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VIII. CAMBODIA: CAMBODIA LAND LAWS AND POLICIES AND THE SITUATION CONCERNING DEVELOPMENT IN AND AROUND THE PREY LANG FOREST

65. In a letter, dated 7 September 2009, the *Special Rapporteur on the human rights and fundamental freedoms of indigenous people*, James Anaya, called the attention of the **Government of Cambodia** to information received in relation to **development activities, including road construction and land concessions, in and around the Prey Lang Forest in Korripon Thom Province, Preach Vihear, and Kratie Provinces**. This communication from the Special Rapporteur followed earlier ones addressing a sub-decree on registration of indigenous communal lands issued by the executive authority of Cambodia. The contents of these earlier letters, dated 19 May 2009 and 22 July 2008, were included in the Special Rapporteur's 2009 Report to the Human Rights Council Report (A/HRC/12/34/Add.1, paras. 12-23).

66. Although the Government did not respond to the Special Rapporteur's letters of 19 May 2009 and 22 July 2008 regarding the sub-decree, it did provide a response to the Special Rapporteur's September 2009 letter, in a communication dated 30 March 2010. Subsequently, in light of the information received and the response of the Government, the Special Rapporteur conveyed observations, including a series of recommendations, to the Government of Cambodia in a communication of 10 June 2010. These observations related generally to land laws and policies in Cambodia that affect indigenous peoples, including the sub-decree and the situation of development in and around the Prey Lang Forest.

ALLEGATIONS RECEIVED BY THE SPECIAL RAPPORTEUR AND TRANSMITTED TO THE GOVERNMENT ON 7 SEPTEMBER 2009

67. In his communication of 7 September 2009, the Special Rapporteur transmitted to the Government of Cambodia information and allegations received by him in regards to development activities in and around Prey Lang Forest, and he requested that the Government respond to the allegations contained in the communication in light of relevant international standards.

68. According to the information and allegations received:

- a) The Prey Lang Forest, spanning Preah Vihear, Kompong Thom, Kratie, and Stung Treng provinces in northern Cambodia, are inhabited by nearly 350,000 indigenous people, primarily of Kuy descent. As such, the Prey Lang forest area is the last large contiguous area of indigenous peoples' land remaining in Cambodia.
- b) Traditionally, due to the area's geography and scarcity of transportation infrastructure, the villages located within and surrounding the Prey Lang Forest have been relatively isolated from each other and the rest of Cambodia. The indigenous communities in the area have traditionally occupied, used and managed the Prey Lang Forest; under domestic law, the Kuy people could claim the Prey Lang as their indigenous land. In addition, according to maps from the Ministry of Agriculture, Forests, and Fisheries, there are seven areas within Prey Lang designated as "community forest areas", in which the communities are able to manage and protect the forest for subsistence and which allow for the indigenous peoples to ultimately be recognized as land owners. Requests for official recognition are pending before the Forestry Administration for these seven community forest areas.
- c) There has been a recent surge in development activity within the Prey Lang Forest, including road construction projects; economic concessions for rubber

plantations, logging and mining; and social concessions to accomplish land redistribution.

d) The road construction and other development projects that are taking place within the greater forest area are anticipated to directly affect 21 different villages, with a total population of approximately 9,000 people. These villages are: Choam Pr'ap, Krasang, Chhouk, Sre Chang, Kbal Khla, Svay, Chor, Sre Ksaeh, Sre Veal Khang Kaoet, Sre Veal Khang Leeh, Sampor Thom, Sampor Toeh, Boeng, Tbong Teuk, Kanti, Choam Svay, Bangkan, Sre, Sleng Tol, Chhnoun, and Russey Srok. These indigenous communities maintain a subsistence lifestyle based on swidden agriculture and the resources found within the Prey Lang forest.

e) The road construction project to connect Sandan district, Kompong Thom province with Rovieng district, Preah Vihear province was recently completed. Work on this project began from two different directions and ultimately connected. It is difficult to obtain information concerning which companies are involved in the road construction; however, a Forestry Administration map identifies the construction company as the Vietnamese NCE Cambodia Emex. Community members observed upwards of a dozen pieces of heavy equipment, including bulldozers, which belong to NCE Cambodia Emex. Furthermore, signboards and information from the news source, Cambodia Daily, indicate that PNT and Thy Nga, two other companies, are also involved.

f) All of the above companies are part of the Vietnamese Rubber Group, which gives rise to the suspicion that the road construction is intended to facilitate the expansion of rubber production in the area. During the road construction, the entrance road to the Sandan district was guarded by Vietnamese company workers and the district police. Community members were subject to searches and questioning before being permitted to use the road or to access the forest upon which their livelihood depends. Furthermore, some community members who entered the area to take pictures were detained by a commune police officer and company personnel and had their personal camera confiscated.

g) As a result of the road construction, twelve households have had part of the land surrounding their homes destroyed, with four houses being completely destroyed. At least eleven families' agricultural lands were destroyed.

h) Economic concessions, possibly for rubber plantation expansion, have already been granted in Preah Vihear, Kompong Thom, and Kratie provinces. In addition to the Vietnamese companies apparently operating in Preah Vihear and Kompong Thom, two Korean-owned companies, Chhun Hong Rubber Better and CHPD Development CO., hold concessions in Kratie province. Efforts to determine the precise geographic extent or details of these economic concessions have been unsuccessful, though reports in the press suggest that anywhere from 13,000 to 22,000 hectares have been awarded.

i) In 2003, a logging ban resulted in the cancellation and suspension of existing logging concessions. Although the ban on concessions is still in force, logging activities have continued through the use of permissions known as annual logging coupes. The Ministry of Agriculture, Forestry and Fisheries has already granted two annual logging coupes, both in Sandan commune, Sandan district, Kompong Thom province. The precise area of these two coupes is unclear, but it is likely that their combined area is between 4,936 and 5,095 hectares.

j) In addition to logging and rubber plantations, iron ore mining activities are also occurring in Prey Lang. The most prominent company reportedly involved is the South Korean company Kenertec, which in 2008 became majority share owner in the Rattanak Stone mine which has permission from the Ministry of Industry, Mines and Energy to operate in at least two sites within Rovieng district—Phnom Koh Keo and Pnom Thmor. These claimed areas are under the control of the military. Gold mining was also reported to be carried out in Kompong Thom and Kratie provinces by the VannyMex company. The mining practices that Vanny Mex employs involve the use of harsh poisonous chemicals that have adverse environmental and health on the communities in the vicinity of the mine. The company operates under inadequate health and safety standards. Since being granted the mining concession, VannyMex has requested that the communities in the vicinity either move out or work for very low wages.

k) There is also a problem with land concessions in connection with land distribution programs for rural settlement in the Prey Lang Forest. In the Sandan communities, two privately held concessions have led to demarcation and bulldozing in the Sandan district. The construction and development activities are not carried out with transparency so that neither the identities of the companies involved nor the nature of the development plans are clear. As

it stands, this means that the activities are not in compliance with domestic law requiring land use, social and environmental impact studies; community consultations; solutions for voluntary resettlement and bans on involuntary resettlement.

l) Additionally, there has been an increase in private security and government personnel in the area, accompanied by admonitions against organizing or voicing complaints about developments.

m) Indigenous communities stand to lose access to the forest resources upon which their livelihoods depend. This loss of forest would result in food and water insecurity and threaten the survival of the communities. The development activities threaten to increase regional migration as other rural communities are displaced, as well as land speculation, which could negatively impact the cultural survival of indigenous peoples.

Summary of allegations received by the Special Rapporteur and transmitted to the Government on 19 May 2009 and 22 July 2008

69. As stated, the 7 September 2009 letter followed letters previously sent by the Special Rapporteur concerning the 2009 sub-decree on the registration of indigenous communal land. The 19 May 2009 letter followed-up on a previous letter of 22 July 2008 on the same issue, which had been sent, but had not been received by the Permanent Mission of Cambodia to the United Nations in Geneva. Since the 22 July letter had never been received by the Permanent Mission, it was attached to the 19 May 2009 letter for consideration by the Government. The allegations contained in both letters were originally included in the Special Rapporteur's 2009 report to the Human Rights Council (A/HRC/12/34.Add.1, paras. 12-23). They are summarized here for ease of reference, given that the sub-decree is addressed, along with the Prey Lang Forest situation, in the Special Rapporteur's observations below.

Letter of 22 July 2008

70. In the 22 July 2008 letter, the Special Rapporteur drew to the attention of the Government to concerns communicated to him that a draft of an Executive sub-decree on registration of communal land, which ultimately was adopted, fell short, in a number of respects, of the protections provided for indigenous communal land title by the Cambodian Land Law and by relevant international standards. It was alleged that the draft sub-decree did not include a provision to protect indigenous lands prior to the registration of collective title. Reportedly, the failure to protect indigenous lands before title registration leaves lands vulnerable to alienation or other threats in the interim. Further, the draft sub-decree included several provisions that that may have the effect of making for a prolonged titling process, such as the requirement that all indigenous communities be registered as legal entities prior to applying for collective title (art. 3) and the requirement that all land disputes be resolved before the collective title is issued (art. 3 in conjunction with art. 7). Additionally, according to the information provided, the first of these requirements diverges from the Cambodian Land Law, which only requires that a community be registered as a legal entity prior to holding its title, rather than prior to applying for its title.

71. The Special Rapporteur also communicated concerns that several provisions of the draft sub-decree were viewed as limiting the authority of the indigenous communities over management of their lands and resources. The draft of the sub-decree would require indigenous individuals wanting to form part of an indigenous community to surrender their individual land and integrate it into community land (art. 10) and also stated that members who leave the community have the right to receive individual plots of land (art. 11). Sources feared that both provisions would affront the rights of the indigenous community to develop plans and priorities regarding the management of village lands and resources and could interfere with the authority of the traditional leaders in that regard. Additionally, sources raised concern that these articles could very well have the undesired effect of discouraging individuals from forming or remaining part of indigenous communities.

Letter of 19 May 2009

72. In the 19 May 2009 letter, the Special Rapporteur communicated that he understood that the sub-decree on registration of communal land was approved by a cabinet meeting of the Government of Cambodia on 24 April 2009. The Special Rapporteur expressed concern that many of the issues raised in his earlier letter of 22 July 2008 regarding the sub-decree, then in draft form, and the protection of indigenous peoples' right to land are not resolved, and noted that he would appreciate information from the Government regarding how it has addressed those concerns or intends to do so.

73. In particular, the Special Rapporteur expressed concern that the sub-decree may permit the selling of individual land plots by an individual member of a community to outsiders (art.14), which could be potentially problematic for maintaining the integrity of communal land and be against the traditional decision making structures of a

community. Information received also indicated that this might be inconsistent with the 2001 Land Law, which affirms the collective ownership of indigenous land (art. 26), and affirms that no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community (art. 28).

74. Additionally, the Special Rapporteur called attention to reports received indicating that the clearing of traditionally owned lands, territories and resources, as well as coerced or involuntary displacement of indigenous communities for economic development are serious and ongoing threats to the survival and well-being of indigenous peoples in Cambodia, and pose serious threats to their management and rights over natural resources. Reports had been received that economic land concessions on indigenous peoples' lands are an ongoing concern and a number of community groups have requested a cessation of land concessions on indigenous people's territories. Allegedly, some well-connected powerful individuals or private companies outside of indigenous communities have been using bribery or trickery to acquire the land of some members of indigenous communities, coercing them to sell their land, which is later used for private purposes not aligned with the interests of the indigenous community.

RESPONSE FROM THE GOVERNMENT OF 30 MARCH 2010

75. In a letter of 30 March 2010, the Government of Cambodia responded to the above information and allegations contained in the 7 September 2009 letter concerning development activities in and around Prey Lang Forest. The Special Rapporteur notes that he had requested a response to his communication of 7 September 2009 within 60 days, which lapsed on 7 November 2009. The Government response did not refer specifically to the allegations concerning the sub-decree that were raised in the 19 May 2009 and 22 July 2008 letters and, to date, no response to those letters has been received.

76. The following is a summary of the Government's response to the allegations about the Prey Lang Forest situation:

- a) There are indeed a number of mining and development activities being undertaken in Preah Vihear province, including a mining exploration study by Rattanak Stone Cambodia Development Co. in collaboration with with Kenertec Co., Ltd in Koh Keo and Phnom Thmar, Rovieng district, Preah Vihear province.
- b) Rattanak has another concession to conduct exploration studies at Thmar Village, Chey Sen district, Preah Vihear province under an agreement with the Ministry of Industry, Mines and Energy. So far, these exploration studies have been conducted in accordance with technical standards, and have not affected the forests or nearby communities. Kennertec Co. is also conducting its own mining exploration study in Preah Vihear and Stung Treng provinces; this exploration has not affected any communities or their forest resources.
- c) Rattanak is not subject to any military supervisory power. No military officials are listed in the license or agreement documents issued by the companies.
- d) VannyMex Co. has been authorized to conduct gold mining exploration studies in Phnom Chi, Sandan district, Kampong Thom province by the Ministry of Industry, Mines and Energy. However, VannyMex has not begun actual mining activities. Allegedly, it is the local people of the area who engage in "anarchic" mining activities through the use of poisonous chemicals to extract the gold. The Special Rapporteur's allegation that the company asked local residents to move out or work for low wages is unreasonable, since the company has not yet obtained a mining exploitation license, and if it did begin mining, it would have stopped the people from anarchic mining activities on its concession land. VannyMex has not conducted any activities in contravention of the Law on Mineral Resource Management and Exploitation or the Cambodian Development Council's mineral exploitation licensing requirements, both of which include procedures to address and prevent effects on the environment and indigenous peoples' land rights.
- e) Environmental and social impact assessments and consultations with local populations are carried out before concessions are granted to ensure that privately used land is not affected. Therefore, it cannot be said that economic land concessions have caused indigenous communities to lose land.
- f) The granting of economic land concessions will not wait until the registration of indigenous lands is completed, because the Ministry of Agriculture, Forestry and Fisheries prepares social and environmental impact assessments before concessions are granted so indigenous concerns are accounted for. Impact assessments involve assigning a group of experts to cooperate with local authorities at all levels to examine and assess the actual sites in order to reduce the size of land belonging to peoples that is registered as state land according to legal procedures.
- g) Logging concessions within the Prey Lang Forest in Kratie province were granted to two companies: Ever Bright and Pheapimex. These two companies

have suspended logging activities since 2002 but do have licenses for mining exploration. The concessions granted to CHPD Development and Hong Rubber Better Co. for rubber plantations are not in the Prey Lang forest.

h) Development activities have not negatively affected the cultural practices and livelihoods of the Kuy indigenous people. The 21 villages identified in the Special Rapporteur's communication of 7 September 2009 as having been affected by logging, rubber-trapping and acacia harvesting, do not exist in Kratie province. As previously noted, all development activities in Katie province—such as road construction, economic and social land concession grants—must comply with mandatory impact assessments, which are to be completed six months prior to implementation of the concessions.

i) A 2003 sub-decree on the granting of social land concessions provides for community councils to “resolve land” for people to build houses and conduct agricultural activities. Until now, Prey Lang still has no legal base for official registration under the social land concession regime. The forest administration authorities have collaborated with local authorities to create communal forest areas in Prey Lang where five communities officially manage land use.

j) The Special Rapporteur's information about construction of the road linking Sandan district to Roving district in Preah Vihear province is inaccurate since the project has not been completed. The local residents of the Rattanak community agreed to give away small portions of their residential lands and rice fields to make way for the road, and therefore that project is based on an agreement with the local people and they are happy with it. Moreover, four of the villages in Rovieng district mentioned in the Special Rapporteur's September 2009 communication were Khmer, not indigenous, communities.

k) Two companies, Thi Nga Development and Investment Co. and PNT Group Co. were granted concessions for rubber plantations in the Rovieng district. The concessions are located 10 kilometers away from Prey Lang and therefore the company has not prevented indigenous peoples from making their living. Impact assessments were carried out at the village, community, district and provincial levels prior to the granting of concessions to ensure that no privately owned lands were affected. Some forest land was recognized as having spiritual value and was reserved at the request of the affected people.

OBSERVATIONS OF THE SPECIAL RAPPORTEUR

77. The Special Rapporteur thanks the Government of Cambodia for its response to his communication of 7 September 2009 and to the allegations contained therein. In light of information received and the Government response, the Special Rapporteur presents the following observations with a series of recommendations. The observations and recommendations refer to the situation of development within and around the Prey Lang Forest, and also refer more broadly to Cambodian land laws and policies affecting indigenous peoples, including the 2009 sub-decree, which was the subject of the Special Rapporteur's 19 May 2009 and 22 July 2008 letters to the Government. The following observations were transmitted to the Government in a letter dated 10 June 2010.

Duty to recognize and protect indigenous rights to land and natural resources

78. While the Special Rapporteur is pleased to hear that the Government has laws and policies in place to address indigenous land issues, including the sub-decree, as well as measures in place to assess the effect of proposed development projects on indigenous lands, he remains concerned about whether these protections are in compliance with international standards, which protect indigenous peoples' rights to land and natural resources on the basis of customary tenure and require recognition of those rights. Effective legal recognition of indigenous traditional lands is important for the enjoyment by indigenous peoples of other rights such as culture, religious expression and development.

79. Indigenous land rights are protected and promoted in a number of international instruments, including the *United Nations Declaration on the Rights of Indigenous Peoples* [1] and *International Labor Organization Convention No. 169 on Indigenous and Tribal Peoples*. *Convention No. 169* is of note even though Cambodia has not ratified it, given its provisions on indigenous land rights that are similar to those of the United Nations Declaration. Also of note, from a comparative perspective, is that the Inter-American Court of Human Rights has likewise recognized that “*traditional possession of indigenous peoples of their lands has the equivalent effect of full title granted by the State*”.[2] on the basis of the *American Convention on Human Rights*.

80. International instruments do not require that indigenous peoples be registered as legal entities prior to obtaining legal title to their lands. The Special Rapporteur was informed that the Ministry of the Interior is responsible for granting legal recognition to indigenous communities but a legal framework has not yet been

adopted for this process. The Special Rapporteur also received information stating that Cambodian courts will not normally adjudicate cases regarding indigenous communities' rights until those communities have had their legal personality conferred.

81. In light of the above information, the Special Rapporteur is particularly concerned about the inconsistencies between the Cambodian Land Law of 2001 and the sub-decree on registration of indigenous communal lands relating to the exact stage at which communities need to be registered as legal entities. These inconsistencies bring legal uncertainty about the point at which communities can register their communal lands, given that registration of a community as a legal entity is a precondition to registering communal land. These obstacles may account for the allegations received that no indigenous community has of yet acquired any collective land title.

82. The Special Rapporteur is concerned that the Government of Cambodia has stated that the granting of economic land concessions shall not wait until the completion of the registration of indigenous land. In relation to this, the Special Rapporteur reminds the Government of the UN Committee on the Elimination of Racial Discrimination's recommendations to Cambodia (dated 16 March 2010) highlighting the need for development of protective measures for indigenous peoples' rights to possess, develop, control and use their communal lands.

83. It does not appear that the State has adequately determined the existence and full extent of the property rights that indigenous peoples in Cambodia, including the Kuy people in the Prey Lang Forest, may have on the basis of traditional tenure. Nor is there indication of a sufficient justification for not providing legal recognition of indigenous rights prior to granting economic concessions in areas known to be inhabited by indigenous peoples.

Duty to consult and safeguards needed in development projects affecting indigenous lands

84. While indigenous land rights can be subject to limitations for legitimate, non-discriminatory public purposes in accordance with the law, international human rights standards require that a much higher threshold than ordinarily required be met before limitations on indigenous land rights can be legally justified.

85. As stated in the UN Declaration on Indigenous Peoples in article 32(2), "*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own 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.*"

86. In the context of the Prey Lang forest, the Special Rapporteur is concerned about the consultation process, if any, that was undertaken with indigenous groups in the area. According to information received, nearly 30% of the forest has been subject to destructive development since 2004, and despite the existence of "**community forest areas**" where Kuy communities can manage and protect the forest, Kuy communities have still not received any legal recognition to any area in the Prey Lang forest under the form of a collective legal land title. This is corroborated by the Government's statement that "*Prey Lang still has no legal base for official registration.*" This brings into question whether indigenous peoples have had any opportunity to truly influence the decisions regarding the granting of concessions that affect them. This is particularly concerning due to the allegations received that indigenous peoples have been displaced without just compensation or resettlement, thereby losing their livelihood on land and forest resources upon which they have traditionally depended. Furthermore, the allegations received regarding ongoing threats of displacement and the presence of security forces and company workers on indigenous territories reflect an overall feeling of uneasiness on the part of indigenous peoples with the development projects underway as well as the fear that any voice of opposition would be hindered by company personnel or security forces.

87. The Special Rapporteur is also concerned about whether indigenous peoples were consulted about the legal measures that would have an impact on their land rights, such as the aforementioned sub-decree on indigenous land registration. Consultation in this context is required by article 19 of the Declaration, holding that it is the duty of states to "*consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*" It is also evident from the allegations received that the sub-decree on land registration limits the authority of indigenous communities to manage their lands and resources, particularly in relation to the administration of individual and collective landholdings of indigenous community members.

88. In the case of development activities that have a potential impact on indigenous land rights, special, differentiated consultation procedures are necessary insofar as

the indigenous peoples concerned are marginalized in the political sphere such that the normal political and representative processes do not work adequately to address their particular concerns.[3] In light of the legal uncertainty of the territorial rights of indigenous peoples in Prey Lang, it is important to note that the duty to consult is not limited to circumstances in which a proposed measure will or may affect an already recognized right or legal entitlement in lands and resources; therefore it arises whenever the indigenous peoples' particular interests are at stake, even when those interests do not correspond to an already recognized title to land or other legal entitlement.[4]

89. Consultation processes must allow indigenous peoples the opportunity to genuinely influence the decisions that affect their interest. This requires the Government to fully engage indigenous peoples in the discussions about what the outcomes of those decisions should be before they are taken. It also requires procedural safeguards to account for indigenous peoples' own decision-making mechanisms, including relevant customs and organizational structures, and ensuring that indigenous peoples have access to all needed information and relevant expertise.

90. Furthermore, in all cases in which indigenous peoples' particular interests are affected by a proposed measure, obtaining their consent should, in some degree, be an objective of the consultations. This principle is designed to build dialogue in which both States and indigenous peoples are to work in good faith towards consensus and try in earnest to arrive at a mutually satisfactory agreement. The processes of consultation and consent are aimed at avoiding the imposition of the will of one party over the other, and at instead striving for mutual understanding and consensual decision-making.

91. In addition to the duty to consult, States must ensure that adequate mitigation measures are in place, including compensation for any impact that a measure or development project has on indigenous peoples. As stated by the UN Declaration in article 32(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.*" The information received, including the Government's response, provides no indication of the mitigation or compensation measures that have been provided to indigenous peoples due to the economic development concessions granted on indigenous lands, including in the Prey Lang Forest.

92. Such measures need to be identified especially if, as the Government states, environmental and social impact assessments are routinely carried out before any concession is granted on indigenous-inhabited areas such as Prey Lang. The Government should use the findings of such environmental and social impact statements to guarantee that indigenous land rights are not affected, and if they are, then adequate mitigation or compensation measures need to be in place to address any adverse environmental, economic, social, cultural or spiritual impacts brought by a proposed measure or activity. These measures need to also be designed in consultation with the affected indigenous peoples.

93. Indigenous peoples should be provided with the opportunity to participate as equal partners in any type of development process when both their particular interests and those of the larger societies are implicated. State officials and private industry representatives need to consider options where indigenous peoples are real partners in development activities affecting the lands and natural resources they utilize. Real partnership would require indigenous peoples to be able to genuinely influence decisions concerning the development activities, to fully participate in their design and implementation, and directly benefit from any economic or other benefits derived from them.

94. In this regard, the information brought to the Special Rapporteur's attention does not indicate how indigenous peoples directly influence decisions regarding development activities, including within the Prey Lang Forest, and what economic or other kind of benefit they have derived or will derive from the intensive mineral and logging activity currently underway in that area. The concessions provided in areas such as Prey Lang should be granted only with the direct input from and should provide benefit to affected indigenous peoples in a spirit of true equitable partnership.

RECOMMENDATIONS

95. In light of the foregoing, the Special Rapporteur makes the following recommendations to the Government of Cambodia:

95.1. Examine the traditional or customary land tenure patterns of indigenous peoples in Cambodia, including the Kuy and other indigenous peoples in the Prey Lang Forest, and provide appropriate recognition and protection of their rights to lands and natural resources.

95.2. Examine and revise, as needed, the sub-decree on registration of indigenous

communal land approved on 24 April 2009 in order to make it consistent with international standards reviewed above and the 2001 Land Law. Reforms should be made to the sub-decree as necessary to:

- Provide full legal protection to indigenous collective ownership rights, on an equal standing with other forms of property;
- Ensure respect for the rights of indigenous peoples to determine their own priorities and strategies for the development, use, or management of their traditional lands; and
- Safeguard possession by an indigenous community of its traditional land from the time that the community applies for a title to the time that the title is registered.

95.3. Delay the issuance of concessions on lands inhabited by indigenous communities that have applied to be registered legally as part of their land title application, until titles to communal lands have been assessed and determined, unless otherwise agreed upon by the indigenous communities concerned.

95.4. Develop and implement an effective mechanism for consulting with the Kuy people and other indigenous groups in and around the Prey Lang Forest that are or might be affected by the issuance of concessions in the forest. Such consultation mechanism should be designed and implemented in accordance with relevant international standards and have the objective of obtaining the free, prior and informed consent of the affected indigenous communities to the concessions.

95.5. Provide for the participation of indigenous peoples in the realization of any social, cultural or environmental impact assessments and studies undertaken before the granting of economic development and social concessions granted in Prey Lang and other indigenous-inhabited areas of the country

95.6. Establish a comprehensive process to provide appropriate redress and mitigation measures for Kuy and other indigenous families and individuals who have been resettled or otherwise affected by economic development activities, to be designed and implemented with participation of the indigenous peoples concerned through their representative institutions.

95.7. Provide indigenous peoples with the opportunity to participate as equal partners in development processes such that they can genuinely influence decisions concerning the development activities affecting them, fully participate in the design and implementation of these activities, and share directly in any economic or other benefits derived from them.

Notes

[1] Arts. 26(1)(2) stating "*Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired...[and] to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired*"

[2] *Sawhoyamaya Indigenous Community v. Paraguay*, Inter-Am Ct. H.R. (Ser. C) No. 146 (29 March 2006), para. 128.

[3] See Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/12/34 (15 July 2009), para. 42.

[4] *Ibid.*, para. 44.

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