

Cambodia



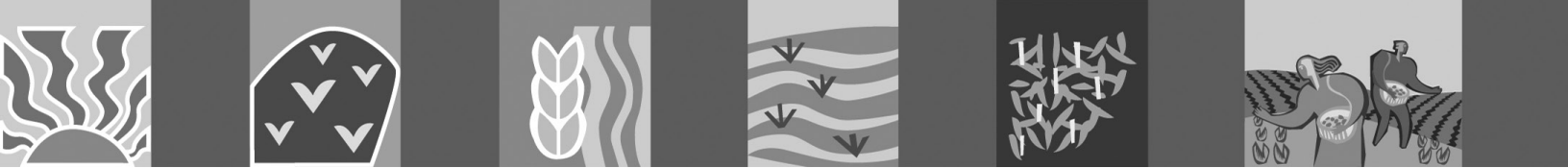
Kui indigenous people walking over what used to be their farmland after it was cleared for the Lan Fen and Rui Feng rubber plantation in Tbeng Mean Chey District, Preah Vihear Province.

Photo by CIYA

According to a study by the International Work Group for Indigenous Affairs (IWGIA) in 2012, there are an estimated 200,000 indigenous peoples in Cambodia, or a mere 1.2% of the country's population. Another report by the NGO Forum of Cambodia (2008) estimates IPs in the country to number from 101,000 to 190,000, or 1.4 % of the population.

The Cambodian government's 2009 National Policy on the Development of Indigenous People (NPDIP) lists 24 different indigenous ethnic groups found in 15 of Cambodia's 23 provinces (World Faiths Development Dialogue, 2008).

Condensed from *Scoping Study on the Access to and Control of Land by Indigenous People in Cambodia* by NGO Forum on Cambodia. For more details of the case, contact: ngoforum@ngoforum.org.kh.



Legal framework related to indigenous peoples' land rights

International law

Cambodia is legally committed to the following international treaties, covenants agreements, and declarations:

- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). *(However, the country has not ratified ILO Convention no. 169, which defines indigenous peoples' rights to lands, territories and resources under international law.)*
- International Covenant on Social, Economic and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Climate Change & REDD+

It has also to be noted that IP rights, including rights to land, territories and resources, are not a special new category of rights but form part of the indivisible human rights of all human beings, which are contextualized to reflect the group and communal dimension of IP way of life.

Accordingly, all the rights of IPs are confirmed and underpinned by major human rights treaties. The Royal Government of Cambodia (RGC) has ratified most of the key international human rights treaties, with a bearing on indigenous peoples' land rights, including the Convention on the Rights of the Child (CRC), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention Concerning the Protection of the World Cultural and Natural Heritage, and the Convention on Biological Diversity (CDB).

None of the international human rights instruments mentioned seem to be effectively enforced in Cambodia. Many of the treaty monitoring bodies and Special Procedures of the UN, such as the Special Representative on Human Rights in Cambodia raised concerns about land grabs and lack of respect for the rights of indigenous peoples to land.

National laws, policies, programs, structures and mechanisms

Land management

Land Law 2001. In 2001 the RGC passed a new Land Law, which classified Cambodian land into five categories: State Public Property; State Private Property; Private Individual Property; Monastery Property, and Collective Indigenous Community Property (Land Law 2001, Art. 16). State Public Property (Articles 15 and 16 Land Law) is land held by the state in public trust, which carries a public interest use.

State Private Property can be privately possessed, sold and owned. According to the Land Law 2001, State Public Property may be reclassified as State Private Property if the property loses its public interest use.

According to the Land Law, any person who enjoyed peaceful, uncontested possession of land – but not State Public Land – for at least five years prior to the law's promulgation has the right to request a definitive title of ownership.

National Policy on the Development of Indigenous Peoples. In 2009, the Ministry of Rural Development (MRD) produced the National Policy on the Development of Indigenous Peoples (NPDIP), which was approved by the plenary of the Cambodian Council of Ministers on 24 April



2009. The main goal of the NPDIP is to improve the livelihoods and accordingly the quality of life of indigenous communities.

Economic Land Concessions

Sub-Decree on Economic Land Concessions (ELCs). The Sub-Decree was adapted by the RGC in December 2005, to establish the legal and regulatory framework for the granting and management of concessions. The following conditions need to be met for an ELC to be granted:

- The land must be classified and registered as State Private land;
- A land use plan must have been adopted by the Provincial-Municipal State Land Management Committee and the proposed use of the land should be consistent with this plan;
- An Environmental Social Impact Assessment (ESIA) must have been completed in relation to the land use and development plan for an ELCs projects;
- The proposed land concession must present solutions for resettlement issues and the government shall ensure that there will be no involuntary resettlement of lawful land holders and that access to private land is respected;
- Public consultations with territorial authorities and residents of the locality on the concession projects have been held (Note that there are no guidelines on how such consultations should be conducted).

ELCs ranging from 1,000 to 10,000 hectares (ha) can be granted to companies. According to article 5 of the Sub-decree, ELC applications should be evaluated in light of the “*promotion of living standards of the people, perpetual environmental protection and natural resources management and avoidance or minimizing of adverse social impacts*”. Under Sub-decree No. 72 on the



A community representative of Prap Tuch in Busra Commune sharing his sentiments about their lands being acquired by another party.

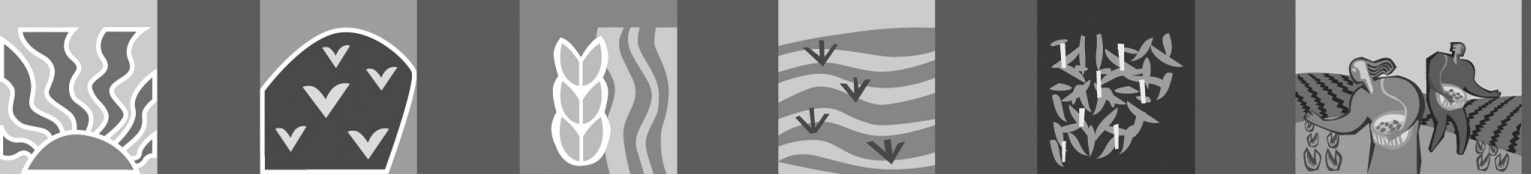
Photo by NGO Forum of Cambodia

Environment Impact Assessment Process, all ELCs have to submit an ESIA study to the Ministry of Environment to receive approval from the RGC.

ELCs and indigenous peoples’ rights

Land Law 2001. The law has specific provisions, under articles 23 through 28, referring to land rights of indigenous peoples. Article 23 defines an indigenous community as made up of “members who manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.”

Article 25 defines the land of indigenous communities as those “where the said communities have established their residences and where they carry out traditional agriculture”. Article 26 confirms that the property right given to the community is a collective one. Article 27 provides for a situation whereby a member of the indigenous community would like to exit that community and claim his part of the property.



Finally, Article 28 confirms the absolute property right by indigenous communities of their land, by stating “No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community.”

Forestry Law 2002. This law contains important provisions on traditional use and access rights to forest resources, though these do not include management rights. The law has provisions that allow for the creation and management of community forests, whereby communities are granted an area of the Permanent Forest Reserve to manage and derive benefits from.

Registration, collective land titles and interim measures. In line with the Land Law and the 2009 Sub-decree on Procedures of Registration of Land of Indigenous Communities, the IPs wishing to receive a communal land title need to follow the three steps listed below:

- Identification of indigenous peoples and communities
- Registration of the IP community as a legal entity
- Registration of the collective land title and issuing the title

The whole process has been subject to heavy criticism by IP organizations and CSOs because of the amount of procedural hurdles one needs to overcome in order to go from one step to another.

Directive 01BB. In July 2012, the RGC launched Directive 01BB: Measures Reinforcing and Increasing the Efficiency on the Management of Economic Land Concessions. Among other things, the directive called for increased monitoring of ELCs and reinforced the concept of a “tiger (or leopard)-skin policy”. The policy stipulates that land inhabited by farmers (that also applies to indigenous communities) must be cut out of the

concession areas, leaving areas used by farmers in shapes resembling leopard or tiger using patterns.

Dispute Resolution and Recourse Mechanisms

Cadastral Commission. This body has the competence to identify properties, establish cadastral index maps, issue ownership titles, register land and inform people about the status of each parcel of land.

National Authority for the Resolution of Land Disputes. This Authority is made up of 17 high-ranking officials from various ministries. However, according to observers, its members have largely delegated its tasks, rendering the body ineffective in practice.

Suspension of a concession contract. The Ministry of Agriculture, Forestry and Fisheries (MAFF) has the power to suspend an ELC contract with a company, in cases where the company in question fails to respect the conditions and terms of the ESIA reports or where there are disputes between the local population or other third parties related to a concession land.

Domestic courts. IP communities and CSOs remain very skeptical about the efficiency and impartiality of the Cambodian justice system, which continues to be the subject of concern among numerous actors such as the United Nations.

Policies and laws on agriculture, land use, food security, conservation and forestry, that also have impact on IPs

Rectangular Strategy. The Rectangular Strategy for Growth, Employment, Equity and Efficiency – Phase II is the RGC’s main socio-economic policy



agenda for the Fourth Legislature of the National Assembly (2008-2013). It aims to improve agricultural productivity and diversification, land reform and de-mining, fishery reform and forestry reform. The strategy aims to promote an equitable and efficient system of land management, distribution and utilization. It also undertakes to provide support for land registration and distribution, land tenure security, eradication of illegal settlements and land grabbing.

Royal Government of Cambodia's National Forestry Policy. This document is not so much a policy but "Royal Government on National Forest Policy Statement." Cambodia still needs to develop a comprehensive forestry policy.

National Strategic Development Plan update 2009-2013. According to this policy document, the RGC will "continue to resolve land conflicts by using legal mechanisms to ensure justice coupled with the out-of-court conflict settlement mechanism."

Agriculture Sector Strategic Development Plan 2006-2010. This document has identified the following seven strategic objectives for the agriculture, fisheries and forestry sectors:

- Food security, productivity, diversification;
- Improve and strengthen agricultural research and extension systems;
- Market access for agricultural products;
- Institutional and legislative development framework;
- Land reform - land market development and pro-poor land access;
- Fisheries reform - sustainable access;
- Forestry reform - promote sustainable conservation and management of forests, ensure better management of natural protected areas.

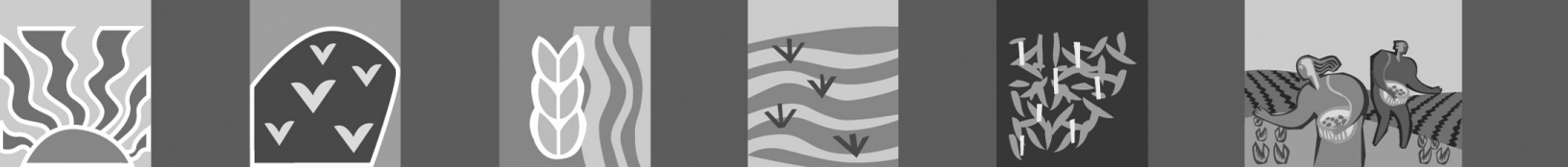
Effectiveness of laws, policies, structures and mechanisms

Lack of implementation of laws and policies re IP land rights. There seems to be a near universal consensus among domestic and international CSOs, as well as UN agencies, that the laws governing land rights and other customary rights of IPs in Cambodia are very credible and well thought out on paper. Technically, there are few serious criticisms one can make about the relevant laws. The key problem, which has been repeated time and again by most of the stakeholders is a near complete lack of implementation of the legal and policy framework related to IPs' land rights in Cambodia.

The Land Law 2001 recognizes the communal dimension of property rights of IPs, which is a very welcome step. However, since 2001 when the law was passed, only eight IP communities have been awarded collective land titles. More often than not, the authorities disregard the right of indigenous communities, refuse to recognize them as legal entities, and fail to implement measures to protect the land from encroachment by companies before a demarcation and determination of land has been completed (ADHOC, 2013). Often communities report intimidation and threats from the authorities that pressure the community members to settle for individual, as opposed to community, land titles.

The land alienation of IPs was further increased by the launch of Directive 01BB, which lacked clarity from the start and was made even more complicated by numerous policy changes.

Bottom up approach to CLT. Officially the Land Law of 2001 provides for two ways in which communities can acquire a communal land title, that is a top-down approach (whereby the state



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apparatus initiates the registration process) and the bottom-up approach (whereby the community initiates the process). In practice however, only the latter process is being used.

Disregard for ELC procedures. At the root of the IP land rights concerns is poor enforcement of and compliance with the requirements of the Land Law and Sub-Decree on Economic Land Concessions, which govern the granting and management of economic land concessions. Essential pre-conditions to the granting of concessions, such as the registration of land as state private land and conduct of public consultations and environmental and social impact assessments (ESIAs), are usually not met. Likewise, restrictions on the size and ownership of ELCs have not been properly enforced.

Complicated land-titling procedure. The application process for a communal land title is too complicated, time consuming and not culturally appropriate for IP communities.

Level of awareness/dissemination

CSO-driven education and awareness raising. The level of awareness of indigenous peoples about their rights is usually very low. Exceptions

are communities in the Rattanakiri and Mondulkiri provinces who are very well informed about their land and natural resources rights.

Very little state-driven education efforts. Except for the Ministry of Environment, which has made some efforts at disseminating information regarding the requirements of ESIA prior to granting permissions for development projects, none of the concerned ministries seem to be actively promoting or disseminating the relevant information to indigenous communities.

Lack of access to information. The granting of ELCs to companies has been marred by secrecy and lack of transparency. Some information about ELCs is available on the Government website but the information presented there is by no means complete. There is no Right to Information law in Cambodia and hence, when adversely affected communities request the local or provincial authorities for information about the ELCs granted on their land or in the vicinity of their communities, they are usually met with refusal by the authorities.

Trends

ELCs. Concessions granted to Cambodian and overseas companies are viewed as the biggest threat to land rights, livelihoods and sheer existence of the indigenous groups in Cambodia, as many of the concessions encroach upon and often take over the land used by IPs. This state of affairs also undermines the ability of indigenous communities to register their collective ownership of traditional lands, and enforce their rights to land under the Land Law.

Loss of livelihood and adverse impacts on women. In 2012, ELCs with a total area of 17,856 ha were granted over the ancestral land of the



Kui in Prame Commune, District of Tbaeng Mean Chey, the capital of Preah Vihear Province. At the end of 2012, the villagers saw their paddy fields, gardens and around 600 resin trees owned by approximately 74 families cleared off the land. The companies involved also cleared the remnants of an ancient Kui temple, which is a sacred site, and the nearby site of an ancient Kui village.

The ELCs in Prame virtually destroyed the means of subsistence and traditional occupations of the Kui. This in turn has imposed further burdens on the Kui women, who lost their access to food sources and livelihood.

Land speculation. Land concessions also generated land speculation in indigenous areas, further limiting indigenous peoples' access to their traditional lands. Since the granting of the New Cosmos eco-tourism concession in Aural district, Kompong Speu province, Suy indigenous communities have faced land alienation and increased pressure on land available for their use. The commune authority has sold land reserved for future community use, including land used for the collection of non-timber forest products. (Special Rapporteur, 2007)

Illegal logging. According to the latest report by Global Witness (2013), most of the illegal logging is taking place on ELCs granted to rubber and agricultural companies, which use it as a cover to cut down large swaths of forest.

Migration. Land grabs of IP lands strips them of their means of subsistence and forces many to either migrate to cities or to work on rubber and/or sugar plantations.

Intimidation. Incidences of coercion and intimidation are common in these land disputes.

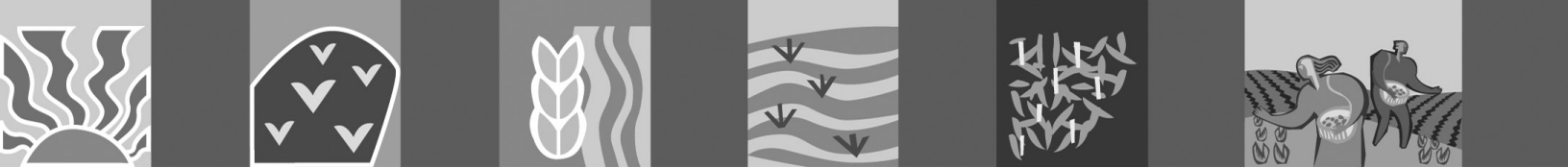
The case of Busra Commune, Mondulkiri province describes how a 10,000 ha rubber plantation is evicting indigenous community members. Some community members reported being forced to "sell" their land to the company. Indigenous people in this case and others report that they are frequently told by Government officials that the land under dispute is state land (even their agricultural land), that they have no rights to it, and thus they have two options: (1) settle now, or (2) risk losing the land in the future without any compensation (IPNN et. al., 2010).

New influences. New influences include the

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monetization of the household economy which has led to less sharing within the community, encouragement of individual interests over communal ones, and devalued traditional cultural artifacts, clothes, jewelry, gongs, etc. Exposure of the IP youth to modern media and Khmer culture has contributed to their lessening interest in maintaining their cultural history.

Deforestation, climate change. Economic land concessions, mining concessions, Special Economic Development Zones and large-scale hydroelectric projects are direct drivers of deforestation and forest degradation in Cambodia.



Community representative Horin Ror from Paor village in Ratanakiri stressed the importance of community education by NGOs.

Photo by NGO Forum of Cambodia

Lack of means for sustainable growth. The government’s line of argument and policy position is that ELCs are there to bring in needed jobs and lead to income diversification to the rural poor. However, rights groups maintain that the returns from ELCs in terms of jobs for the local population have been questionable at best, and in most cases have contributed to the further eradication of IP customs and culture.

Assessment of key actors promoting/impeding IPs’ land rights

Government

Ministry of Rural Development. The Ministry of Rural Development (MRD) has the mandate to coordinate, evaluate and implement rural development projects and programs. It evaluates

indigenous peoples’ claims of rights to communal land ownership based on historical occupancy and ancestral connections to the land.

Ministry of Interior. The Ministry of Interior is tasked with registering the IP community as a legal entity, which is a pre-requisite step before the community can go on to apply for a communal land title with the Ministry of Land.

Ministry of Land Management, Urban Planning and Construction. The Ministry is responsible for issuing land titles to IP communities who wish to preserve and use their ancestral lands.

Central Cadastral Administration. The CCA “is responsible for the preparation, coordination and supervision of operations concerning cadastral measurements of immovable property within the Kingdom of Cambodia.”

Forestry Administration. The Forestry Administration is the government authority under the Ministry of Agriculture, Forestry and Fisheries managing forests and forest resources.

Ministry of Agriculture, Forestry and Fisheries (MAFF). The MAFF has the authority and power to grant ELCs to any company interested in development projects, that so often adversely affect IP land rights.

Ministry of Environment. The 2008 law requires the Ministry of Environment to develop a National Protected Area Strategic Management Plan (NPASMP).

Political parties

Cambodia does not have political parties that explicitly support the rights of indigenous peoples. Although there are indigenous representatives



at different levels of the government, they are generally not very vocal about the indigenous peoples' agenda.

While the ruling Cambodian People's Party is behind the passing of the laws and regulations stipulating communal land rights of indigenous peoples, it seems to lack the political will to ensure that these laws are respected and implemented.

The leading opposition party, CNRP, was very vocal about land issues, including "land grabs" in Cambodia, during its election campaign in 2013. Land rights were very much a present issue during the speeches of opposition leader Sam Rainsy, who repeatedly called for an end to land grabs and promised to rescue Cambodia's forests and natural resources.

Local government

Provincial Governors. Under a 2001 Joint Circular of the Ministries of Interior and of Land Management, Urban Planning and Construction, provincial governors are responsible for issuing interim protection letters each time a community files an application for a communal land title.

The provincial/municipal and *srok/khan* Cadastral Offices. These Cadastral offices implement all instructions issued by the Central Cadastral Administration.

Customary/traditional authorities. Traditional authorities tend to have some variation across different communities but generally are composed of a chief elder (*mé kântreanh*) who derives his authority from the local village spirits. The *mé kântreanh* advises on customs, ceremonies and sacrifices, while sub-elders lead dispute resolution cases based on their knowledge of customary law and their reputation.

Local authorities in general. One of the key roles of all local authorities is to support the efforts of IP communities in securing their land tenure and manage their natural resources. However, it is allegedly the authorities at the local level that are most often obstructing/hindering the achievement of land rights by IPs. Village and commune chiefs are often accused of colluding with the authorities higher up in the levels of command, as well as the companies involved with ELCs and other powerful actors.

Donor agencies and international institutions

The relevant financial institutions with policies and/or safeguards on indigenous peoples' rights include: the World Bank (WB), the Asian Development Bank (ADB) and the International Financial Corporation (IFC).

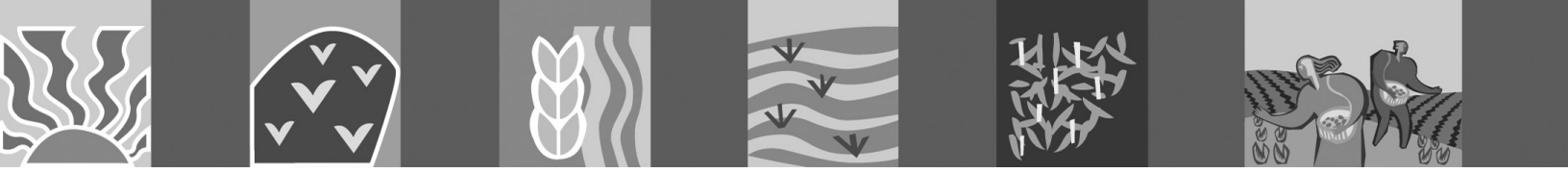
Private sector

The adverse impacts of the private sector activities are felt very strongly and continuously by the IPs across Cambodia. According to rights groups, three quarters of Cambodia's total arable land mass is leased to private companies via ELCs. It is estimated that land grabbing through ELCs has affected 400,000 Cambodians in twelve provinces since 2003.

Private enterprises operating in Cambodia often fail to carry out an ESIA prior to beginning their projects and fail to properly consult the indigenous communities that stand to be adversely affected by their operations.

Civil Society and Social Movements

Indigenous Rights Active Members (IRAM), which was formed in 2003, is the key indigenous peoples network in Cambodia. This is an informal



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network, composed of indigenous leaders from 15 provinces, and does not have an NGO status as it was not registered with the Ministry of Interior. The network used to be coordinated by the NGO Forum on Cambodia and is now coordinated by the Indigenous Community Support Organization (ICSO).

At the local level, IRAM mobilizes the community and its leaders to advocate for their land rights and natural resource management. Its members also train the IP communities and raise awareness about land rights as well as submit complaints and petitions relevant stakeholders, requesting intervention. In terms of collaboration, IRAM has been cooperating with local authorities, such as the Village Chief and Counselor, for implementation of relevant laws at ground level.

Additionally, IRAM has very strong links and cooperates with IP NGOs at the national level, and also works closely with the media and has developed their strategic action plan.

There are several grassroots indigenous peoples’ organizations and associations in Cambodia. These are: 3 Rivers Protection Network (3SPN), Cambodian Indigenous Youth Association (CIYA) based in Phnom Penh; Highlanders Association (HA), Indigenous Peoples for Agriculture Development in Cambodia (IADC) based in Ratanakiri, Indigenous Peoples’ Rights to Health

(IPRH), based in Ratanakiri and Mondulakiri, and the Organization to Promote Kui Culture (OPKC) based in Preah Vihear.

Key civil society support groups

Indigenous Peoples NGO Network (IPNN). The network works primarily on land rights of indigenous peoples in Cambodia. Its most active members include: Cambodian Human Rights and Development Association (ADHOC), Ponlo Khmer (PKH), Community Economic Development (CED), Centre d’Etude et de Development Agricole Combodgien (CEDAC), Community Legal Education Centre (CLEC), Development & Partnership in Action (DPA), Highlander Association (HA), Henrich Boll Foundation (HBF), Indigenous Community Support Organization (ICSO), My Village (MVI), Non-Timber Forest Products Organization (NTFP), Organization to Promote Kui Culture (OPKC), South-east Development Programme (SADP), Village Focus Cambodia (VFC), and Wildlife Conservation Society (WCS).

How do civil society actors work together and with other actors

IPNN network members. The Land and Housing Rights Network and IP and ELC Network have recently merged to form a Land and Livelihood Network. This network’s members are meeting twice a year to share information, reflect on the strengths, weaknesses, opportunities and threats in each project implementation. Moreover, network members organize meetings to exchange information, discuss outstanding cases and strategy for working together to minimize negative impacts of ELCs such as loss of land, forced evictions and resettlement by promoting the implementation of FPIC, alternative livelihood



options and IP land legalization. Many of the NGOs belonging to the NLPP network organize training and capacity building workshops together at the local and national level. CIYA, ICSO and ADHOC, for example, train indigenous peoples with regard to relevant domestic land laws and international human rights laws and standards at local level.

Indigenous communities. The NGOs working at the local level tend to work very closely with the affected IP communities on the ground. Many of the NGOs belonging to the IPPL network organize training and capacity building workshops for IPs at the local and national level. When they can, they also sponsor local IP community representatives to join trainings and workshops at the national level.

Authorities. CSOs try to engage actively with the local authorities, by inviting local government officials to human rights and land rights trainings and capacity building exercises.

ILO. Local NGOs in Ratanakiri and Monduliri provinces (NTFP, DPA, HA, ICSO in Ratanakiri and MVI, DPA, Vigilance, WCS in Monduliri) are working closely with the ILO on a project which aims to speed up and facilitate the registration of communal land titles by indigenous communities.

Media. CSOs at both the national and local level work very closely with the Khmer-speaking and English-language media in Cambodia. Most of the local NGOs or provincial offices of larger domestic CSOs have the phone numbers for print and radio journalists in the province and in Phnom Penh.

Private enterprises. Many CSOs reach out to companies involved in alleged land grabs and breaches of the relevant laws of Cambodia, with varying degrees of success.

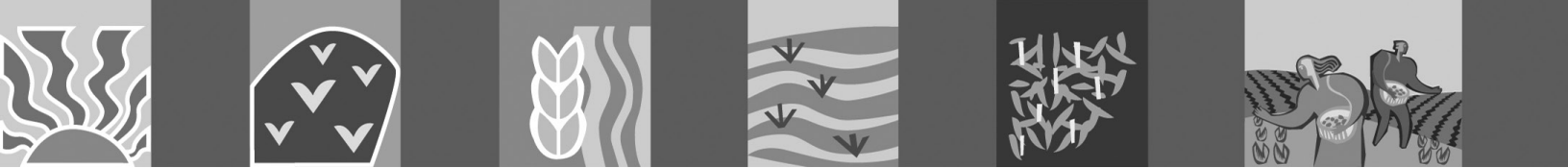
Key issues and gaps in the engagement of CSOs working on land rights, food security and climate change

Lack of follow-up. IP organizations have raised concerns about lack of follow-up and continuity of engagement with the IP communities adversely affected by land and natural resource issues. Sometimes the communities feel they are being abandoned by the NGOs, especially when it comes to protests. They feel the morale of the community is winding down because of lack of NGO support for their protests and other actions.

Lack of (culturally acceptable) communication. Lack of communication of NGOs and information of the affected communities has been raised on several occasions. IP representatives have observed that the communication between relevant NGOs and the community are very patchy and sporadic throughout the process of acquiring a communal land title. It has also been pointed out that NGOs fail to communicate with the IPs in a way which is culturally acceptable and known to the communities.

Some networks are weak. One network member from Kampong Speu province complained that her network was very weak and said that the IRAM network in her area is much stronger. Accordingly, NGOs in the network should strive to work much more closely with and reach out to grassroots organizations, like IRAM.

Women. There seem to be very few NGO initiatives directly aimed at empowering and educating indigenous women. It has been observed that in the communities, where training was provided to women, they were very vocal and active on the grassroots level. IP women's empowerment and education are cross-cutting issues that can



“The Cambodian media is largely considered as being under the influence of the ruling Cambodia People’s Party and therefore not free and independent.”

provide solutions to many of the problems faced by IPs with regard to land rights and natural resources management.

NGOs slow to respond to immediate challenges. It has been pointed out that NGOs can sometimes be slow to respond to certain initiatives introduced by the government or to calls for assistance by the IP community. One such example identified by both the IP community and NGO representatives was the introduction of directive 01BB. When the authorities introduced the directive, NGOs were allegedly very slow to react to the changes in the law and procedure, and did not allocate enough staff and resources to explain the implications of the directive to the affected IP communities.

Language barrier. Some IP members also raised language as a concern when it comes to training and capacity building. Most of the IP community members use their own and unique language to communicate and those who do not speak Khmer seem to miss out on accessing training information. Even if they access basic information at the village level from other IP members, their inability to speak Khmer and the lack of available training in the language they understand hinder them from participating in district or national level workshops and trainings.

Traditional knowledge vs. awareness raising and education. NGOs have promoted democratization of ‘village development actors’ that empowers more community members but does not build on traditional cultural knowledge and the role of traditional authorities.

Range of actions taken by CSOs and IP communities in responding to challenges to the recognition of IP customary rights

Letters of complaint. Most of the CSOs working on IP land rights have assisted IP communities adversely affected by ELCs or illegal logging in sending and/or filing a letter of complaint with authorities at the local, district and national level, as one measure of challenging the lack of respect for their (customary) land rights.

National Authority for the Resolution of Land Disputes. Many of the IP communities adversely affected by land grabs filed complaints with this body but their claims were largely unanswered. This was the case with complaints with the **Cadastral Commission** as well.

Domestic litigation. CLEC is one of the very few organizations in Cambodia that provides pro bono legal assistance to affected IP communities. However, lawsuits against local authorities and/or companies are few and far between mainly due to the fact that courts are often seen as not independent and, in fact, siding with the interests of the rich and powerful in the country.

Protests. Faced with no support from the authorities and no respect of their rights by the company, the IP often turn to protests against the ELCs and the illegal clearing of their land. The protests are held either on the acquired land or in front of village or district authorities’ premises. Protests sometimes escalate into violence.



Information and other requests. In some cases, the IPs gather at the commune office to demand information about the company clearing their land, and at the same time ask that they be allowed to cultivate their crops.

Meetings among IPs, NGOs, authorities and companies. In most of the reported cases of IP land grabs, CSOs played a facilitating role in organizing meetings between all the actors involved in the land conflict, inviting the local authorities and companies claiming the land under ELC. This move has had varying degrees of success in terms of attendance by the companies and local authorities. Even where all stakeholders were present at a meeting, the meeting rarely yielded positive results for the adversely affected communities.

Forest patrols. Some IP communities living in the areas where illegal logging is common organize forest patrols, to ensure that trees are not cut down contrary to the laws of Cambodia and IP customary practice.

Role of media in highlighting issues and influencing public opinion

The Cambodian media is largely considered as being under the influence of the ruling Cambodia People's Party and therefore not free and independent. Accordingly, the Khmer-language media very rarely highlight the land alienation and other customary rights issues faced by IPs across the country. The English-language *Cambodia Daily* and *Phnom Penh Post* newspapers cover news about IPs, and are largely read by the expat community and educated Cambodians.

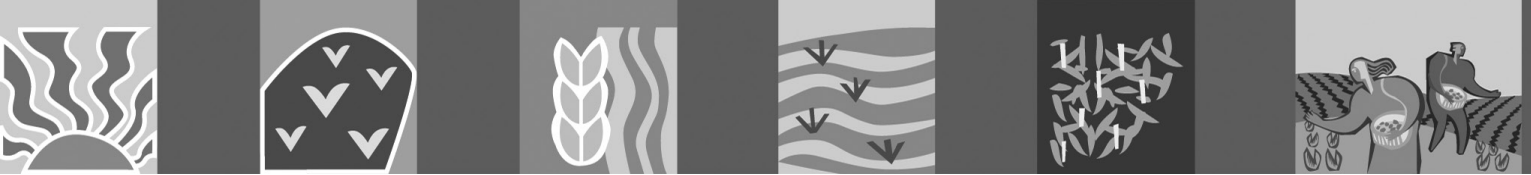
Radio most effective. So far radio proves to be the most important medium with regard to highlighting IP issues. Radio is also the main

media used and fairly easily accessible to IP communities. However most radio programs are in Khmer language, not the indigenous people's languages, furthering the marginalization of women and elders who tend to have a more limited knowledge of Khmer.

Social media. New trends in technology and changes in the demographics of Cambodia mean that an increasing number of people use social media. This trend has been highlighted most recently by the Kingdom's parliamentary elections, which saw thousands of users of the social networking site Facebook sharing information and reporting election irregularities freely. Most CSOs working on IP issues in Cambodia are very active on social media and accordingly have the capacity to fill in the gaps in information regarding IP rights in Cambodia. Having said that, this is the trend in the cities and a lot of work and time is needed before meaningful progress on influencing public opinion regarding IP rights can take place. Most importantly, this medium of sharing information and news will only be really meaningful if it reflects and gives a platform to voices of the IPs, whose land rights are being violated. The need for indigenous peoples' voices to be heard and the importance of empowerment of IPs through their access to and participation in media and the development debate applies to all media types.

Key opportunities and strategies to advance indigenous peoples' customary rights

Involvement of all stakeholders. IP organizations, CSOs, local and central government representatives, and companies applying for ELCs, all need to be involved in joint discussions and negotiations on a regular basis. All stakeholders need to understand and acknowledge that they



are driven by different interests and objectives and that they need to find a common ground – one that follows domestic and international laws and best practices, gives equal weight to all the voices in the discussion and preserves IP lands and culture.

Government for the people. The vast body of literature about the impact of ELCs on IP land rights and recent interviews with CSOs and IP groups confirm that the leading problem with regard to securing land tenure by indigenous communities is the lack of transparency in the granting of ELCs and lax enforcement of the existing laws and regulations. Until and unless these issues and the lack of political will to implement the legal provisions ensuring land rights of IPs are effectively addressed, the secure land tenure of IPs will be very difficult to achieve.

Corporate capture of government at all levels. Another key issue that is intrinsically linked to the lack of enforcement of the current legal regime is the overwhelming problem of ‘corporate capture’ of the Cambodian government. It has been largely documented by CSOs and local media that the ruling political elite often has direct or indirect ties with companies that are interested in investing in

“...the leading problem with regard to securing land tenure by indigenous communities is the lack of transparency in the granting of ELCs and lax enforcement of the existing laws and regulations.”

the land inhabited by IPs. In fact, government at all levels of the chain of command is involved in questionable but lucrative deals with companies applying for ELCs. This evident conflict of interest needs to be tackled and the government needs to introduce legislation regulating human rights impacts of companies on IPs and Cambodians in general.

IP voice and leadership. In order for any meaningful change and advancement of indigenous peoples’ land rights to take place, the movement needs to be led by the IP communities themselves. The IPs need to be at the forefront of mobilization and advocacy efforts for their own rights and need appropriate platforms to voice their concerns. The IP voice needs to be present in policy considerations at all levels of government, from local through to national authorities. This requires up-scaling empowerment, education and awareness raising among IP communities. As Mr. Vuthy, one of the IRAM members pointed out: *“one of the best ways to empower indigenous peoples is to make sure that they contribute their own financial resources to the community movement fund, so they can use it for various activities and take ownership in it.”* Another key factor needed for the IP movement to grow in strength is the improvement of networking among the IP communities themselves. This is elaborated on in more detail in the succeeding sections.

Greater understanding of IP issues by all stakeholders. Members of relevant ministries, parliamentarians and government officials at local and provincial levels need to have a better understanding of international human rights laws, domestic legal provisions and procedures regarding IP land and resource rights. The same applies to companies, Khmer-speaking media and the general public. Without greater awareness



and understanding of IP issues and processes by all actors involved, IP issues will not receive the attention they warrant.

Independent judiciary. IP land and resource rights will never be fully realized if the courts in Cambodia refuse to follow the letter of the law and choose to follow their personal financial interests. Therefore judiciary reform, training and education of judges is an absolute must.

Best practices' for replication and upscaling

Communal land title registration. The ILO office in Cambodia is working closely with local NGOs in Ratanakiri and Mondulokiri provinces (NFTP, DPA, HA, ICSO in Ratanakiri and MVI, DPA, Vigilance, WCS in Mondulokiri) on a project which aims to incorporate indigenous communities as legal entities under the Land Law 2001, so that they are eligible to apply for a collective title with the MoI. The objective of the project is to have as many communities as possible incorporated legally to facilitate a claim to the Ministry of Land Management to begin the process of securing land titles for indigenous communities (IFAD, p. 21). As part of the project, the ILO has been working closely with the MoI to increase its capacity to deal with applications for a legal recognition of IP communities.

Empowerment through education and awareness raising. IP communities in Ratanakiri and Mondulokiri provinces are increasingly strong and are very vocal about their grievances vis-à-vis land grabs and illegal logging. They organize protests, demand information, issue letters of complaint (with the assistance of CSOs and local activists) and participate in stakeholder meetings.

Community media project. Some of the active members of the IPPN take part in the Community Media Project, which in turn supports IP community initiatives. The Project also promotes IP networks and key community members' voices through radio live talk-show programs, radio and TV productions related to indigenous people's issues meant to raise awareness among the general public and to promote grassroots communication, information and IP voices in the mainstream media.

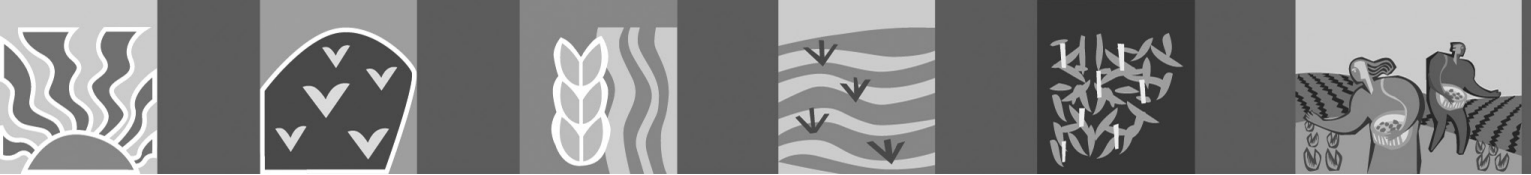
Centralized IP network. ADHOC received funding from the UK Government for a project aimed at connecting IPs from all the provinces across Cambodia. IRAM members are allegedly working on a similar initiative. It could be a good idea for the two organizations to cooperate and join their forces in this very important effort.

Video documentary project. On 9 August 2013 the NGO Forum organized a screening of a documentary "The Other Cambodia: Indigenous Land and Rights." The documentary, which combined efforts by IP activists and a filmmaker hired by NGO Forum presented a very concise and compelling case of land grabbing in the northern regions of Cambodia.

Community empowerment project. ICSO runs a community empowerment project directed at IRAM members. The project provides rights training as well as financial, logistical and mentoring support to IP representatives chosen by the organization.

Strategic linkages to be pursued by IP organizations and CSOs

IPs. The most important linkages IP organizations need to pursue are the ones among themselves.



The ability to share information, experiences and lessons learned between the different IP groups will increase the groups' capacity and will make it easier for the IPs to speak with one voice and decide collectively which issues should be prioritized for the IP agenda. It will also add clout to the IP-led movement with the sheer numbers of organizations and people in the network, increasing its leverage at both the national and international level.

Authorities at the local and national. One of the key reasons for the exclusion of IP voices from land rights and other policies affecting IPs and the apparent disregard for their human rights by the authorities is the lack of IP representation at all levels of government, be it at commune, district or national level. It is therefore extremely important for the IPs to take active part in the mainstream electoral process, including running as candidates or forming separate indigenous peoples parties.

Ministry of Land and Natural Resources. Since the Ministry is vested with the final say about when and whether an IP community will receive a community land title, it is of paramount importance for the CSOs and IP organizations to have a good relationship with the Ministry and its representatives.

Judiciary. The courts are the last recourse at the domestic level for IP communities to try and enforce their land and resource rights. Therefore establishing good working relations and linkages with the judiciary is very important. While this process will most likely be very time consuming due to the widespread lack of independence and weakness of Cambodia's court system, it is a step that must be taken sooner or later for meaningful change to happen on the ground.

Donors. IP organizations need to establish strong relations with donor organizations, in order to increase their chances of sustained and direct funding for activities and projects that are designed for IPs by IPs.

Asia Indigenous Peoples Pact. Cited as an example of best practice is the annual Asia regional preparatory meetings to devise strategies and plans of action in relation to the various United Nations mechanisms and procedures as well as other relevant international bodies and agencies, organized by the Asia Indigenous Peoples Pact with the active participation of self-selected representatives of indigenous peoples, indigenous experts and representatives of United Nations agencies.

Specific 'spaces' or opportunities for indigenous peoples' organizations and civil society

Presence of increasingly strong IP movements and networks. The IP communities in Cambodia's Rattanakiri and Mondul Kiri provinces are increasingly strong and well organized. Thanks to the support of IRAM and local CSOs, IPs in these provinces are engaging in campaigns and are mobilizing to defend their lands, territories and resources. An increasing number of IPs have a very good knowledge about their land and resource rights and are eager to share that knowledge with others in their communities. At regional level, the network of indigenous peoples known as the Asia Indigenous Peoples Pact (AIPP) is engaging in numerous processes at regional and international levels to advocate for indigenous peoples' rights to lands, territories and resources, including in the context of climate change and REDD+, resource management, international finance, extractive industries, human rights monitoring, development, support to indigenous women and



human rights defenders etc. (see more at www.aippnet.org).

Change of political landscape and culture in Cambodia. The contested July 2013 elections to Cambodia's National Assembly showed an appetite for change in the way the country has been governed by the ruling Cambodian People's Party. According to official preliminary results, the opposition CNRP party won 55 out of the 123 seats in the lower house of parliament, taking away at least 20 seats from the CPP. If the two parties will be able to resolve the current political deadlock and form a government, the influence of CNRP, which was very vocal about remedying land rights abuses in the country, the climate for promotion of land rights in general and IP rights specifically, could lead to accountability for rights abuses and real change on the ground.

REDD+ as leverage for recognition of rights. The Cambodian Government could prove relatively open to engage in dialogue on forest rights under the REDD+ Cancun Agreement.

Indigenous Peoples' Forum as a networking and leverage platform. IFAD's Indigenous Peoples' Forum, a process of dialogue and consultation between representatives of IPs, IFAD staff and member states also offers a space for IP organization members to share information with each other and to promote their participation in institutional outreach and learning events.

Recommendations

Government

Implementation of the already existing legal and policy framework. While this seems a rather obvious recommendation, it cannot be repeated enough. Secure customary land rights of

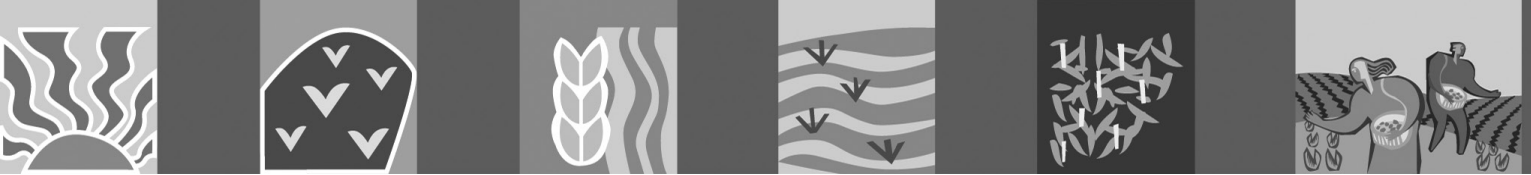
“The Cambodian Government could prove relatively open to engage in dialogue on forest rights under the REDD+ Cancun Agreement.”

indigenous peoples in Cambodia will never really be attainable unless and until the authorities show and exercise the political will to implement the already existing laws and policies.

Regulating company behavior. Another absolutely necessary step for the promotion and protection of IP land rights is the regulation by the RGC of companies coming to invest in Cambodia as well those domiciled in the country.

Protect IP territories. The authorities should take 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:

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



“The Government should continue to develop and expand bilingual and inter-cultural education for indigenous peoples.”

indigenous communities are registered with government.

- Suspend land, tourism, mining and other concessions and other large-scale development projects in indigenous people’s areas until such time as registration of lands under the 2001 Land Law has been completed.
- Ensure that respect of the right of free prior and informed consent is applied to any activities to be undertaken on indigenous people’s lands and territories.
- Ensure the proper and just resolution of cases of alienation and loss of customary lands in indigenous people’s areas, including through restitution of lands taken without indigenous people’s 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 people’s communities.
- 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.
- 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.

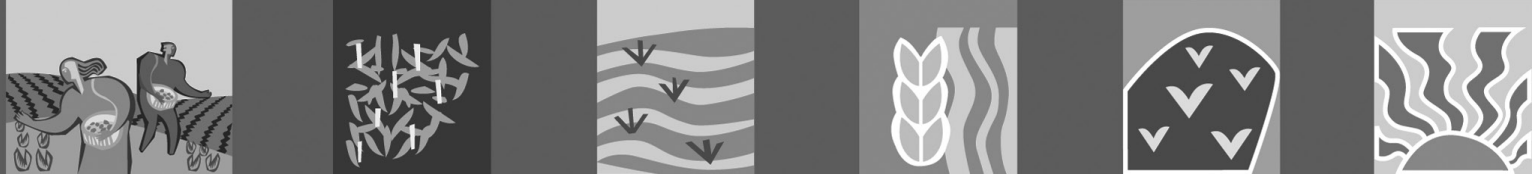
- Address the rights of indigenous peoples, as outlined in the UNDRIP, within the legal framework related to mining in Cambodia.

Amend Sub-Decree on Procedures of Registration of Land of IPs. The government should amend the Sub-Decree to be consistent with indigenous peoples’ rights as defined by international covenants, conventions and declarations.

Swift land registration. The RGC needs to take concerted action to ensure that the titling of indigenous people’s 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.

IP education. The Government should continue to develop and expand bilingual and inter-cultural education for indigenous peoples. It should also devise and implement special education support grants or programs aimed specifically at IP.

Support for IP authorities, culture and custom. The Government should take 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 people’s communities. It should also devise and support programs that encourage the preservation of IP culture and custom in Cambodia.



CSOs

Regular follow-up, communication and support.

CSOs working on IP land rights should support (or keep supporting) the noticeable rise in community demand for empowerment activities as well as the recognition by IPs of their central role in managing advocacy agendas, development, networks and social transformation within their community (as articulated by some IRAM members interviewed for the purposes of this study). Additionally, CSOs should further encourage mobilization and organization at the community level and seek out and identify community leaders (Hutchinson, et. al., 2008).

Forging closer links with IRAM and other grassroots IP organizations.

The Land and Livelihood Program (LLP) network is not equally strong across the country – there are provinces where the network is weaker. In order to fill that gap and enable the CSOs in the LLP network to be effective and responsive to the needs of indigenous communities, closer links should be forged with grassroots IP organizations, like IRAM.

Slight adjustment of CSO-led education initiatives for IP.

It is of great importance for NGOs leading the awareness raising and education among IP communities not to forget to build on traditional cultural knowledge and role of traditional authorities.

Upscaling use of social media. The power of social media should not be underestimated by the CSOs in the LLP network. Many successful advocacy campaigns were born online and, with the change in the way we share information and access news, a Facebook or Twitter presence seems an absolute must for NGOs that want to reach out to a global audience.

Better awareness and understanding of IPs by some CSO workers.

For all CSOs working with IP communities, it is important to consider carefully the role they play and approaches they employ. What may be fairly straightforward for a national Cambodian organization in other parts of Cambodia will require a deeper level of reflection in IP areas, as the organization, program and staff are challenged to understand development from the perspective of indigenous peoples.

Donors

Do no harm. Donors need to make sure that the development projects they are funding are not undermining the land rights and other human rights of IP communities.

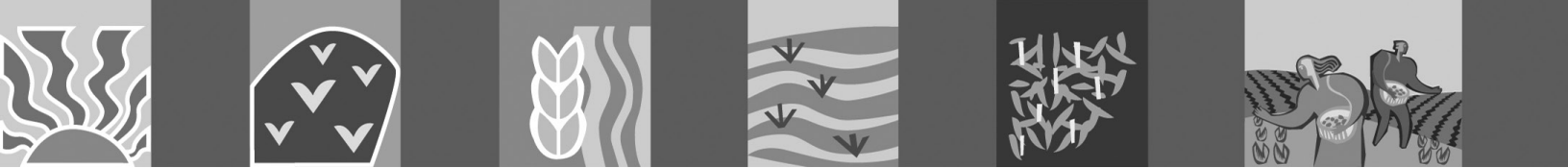
Use donor leverage. Donors are often in a much better position than NGOs to raise concerns over human rights abuses of IPs with the RGC because of their financial relationship with the authorities.

Use human rights standards when negotiating with RGC. Use relevant international instruments and treaties as standards when negotiating with the Cambodian government, including trade issues as well as loan and project assistance.

Build skills and knowledge. Donors should support university scholarships for training IP teachers and other professionals, fund culturally supportive education in local languages as well as encourage female IP education, so that they can later represent the land rights and customary rights interests of their communities (Alcorn, 2001).

Support communication and networking of IPs.

Donors should support networking and other opportunities for IPs to share their experiences



and ideas within Cambodia, in the region, and between IPs from other regions.

Seek creative options for direct funding. A lot of IP communities have a problem registering as a legal entity for the purposes of obtaining a communal land title because of the authorities' drive to suppress IP interests. It is important that donors find ways in which they can support unregistered grassroots organizations, like IRAM.

Create grant making and project processes that fit IPs needs and strengths. Donors need to understand that IP organizations are not necessarily like other NGOs they are working with. Accordingly, there is a need to simplify certain processes, avoid imposing enormous reporting requirements, accept alternative reporting mechanisms, such as videos, and photographs or tapes with recorded oral messages. Deadlines should also be made more flexible to be more responsive to the indigenous culture.

Invest for the long-term. Support creative financing mechanisms for IPs, such as trust funds under IPs' control. Fund core costs for IPs' organizations and train them in sustainability mechanisms. Beyond conventional funding of activities, develop alternative ways to access credit. Nurture indigenous saving societies and credit unions to build financial independence without risking lands as collateral. ■

References:

- Alcorn, J.B. (2001). *Indigenous peoples & biodiversity governance: The Hundeded recommendations for donor best practices*. Washington D.C.: Biodiversity Support Program and World Wildlife Fund.
- Cambodian Human Rights and Development Association (ADHOC). (2013). *A turning point?: Land, housing and natural resources rights in Cambodia 2012*. Retrieved from <https://www.google.com.ph/>
- Forestry Law 2002. *Law on Forestry*. July 30, 2002.
- Global Witness. (2013). *Rubber barons: How Vietnamese companies and international financiers are driving a land grabbing crisis in Cambodia and Laos*. Retrieved from http://www.globalwitness.org/sites/default/files/library/Rubber_Barons_lores_0.pdf.
- Hutchinson, N., Ironside, J, and Clark, K. (2008). *The culture and traditional authority of indigenous peoples and development program*. Development and Partnership in Action (DPA). Retrieved from http://www.dpacam.org/images/publications/Others/Final_08_09_08_IP_Culture_08.pdf.
- Indigenous People NGO Network (IPNN), NGO Forum on Cambodia, and Asian Indigenous Peoples Pact (AIPP). (2010). *The rights of indigenous peoples in Cambodia*. United Nations Committee on the Elimination of Racial Discrimination. Retrieved from http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGO_Forum_Cambodia76.pdf.
- International Work Group for Indigenous Affairs (IWGIA). (2012). *The indigenous world 2012*. Retrieved from http://www.iwgia.org/iwgia_files_publications_files/0573_THE_INDIGENOUS_ORLD-2012_eb.pdf.
- Land Law 2001. *The 2001 Amendment to the Land Law*. July 20, 2001.



NGO Forum on Cambodia. (2008). *NGO Forum on Cambodia Report*. February 2008. Phnom Penh: NGO Forum on Cambodia.

United Nations Human Rights. (2007). *Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*. United Nations Human Rights.

World Faiths Development Dialogue. (2011). *Indigenous spirituality in Cambodia: Implications for Development Programming*. Washington DC: World Faiths Development Dialogue.

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