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The Expert Mechanism on the Rights of Indigenous People - Access to Justice

Cambodia Indigenous Youth Association (CIYA)



Case Study: Prame Commune, TbengMeanchey District, PreahVihear Province
March 10, 2014

Table of Contents

Organization Information:	3
Indigenous Context in Cambodia:	3
Introduction:	4
Prame Commune:	4
Legal context of the case:	6
Methodologies:	7
Findings:	8
Requests and Comments from Community Members	10
Appendix	10

Organization Information:

Cambodia Indigenous Youth Association (CIYA) was established by a group of Cambodian indigenous students in Phnom Penh in 2005. The association was officially recognized by the Royal Government of Cambodia in 2008 with the support of the Heinrich Böll Foundation (HBF). It is the first organization established for indigenous youth and the third indigenous organization established in Cambodia. The original purpose of the development of CIYA was to mobilize indigenous youth as a strong group in which members could support each other by acting as a social network within the city. In order to do so, CIYA began implementing activities to build their capacity allowing them to serve as indigenous community development workers in the future. As the number of indigenous students in Phnom Penh increases, the members of CIYA also increase and has since expanded to the provinces, particularly in North and Northeast Cambodia. CIYA now has 12 secretariat members and more than 300 associational members who are formally represented in the General Assembly.

From 2009, with the support HBF, CIYA was granted an office area and a strong operational unit to support the association's programs and its members. International and national consultants have been recruited to help this new organization develop its own strategies with full participation from its members and partner organizations such as the NGO Forum, The Community Legal Education Center, UNDP, ILO, Indigenous Community Support Organization, My Village, VisionFund Cambodia, etc. In 2010, HBF provided a small grant to support CIYA's core funds as well as some awareness raising field activities on legislation related to indigenous people's livelihoods including land and forestry laws. CIYA was able to facilitate community dialogues, conduct surveys to gather statistics about indigenous youth specifically with regards to education, and to document the customs and traditions of indigenous people. HBF has also provided support to build the capacity of the operational unit of the association including organizing the full assembly and building up the management system of staff, administration and finance.

Indigenous Context in Cambodia:

The indigenous people in Cambodia are living in the remote areas and highlands of Cambodia, especially in the Northeast of Cambodia, including Ratanakiri, Mondul Kiri, Kratie, and Preah Vihear, and in the southwest along the Cardamom mountains. These provinces are located far from Phnom Penh, the capital of Cambodia. The infrastructure in these locations are very poor, but the regions are rich in natural resources. Migration and economic development in other parts of Cambodia have all

negatively impacted the ability of Indigenous Peoples to manage their land and natural resources due to illegal logging, non-participatory concessions, and land encroachment. Furthermore, the provinces in which most Indigenous People reside have poor access to information and other public services such as education and healthcare, which limits Indigenous People's capacity to manage internal and external problems.

In order for Indigenous people in Cambodia to retain their culture and their traditional livelihoods, they must retain their connection to land. "Land is life" is a phrase that is often uttered in situations where Indigenous People's access to land is hampered. Indigenous groups depend on farm and forest land for every single part of their lives and many economic development projects have gone ahead without an assessment to the impact of development on the lives of Indigenous People. Further, Indigenous People in Cambodia struggle between the promise of rights and laws and the practice of neglect of those same rights and laws. With very little political and financial power, claiming rights often results in a number of consequences for Indigenous people.

Introduction:

For CIYA's study on access to justice of indigenous peoples in Cambodia, the team decided to focus their attention on a case that is developing in the northern province in PreahVihear. Justice in the indigenous context is a multilayered and complicated concept for Cambodia. Indigenous People across the country are called to interact in the name of justice as their rights are repeatedly ignored. Using the case of Prame Commune, PreahVihear, our team is able to extract valuable insight into the application of the Cambodian judicial system



Kui indigenous people celebrating the harvest and worshipping in their spiritual forest, March 2014.

Prame Commune:

The CIYA team focused their research mainly on Prame commune, PreahVihear province, Cambodia. This community faces economic, social and cultural issues due to economic land concessions. The land concessions began in 2011, and CIYA began turning their efforts to the community of Prame village around the same time. There were 216 families affected by the economic land concessions, in which 330 are male and 320 are female. Prame commune is home to members of the Kui Indigenous group along with spiritual forest lands and

The Kui indigenous community in Prame commune faces many challenges due to ELCs including deforestation, loss of culture, destruction of ancient temples, disunity of the indigenous community, loss of ownership on the traditional land use and enjoyment of rights in accordance with national and international laws and indigenous traditions. The following is a detailed description of the challenges facing Prame commune:

1. Economic Impact:

- The companies have been demolishing farming lands, residential timbers, and agricultural lands in the areas of Or Porpaing, Or Preal, TrapaingAngdong and TrapaingAmpel, aiming at ruining the evidence of land abuse, and furthermore, blocking the roads to farming fields preventing a few families from cultivating.
- Reserved lands for the generation's cultivation are being cleared.
- Bulldozing the forest in the area of KokPreng, Or Preal, and Or Porpaing, numerous affecting the cattle tending fields, habitat to animals, NTFPs, resin collection, and natural foods for sustaining the community livelihood.
- Affecting and destructing rice of some villagers in the areas of Or Preal and Or Porpaing;
- Loss of sources of traditional herbs from the forest;
- Loss of incomes of our community and neighboring communities;

2. Environmental Impact:

- Destruction of animal habitats, water systems, sources of fodder, and fishes in Stung Sen River flowing into the Tonle Sap Lake. The area also faces drought, storm, warming, degradation and flood eroding community crops, houses, property, etc.

3. Cultural Impact:

- Destroying the ancient village, spiritual forests, ancient temples, and sacred lake which are part of the cultural heritage of the country results in a loss of traditions, worship places, and identity of the indigenous people and nation.
- Causes mental health problems, loss of national territory and loss of hope ;

4. Social Impact:

- Affects the system of traditional livelihood, community unity, and results in migration;

- Children and young people quit pursuing their studies because they need to participate in protest activities and concerns over land loss and for their future livelihood;
5. Local community and neighboring impact:
- Local communities depending on forests and water resources as well as natural fertilizers in the area face a loss of jobs such as cultivation, fishing, tending fields, gathering NTFPs, residential timber logging.
 - The neighboring communities' health or people who use the water from the rivers in this area will be affected by chemical substances used for insecticide in plantations.
 - Encourages conflict among communities.



Cleared forest area in Prame commune. March 2014

Legal context of the case:

The Kui indigenous people in Prame commune filed a complaint to the government and sent a letter of request to related ministries in Cambodia such as: the Ministry of Cadastral, the Ministry of Rural Development, the Ministry of Environment, the King of Cambodia and the Ministry of Forestry Administration on 28/01/2013. The Prame community held a press conference on 28/01/2013 to bring attention to their concerns and suffering with regards to their loss of land and to the clearance of their forests. Currently, the community has no environment, or temples. In order to get the company to negotiate with them, to listen to their needs and to end the Economics Land Concession in their area, the community is continually guarding the forest. Community members are becoming sick and have begun to lose hope after long days and nights spent guarding their forest. A variety of NGOs and CSOs joined the press conference a

long with Khmer and English news sources.

The local authorities have threatened the villagers by saying that they have no right to protest against the government or local authorities because the Prime Minister of Cambodia has already given the company permission to develop and clear the land. The state has laws and policies to develop the country and citizens must obey the law in order show their respect to the state. However the state has never accepted the request letter and has never replied to community. Furthermore, the local authorities have also tried to find and arrest two community members who have served their own community and supported the struggle against the ongoing land concession. The community members took the opportunity to advocate for the two men who received threats of arrest at the press conference. All authorities have no warrant letter to arrest either of them since they have not committed any crime against the government.

The community has recently hired a legal representative through the support of CIYA's donors. As a last resort, the community's legal representative is in the process of filing a complaint to the provincial court. Through intervention from the provincial court the community hopes to end the current land concession, to get back some of the land they are highly dependent on and to receive compensation for their losses. This action is the only legal option left to bring justice to the Kui indigenous people of Prame. If community members are not heard and justice is not served, there are no other legal processes available to assist this community within the Cambodian judicial system.

Methodologies:

Using the criteria established by EMRIP, the CIYA team built a questionnaire in order to gather data surrounding indigenous people's access to justice. The questionnaire was then used for one-on-one interviews and focus groups with members of Prame village, NGOs and Institutions involved in the case of Prame's indigenous rights violation. The 27 questions are available in English in the appendix of this document. Over the course of a 5-day data collection activity, the team surveyed 23 individuals between the ages of 20-55 of which 13 were male and 10 were female. Out of the 23 individuals interviewed, two are representatives of ADHOC and ILO, organizations that have contributed directly to the case of Prame.

Information for this report has been gathered since 2011 through the documentation of CIYA's Indigenous Peoples Human Rights Defenders and Advocacy (IPHRDA) project. Research for this report has been supplemented by documentation through fact sheets as written by the CIYA-IPHRDA team. Photos in this report were taken during data collection conducted between February 27th to March 1st 2014.

Findings:



Site of an uprooted ancient temple in Prame Commune where a company searched for gemstones, March 2014.

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Findings of CIYA's research can be broken up in two major parts: The villagers' understanding of the judicial system of Cambodia and the Royal Cambodian Government (RGC)'s effectiveness in providing a judicial system within which Indigenous People can interact equitably. Using the criteria outlined by EMRIP, the villagers' understanding of the judicial system was measured based on their knowledge of the existing judicial branch of the government as well as their knowledge of relevant international and national laws, policies and declarations which are endorsed or upheld by the RGC.

In order to measure access to the judicial system for indigenous people, Human Rights institutions and the communities' lawyer were consulted. The research also measured the communities level of knowledge with regards to their access to justice within state law systems and non state indigenous law systems. Please refer to the appendix for a list of questions used to measure access to justice.

Understand and Access to the Judicial System

Above 70% of the participants interviewed believed that they had some knowledge and understanding of the Cambodian judicial system. All participants interviewed agreed that translation services were available for indigenous peoples. Less than 20% believed that judges were trained on indigenous people's perspectives and were knowledgeable about issues specifically faced by indigenous people. When asked about indigenous access to adequate legal representation, participants answered that without sufficient funds, indigenous peoples and communities are generally unable to acquire adequate legal representation.

The research revealed that low income and corruption within the judicial system were the two major obstacles to indigenous people's access to justice. Without sufficient funds, indigenous peoples and communities are generally unable to acquire adequate legal representation. "We are able to cry here and speak out, but the government in Phnom Penh does not care about what they are doing," said one Prame community member referring to the companies involved with the Economic Land Concession, when asked about social, economic and cultural factors which impede the ability of indigenous

people to access justice. For the community members of Prame, it is clear to them that their government is less than interested in understanding and acknowledging the impact of their economic development plan on indigenous communities.

When asked about access to justice within indigenous customary law systems, all participants interviewed felt satisfied and willing to rely on the traditional system. Many participants insisted that through the customary law systems, both victims and perpetrators felt satisfied with their sentences. So much so that they believed there was significantly less disunity after sentences were complete and that victims and perpetrators were able to move on and live in harmony with one another. Unfortunately, many participants explained that the execution of customary law systems are not always allowed and local authorities often force indigenous community members to seek justice within the state system. This often causes community members to lose any semblance of financial stability and valuable time.

Since there are many NGOs and CSOs who contribute to strengthening the community, participants were able to outline the 2001 Land Law and the United Nations Declaration on the Rights of Indigenous peoples as relevant laws and policies which protect the rights of Indigenous Peoples. More than 90% of the participants interviewed believed that indigenous peoples have the right to manage their territories and members but explained that these rights are often neglected and ignored in practice. Many participants also believed they clearly understood their rights collectively and individually as indigenous people as written in laws and policies. However, there was a general consensus that the laws and policies were rarely implemented in such a way that could benefit the community.

When men, women and youth were asked specifically about incarcerations within the community, it was clear that there had been no previous history of incarceration. However, the community had faced several threats of arrest in connection to peaceful protests and demonstrations against the current economic land concession. When asked about violence against women and children, all participants answered that there have been no cases within the community. Participants offered that through customary law, indigenous men and women both have access to justice within the community.

In relation to consequences for indigenous rights violations for businesses and industries, participants were unsure how to answer this question. Many answered by sharing the consequences that have been inflicted on them at the hands of foreign businesses. Others used their case to explain that consequences do not exist for businesses. Some members who have participated in activist activities explained in addition to their land and natural resources, businesses and local authorities have complained about the indigenous communities in Prame and have suggested that they seek to betray the state, further punishing the devastated community.

Legal situations faced by the community and government response

In mid 2013, a female activist who had travelled to the communities' forest to participate in protest activities was found bludgeoned in the head and dead in the forest naked. There was little investigation of the incident conducted by local authorities, and to this day the family of the victim has no idea what has happened or who is responsible.

In early January, a young male member of the community was hit by a car and killed. Directly after the incident occurred the driver of the vehicle was arrested and then promptly released. Since the family of the victim could not pay for legal representation, they were advised to seek the assistance of ADHOC, a Human Rights development organization in Cambodia. Nearly two months later, there has been no progress on this case.

Requests and Comments from Community Members

At the end of each interview, focus group and consultation, community members were given a chance to share any comments or recommendations they might directed at the Royal Government of Cambodia, International Human Rights Institutions, and to the Cambodia Indigenous Youth Association. The following is a list of the various comments received.

- Indigenous People need to be able to identify themselves as belonging to the Indigenous community.
- The state must recognize the self-identities of indigenous people.
- The Royal Government of Cambodia must create new mechanisms to follow up with and monitor the implementation of laws and policies related to Indigenous Peoples.
- There should be no discriminate against Indigenous Peoples, and the state should provide access to rights which ensure economic, social and cultural freedoms.
- Stop corruption within the Cambodian justice system.
- International Financial Institutions should stop supporting companies who are awarded Economic Land Concessions and who are participate in illegal land grabbing.
- Civil society should support, strengthen and intervene on behalf of the community.
- The Royal Government of Cambodia should respect indigenous rights and laws.
- Indigenous youth student that study law should come back to their community to share what they have learned.
- Children and youth in the community must receive a proper education.
- All those who have come to visit the village and learned about this struggle should share the challenges of the community to others.

Appendix

Expert Mechanism on the Rights of Indigenous People:

Questionnaire

Personal Information:

Name of Village: _____ commune _____

District: _____ province _____

2. Ethnic group:

.....

3. Check one sex: Male () or Female ()

4. Check one age: Under 35 () or Over 35 ()

5. Occupation:

.....

6. Position within the village/community:

.....

Knowledge about Jurisdictions:

7. Have you heard about the judicial system in Cambodia? Yes () or No () (For Community)

8. Do you have access to the judicial system in Cambodia through:

- Interpretation services; Yes () or No () If yes, how? If not, why?
- Training for Judges on Indigenous people's perspectives Yes () No () If yes, how? If not, why?
- Adequate legal representation Yes () or No () If yes, how? If not, why?
- Cultural Sensitivity Yes () or No () If yes, how? If not, why?

9. How many in your village or community are incarcerated per year:

- Indigenous Women ?
- Indigenous Youth ?
- Indigenous people?

10. Who do you seek justice from? Where?

- Complaint to judicial police () Police post () Provincial court ()

11. Do women/youth in your community understand the elements of the judicial system? Yes ()
No (), Why?

12. Do you think Indigenous People have the right to access justice collectively?

- Based on laws and policies: Yes () or No ()
- In practice: Yes () or No () If yes, how? If not, why?

13. Do you think Indigenous People have the right to access justice individually?

14. What other social, economic and cultural factors impede the ability of Indigenous people to access justice?

15. Do Indigenous people have authority (jurisdiction) over their territories and members?

16. Do indigenous have custom jurisdiction for themselves?

17. Is the Indigenous approach to law recognized by the juridical system in Cambodia?

18. Do civil society organizations offer training on alternative dispute resolution for indigenous people? Which organizations?

19. Are indigenous people satisfied with the justice they receive through indigenous jurisdiction?

20. Does violence against women and children exist? If yes, who commits these acts of violence?.

21. What legal process exists for women and children to seek justice?

22. Can Indigenous women access justice through indigenous law systems If yes, how?

23. What measures are in place to protect indigenous peoples' lands, territories and resources as held under indigenous peoples' customs and practices?

24. Is there consequences for individuals and businesses that commit human rights violations against Indigenous People?

25. Is there competing jurisdiction between indigenous people's justice systems and non-indigenous justice systems?

27. What is the role played by international, regional and domestic human rights focused institutions in ensuring access to justice for indigenous peoples?

28. Do you have any final comments? Would you like to make any requests or recommendations?