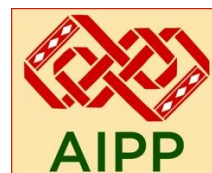


Cambodia Indigenous
Peoples Alliance
(CIPA)



Situation of Indigenous Peoples in Cambodia

Submission for the 3rd Cycle of Universal Periodic Review of Cambodia
32nd Session of the Human Rights Council
January – February 2019

Submitting Organisations:

Cambodia Indigenous Peoples Alliance (CIPA)

CIPA is an alliance of indigenous communities and peoples' organisations, associations, and networks. It serves as a platform for solidarity, cooperation and coordination of actions for the promotion and assertion of the collective rights of indigenous peoples in Cambodia

<https://www.facebook.com/profile.php?id=100008481934118>

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Cambodia Indigenous Youth Association (CIYA)

CIYA works on building capacity of indigenous youth regarding the relevant international and national laws, human rights documentation and advocacy, peace-building, accountability, transparency and integrity. It has members from eight provinces of Cambodia. All have been actively contributing to the indigenous communities struggles on land rights, particularly to agri- business companies and hydropower projects. It has around 750 members approximately 300 of which are involved in all CIYA activities and the remainders are based and work in eight provinces of Cambodia.

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Asia Indigenous Peoples Pact (AIPP)

AIPP is a regional organization founded in 1988 by indigenous peoples' movements. It is committed to the cause of promoting and defending indigenous peoples' rights and human rights and articulating issues of relevance to indigenous peoples. Based in Chiang Mai, Thailand, AIPP currently has 48 member-organizations from 14 countries in Asia. It has Special Consultative status with the UN Economic and Social Council (ECOSOC) since 2012.

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I. Indigenous Peoples in Cambodia

1. Cambodia is a multi-ethnic country of 14.8 million people with Khmer making up 90% and around 1.34% are indigenous peoples. There is no definite statistical data on indigenous peoples in Cambodia. But the 2015 Commune Database Statistic shows that there are around 276, 878 indigenous peoples from 24 different indigenous communities in 15 provinces of Cambodia, with the highest populations in Ratanakiri, Mondulakiri and Kratie.
2. The lack of appropriate legal recognition of ‘indigenous peoples’ in Cambodia is among the reason for having no reliable statistical data on indigenous peoples. Further, it has been established and recognized that non-recognition of indigenous peoples’ profound relationship to their lands, territories and resources leads to gradual deterioration of their indigenous societies.ⁱ This is profoundly true in Cambodia. Indigenous communities are recognized from their language but many of them have lost their ability to speak their own tongue affecting their confidence to declare their indigeneity.ⁱⁱ The loss of language is a result of long history of discrimination and lack of legal recognition of indigenous peoples that persists until today.
3. There are, however, laws and policies that refer to indigenous peoples in Cambodia and use varying terms such as ‘indigenous communities’, ‘indigenous ethnic minorities’ and ‘highland peoples’, but these effectively describe the same peoples. They include Bunong, Kui, Tompourn, Kroeung, Brov, Karvèt, Stieng, Kroal, Mil, Karchak, Por, Khoan, Chornng, Sui, Thmoun, Loun, Soauch, Rodè, Khe, Ro Orng, Spong, Loeun, Charay and Samrè. It is believed there are other communities of indigenous peoples that are yet to be identified and added in this list.ⁱⁱⁱ
4. Among the main issues of indigenous peoples in Cambodia are the loss of their rights to land through economic land concessions (ELCs) and land conflicts, population growth and in-migration. The degradation of forest and general loss of their rights to their lands have gravely affected their impoverishment, education and health.
5. Cambodia has adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), including nine of the core treaty bodies that are reflective of the principles of UNDRIP. It has not ratified the ILO Convention 169.

II. Follow-up and developments since the 2nd UPR

6. It is notable that in the 2nd Cycle UPR, the Royal Government of Cambodia’s (RGC) national report mentioned that their Education Ministry has prepared the fast track program of learning for minorities and indigenous peoples.^{iv} The programme included provision of scholarship to primary schools in Ratanakiri, Mondulakiri and Preah Vihear provinces and expansion of a bilingual education programme, particularly targeting the remote areas. Further, RGC elaborated on the issue of land rights and noted the significance of the Land Law of 2001.^v It is also notable that in 1st UPR, RGC reported about its efforts on the procedures of land registration of indigenous communities and recognition of the rights of traditional land use of indigenous peoples communities.^{vi} In its 2nd UPR report, it has particularly highlighted the fair compensations to resettlement, systematic approach to land registration and specifically noted that “eviction is not a policy of RGC.”^{vii}
7. This submission will particularly update on these issues of land rights and focus on the situation of indigenous peoples.

Land rights and justice

8. RGC’s Forest Law of 2002 and Land Law of 2001 recognise indigenous peoples’ traditional use of land and the latter allows indigenous peoples to apply for community land titling (CLT). However, the process to apply for community land titling have been particularly challenging for indigenous

peoples. As of December 2017, among 458 indigenous villages in fifteen (15) provinces, only nineteen (19) of them have their land registered as indigenous collective land titles or 16,271 hectares of land for 1,774 families.^{viii}

9. The complexity of acquiring CLT has been raised in a joint communication of the Special Rapporteur on the Rights of Indigenous Peoples and Special Rapporteur on the Situation of Human Rights in Cambodia issued to RGC on 1 December 2017.^{ix} The joint communication pointed out that the “complex and costly land titling processes – in which indigenous peoples and supporting organisations bear the bulk of the financial costs – are putting indigenous peoples in Cambodia at serious risk of losing their traditional lands and resources, in particular sacred forests and gravesites, and their distinct identities as indigenous peoples.” It forwarded a number of observations seeking response from the RGC within 60 days since the issuance of the joint communication but the RGC has ignored this.
10. Further, the economic land concessions (ELC) have been among the major impediment for indigenous peoples to apply for CLT as well as main challenge with regards to respecting indigenous peoples’ rights to LTR and free, prior and informed consent (FPIC). Despite Cambodia signing the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), indigenous peoples rights, particularly their collective rights to LTR and FPIC, are disregarded if not violated outright. Also, indigenous peoples remain to be the most marginalised and discriminated with regards to basic social services, particularly on health, education and livelihood (see paragraph 19-23).
11. There have been 267 economic land concessions (ELC) granted in 2016^x amounting to over 2 million hectares across Cambodia. These ELCs involve development projects such as large-scale agribusiness, mining and hydro-power development projects. At least 98 of these ELCs involve the lands, territories and resources (LTR) of indigenous peoples. None of these development initiatives that involve indigenous territories have gone through the process of FPIC. ELCs hve always been discussions between companies and the RGC. Often, communities are left to deal with companies as in the case in Lao Ka village, Mondulkiri province in Cambodia, which escalated in January 2018 when three indigenous peoples human rights defenders (IPHRDs), led by an indigenous woman, were accused of intimidations and charged with criminal and civil case for leading the community to put a stop to workers, escorted by police officers, who suddenly came to clear their forest.^{xi} The IPHRDs had only wanted to get clarification regarding their intended activity of clearing the community forest without their prior knowledge.
12. Furthermore, these 98 ELCs are mainly for rubber and other industrial plantations. The ELCs in Ratanakiri province alone cover 21% of the total provincial land areas.^{xii} There are also two (2) dams currently operating while three (3) dams are under construction, and 7 are planned to be built along the Sesan Rivers. The Lower Sesan II (LS2) inaugurated in September 2017 resulted to fully submerging Kbal Romeas village in Stung Treng province, and displacing 83 families.^{xiii} Aside from the immediate impact of displacement, dams affect the overall land and water ecology of the affected areas. Studies have proven that indigenous peoples’ survival and overall wellbeing are tied to their LTR;^{xiv} lack of access and control over lands, and cutting ties from their LTR causes irreparable damage to indigenous peoples’ culture and tradition, livelihood, education, and health and overall development and wellbeing.

Recommendations:

13. RGC should respond to the joint communication of the Special Rapporteur on the Rights of Indigenous Peoples and Special Rapporteur on the Situation of Human Rights in Cambodia (OL KHM 6/2017) regarding the “current slow pace at which indigenous land titling is currently taking place.” Highlighting the recommendations in this joint communication,
14. RGC should to simplify the collective land title application process, including by reducing procedural requirements such as preliminary mapping and the number of ministries involved.

15. RGC should revoke the limitation of indigenous peoples' sacred forests and gravesites (seven hectares respectively) in their collective land title applications.
16. RGC should ensure that indigenous peoples have the necessary technical support, including for cadastral surveys of their community, recognition of their legal status and completion of the necessary procedures once they have submitted their applications.
17. RGC should work with indigenous peoples in sensitizing the ministries involved to indigenous rights and ensure a non-discriminatory treatment and service provided.
18. RGC should ensure that their Environment and Natural Resources Code of Cambodia and associated guidelines and Law on Agricultural Land that are being drafted, including its 2001 Land Law correspond to RGC's international human rights obligations – in particular with regard to procedural safeguards including consultation and consent – and its recognition of indigenous peoples' land rights.

Democracy, rule of law and indigenous human rights defenders

19. The current shrinking of democratic space in Cambodia,^{xv} particularly with the recent result of election in August wherein Cambodia's ruling party won all seats in parliament,^{xvi} access to justice, corruption and impunity of government representatives, particularly of the Prime Minister's family that has links with business conglomerates in the country, including ties with the military.^{xvii}
20. Compromised democracy with the CPP having absolute control to the government is particularly challenging for indigenous peoples human rights defenders (IPHRD), particularly in consideration of the reality that they remain to be marginalised. IPHRDs are often in remote villages and the harassment being done to them due to their legitimate demands for land rights are missed by the media. This reality also affects their access to justice. Further, in addition to the case of the indigenous woman human rights defender mentioned above (see paragraph 11), an IPHRD is currently facing security issue on his own and his family's safety. This harassment is believed to be related to his efforts to acquire CLT for his community of Chong indigenous peoples and his refusal to join the CPP after his political party of Cambodia National Rescue Party (CNRP) was dissolved by CPP in November 2017.^{xviii}
21. Moreover, the local demonstrations^{xix} against the LS2 dam led to the issuance of the Provincial Deputy Prosecutor, Kim Hongsan, a subpoena to three IPHRDs from Kbal Romeas on 12 September 2017 under the grounds of "incitement to commit crimes."^{xx} To this date, the three remain to seek safety and refuse to submit to the subpoena for fear of an unduly arrest.
22. Also, at the first quarter of 2018, a land dispute that started in 2008 involving the Vietnamese-owned, Memot rubber plantation, in Pi Thnou commune in Kratie province' Snuol District, Cambodia resulted to eight (8) killings and injuring dozens more as authorities opened fire and forced them to leave their lands by burning their houses down.^{xxi} Cambodian government granted 9,855 hectares of an economic land concession to Hun Mana, daughter of Prime Minister Hun Sen, in 2008, including the 700 hectares that was sold to make way for the rubber plantation.^{xxii}

Recommendations:

23. RGC should take further measures to proceed with its judicial reform, to address land issues and to combat corruption, as these are important for the promotion and protection of human rights as well as the consolidation of democracy.
24. RGC should ensure a clear-cut separation of power and the rule of law and follow through with the commitment toward the continuation of implementation of its reform program in all sectors in a more in-depth manner, particularly - individual rights, collective rights, and multi-party system and pluralism.

25. RGC should respect the rights of indigenous peoples to free, prior and informed consent as per UNDRIP, in particular regarding management of their LTR, including any development initiative that will impact their lives and overall wellbeing.
26. RGC should ensure that IPHRDs are not criminalised and ensure access to justice for all IPHRDs, including

Discrimination, poverty, basic social services (right to health, education and livelihood)

27. In Cambodia's Development Context of Cambodia Indigenous Peoples Organisation (CIPO) in 2016, Ratanakiri and Mondulakiri provinces where a large number of indigenous peoples live have poorer health status. The health indicators are significantly below the national average. Around 80 percent of the indigenous household faces chronic food infection, particularly infant between 4 to 8 months old. Among the causes identified are: poverty, remoteness, lack of understanding and the knowledge of indigenous peoples' culture and the poor health service available in the area, the limited land for cultivation, modern agriculture technic and market skills and daily proper food.
28. Further, indigenous peoples have lower education achievement than the majority Khmer. In Mondulakiri, 58.26 percent of children have not enroll in primary school. A report of the Ministry of Education in 2013 have also mentioned that enrolment has decreased and dropout rate has increased. The poverty, out-migration, seasonality for farming, poor school infrastructure, distance from school, irregular teaching schedules, unattractive school environment, and low awareness of private return of education are the factors of students school drop-out (Ministry of Education , 2013).
29. The confusion/inconsistency and lack of data on indigenous peoples may cause a bias against indigenous peoples in inclusive development as well. Putting the proportion of indigenous people at a miniscule 1.4 percent, may lead to inappropriate and irrelevant development outcomes/intervention if government and NGO's merely replicate lowland development approaches to apply for all marginalized groups, including indigenous peoples where their culture and lifestyle are unique and attached to land and natural resources.
30. The literacy rate among the indigenous peoples is quite low, only 29% of indigenous peoples can write and read Khmer language compared to the general population with 77.1%. Indigenous peoples completing beyond primary education (after grade 7) rate is only 27.1%, while general Khmer is 52.8%.
31. Also, 10.5% of indigenous girls aged 15 years or less get married earlier compared to Khmer with only 1.5% of them. Further, for ages between 15 – 19 years, 55% of indigenous girls are married early while Khmer is only 39.7%, and for ages between 20 – 24 years, 86.2% indigenous women get married while Khmer is only 82.7%.

Recommendations

32. RGC should legally recognise all indigenous peoples and work with indigenous organisations in other indigenous communities that are currently not in the Government's list. It should uphold UNDRIP, including all the international human rights instruments it has ratified.
33. RGC should demonstrate its tolerance to diversity through declaration of the International Day of Indigenous Peoples commemorated every 9 August as national holiday.
34. RGC should implement their 2030 Agenda in cognisance of indigenous peoples situation and rights, including ensuring disaggregated data by ethnicity are put in place when monitoring the implementation of the 2030 Agenda.

35. RGC should consider reviewing the bilingual education programmes in consultation with indigenous peoples, and in line with CERD and UNESCO recommendation,^{xxiii} to ensure a method that will improve the learning environment for indigenous peoples.
36. RGC should provide particular assistance to indigenous women and girls and ensure full support to achieve proper education until tertiary level.
37. RGC should ensure full and equal access to public health and education services for indigenous peoples through increasing the number of health care and education facilities that sensitive to indigenous peoples culture and rights.

ⁱ Report of Special Rapporteur Erica Irene Daes, E/CN.4/Sub.2/2002/23

ⁱⁱ Indigenous Navigator baseline factsheet from Cambodia Indigenous Peoples Organisation. (unpublished document) but see: <http://nav.indigenousnavigator.com/index.php/en/>

ⁱⁱⁱ Indigenous Navigator baseline factsheet from Cambodia Indigenous Peoples Organisation. The 1998 national census only identifies 17 indigenous groups.

^{iv} A/HRC/WG.6/18/KHM/1, para. 69 – 70.

^v A/HRC/WG.6/18/KHM/1, para. 16 – 24.

^{vi} A/HRC/WG.6/6/KHM/1, para. 44 – 45

^{vii} A/HRC/WG.6/18/KHM/1, para 23

^{viii} Annual progress report Dec 2017 of Ministry of Land Management, Urban Planning and Construction (MLUPC)

^{ix} <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23484>

^x Link of Ponlok Khmer report

^{xi} Further information is not available for public sharing. The case has been forwarded to UN Special Rapporteur on the Rights of Indigenous Peoples confidentially.; see related news: <http://www.phnompenhpost.com/national/mondulkiri-police-question-adhoc>

^{xii} According to Highlander Association report on August 2017

^{xiii} <http://www.phnompenhpost.com/national-post-depth/life-after-flood-sesan-dam-holdouts-rue-their-losses-see-fragile-victory>; see also, <https://www.npr.org/sections/parallels/2017/08/26/546036670/i-will-lose-my-identity-cambodian-villagers-face-displacement-by-mekong-dam>;

Also, despite losing their homes, farms, spiritual forest and disrupting the social ties of the community, the families refuse to move to the resettlement area (see [link](#) for more info) and now calling for the commitment of Prime Minister Hun Sen and Deputy Governor of Stung Treng, Duong Pov, in supporting their demands for compensation and facilitation for community land registration and restoration of infrastructure. [*Letter from Cambodia Indigenous Peoples Alliance (CIPA) to PM Hun Sen and Deputy Governor, Duong Pov is not yet available for public sharing. It will be forwarded to UNSRRIP confidentially.*]

^{xiv} http://www.un.org/esa/socdev/unpfii/documents/6_session_factsheet1.pdf

^{xv} See: <http://www.nydailynews.com/newswires/news/national/cuts-aid-cambodia-citing-anti-democratic-actions-article-1.3844449> and

<https://www.phnompenhpost.com/national/cambodia-plunges-democracy-survey-after-cnpr-dissolution>

^{xvi} <https://www.reuters.com/article/us-cambodia-election-result/cambodias-ruling-party-says-it-won-all-125-parliamentary-seats-idUSKBN1KK0HN>

^{xvii} <https://www.globalwitness.org/en/reports/hostile-takeover/>

^{xviii} <http://iphndefenders.net/cambodia-investigate-without-delay-harassment-indigenous-activist-areng-valley-restore-foundations-democratic-governance/>

^{xix} <http://iphndefenders.net/joint-call-cambodias-indigenous-peoples-forced-evictions-indigenous-communities-kbal-romeas-village-lower-sesan-2-dam/>

^{xx} <http://iphndefenders.net/cambodia-lower-sesan-ii-dam-protesters-summonsed/>

^{xxi} <https://www.rfa.org/english/news/cambodia/shooting-03092018154857.html>; see also: <https://www.phnompenhpost.com/national/villagers-flee-rubber-plantation-where-security-personnel-fired-protesters-kratie-province> and <http://www.phnompenhpost.com/national/second-land-protest-kratie>

^{xxii} <https://www.cambodiadaily.com/news/hundreds-of-evictions-ordered-on-hun-daughters-plantation-134107/>

^{xxiii} A/HRC/WG.6/18/KHM/2, para 64.