



Economic and Social Council

Distr.: General
13 March 2007

Original: English

3,217 words

Permanent Forum on Indigenous Issues

Sixth session

New York, 14-25 May 2007

Item 3 of the provisional agenda*

Special theme: territories, lands and natural resources

Information received from non-governmental organizations with ECOSOC consultative status

International Work Group for Indigenous Affairs (IWGIA)

IWGIA and Tebtebba Foundation

Summary

The present document consists of two sections. Section A contains information provided by IWGIA, on behalf of the NGO Forum in Cambodia, provides information on the situation regarding lands, territories and natural resources issue of indigenous communities in Cambodia. A number of recommendations are made to address these issues to the Permanent Forum. Section B contains summary and recommendations of Asia Regional Conference on Indigenous Peoples and Communal Land held in Kompong Cham, Cambodia from 14 to 16 February 2007, provided by IWGIA and Tebtebba Foundation.

* E/C.19/2007/1.

Advance Unedited Version

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A. Information from IWGIA

1. Introduction

1. Empirical research suggests that number of indigenous peoples in Cambodia could be 190,000 people or 1.4 percent of Cambodia's population. The 1998 Cambodian Population Census identified 17 different indigenous peoples. Compared to its neighbours in Southeast Asia, Cambodia has the smallest population of indigenous peoples, both relatively and in absolute numbers. The country's majority of ethnic Khmer accounts for approximately ninety percent of the population.

II. Illegal land alienation from indigenous communities

2. Despite the favourable regulations for indigenous communities in the 2001 Land Law, the lack of implementation and enforcement has left indigenous peoples vulnerable to commercial and state interests, which are increasingly attracted to exploiting the economic potential of the forests and upland areas traditionally used and managed by indigenous communities.

3. Road development continues to impact seriously on indigenous communities. Massive land grabbing has been associated with construction of a road from Mondulkiri to Ratanakiri province, and from Kratie to Stung Treng province. News of planned road development to be funded by the World Bank in Preah Vihear province has led to increased land grabbing in Kui communities by outsiders.

4. The trading of land has also involved many indigenous persons who have been corrupted by an environment of self-interest. People in government have been integrally involved in these illegal land deals as buyer, seller, approver and brokers.

5. Indigenous peoples' attempts to tackle land grabbing have been frustrated by the courts and many in government. In a notable case in Ratanakiri province (in Aikapeap commune), a court upheld a land grab on land belonging to a Tampuen community. There are allegations on the involvement of high ranking governmental officials in the transaction of land to transform it into rubber plantation.

6. In February 2007 these issues were raised in a national workshop which was attended by the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples. The situation is now critical and urgently requires attention.

III. Land concessions

7. Economic land concessions for the development of plantations were granted on indigenous communities' land or land they use in Kratie, Stung Treng, Oddar Meanchey, Siem Reap, Preah Vihear Ratanakiri, Mondulkiri, and Kompong Thom provinces.

8. Wuzhishan, a Chinese company, continues work on a large pine plantation in Mondulkiri province on land belonging to Punong communities. The Special Representative of the United Nations Secretary-General (SRSG) on Cambodia called for the cancellation of this land concession in his statement dated 5th July 2005. A tourism concession in an area sacred to the Suoy people in Kompong Speu province, by a Chinese Company (New Cosmos), continues, despite local resistance.

9. In many areas indigenous communities are being told by government officials and business people that they will have their lands taken for social concessions, land concessions, mining concessions or tourism concessions (or other reasons). They are allegedly told they it is better

for them to illegally sell their land now rather than have it taken in the future with no income at all.

IV. Mining

10. In Cambodia, the Land Law provides little or no protection to indigenous peoples with regard to mining concessions. This is a great concern, especially as there has been a significant acceleration of the idea that indigenous peoples' land must be industrialised "in the national interest". Without control of mining, the provisions in the 2001 Land Law related to indigenous peoples' lands may be meaningless.

11. In 2006, the Government announced that 100,000 hectares of land were being granted to Japanese and Australian companies for mineral exploitation in north-eastern Cambodia. This is in addition to existing mining concessions on indigenous communities' land in Ratanakiri, Preah Vihear, and other provinces issued without prior consent of indigenous peoples. In Stung Treng developments of an iron mine on indigenous land have recently slowed. All have been granted with the absence of free, prior and informed consent.

V. Forestry Issues

12. In January 2002, the Royal Government of Cambodia imposed a moratorium on logging in forest concessions. However, it has now begun to allocate logging areas to companies for annual harvesting rights, in some cases in areas used by indigenous communities. One annual coupe was granted in an area in Ratanakiri province. Logging was approved without adequate consultation with indigenous communities residing in and around the allocated forest area. Investigations found significant departures from plans and standards. In some areas of

Kratie, Mondulhiri, and Preah Vihear provinces, indigenous communities have patrolled forest areas themselves, when the official structures proved ineffective.

VI. Land title registration

13. The 2001 Land Law includes a chapter on registration of communal lands of indigenous communities, providing a mechanism to safeguard indigenous communities' land in the form of communal land titles. However, no such titles have yet been granted.

14. Within an Indigenous People Land Policy currently being drafted, there have been attempts to place limits on the amount of spirit forest and cemetery forest allowable in communal land titles in the future. This is clearly against the 2001 Land Law, which says that the boundaries of indigenous peoples' lands are the factual boundaries as agreed by communities.

VII, Hydro-electric dams

15. Extreme problems have been reported since mid 1996 as a result of hydropower dams located on the Sesan River in Vietnam, which flows through Ratanakiri and Stung Treng provinces in the north-east of Cambodia. Many of the communities located along this river are indigenous. .

16. While these problems continue, they are likely to be exacerbated by more dams that have already been commenced or are being planned in Vietnam and Lao PDR, on the Sesan, Srepok, Sekong and Mekong rivers. International donor agencies and multi-lateral banks continue to support and validate their construction by supporting associated projects such as power line construction and funding feasibility studies.

VIII. Security of community people protecting their rights

17. Of increasing concern is the number of indigenous (and non-indigenous) activists being arrested, often illegally, related to resistance to land and forest alienation attempts by rich and powerful people/companies. Cases in several provinces have shown how this has played a role in targeted intimidation against indigenous activists who have had to resort to non-violent protest in attempts to get forest and land issues addressed.

IX. Understanding of indigenous issues within Cambodia

18. Most Cambodian people are generally not aware of indigenous peoples' rights or indigenous peoples' culture. The same can be said for the majority of people working within UN agencies.

Education programs within the UN and within general Cambodian society are urgently required.

X. Recommendations

19. Recommendations – Land.

- The UNPFII should urge UN agencies, the World Bank, ADB and bi-lateral donors work with the Cambodian Government to develop commitment to addressing land, including:
 - o **Instigating a clear and concise program of information of states that the sale or trade of indigenous community land is contrary to the 2001 land law, that the lands will not be taken for concessions, and that land acquired from indigenous communities subsequent to the 2001 land law will not recognised.**

- **Issuing clear directives and discipline to commune councils that the approval of land sales in indigenous peoples' areas is contrary to the 2001 Land Law.**

- The UNPFII should establish an independent investigation into the alleged abuse of indigenous peoples' land rights through illegal land alienation, the issuance of land, forestry, tourism and mining concessions. This should include:
 - **Recommendations on how the rights of indigenous peoples can be legally protected.**
 - **The degree to which the Cambodian Government ensured free, prior and informed consent of indigenous peoples in decisions to approve land concessions and mining exploration licenses over the traditional lands and forests of indigenous peoples.**
 - **The role of other states in the promotion of agri-business and extractive industries in the north-east of Cambodia without the free prior and informed consent of indigenous peoples.**
 - **The role of multi-national agri-business and extractive industries companies in the north-east of Cambodia and whether corporate social responsibility responsibilities have been fulfilled.**

20. Recommendation: Forestry Issues.

- **UNPFII should urge the World Bank to follow through with the specific actions that have been identified in the Management Report and Recommendation in Response to the Inspection Panel Investigation Report (May 2006) including**

calling for the termination of all existing logging concessions and promoting more equitable and sustainable alternatives of forest management.

21. Recommendations: Hydro-electric dams

- **The UNPFII should express deep concern to the Cambodian government and the Vietnamese government as to the undermining of the rights of indigenous peoples that these hydro-electric dams represent.**

22. Recommendations: Security of community people protecting their rights

- **The UNPFII should recommend the Office of the High Commissioner for Human Rights and the Cambodian Government to establish a monitoring mechanism for the reporting to the international community the treatment of indigenous peoples attempting to protect their resource rights**

B. Information from IWGIA and Tebtebba Foundation: the Summary Report and Recommendations of Asia Regional Conference on Indigenous Peoples and Communal Land, Kompong Cham, Cambodia

23. From February 14 to 16, 2006, 95 indigenous representatives from Bangladesh, Myanmar, Cambodia, India, Indonesia, Japan, Laos, Malaysia, Nepal, Philippines, Thailand and Vietnam gathered in Kompong Cham, Cambodia to hold a conference on Indigenous Peoples and Communal Land. The conference was organized by the Asia Indigenous Peoples Pact (AIPP) and NGO Forum on Cambodia, with support from IWGIA and the European Commission.

24. The participants were brought together by their shared concern over the lack of recognition of communal land rights in many Asian countries, the rapid loss of land, and the erosion of traditional communal land tenure, use and management systems in indigenous communities across the region. Indigenous communities identify themselves strongly with their territory. Their relationship to land has not only a pronounced communal, but also an inter-generational character, and their relationship to land is multi-dimensional: economic, social, cultural, and spiritual. Thus, as Special Rapporteur Erica Irene Daes noted in her report, “The gradual deterioration of indigenous societies can be traced to the non-recognition of the profound relationship that indigenous peoples have to their lands, territories and resources ” ((E/CN.4/Sub.2/2002/23).

The common picture

25. Across the Asia region, indigenous peoples are being deprived of their land and resources. The process began during the colonial era, but continued under post-colonial

independent nations. Land classification systems and basic legal concepts, like that of the Eminent Domain, whereby the state claims ownership over vast areas of land, have been introduced by the colonial powers and are still enshrined in the Constitution of many Asian states. In the process, the presence of indigenous peoples and their customary land rights and management systems were and continue to be ignored. In those cases where customary rights are legally recognized, the implementation and enforcement of the respective laws and policies is generally weak, often hindered by contradicting legislations and sometimes altogether avoided as a result of intervening powerful vested interests.

26. A critical stand towards large scale resource and land appropriation by the state and private companies are usually branded as anti-development and anti-national, and indigenous peoples' resistance to dispossession is often met with harassment if not violent repression by the state's security forces. As a result, some indigenous areas in South and Southeast Asia are among the most heavily militarized regions in the world.

27. State laws and policies in the Asia region clearly favor private land ownership and corporate interests over communal land ownership and the well-being of indigenous communities. After decades of logging of indigenous peoples' forests, exploitation of resources on indigenous territories is currently focusing on mining and large-scale commercial plantations such as rubber, cashew nuts, cassava or oil palm. While the demarcation and registration of indigenous communities' land – in countries where the respective legal provisions exist – is usually a long, complicated and expensive process, governments are very forthcoming in issuing logging, plantation and mining concessions over vast areas inhabited by indigenous communities. With a few exceptions, attempts to seek legal recourse are frustrated as the judiciary in some Asian countries is still not independent,

judges insensitive and biased, or the procedures prohibitively expensive for poor indigenous communities.

The challenges

28. In defense of their land and resources, indigenous communities are facing challenges of magnificent scope.

29. At the legal front, indigenous peoples in most Asian countries still have to struggle both for their recognition as indigenous peoples, and for the recognition of communal land rights. They are usually confronted with a biased and corrupt judiciary, state administration and security apparatus, often enjoying impunity.

30. At the political front, they are confronted with an – often violent – repression of their attempts to organize themselves, with corruption, intimidation, harassment or even the killing of their leaders. Their customary laws and institutions, such as traditional leaders and councils, are not recognized and the state's political-administrative system is imposed on them, thus undermining their own socio-political organization.

30. The knowledge, capacity and skills as well as financial resources needed for an effective engagement with the state's political and judicial system, and for effective networking and mobilization in defense their rights are in most indigenous communities largely absent. Many also do not know how to engage with private companies or how to use the international legal instruments.

31. Lack of self-confidence, cultural assimilation pressure, mainstream education, youth migration, proselytizing and other external forces are weakening existing customary institutions and are dividing the communities and generations thus breaking the unity of indigenous communities and peoples.

32. Increasing cash needs and integration into the market economy without the capacity to explore culturally, socially and ecologically appropriate alternatives in economic development force indigenous communities to engage in unsustainable land use practices and a development process that increases economic dependence.

Recommendations

In order to overcome these challenges in their struggle for the recognition of their communal land and resource rights, the participants of the Conference came up with the following recommendations to UN and government agencies, NGOs, and indigenous peoples' organizations.

On the local level

33. Empowerment

Promote and support:

self-organizing and self-empowerment of indigenous communities and networking for mutual support and protection,

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- **awareness raising on existing laws and international human and indigenous rights instruments,**
 - **encourage and support indigenous communities to make use of the national legal system and international instruments to protect their rights**

- leadership training,
- economic empowerment through exchange and mutual learning,
- community mapping involving elders to solve land conflicts,
- applying gender sensitive approaches in all strategies for safeguarding indigenous peoples control over land and resources.

34. Customary law

- Continue, revitalize and review traditional systems, customs and practices to adapt them to changing conditions and needs,
- Document indigenous peoples' customary laws and land and resource management systems.

On the national level

35. Awareness raising

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- Engage and educate the media for systematic and sustained awareness raising of the general public, governments, legislators and private companies on indigenous peoples' issues,
 - Engage communities directly in awareness raising and education initiatives on indigenous peoples' issues.

36. Laws, policies and their implementation

Promote and call for:

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- the constitutional and legal recognition of indigenous peoples,
 - legal reform, in particular towards the recognition of indigenous peoples' communal land rights, and explore possibilities for alternative legal paradigms

that are compatible with and recognize indigenous peoples' customary laws and institutions,

- **national laws conform with international laws,**
- **the establishment of Land Commissions that address violations of indigenous peoples' land rights, facilitate restitution of alienated land, and settles disputes,**
- **legal provision ensuring the inclusion of indigenous representatives in political decision-making bodies, e.g. the reservation of seats for indigenous in parliaments, senates or other legislative bodies of the state,**
- **donor policies on indigenous peoples to be applied in order to achieve legal and policy changes.**
- **the passing of laws controlling investors' activities and mitigating the negative impact of economic liberalization on indigenous peoples' territories,**
- **full transparency on projects on indigenous territories by governments and corporations, i.e. implementation of Free, Prior and Informed Consent (FPIC) principles and mechanisms including providing information in a timely and appropriate manner, and in accordance with customary laws and practices of the respective indigenous peoples.**
- **the complete abandonment of transmigration policies and programs, and for the prevention of illegal migration to indigenous peoples territories .**
- **the broadening of the mandate of, strengthen and use national human rights commissions to fight violations of the rights of indigenous peoples.**

37. Lobby, advocacy and networking

Promote and support:

- **the formation and strengthening of existing national networks and alliances among indigenous communities and their organizations for advocacy, mutual support and protection,**
- **indigenous peoples' engagement with the government to learn about procedures, mechanisms and tactics,**
- **setting up of pilot projects to demonstrate effective communal land management to lobby the authorities ,**
- **the use of environmental conservation discourse, laws and instruments such as the Convention on Biological Diversity (CBD) to promote indigenous peoples' right to land and resources,**
- **governments and the general public to value indigenous knowledge on natural resource management.**

On the international level

38. *Lobby, advocacy and networking*

Promote and support:

- **the use of international instruments and for a for the promotion of indigenous peoples rights, in particular the recognition of communal land rights,**
- **international campaigns and networking on indigenous peoples' land rights,**
- **the strengthening of existing networks and alliances of indigenous peoples organizations within Asia and their organizations for advocacy, mutual support and protection,**

- **studies and campaigns on the concept of Eminent Domain as a continuation of or adoption of colonial practices in present-day independent nations,**
- **campaigns against large-scale commercial plantations, mining and mega-dams on indigenous territories,**
- **a discourse on development alternatives among indigenous peoples.**

39. Laws, policies and implementation

Promote and support

- **the development and proper implementation of policies on indigenous peoples by the European Union, UN agencies, World Bank, Asian Development Bank ,**
- **drawing up a common policy for development agencies giving priority to the recognition and protection of land rights and resource rights as a precondition for achieving the Millennium Development Goals for indigenous peoples.**