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Cambodia: Ignoring the rights of Indigenous Peoples

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No authority external to the community may require any rights related to any immovable properties belonging to an Indigenous community.

Article 28, 2001 Land Law

It is government land, so the government has rights to decide.

Mondulkiri Deputy Governor

Despite the legal protection for Indigenous Peoples, including in terms of land ownership, land grabbing, land disputes and development projects are escalating in the northeast of the country, from where an increasing number of forced evictions from land is reported.

In August 2004 the Cambodian government granted “in principle” an economic land concession to China-based Wuzhishan L.S Group Company Ltd,¹ registered with the Ministry of Commerce since May the same year, for a pine tree plantation in the eastern highland province of Mondulkiri. In the absence of initial environmental, social or human rights impact assessments, a tract of land of just under 200,000 hectares, almost 20 times the legal maximum,² was to be awarded to the company, with 10,000 hectares granted immediately for trial plantation.³

Traditional land of Indigenous Phnong People lies within the perimeter of the concession.⁴ Yet, there had been no consultations with the Phnong prior to the

¹ On 3 March 2008 Amnesty International supplied this text to Wuzhishan L.S Group to seek comments on issues that involve or relate to the company. By mid-April, there had been no response.

² Chapter 5 of the 2001 Land Law stipulates that the area must not exceed 10,000 ha (article 59), unless the concessionaire is granted specific exemption. The Sub-Decree on Economic Land Concession (2005) states that negotiations should seek to reduce oversized concessions. It further regulates that environmental and social impact assessments must have been completed before a concession is granted.

³ *Land concessions for economic purposes in Cambodia - A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, Nov 2004 (Annex).

⁴ With a population of around 24,500 the Indigenous Phnong in the Cambodian eastern highlands constitute 54 percent of the population in Mondulkiri province. Cambodia’s 17 Indigenous groups

agreement. Instead, once the agreement had been reached, local leaders told Amnesty International that they had been intimidated into thumb-printing their approval. One commune leader told Amnesty International how he was intercepted by authority representatives as he travelled by moped on an isolated road and coerced to thumbprint an approval; another reportedly had to sign it at the house of a high-ranking official, in the presence of military police and company representatives.⁵

When the company moved in and started clearing land, which had not been demarcated and mapped, there was still no formal contract regulating the agreement between the Cambodian government and Wuzhishan L.S Group,⁶ much less the free, prior and informed consent of the Phnong.

Access denied

By 2005, the emerging plantation had already had a significant impact on the lands, territories and resources of the Phnong. It had enveloped and partly destroyed farmlands, forests and crops, grazing land, ancestral forests and traditional burial sites around the villages.⁷ To the community members loss of access to forest land meant loss of products that provide nutrition, medicine, fuel, and non-forest timber products that boost income. The encroachment impacted also on the culture of the Phnong, whose beliefs, religious practices and traditional environment are intimately associated. The forest in particular is central to the spiritual life of the Phnong.⁸

La Rav, a leader in Po Antreng, whose burial sites have been destroyed, told Amnesty International of their concerns: *"Now we don't know where to bury our dead... We go here and [the company] says it is their land, we go there and they say it is theirs."*

Following pressure from civil society and the Phnong community, an inter-ministerial commission was set up to broker a settlement acceptable to both sides. Mondulkiri Deputy Governor, Lach Sam Oun told Amnesty International that he had hopes for a reasonable compromise, but held the view that the Phnong made claims to too large an area. *"They request too much; 1,000 ha around a small village – we just can't provide them that. It is government land, so the government has rights to decide."*⁹

The Deputy Governor said that clear demarcation of the plantation was key to any negotiated settlement. Yet the government of Cambodia has taken no steps to

account for 0.9 percent of the total population, according to the 1998 population census, although this is believed to be an underestimation. NGO Forum on Cambodia, for example, assesses the true number to be 1.4 percent. (See e.g. *Indigenous Peoples in Cambodia*, NGO Forum on Cambodia, April 2006.)

⁵ *Land concessions for economic purposes in Cambodia - A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, Nov 2004 (Annex: *Wuzhishan L.S. Group - A Pine Tree Plantation in Mondulkiri Province*, June 2005).

⁶ Wuzhishan's directors are Lui Wei, Lau Meng Khin and Sy Kong Triv. Kong Triv has been an executive board member of the Cambodian Chamber of Commerce and is since January 2006 a senator for the ruling Cambodian People's Party (CPP). Lau Meng Khin is also a CPP senator.

⁷ The area affected is mostly in O'Reang district, in particular Dak Dam and Sen Monorom communes.

⁸ See e.g. *Rethinking Poverty Reduction to Protect and Promote the Rights of Indigenous Minorities in Cambodia*, NGO Forum on Cambodia, April 2005.

⁹ Interview with Deputy Governor of Mondulkiri, Lach Sam Oun, Sen Monorom, 7 March 2006.

secure the right of the Phnong, as Indigenous Peoples, to recognition and protection of their traditional lands, territories and resources.

As the plantation expanded, local leaders forwarded numerous complaints to provincial authorities, which resulted in the first rounds of consultations including officials, company representatives and villagers in March and May 2005. Afterwards, a set of recommendations was identified, including the suspension of Wuzhishan's activities until the legal status of the concession had been clarified and land acceptable to all parties had been identified. When these recommendations were not acted upon and the company's operation expanded, protests ensued, at the company sites near villages and also in the provincial capital Sen Monorom. In June 2005 up to 800 villagers marched peacefully towards Sen Monorom, in a demonstration that had been notified to the authorities. Police attempted to disperse them with water hoses, but eventually let the protest take place.¹⁰

As a response, the Council of Ministers also issued a notification ordering a suspension of Wuzhishan's activities and initiated field research which assessed the plantation, including prepared land, to 16,500 hectares.¹¹ Part of the plantation was found to encroach on another economic land concession, and a government committee decided the company had to withdraw from this concession. No similar decision was taken about the encroachment on traditional Phnong land.

Around the same time, the UN Special Representative of the Secretary General for Human Rights in Cambodia called on the government to cancel the concession:¹²

"The Government and the company have disregarded the wellbeing, culture and livelihoods of the Phnong Indigenous people who make up more than half the population of the province, and many breaches of the law and of human rights have been committed."

Despite the government's order to halt activities, Wuzhishan continued planting.

Unclear impact

The extent of the damage on traditional Phnong land remains unclear because some of the lost land was kept fallow, in line with



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Non-timber forest products were more difficult to find after the inception of the concession.

¹⁰ Interview with staff of human rights NGO ADHOC, March 2006.

¹¹ *Fast-wood Plantations, Economic Concessions and Local Livelihoods in Cambodia*, Environment Forum Core Team/NGO Forum on Cambodia, Phnom Penh, 2005.

¹² *Special Representative, Peter Leuprecht, calls for the cancellation of the land concession to Wuzhishan L.S Group in the province of Mondulhiri*. Cambodia Office of the High Commissioner for Human Rights, 5 July 2005; [http://cambodia.ohchr.org/download.aspx?ep_id=224].

traditional agricultural methods. The result will only be seen once such areas are due for cultivation. Another reason is that the size of the plantation was unknown or at least not publicly disclosed. In March 2006 Mondulokiri's Deputy Governor estimated the plantation to around 20,000 hectares,¹³ while NGO workers following the case estimated that it exceeded 40,000 hectares. To date no system of reparations including compensation has been established.

Although full effects from loss of land and forest resources in the Phnong community is not yet known, several interviewees said that they had become poorer. They also described how they, in various ways, struggled harder to ensure their livelihood. Gathering non-timber forest products and cattle grazing had become significantly more difficult for some; as the forest cover and grazing land decreased villagers had to go further afield for their products.

Like other highland populations, the Phnong are disadvantaged by the lack of representation within the national power structures and because of the language barrier. The Phnong language is an oral one without a script, and most Phnong speak limited or no Khmer. They also have far higher than average rates of illiteracy – recent studies put the literacy rate in highland minority villages at around 10 percent.

“We worry about expressing our concerns. We are minority people, and we don't seem to get our words across”, a Phnong representative explained to Amnesty International.

Community members complained to Amnesty International that they, since the inception of the plantation, had been harassed by workers of the company and that property had been destroyed, including crops and cattle. Several people said that they had complained to the authorities, including police, but that their complaints had not been taken seriously. One victim, Phlang Toum, a 45-year-old widow, whose land and property had been looted and burnt three times, never went to the police. *“I only reported it to our community leaders. I had seen how others lodged complaints without results; the police just took their money. Also, I don't know how to write.”*

By early April 2008, there had been no negotiated settlement. Such geographic and political lack of clarity leaves the community at risk of further violations of their land rights. Indeed some reports suggest that two further 100,000 ha land concessions may have been agreed in the north-eastern parts. One of them, an exploration licence for bauxite, reportedly overlaps geographically with the Wuzhishan concession.

Background

Thousands of Cambodian families have been forcibly evicted from their homes and lands in recent years, and there are at least 150,000 people throughout Cambodia who are currently living at risk of forced evictions because of misguided development projects, land disputes and land grabbing. This appears to be contrary to the “pro-poor” policies of the Cambodian government. Forced evictions, which are carried out in situations of a lack of transparency and outside the framework of the law, are

¹³ Meeting with Amnesty International in Sen Monorom, 7 March 2006.

causing great hardships for already poor communities, in violation of their fundamental rights.

As a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Government of Cambodia is legally obliged to respect, protect, and progressively fulfil the right to adequate housing, guaranteed in Article 11 (1) of the Covenant. This includes the duty to ensure ‘security of tenure which guarantees legal protection against forced eviction, harassment and other threats,’ as clarified by the Committee on Economic, Social and Cultural Rights. The government has legal obligations to protect everyone within its jurisdiction from forced evictions, especially when such evictions render affected persons homeless.

The ICESCR and other international human rights treaties prohibit forced eviction and related human rights violations, including the excessive use of force. Forced evictions have also been recognized by the UN Commission on Human Rights as a gross violation of human rights.

Article 31 of the Cambodian Constitution explicitly requires that Cambodia ‘shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.’

Recommended Action

Please send appeals in English or your own language:

Urging the government of Cambodia:

- to end all forced evictions as a matter of urgency and to introduce a moratorium on all mass evictions until legislative and policy measures are in place to ensure that any evictions are necessary and conducted only in full compliance with international human rights law and standard;
- not to allow activities impacting on the human rights of Phnong Indigenous Peoples in respect to lands, territories and resources unless they have granted their free, prior and informed consent;
- to annul the unlawful contract and ensure access to effective remedies, including reparations and compensation for all immovable and movable property destroyed or damaged during this eviction;
- to ensure that complaints of harassment or destruction of property carried out against Phnong Indigenous Peoples are fully investigated by a competent and impartial body and those responsible are brought to justice.

Appeals to:

His Excellency Lay Sokha <u>Governor of Mondulakiri Province</u> Phum Deamtrol, Khum Monorom, Srok Sen Monorom Mondulakiri Kingdom of Cambodia Fax: + 855 23 212 708/726 052 (c/o Ministry of Interior) Email: moi@interior.gov.kh (c/o Ministry of Interior)	His Excellency Sar Kheng <u>Minister of Interior and Deputy Prime Minister</u> No 75 Norodom Blvd. Khan Chamkamon Phnom Penh Kingdom of Cambodia Fax: + 855 23 212 708/726 052 Email: moi@interior.gov.kh
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