900 hectares surrounding natural hot springs. This is the traditional land of the Suy indigenous people and is an area of cultural and spiritual importance, as well as being a vital source of livelihoods. The company and local authorities have tried on several occasions to remove the statue of the Suy goddess, Yeay Te, from its location near the hot spring. Suy elders are reported to now maintain a permanent presence by the statue to prevent its removal. Community members are allowed access to the statue, but have been barred access to other areas within the concession, which are important for spiritual life and community livelihoods.

Recent trends and future concerns

The ongoing grant of economic land concessions prior to the mapping and registration of state private land, and without due respect for the requirements of public consultation and environmental and social impact assessments, poses a serious threat of further alienation of indigenous traditional land. There also appears to be increasing demand for concessions not exceeding 1,000 hectares, which may be granted at the provincial level. In Kratie, information from provincial authorities indicates that 34 proposals for economic land concessions are under consideration, including 22 proposals for concessions of 1,000 hectares or less. In Mondulakiri, as of December 2006, 23 proposals for economic land concessions were reported to be under consideration, covering over 100,000 hectares and including 11 proposals for 1,000 hectare concessions. There is no comprehensive information available on concessions granted at the provincial level, or on provincial processes for granting concessions.

The growing number of mining concessions is another cause for concern, particularly in light of Government statements that mining is to be a vehicle for economic growth in the north-eastern provinces. In recent months, a license was granted to BHP Billiton and Mitsubishi Corporation to explore for bauxite over 100,000 hectares of land in Mondulakiri province, encompassing the traditional land of indigenous communities. There are also other mining concessions affecting indigenous land, for example in Veal Veng district, Pursat and Roveang district, Preah Vihear. Unless thorough and credible environmental and social impact assessments are undertaken with the informed and effective participation of local communities, these concessions have the potential to lead to

³ For further details, see Special Representative of the Secretary-General for Human Rights in Cambodia, report on land concessions for economic purposes in Cambodia, November 2004. Available at <http://cambodia.ohchr.org/>.

further land alienation and cause significant damage to the livelihoods, culture and well-being of indigenous communities.

The continued alienation of indigenous land through the grant of economic land and other concessions is undermining the ability of indigenous communities to register their collective ownership of traditional lands, as provided for by the Land Law. Without urgent and immediate action to protect indigenous ownership rights over their traditional land, there is increasing concern that little land will remain available for registration once the legal framework for the registration of indigenous communities and collective land title is finalized.

Who benefits from this ‘development’?

In light of the concerns described above, an important question is: who benefits from these ‘development’ initiatives?

In a number of cases, local community development initiatives are being overridden by the grant of economic land and other concessions, thereby disregarding the goal of improved livelihoods and poverty reduction in rural areas, envisaged by the National Strategic Development Plan 2006-2010. The prioritization of large-scale investment over community-based initiatives also runs contrary to the recommendations on rural poverty reduction made by the World Bank Cambodian Agrarian Structure Study 2005 and Poverty Assessment 2006.

In Aural district of Kompong Speu province, Suy indigenous people were working on a community-based eco-tourism project to manage the hot springs area sustainably and generate community income, with the support of Lutheran World Federation and Fauna and Flora International, and in cooperation with the Ministries of Environment and Tourism. They were told to stop activity in October 2004, after the foreign-owned New Cosmos Development Company was granted an eco-tourism concession for a large-scale project involving a golf course, hotel and entertainment facilities. The presence of the company has fuelled land speculation and further alienation of indigenous land, including land within reserved areas that was illegally sold by commune authorities. There is now insufficient land for families, and this is a source of community conflicts.

Similarly, Phnong indigenous communities near Bou Sra waterfall in Mondulkiri province were working with local authorities, with the support of DANIDA, to manage the site and develop small-scale tourist facilities. DANIDA invested over \$10,000 through the Ministry of Interior to support the development of a Local Resort Management Committee, preparation of rules and regulations for use of the waterfall, and protection of 368 hectares of land in the area. Despite this initiative and investment, in December 2006, an eco-tourism concession was granted to Solar Investment Co Ltd, with plans for larger scale development.

There are also examples of economic land concessions affecting community initiatives to establish community forests, in accordance with the Forest Law. In Kratie province, a community-based NGO, Community Economic Development, had been working since 2005 with local communities, including Mil and Phnong indigenous people, to establish a community forest in Kbal Damrei commune, Sambo district. Local authorities and forestry officials were aware of this initiative. However, as noted above, in 2006 three economic land concessions were granted over the land sought as a community forest.

In these cases, local communities were developing land management and livelihood strategies for the benefit of their communities, working with local authorities, NGOs and development cooperation agencies. Yet the process of granting concessions took no account of the initiatives underway, and accorded exclusive possession rights to private enterprises, to the detriment of local populations.

Recommendations

The following recommendations are proposed in order to protect indigenous rights to collective ownership of land and traditional use of forest resources, as recognized by Cambodian law. Action on these recommendations is urgently required.

To halt the alienation of indigenous land:

- Declare and enforce a moratorium on the sale and registration of land, and the grant of economic and other land concessions, in areas occupied by indigenous peoples.
- Promote a greater understanding of indigenous rights to land and natural resources, and continuing dialogue between the Royal Government of Cambodia and indigenous communities about the implementation of these rights.

To prevent the encroachment of land concessions on indigenous land:

- Review all existing economic land concessions to ensure they do not encroach upon land used by communities, including forested areas.
- Ensure that all economic land concessions, including those under 1,000 hectares, comply fully with requirements of the Sub-Decree on Economic Land Concessions, and that public consultations and full environmental and social impact assessments are conducted prior to granting concessions.
- In the case of other land concessions, including tourism and mining concessions, ensure that public consultations and full environmental and social impact assessments are undertaken prior to granting concessions.
- Publish information on economic land concessions, mining concessions and tourism concessions granted and proposals under consideration, including location, size, use and information on concessionaires.
- Document the current use of land and natural resources in areas occupied by indigenous communities, and monitor encroachment upon traditional indigenous land.
- Promote the active participation of indigenous communities in the mapping of state land, including forested land.

To promote the registration of indigenous collective title:

- Assist indigenous communities to demarcate their traditional lands for registration, and provide preliminary recognition of this land pending the full process of registration of indigenous communities as legal entities, and of collective land title.
- Support indigenous communities to take other steps required to register collective title, including the legal registration of indigenous communities.