



Indigenous Issues

[The occasional briefing papers of the Asian Indigenous and Tribal Peoples Network (AITPN)]
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CAMBODIA:

A case for moratorium on the sale of indigenous lands

On 20 December 2006, at a meeting in Ratanakiri province's Banlung town between the Ministry of Land Management of the Royal Cambodian Government and representatives of more than 100 ethnic minority groups from five provinces of Kratie, Mondolkiri, Preah Vihear, Ratanakiri and Stung Treng, the government unveiled plans to register and protect land belonging to Cambodia's ethnic minority communities. According to the draft policy paper distributed at the meeting, private state land includes land for home construction and farmland. Public state land also includes spirit forests and forest cemeteries, which will be managed by minority communities and cannot be sold. The draft policy paper stated that each minority village will be allowed to set aside two hectares for spirit forests and five hectares for forest cemeteries and the amount of land for farmland and house construction will depend on the number of villagers living in a particular area.^[1]

In July 2001, the National Assembly (Parliament) of Cambodia passed the Land Law of 2001. Among others, the Land Law provided for indigenous communities to gain title to their lands, either in their individual capacity or collectively as a community. Article 25 of the Land Law defined indigenous communities' rights where they (i) have established their residences; (ii) carry out traditional agriculture; and (iii) other areas reserved for shifting cultivation as required by the agricultural methods they currently practice and are recognized by the administrative authorities.^[2]

However, the government had little seriousness. The apathy of the authorities can be best judged from the fact that a pilot project for registration of land of indigenous communities is supposed to start in Ratanakiri province from January 2007,^[3] 6 years after the adoption of the Land Law of 2001.

UN reports on the issue:

Complaints of human rights violations affecting Cambodia's indigenous peoples were reported by the UN Special Representatives of the Secretary-General on the situation of human rights in Cambodia. Special Representative, Thomas

Hammarberg in his 1999 report to the Commission on Human Rights stated, “the rights of indigenous communities to land and the natural resources on which their livelihoods depend is under threat not only because of logging and plantations, but also from land grabbing, which takes several forms: bribes to the weakest members of a community, false promises, enticement, or simply intimidation and violence”.^[4]

Thomas Hammarberg's successor Peter Leuprecht also called for no more economic land concessions to be awarded, and for the registration of individual titles to be prohibited on state land eligible for indigenous collective title until the sub-decrees are in effect. All the Special Representatives on Cambodia have warned that Cambodia's indigenous peoples are becoming more and more vulnerable to land confiscation and alienation of their lands. There is now growing concern that there will be little land left to title by the time these sub-decrees and other legislation are put in place.^[5]

The key concerns relating to indigenous peoples' land rights are the following:

I. Slow development of legal instruments

Legal instruments to recognize the indigenous communities as legal entities remain the prerequisite in Cambodia. Of late, the Ministry of Interior of the Royal Government of Cambodia has reportedly been active and supportive in developing model statutes which indigenous communities can adopt or adapt for use in the legal registration process. A sub-decree on indigenous communal title which is being drafted by a team for an Inter-Ministerial Task Force to lay down the requirements for legal recognition of communal land ownership is yet to be completed. A pilot project of the Ministry of Land Management for registration of the lands of indigenous communities is being implemented by the national task force. Unfortunately, this process has been exceedingly slow and a large amount of indigenous community land is being lost in the meantime. Land alienation has been taking place at an exceedingly alarming rate.^[6]

II. Land concessions or alienation?

Of particular concern is the proliferation of “land concessions” issued by the Royal Government of Cambodia to companies in provinces like Kompong Thom, Stung Treng and Kratie,^[7] Ratanakiri and Mondulkiri. These included 70,000 hectare concession given to private companies over Suy indigenous peoples' land in Kompong Thom, 1,400 hectare gem mining concession over indigenous peoples' land in Lumphat district, another 2,000 hectare gem mining concession

over indigenous peoples land in Borkeo district in Ratanakiri province. In Mondulakiri, the authorities proposed a concession of 200,000-hectare land.^[8] These land concessions are given to establish industrial agricultural plantations like rubber and cashew nut or for mining and industrial operations. Once the concessions are granted, the companies clear the forest and reduce indigenous minority people into positions of subservience and poverty, their natural resources being removed from their management and use.^[9]

In 2005, Wuzhishan LS Group, a company controlled by the Chinese government was given a land concession of 199,000 hectares at Phnong village in Cambodia's eastern province of Mondulakiri. The Phnong, a highland people numbering 35,000, accused the company of encroaching on traditional burial land and a holy spirit forest, as well as using chemicals affecting the health of people and animals. The concession also reportedly encroached land planned for inclusion in a large Japanese development project.^[10] The Phnong villagers mounted unprecedented protest against the concession and the Representative of the Japanese Government has also reportedly asked Cambodia's Senior Minister Sok An, who is said to have negotiated the concession deal, for an explanation and threatened to suspend their own project commitment.^[11]

III. Illegal sales of indigenous land

There has been continuing growth of land "sales" that involve misinformation, coercion, threats, bribes to officials and other illegal mechanisms. The local officials, often in collaboration or under threat and intimidation from higher level officials or business people, start the process of illegal sale of land. The companies often induce the indigenous peoples.^[12]

According a human rights group from Cambodia, it received 356 land grabbing complaints in 2004 against 148 such complaints in 2003. Many such cases were reported in 2006 also. In one case, vast tracts of indigenous community land in Ratanakiri province that was told to have been reserved for development, has been clandestinely conceded to a rich and powerful businessman by the local authorities. In January 2006, the said businessman without securing a title deed of ownership began to clear the lands and destroyed the crops. While protesting the grabbing of their lands and the destruction of their crops, two of the villagers were arrested and charged with causing damage to other people's property.^[13]

Threat and intimidation form a part of such land grabbing. At 11:20pm on 15 November 2006, Mr. Pen Bonnar, 44-year-old provincial coordinator for local rights group ADHOC in Ratanakiri province received a death threat message to

his mobile phone from an anonymous person. Mr. Bonnar suspected that this was a well planned threat upon him by government officials or businessmen who might be annoyed by his work against illegal land grabbing in the province.^[14] While proceeding in a case filed by Pen Bonnar, on 23 November 2006, a Cambodian court sentenced eight people, including a former provincial governor, to up to 17 years in jail for taking bribes to allow a Vietnamese company to log in a national park. While former Rattanakiri governor Kham Khoeun, who was sentenced in absentia after going into hiding, received 17 years, the others, military officers, police chiefs and forest rangers, got between 13 and 15 years. Judge Ke Sakhan also ordered them to pay \$15 million for the destruction of the forest.^[15]

IV. Recommendations

Land being central to the survival of indigenous communities, the loss of land destroys the cohesion of the community and leads to social disintegration. However, despite repeated assurances, the Royal Government of Cambodia has failed put in place the legislations to protect the lands and resources of the indigenous communities. Nor has it paid any heed to recommendations of the Special Representatives of the UN Secretary General on the situation of human rights in Cambodia to place a moratorium on further land sales or alienation pending such legislation. Indigenous community leaders and indigenous rights workers believe that unless there are real reforms in the legal systems are undertaken and the perpetrators of all the illegal sales are brought to justice, there will be no improvement in the situation.

In the light of the foregoing challenges and problems, Asian Indigenous and Tribal Peoples Network (AITPN) recommend the following: -

1. The drafting of the legal instruments which are the prerequisite for recognizing the indigenous communities as legal entities must be expedited;
2. Adoption of the National Policy on Indigenous People Development submitted to the Council of Ministers in 2006 be expedited;
3. Drafting of the Sub-Decree and other enabling legislations required for issue/grant of communal/ collective title of indigenous community lands be expedited and completed in a time bound manner;

4. Implement the recommendations of all the Special Representatives of the Secretary General and place a moratorium on further land sales or alienation and issuance of land concessions.

ENDNOTES:

- [1]. Govt.'s Plans Pilot Indigenous Land Registration, The Cambodia Daily, 24 December 2006
- [2]. <http://www.ngoforum.org.kh/Land/Docs/Indigenous/Rethiking/Part%20I.htm#Part%20I>
- [3]. Govt.'s Plans Pilot Indigenous Land Registration, The Cambodia Daily, 24 December 2006
- [4]. Report to the Commission on Human Rights on the situation of human rights in Cambodia, UN Doc., E/CN.4/1999/101, 26 February 1998, para. 132.
- [5]. Statement by the Office of the UN High Commissioner for Human Rights in Cambodia dated 9 August 2005
- [6]. NGO Statement to the 2006 Consultative Group Meeting on Cambodia
- [7]. *ibid*
- [8]. Land alienation from the indigenous peoples in Cambodia, NGO Forum Cambodia
- [9]. *Ibid*
- [10]. Cambodia: Phnong Land Rights Under Threat, available at: <http://www.refintl.org/content/article/detail/6234/>
- [11]. <http://www.ahrchk.net/statements/mainfile.php/2006statements/446/>
- [12]. NGO Statement to the 2006 Consultative Group Meeting on Cambodia
- [13]. <http://www.ahrchk.net/statements/mainfile.php/2006statements/446/>
- [14]. CAMBODIA: Death threats to an activist working against land grabbing in Ratanakiri, <http://www.ahrchk.net/ua/mainfile.php/2006/2094/>
- [15]. Cambodian court jails eight for illegal logging, 23 November 2006, available at : <http://www.alertnet.org/thenews/newsdesk/BKK292191.htm>