

**UN COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL
RIGHTS**

(42ND SESSION 2009)

THE RIGHTS OF INDIGENOUS PEOPLES IN CAMBODIA

Submitted by

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SUBMISSION TO THE UN COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS (42ND SESSION 2009)

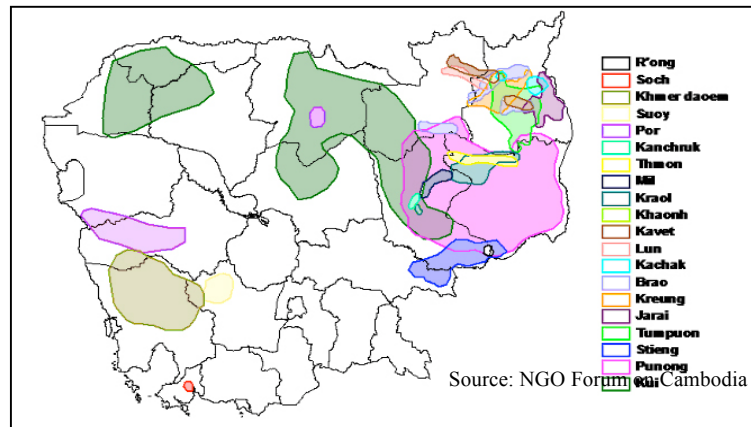
THE RIGHTS OF INDIGENOUS PEOPLES IN CAMBODIA

I. SUMMARY

1. Two indigenous peoples and support organizations in Cambodia, together with an Asia regional indigenous peoples' federation and an international NGO, ('the submitting organizations') (see Annex A for a description of these organizations) have the honor of submitting this report to the Committee on Economic, Social and Cultural Rights ('the Committee') for consideration at its 42nd session. It focuses on the rights of indigenous peoples and is intended to aid the Committee when it reviews Cambodia's initial periodic report (E/C.12/KHM/1).

2. This report provides specific facts and documentation related to ongoing violations of the economic, social and cultural rights of the indigenous peoples of Cambodia. The information contained herein looks in detail at a number of areas in which the rights of indigenous peoples are currently and have historically been violated by Cambodia. These areas, which correspond to Articles 1, 11, 12, 13 and 15 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), are: (i) the right to self-determination; (ii) land and resource rights; (iii) forced displacement; (iv) the right to education; and (v) the right to health.

3. Indigenous peoples are estimated to be the traditional owners and managers of over 4 million hectares of Cambodia's forest lands and have been responsible for preserving stable environmental conditions for many other parts of the country (forest conservation supporting flood control, for example).¹ The 1998 Cambodian Population Census identified 17 different indigenous groups.² Population estimates for indigenous people range from 101,000 to 190,000, or around 1.4 percent of Cambodia's population, and as the map indicates, their customary lands are overwhelmingly found in the north-eastern provinces.



4. Whilst indigenous peoples welcome development opportunities in their communities, there are rapid changes now occurring in an environment where many indigenous people are functionally illiterate in the national language (Khmer), and where weak local governance and transparency are significant barriers to indigenous peoples' effective participation in decision-making processes. In this environment, it is of paramount importance that the civil, political, economic, social and cultural rights of indigenous peoples are recognized and protected by the State, including in relation to the acts of private companies and organizations. However, as discussed herein, the State has failed to comply with its obligations with respect to indigenous peoples' rights and violations thereof are common in Cambodia today.

II. SELF-DETERMINATION

5. Article 1 of the ICESCR guarantees the right of all peoples to self-determination, including indigenous peoples.³ This right has been further contextualized to indigenous peoples in the 2007

¹ Community Forestry International internal reports 2006.

² *Population Census*, National Institute of Statistics, Cambodia 1998, available at: <http://statsnis.org/CENSUSES/Census1998/index.htm>

³ See for instance Russian Federation, 12/12/2003. E/C.12/1/Add.94, at para. 39 (stating that "recalling the right to self-determination enshrined in article 1 of the Covenant, [the Committee] urges the State party to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence").

UN Declaration on the Rights of Indigenous Peoples. This Declaration was supported by Cambodia and highlights, *inter alia*, self-determination in relation to the ownership and control of traditional territories and resources; the maintenance and development of indigenous political, economic and social systems; the right to free, prior and informed consent in connection with development projects, resettlement and the adoption of legislation; and the preservation and promulgation of culture. The Committee on the Elimination of Racial Discrimination has observed that the Declaration should be used by states to interpret their obligations under the human rights treaties to which they are party.⁴ This submission will therefore address the obligations of Cambodia with reference to both the ICESCR and the UN Declaration on the Rights of Indigenous Peoples.

6. Despite the extant international guarantees for the right of self-determination, the lived experience of indigenous peoples in Cambodia is of violations of the most fundamental aspects of their basic human rights and their right to self-determination. We will address below violations of the right to an adequate standard of living (Article 11); the right to traditional and customary land and the right to be secure in the means of subsistence (Article 1(2)); the right to be free from involuntary resettlement (Articles 1(1), 1(2) and 11); the right to equal access to education (Article 13); and the right to medical attention and services in the event of illness (Article 12).

III. LAND

7. The UN Declaration on the Rights of Indigenous Peoples unequivocally affirms the territorial rights of indigenous peoples.⁵ The Committee has also recognized the centrality of secure rights to traditionally owned lands, territories and resources, including the protection of traditional land tenure systems, to the maintenance of indigenous peoples' ways of life and culture.⁶ Moreover, it has related recognition and protection of these rights to the exercise and enjoyment of the full range of the rights guaranteed by the Covenant.⁷ The Committee has, for example, observed that indigenous peoples are especially vulnerable to violations of the right to food in cases where "access to their ancestral lands may be threatened."⁸ In Cambodia, indigenous peoples are routinely denied access to their traditional lands, territories and resources and, in many cases, their lands have been simply taken from them. Such takings are ongoing and constitute a major threat to indigenous peoples' security and well being.

8. Cambodian law does recognize communal ownership of land. The Constitution, for instance, describes ownership of land within Cambodia as being understood as both collective and individual,⁹ although collective ownership rights for indigenous peoples are dependent on a concomitant recognition of legal personality through a process that is not adequately defined and which may be contrary to indigenous peoples' internationally guaranteed rights.¹⁰ The 2001 Land Law also recognizes communal and traditional tenure, again subject to registration as a legal

⁴ *Concluding Observations of the Committee on the Convention for the Elimination of Racial Discrimination: United States of America*, UN Document CERD/C/USA/CO/6, May 2008: para 29.

⁵ The UN Declaration on the Rights of Indigenous Peoples, Article 32 provides that:

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

(2) States shall consult and cooperation in good faith with the indigenous peoples concerned through their won representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

(3) States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

⁶ See *inter alia* E/C.12/PRY/CO/3, 4 January 2008, para. 29 and 34; E/C.12/IND/CO/5, 10 May 2008, para. 44; E/C.12/BOL/CO/5, 08 August 2008, para. 23 and 36; and E/C.12/KEN/CO/1, 1 December 2008, para. 12 and 31.

⁷ See *inter alia* E/C.12/CO/FIN/5, 16 January 2008.

⁸ *General Comment No. 12, The Right to Adequate Food (Art. 11 of the Covenant)*, adopted at Committee's Twentieth session, 1999, at para. 13.

⁹ Constitution of the Kingdom of Cambodia, Article 44 ("All persons, individually or collectively, shall have the rights to ownership").

¹⁰ See 2001 Land Law, Arts. 8 and 23 and; the 2008 draft *Sub-Decree on Procedures of Registration of Land of Indigenous Communities*, Art. 3 (providing that "General principles that shall be applied in the registration of land of an indigenous community are as below: - Only communities established as a legal entity which have registered community by-law and legal recognition can apply for registration of collective title. ...").

person.¹¹ As discussed below, these guarantees do not adequately protect indigenous peoples in practice. This is due to a lack of political will as well as limitations within the implementing laws.

9. While the 2001 Land Law contains provisions for the titling of communal ownership of land, the required implementing decrees are still in draft form (see Annex C containing the draft *Sub-Decree on Procedures of Registration of Land of Indigenous Communities*). These provisions are thus presently unavailable in fact despite the passage of almost eight years since the Land Law was adopted in 2001. The provisions for communal land titling are also restricted to the recognition of common property held by a recognized legal entity (Article 8), rather than the communal property or customary tenure of an indigenous people or of any collective that has not been registered as such by the State. Requiring legal registration and legal identity prior to the recognition of land rights is tantamount to vesting in State authorities the power to determine who is 'indigenous' in direct violation of the rights of indigenous peoples to self-determination and to juridical personality.¹²

10. However, although the 2001 Land Law is problematic in some respects, Article 23 does contain some measure of protection for the residential and cultivatable lands of indigenous peoples, titled or otherwise, at least pending a determination of their legal status.¹³ The former Special Rapporteur on Adequate Housing, Miloon Kothari, opined in his 2003 report on Cambodia that this provision, at a minimum, "should provide indigenous peoples with protection against displacement."¹⁴ However, as discussed below, this protection has not been apparent or effective for indigenous peoples in Cambodia.

11. Indigenous peoples have confirmed that the sale or transfer of land to outsiders is contrary to their traditions and customary laws. However, there have been and continue to be widespread reports of indigenous communities being told that: 'the land is state land. You have no rights. It will be taken from you. You can sell it now and get some money now or it will be taken anyway and you will get nothing'.¹⁵ The appropriation and alienation of the lands and resources of indigenous peoples in Cambodia have reached extraordinary proportions, despite the protections provided in the letter of the laws cited above. It is not possible to provide clear information about the extent of that alienation because of lack of transparency in many of the land and concession deals. However studies on land alienation in the northeastern provinces have estimated that the majority of land transfers in these provinces are illegal and, in particular, contravene the protections afforded to indigenous peoples under Cambodian law.¹⁶

12. The serious nature of the issues of land and food security facing indigenous peoples in Cambodia has not escaped the attention of the international community. The Special Representative of the Secretary General to Cambodia noted in his 2007 report that the existing laws in Cambodia are not applied, and without the exercise of political will to correct the situation, the alienation of indigenous peoples' lands would continue.¹⁷ He recommended that the sale of land and the granting of 'economic land concessions' and other concessions in areas occupied by indigenous communities be banned pending the registration of indigenous claims over traditional lands and the collective titling process; that other mechanisms be put in place to protect indigenous land pending the registration of collective title; and that the process of registration of collective title

¹¹ See full text of the 2001 Land Law in Annex B.

¹² See for instance Inter-American Court of Human Rights, *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172 (discussing the rights of indigenous and tribal peoples to juridical personality, including recognition as peoples, for the purposes of the recognition and exercise of their collective rights). Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf.

¹³ Article 23 provides "An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members 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. Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law." The law on communities referred to in Article 23 has yet to be enacted.

¹⁴ *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, 21 March 2003. E/CN.4/2006/41/Add.3. Para 21.

¹⁵ *Land Alienation in Indigenous Minority Communities - Ratanakiri Province, Cambodia*. Cambodia NGO Forum, August 2006. Available at: [www.ngoforum.org.kh/Land/Docs/Indigenous/Land Alienation draft.pdf](http://www.ngoforum.org.kh/Land/Docs/Indigenous/Land%20Alienation%20draft.pdf).

¹⁶ Ibid.

¹⁷ A/HRC/4/36.

over indigenous land be finalized.¹⁸ Notably these are existing requirements in Cambodian law, yet they remain unimplemented and ineffective. Until today, no registration of indigenous peoples' lands and resources has been completed under the 2001 Land Law. Despite this, Cambodia lauds the development of rubber plantations and oil and gas exploration on economic land concessions in their report to the Committee.¹⁹

13. In his report of 2008, the Special Representative further recommended that Cambodia protect the rights of indigenous persons and others who, due to illiteracy, customary practices or other reasons, are not familiar with the law or its procedures, the rules for making of economic transactions or the market economy.²⁰ It is clear that Cambodia has been provided with expert advice and has developed through its legislative process a law that provides, to some extent, protections for the communal lands of indigenous peoples. It is equally clear that such protection is not available in practice²¹ and the alienation and exploitation of indigenous peoples' lands continues unabated.²²

IV. FORCIBLE EVICTION AND DISPLACEMENT

14. Article 1 of the ICESCR commits Cambodia to protect the rights of indigenous peoples to “freely dispose of their natural wealth and resources” and to ensure that “in no case may a people be deprived on its own means of subsistence.” Article 11 further details the obligations of the State to protect the rights of indigenous persons and peoples to an adequate standard of living, including adequate food, clothing and housing. The Committee has previously interpreted this in the context of indigenous peoples as being particularly important in contexts where forced displacement may, has or will occur.²³

15. Involuntary or forcible resettlement “is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities.”²⁴ The Committee frequently expresses concern about forcible relocation and has urged states to abandon the practice as being incompatible with the obligations assumed under the Covenant.²⁵ In its *General Comment on the Right to Adequate Housing*, the Committee states that it “considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”²⁶ Article 10 of the UN Declaration on the Rights of Indigenous Peoples restates ‘the relevant principles of international law’ pertaining to indigenous peoples, explicitly stating that “Indigenous peoples shall not be forcibly removed from their lands or territories,” and that “[n]o relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”²⁷

16. Forced displacement and the ongoing denial of effective rights over traditionally owned lands, territories and resources are serious and ongoing threats to the survival and well being of indigenous peoples in Cambodia. Successive Special Representatives of the UN Secretary-General

¹⁸ Ibid.

¹⁹ Cambodia State Report, para. 77 and 81.

²⁰ A/HRC/7/42.

²¹ *Land Alienation in Indigenous Minority Communities*, supra.

²² *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2. Briefing Paper Prepared by members of the NGO Forum on Cambodia*, November 2008.

²³ See *General Comment 7, The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions*, at para. 10 (stating that “Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. ... The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved”). See also E/C.12/PRY/CO/3, 4 January 2008, para. 29 and 34.

²⁴ *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Final report submitted by Mr. Theo van Boven, Special Rapporteur*. UN Doc. E/CN.4/Sub.2/1993/8, at 10.

²⁵ *General Comment No. 4, The Right to Adequate Housing (Art. 11(1) of the Covenant)*, adopted at the Committee’s Sixth session, 1991.

²⁶ Ibid. at para. 18. See also *General Comment No. 7, The Right to Adequate Housing (Art. 11(1) of the Covenant): Forced evictions*, at para. 1.

²⁷ UN Declaration on the Rights of Indigenous Peoples, Article 10.

have expressed grave concern over the semi-official 'economic land concessions' and their impacts on the human rights of indigenous peoples,²⁸ and the Cambodian Office of the High Commissioner for Human Rights has highlighted that such land alienations stem also from large-scale illegal land acquisition by both private actors and the State.²⁹ Further, the Special Representative of the Secretary General on the human rights of internally displaced persons has emphasized that indigenous peoples in Cambodia require specific protections if they are to be adequately protected from being displaced, whether from conflict or from land alienation.³⁰

17. The Committee has recently expressed its deep concern “about the reports of displacement and forced evictions in the context of land acquisition by private and state actors for the purposes of development projects.”³¹ Further, the Committee on the Elimination of Racial Discrimination has highlighted the need to obtain informed consent prior to any decision affecting the rights and interests of indigenous peoples.³² Given the lack of transparency and the amount of misinformation that is presented to indigenous peoples' communities under threat of relocation, the requirement for 'informed consent' is particularly resonant in Cambodia.

18. As stated above, some measure of legal protection for the land rights of indigenous peoples in Cambodia is provided for in the 2001 Land Law. Customary use rights are recognized in the 2002 Forestry Law, and indigenous peoples' rights are further acknowledged by a specific Prime Ministerial Order and a Provincial *Deika*.³³ However, studies into land acquisition in Ratanakiri Province have concluded that the *majority* of land transfers are illegal, being in contravention of these national laws.³⁴

19. The impact of such illegal land transfers on the livelihoods of indigenous peoples in Cambodia can hardly be overstated. In some areas entire communities have disintegrated and there is a progressive and deepening loss of cultural and social resources.³⁵ Community members report that illegal land transfers usually begin with powerful and influential people developing relationships with individuals within communities and either coercing communities into accepting one-off cash payments or negotiating land transfers with individuals on behalf of entire communities.³⁶ The alienation of indigenous communities' lands through the granting of 'economic land concessions', including mining permits, also directly violates the rights of indigenous peoples to assert and gain recognition of their collective ownership of their traditional lands, as provided for under the 2001 Land Law.

20. Indigenous peoples' representatives report a rising level of misinformation with regard to their rights. During 2007 and 2008, NGOs and community groups have also noted an ongoing and increasing level of disempowering and incorrect information provided to communities by government officers. Indigenous community representatives have reported in land forums and conferences that they are repeatedly told by Government officials that they have no rights.³⁷ Communities have also reported that they are told by local officials that indigenous peoples must make way for rapid economic development.³⁸

²⁸ *Economic land concessions in Cambodia - A human rights perspective*. Cambodia Office of the High Commissioner for Human Rights, June 2007.

²⁹ *Ibid*.

³⁰ *Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, submitted pursuant to Commission on Human Rights resolution 2004/55*. UN Doc. E/CN.4/2005/84. Para 43.

³¹ See E/C.12/IND/CO/5, 10 May 2008.

³² Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII on Indigenous Peoples*, August 1997, para. 4(d) and 5.

³³ The Prime Minister's order No. 01 on the prevention, suppression and elimination of forest clearance, burning, earth working and encroaching of forest lands to claim ownership, dated June 2004. A Ratanakiri provincial *deika* in support for order No.001 dated, March 2005 and a further provincial *deika* in Ratanakiri in January 2006.

³⁴ Land Alienation in Indigenous Minority Communities - Ratanakiri Province, Cambodia. August 2006, *supra*.

³⁵ *Ibid*

³⁶ *Ibid*

³⁷ Workshop Reports from: a) Ratanakiri Land Forum (19-20 March, 2008), available from Indigenous Community Support Organisation; and b) National Indigenous Peoples Forum (27-28 October 2008) available from NGO Forum on Cambodia.

³⁸ *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round - 2. Briefing Paper prepared by members of the NGO Forum on Cambodia*, November 2008.

**Extract from “Land Alienated from Indigenous Minority Communities in Ratanakiri”,
NGO Forum on Cambodia, 2006**

A comparison of the situations in November 2004 and January 2006 lead to the following conclusions:

▣ In accordance with the 2001 Land Law, participants of the “Workshop to Seek Strategies to Prevent Indigenous Land Alienation” in March 2005 publicly acknowledged that both selling and buying of indigenous peoples’ land is illegal. Participants included provincial governors, representatives from the Ministry of Land Management Urban Planning, and commune councils. The illegality of the vast majority of land sales in Ratanakiri has also been confirmed by national and international legal experts.

▣ Communities report that, if this situation is allowed to continue, it will lead to a severe disruption of community processes and destroy the solidarity and cohesion within communities. This transforms communities into groups of people or individuals who are selling land and forest and the situation becomes very difficult to control.

21. Of greater concern are the increased threats and intimidation against indigenous community members trying to protect indigenous peoples’ land and natural resources. Indigenous peoples and NGOs report an increasing level of court cases and other threats against indigenous community leaders involved in resisting land concessions and land acquisitions³⁹. Examples include:⁴⁰

- a) in March 2007, an economic land concession was given to the Sopheak Nika Investment Company which overlapped with indigenous community land. On 3rd March 2007, armed soldiers were deployed to break-up a protest by affected communities and allegedly used verbal and physical threats;
- b) in July 2007, in the Kong Yu case, the Provincial Criminal Prosecutor allowed 41 statements made by villagers stating that they willingly sold the disputed land to be filed in the criminal investigation in July 2007. At the time of the statements, the villagers were not formally summonsed for questioning but driven to court in a truck belonging to the business woman’s association. The Jarai speaking villagers were then asked to thumb print written Khmer statements they did not understand and were threatened by the association representatives if they refused. Eleven of the 41 statements were made by villagers who were from outside the village and not involved in the land dispute and who made statements in return for money. The General Prosecutor at the Court of Appeal however, has subsequently ordered the Provincial Criminal Prosecutor to act in accordance with the law;
- c) in November 2007, in Kompong Cham, military soldiers acting on behalf of a private company grabbed 4,000 ha of land used by an indigenous community. The soldiers were armed and fired shots in the air to threaten any community members who attempted to reclaim their rice-fields;
- d) in March 2008, two indigenous Community Forestry leaders in Kratie Province were victims of serious verbal threats and attempted killings after confiscating logging equipment during forest patrols in communal areas. One of their ‘field houses’ was also set on fire & burned down⁴¹. To this day, local authorities have failed to investigate or arrest perpetrators;
- e) in February 2008, an indigenous community in Preah Vihear was intimidated by the provincial court as they attempted to protect their forest from illegal gold mining, which they allege was causing environmental pollution and killing their livestock; and
- f) on 27 May 2008, an economic land concession was given in Snoul District, Kratie Province to CIV Development Agro Industry Company. This overlapped with indigenous land. This concession was granted without any public consultation and was therefore not in line with the sub decree on economic land concession. On 5th September community members staged a protest to halt the clearing of their lands. A week later 4 community representatives involved in the protest were summonsed to court by the prosecutor after the company filed

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Indigenous people often have two houses, one in the village and one near their agricultural fields, where they stay during the planting and harvesting seasons.

criminal complaints the representatives for infringements against private ownership, destruction of private property and robbery after community people surrounded an excavator as part of the protest. An NGO team monitoring the event found that nothing was destroyed and/or stolen. The company relies on the (illegal) economic land concession contract documents, statements of its supervisor and workers to and photographs of the peaceful demonstration to support these charges. However, in the view of the NGO lawyers, there is insufficient evidence to support these serious charges and the company and prosecutor are using judicial mechanisms to intimidate the villagers.

22. Additionally, NGO human rights defenders who are trying to protect indigenous communal land are also increasingly under threat.⁴² An Amnesty International report released in September 2008 confirms this, stating that

Human rights workers also find themselves at risk for their defense of land and housing rights. Security forces are known to have cut off access for lawyers to the villages of their clients, and in Ratanakiri and Mondulakiri, provincial authorities have required written application for permission to pay visits to communities at risk of forced eviction or to monitor peaceful protests.⁴³

V. EDUCATION

22. Article 13 of the ICESCR commits Cambodia to providing primary education free of charge to all Cambodians without discrimination. Article 13 further commits the State Party to make secondary education generally available and accessible to all, including through the progressive introduction of free education, and working towards the provision of equal access to tertiary education, including through the provision of free high school education. Article 14 of the ICESCR commits the State Party to establishing a concrete plan towards the realization of the right to education.

23. The Committee has previously explained that under Article 13(2) of the Covenant, states must take “positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples...”⁴⁴ The UN Declaration on the Rights of Indigenous Peoples also clarifies that this right extends to the provision of culturally appropriate and bilingual education systems and curricula.

24. There have been some positive steps towards the expansion of bilingual education in the formal education system with the Ministry of Education, Youth and Sport (MEYS) supporting such initiatives. In Stung Treng, Mondulakiri and Ratanakiri, the Ministry has set up bilingual community schools and, in Ratanakiri, a number of state schools have adopted bilingual education in the Kreung, Tampuan, Bunong and Kavet languages. The Royal Academy and the MEYS have approved over 80 readers in different languages to be used in formal education. The 2007 Education Law allows for a '*prakas*' (an implementing order or proclamation) to be promulgated for the use of non Khmer languages as the language of instruction in indigenous areas. The MEYS has also indicated that a bilingual education policy can be developed under the Child Friendly Schools policy which came into effect March 2008.⁴⁵

25. However, the situation for indigenous peoples in Cambodia with regards to effective access to appropriate education remains dire. The proportions of indigenous people who can not access school or leave school functionally illiterate continues to remain far higher than the national average. Despite the efforts described above, which are welcomed and supported by indigenous peoples in Cambodia, the lack of educational services in indigenous peoples' areas is a serious issue that needs to be addressed.

⁴² Ibid.

⁴³ Amnesty International, *A Risky Business – Defending the Right to Housing*, 2008, p. 13. Ratanakiri and Mondulakiri are the two provinces most heavily populated by indigenous peoples and the disputes referred to herein all concern traditional occupied and used indigenous lands.

⁴⁴ *General comment No. 13: The right to education (art. 13)*, at para. 50.

⁴⁵ The Child Friendly Schools policy was promulgated by the MEYS in December 2008.

VI. HEALTH

26. Article 12 of the ICESCR commits Cambodia to take steps to realize the right to the enjoyment of physical and mental health, while Article 2 confirms that this right must be recognized without discrimination. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of mental and physical health, Paul Hunt, has also explained that the provision of health services must be culturally appropriate and specifically designed to meet the health needs of indigenous peoples.⁴⁶ However, the health status of indigenous peoples in Cambodia remains below the national average. For instance, mortality rates for children under the age of 5 in Mondulakiri and Ratanakiri provinces, both having majority indigenous populations, are 165 deaths per 1,000 live births compared with the national average of 83 deaths per 1,000 live births.⁴⁷

27. The right to health and well-being, according to the World Health Organisation (WHO), not only means being free from disease, but also having access to preventive health education and counseling.⁴⁸ In Cambodia, language barriers and cultural differences between indigenous people and the public health service providers form major obstacles. Money, transportation, language, discrimination, low levels of education and traditional beliefs/obligations are all cited as major barriers to accessing health services and information.⁴⁹

28. There is still a significant imbalance in the distribution of public health service staff, with most staff in these provinces coming from the majority population. An obvious impact of this imbalance is the continued restrictions on access to health services and information. Observations in Ratanakiri also indicate that some of the previous indigenous staff in health centers have been replaced by majority Khmer staff.⁵⁰ In Mondulakiri Province, where the Phnong make up a majority of the population, only 27 of 121 health service staff are Phnong, and most of these are employed as 'floating staff' (those not necessarily in full-time employment), at the health facility.⁵¹

29. In early 2007, the United Nations Population Fund (UNFPA) funded extensive research in Ratanakiri into priority issues as identified by indigenous peoples. These priority issues included social issues such as domestic violence and inter-generational conflict (as younger people no longer or rarely use traditional medicines), as well as issues more strictly associated with health such as maternal health and malaria. The research concluded that insufficient action is being taken by national and provincial health authorities to meet the needs of Cambodia's indigenous peoples and to ensure that they have equal access to government provided services.

30. Last but not least, the Committee has recognized that indigenous peoples' health is threatened by activities including displacement that affect their traditional territories. In a statement that is very relevant to the situation in Cambodia today, the Committee explains that

in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.⁵²

⁴⁶ *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health Report of the Special Rapporteur, Paul Hunt.* UN Doc. E/CN.4/2004/49, at para. 41.

⁴⁷ Cambodia Demographic and Health Survey 2005.

⁴⁸ Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

⁴⁹ Personal communication with Health Unlimited staff, Ratanakiri Provincial office.

⁵⁰ Ibid.

⁵¹ Personal communication with Healthnet International staff, Mondulakiri Provincial office.

⁵² General Comment 14, *The right to the highest attainable standard of health: 11/08/2000.* UN Doc. E/C.12/2000/4, 11 August 2000, at para. 27.

VII. CONCLUSION AND REQUEST

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

- a) takes immediate steps to ensure that the lands 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;
- b) ensures that the draft *Sub-Decree on Procedures of Registration of Land of Indigenous Communities* is consistent with indigenous peoples' rights as defined by international law. In particular, that registration requirements are not prejudicial to indigenous peoples' rights to self-identification, self-determination and juridical capacity, and that lands in addition to those used for residential or agricultural purposes are included in the titling programme;
- c) takes immediate steps to ensure the proper and just resolution of cases of alienation and loss of customary lands in indigenous peoples' areas, including through restitution of lands taken without indigenous peoples' free, prior and informed consent, and the effective prosecution of offenders, including people of power and influence in Cambodian society and the authorities involved in promoting, endorsing, supporting, or benefiting from land transactions in areas of indigenous peoples' communities;
- d) establishes 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;
- e) suspends all land, tourism, mining and other concessions and other large-scale development projects (such as large hydro-electric dams and highways) in indigenous peoples' areas until such a time as registration of lands under the 2001 Land Law has been completed and ensures that respect of the right of free prior and informed consent is applied to any activities to be undertaken on indigenous peoples' lands and territories;
- f) takes concerted action to ensure that the titling of indigenous peoples' lands under the 2001 Land Law takes place quickly and effectively, with the full and effective involvement of the traditional authorities of the concerned indigenous peoples and in accordance with the relevant norms of applicable international law;
- g) continues to develop and expand bi-lingual and inter-cultural education for indigenous peoples;
- h) provides immediate political and financial resources to establish an effective health outreach programme in rural and remote areas in Cambodia, including the provision of culturally appropriate services in the languages of the indigenous peoples of Cambodia; and
- i) takes immediate steps to recognize, empower and build the capacity of traditional and customary authorities to participate effectively in national decision-making processes relevant to indigenous peoples, including the drafting of laws and regulations on issues impacting on indigenous peoples' communities.

VIII. Annexes

Annex A: Submitting Organizations

1. **Indigenous Community Support Organization.** Address: House 244 AEO, Street 376, Sangkat Boeung Keng Kang III, Khan Chamkar Morn, Phnom Penh, Cambodia Telephone: (855) 23 997 657. Email: Vansey@icso.org.kh Website: www.icso.org.kh.
2. **NGO Forum on Cambodia.** Address: #9-11 Street 476, Toul Tompong, P.O. Box 2295, Phnom Penh 3, Cambodia. Tel: (855)23-214 429/(855)23-213 482 Fax: (855)23- 994 063. Email: ngoforum@ngoforum.org.kh. Website: <http://www.ngoforum.org.kh/>
3. **Asian Indigenous Peoples' Pact Foundation.** Address: 108, Moo 5, Soi 6, Tambone Sanpranate, Amphur Sansai, Chiang Mai - 50210, Thailand Telephone: +66 (0)53 380 168. Email: joan@aippnet.org Website: www.aippnet.org
4. **Forest Peoples Programme.** Address: 1c Fosseway Business Park, Moreton-in-Marsh, GL56 9NQ, UK. Telephone: +44(0)1608 652893. Email: fergus@forestpeoples.org Website: www.forestpeoples.org.