

Research Paper

The Senate Commission 1 on Human Rights, Complaint Reception, and Investigation

The Rights of Indigenous Cambodians



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Executive summary

Cambodia is home to 17 different indigenous groups¹, which are estimated to make up between one and two per cent of the total population². Indigenous peoples inhabit 14 of Cambodia's 25 provinces, with its greatest concentration in the northern provinces. 71 per cent of Ratanakiri, and 66 per cent of Mondulakiri's population are indigenous, while Stung Treng and Kratie also have large indigenous populations³.

In addition to a number of international instruments, which Cambodia is a signatory to, Cambodia's Constitution provides the same formal rights for all Cambodians, regardless of ethnicity, while the 2001 Land Law allows for collective Indigenous land title⁴. However the following research suggests that further work is needed in order to guarantee that indigenous Cambodians enjoy the same privileges of citizenship as non-indigenous Cambodians.

This inequality will be analysed in terms of indigenous Cambodians' access to the following rights:

1. Access to education
2. Access to health services
3. Political inclusion
4. Land rights

Main findings of this study:

Indigenous Cambodian communities still have poorer educational attainments than the national average. However, this is a difficult, long-term problem to address. The RGC's policy of bi-lingual education, with education being offered in both Khmer and various indigenous languages, in response to this issue is achieving promising results and has been recognised as regional best practice.

Indigenous Cambodians are still disadvantaged in terms of access to health care, however there is evidence that this situation has improved significantly over the last decade, and continues to do so. The continued improvement of basic infrastructure, resourcing of health clinics, and removal of up-front fees relating to health services are the biggest factors towards addressing this inequality.

The political inclusion of indigenous Cambodians in the areas surveyed was good. All commune councils in these indigenous communities consisted predominantly of indigenous persons. The indigenous communities felt that their commune councils involved them in the political process, while over half of the communities surveyed also stated that the provincial authorities were receptive to their needs, which increased their perceptions of inclusion in Cambodia's political system.

Indigenous Cambodians' land rights are the most complicated issue covered. This is because indigenous communities view the preservation of forest as the most important factor in their culture's survival, while the RGC's Rectangular Policy requires more rural land to be converted to higher income plantation crops, in order to reduce rural poverty and increase Cambodia's economic development. While Indigenous Cambodians have extensive land rights under law, in practice the

¹Diana Vinding and International Labour Office, *Perspectives from Communities in Bolivia, Cambodia, Cameroon, Guatemala and Nepal: Indigenous Peoples and the Millennium Development Goals* (Geneva: ILO, 2006).p. 7.

²Prasenjit Chakma, *Integration of Indigenous Peoples' Perspective in Country Development Processes: Review of Selected CCAs and UNDAFs* (New York: United Nations Permanent Forum on Indigenous Issues, 2008).p. 24.

³Ibid. p. 25.

⁴NGO Forum on Cambodia, *Indigenous Peoples in Cambodia* (Phnom Penh: NGO Forum on Cambodia, 2006).p. 3.

process of registering indigenous communities and obtaining collective land titles is often too slow, when compared to the pace of economic development. However, the district of Pech Chreada in Mondulakiri offered a good example, where indigenous communities were satisfied with their communal forests protected by the government, while at the same time there is extensive economic development, such as rubber plantations, which is a core tenet of Cambodia's current development strategy. This situation appears to offer a compromise between local indigenous communities' interests and the wider economic development of the country, which may warrant further investigation.

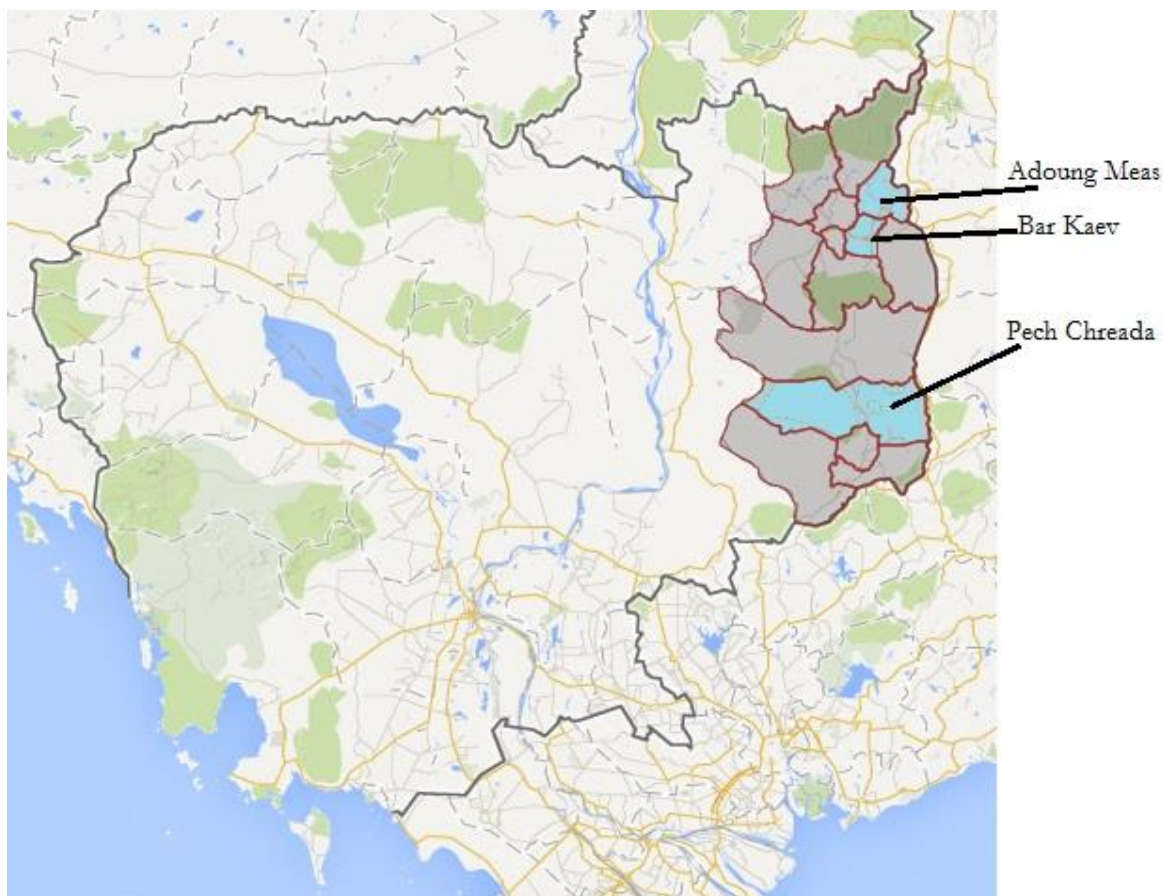
Research rationale:

This paper has taken a thematic approach to the client's request for this research paper. This means that instead of providing detailed information on the status of specific rights in the requested provinces of Kampong Cham, Kratie and Mondulakiri, the status of the rights identified as most important to indigenous Cambodians has been addressed in the broader context. This approach has been taken for two reasons. Firstly, existing research on the topics dealing with each issue from a Cambodia-wide context note that the issues facing indigenous people are broadly similar in each province. Secondly, as Kampong Cham does not have a significant indigenous population, and there is no information available on any possible indigenous issues in the province, a thematic approach was determined to be more informative and useful to the Commission. In support of this broad research, the PIC conducted original field research to compile case studies on the status of indigenous rights, in order to provide the Commission with the most up-to-date and detailed information possible. This field research was conducted in Pech Chreada district in Mondulakiri, and Adoung Meas and Bar Kaev districts in Ratanakiri. These areas are labelled in Map 1, below. Although Ratanakiri was not included in the Commission's request, it was studied as it is the province with the highest proportional indigenous population, where indigenous rights issues are most readily researched.

The following rights were selected, as they were identified as the most relevant in regards to indigenous Cambodians, are feasibly assessed, and were requested by the Commission, with two provisos. Firstly, with regard to the Commission's exact request, it was not feasible to also investigate the indigenous related justice and prison issues. Due to time constraints, and the large size and importance of this issue, we could not conduct the necessary field work and research on this topic as well as the others requested. However the PIC is currently conducting a research project on prison management which will be made available to the Commission in the coming months. Secondly, although the Commission requested information on indigenous peoples' access to housing rights, subsequent desk and field research revealed that the most important factor affecting indigenous housing, were land rights which were therefore examined instead.

Introduction

This paper will address four points relevant to indigenous rights and welfare: access to education; access to health services; political inclusion; and land rights. An overview of each topic and current challenges will be provided, along with the results of recent field research conducted by the PIC. Field research was conducted in Adoung Meas, Bar Kaev districts in Ratanakiri and Pech Chreada in Mondulakiri, highlighted in Map 1, below.



Map 1 The districts in Mondul Kiri and Ratanakiri where field research was conducted⁵

In broad terms, indigenous Cambodians have worse outcomes than the national average in terms of health, education and land related indicators, except for their political inclusion. However, efforts have been made to address this imbalance, most successfully in education. Cambodia is now considered a regional leader in providing effective education programmes to its indigenous population. Health related issues have also gradually been improving. However land rights issues are more complex.

Indigenous educational attainment is found to be significantly worse than the Cambodian average. However, for over a decade the RGC has been addressing this problem by developing a bi-lingual education programme, which teaches in indigenous languages and Khmer, and has been delivering promising results. This programme is now recognised as regional best practice for affecting indigenous education rights. The field research conducted confirms the utility of this approach.

Indigenous Cambodians' access to health services is also below the national average. This can be attributed to a small number of factors, primarily the remoteness of many communities from sufficient health clinics, the inability of many indigenous people to pay even small fees for medical services or transport to them, and the continued prevalence of traditional medical practices. The field research found that while these are still problems, indigenous communities reported that their access to basic health services, as well as their understanding of sanitation and medical issues has significantly improved over the last decade.

The question of indigenous Cambodians' political inclusion was addressed by investigating their participation in, and their opinions of, commune councils and provincial government. The literature reviewed suggested that such inclusion is beneficial as it allows indigenous communities to influence

⁵Open Development Cambodia, "Socio-Economic Atlas of Cambodia" (Phnom Penh: Open Development Cambodia, 2014), <http://www.opendevdevelopmentcambodia.net/maps/>.

government policy in their favour, while also providing the government with a greater ability to implement effective policy and govern in indigenous regions. The field research found that in the indigenous communities visited, all of their commune councils were majority indigenous, and most of the communities were generally pleased with the political inclusion afforded to them. The indigenous communities of in Pech Chreada district, Mondulkiri reported that they also found their provincial government to be helpful and responsive to their concerns.

The final section examines issues related to indigenous Cambodians' land rights. It commences by offering an overview of their legal entitlement to individual and collective land titles. The literature review reveals that there is a basic divergence between the RGC's rural economic development policies, which require more economically productive land use in order to facilitate the country's development, and the fact that many indigenous communities' wish for as much land to remain undeveloped as possible. The field research offered a different view on land issues. While much of the existing research reported these land issues as negative⁶ for indigenous communities, and indeed the indigenous communities interviewed in Ratanakiri largely seconded this analysis, the communities of Pech Chreada, Mondulkiri acknowledged that their traditional land has reduced, but were satisfied with the communal land which the provincial and national authorities have safeguarded for their use. This approach could offer a model for successfully balancing the requirements of the RGC's Rectangular Strategy, which requires intensive land cultivation, against the indigenous communities' needs for forest, in such a way which satisfies all parties, and can be to the economic benefit of Cambodia.

1. Access to Education

The Ministry of Education, Youth and Sport (MoEYS), in its most recent education strategic plan, reaffirmed its obligations under Cambodia's Constitution, and in keeping with the Royal Government's commitment to the UN Child Rights Convention, to provide all Cambodians with equal opportunities to access good quality education, regardless of ethnicity, language or geographical location⁷. However, Cambodia's indigenous populations are disadvantaged in terms of access to education and educational outcomes⁸, represented below in figures 1 and 2. These figures show that the provinces with large indigenous populations, Ratanakiri, Mondulkiri and Stung Treng and Kratie⁹, have poorer rates of educational attainment than predominantly Khmer Cambodian provinces¹⁰.

⁶ Eg. NGO Forum on Cambodia, *Indigenous Peoples in Cambodia*; Chakma, *Indigenous Peoples' Perspective*; Vinding and International Labour Office, *Perspectives from Communities in Bolivia, Cambodia, Cameroon, Guatemala and Nepal*; Birgitte Feiring, *Including Indigenous Peoples in Poverty Reduction Strategies: A Practice Guide Based on Experiences from Cambodia, Cameroon and Nepal* (Geneva: International Labour Organization, 2008), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_097721.pdf.

⁷ Ministry Of Education, Youth and Sport (MoEYS), *MoEYS Education Strategic Plan 2009-2013*, Education Strategic Plan 2009-2013 (Phnom Penh: MoEYS, 2010), <http://www.moeys.gov.kh/images/moeys/policies-and-strategies/policies-and-strategies/Education-Strategic-Plan-2009-2013/esp-2009-2013-en.pdf>. p.2

⁸ Ministry Of Education, Youth and Sport (MoEYS), *Policy of Non-Formal Education*. p. 3.

⁹ Chakma, *Indigenous Peoples' Perspective*. p. 25.

¹⁰ Ministry Of Education, Youth and Sport (MoEYS), *Education Statistics & Indicators 2012/2013* (Phnom Penh: MoEYS, 2013).p. 36.

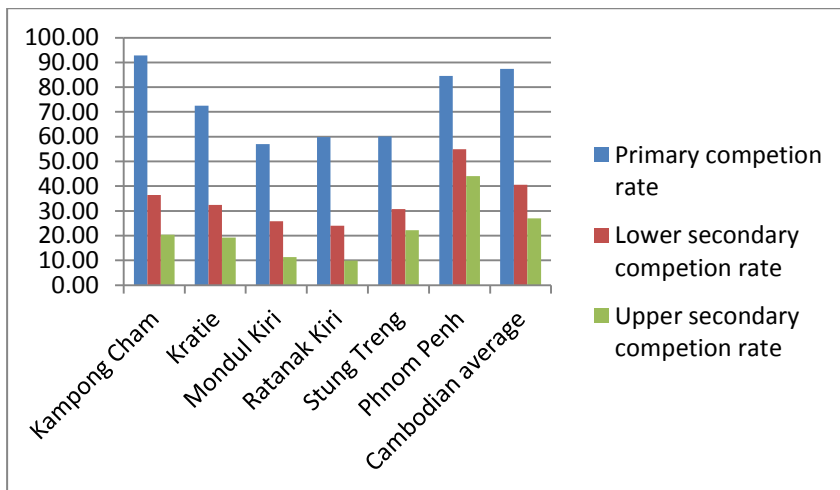


Figure 1. School completion rates¹¹

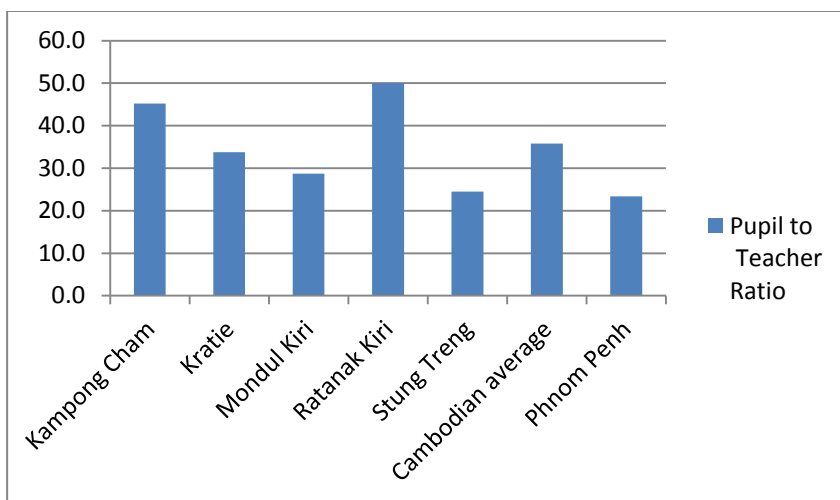


Figure 2. Number of students per teacher¹²

These poorer outcomes are due to a combination of language barriers, remote geography and poverty, which can put even modest educational expenses out of the reach of many families¹³. Map 2, below, shows the dramatically lower literacy rates which these lower rates of education result in.

¹¹ Based on data from: Ibid. p. 36.

¹² Based on data from: Ibid. p. 56.

¹³ UNICEF, *Cambodia Country Kit 2011-2015* (Phnom Penh: UNICEF Cambodia, 2011), http://www.unicef.org/cambodia/results_for_children_18255.html.p. 7.



Map 2. 2011 literacy rates by province¹⁴.

However, through education policy reforms, the RGC has made significant progress towards addressing these inequalities. This has led to Cambodia being recognised as a regional leader in addressing indigenous education challenges, through its bilingual education programme¹⁵.

¹⁴Open Development Cambodia, "Literacy Rates in 2011" (Phnom Penh: Open Development, 2013), <http://www.opendevdevelopmentcambodia.net/download/maps/atlas/en/Literacy-Rates-in-2011.jpg>.

¹⁵Jan Noorlander, Interview on indigenous rights issues with CARE Cambodia's Programme Coordinator on Marginalised Ethnic Minorities, July 3, 2014; Benson Carol, *Evaluation of the State of Bilingual Education in Cambodia* (Phnom Penh: Ministry of Education, Youth and Sport, 2011), <http://www.careevaluations.org/Evaluations/Final%20report%20BE%20evaluation%20Benson%20FINAL%20DR AFT%2022Mar.pdf>; Chey Chap, The In, and Anne Thomas, "Bilingual Education in Cambodia," in *Bilingual Education in Cambodia* (presented at the Language Development, Language Revitalisation and Multilingual Education in Minority Communities in Asia, Bangkok, 2003), http://www.silinternational.com/asia/ldc/parallel_papers/he_chey_chap.pdf; Feiring, *Including Indigenous Peoples*.

Bilingual education, which involves first teaching in indigenous languages, and then in Khmer and indigenous languages¹⁶, can provide the link to bridge the gaps between indigenous and non-indigenous communities in Cambodia¹⁷.

Article 24 of the 2007 Education Law allows MoEYS to announce *Prakas* which allows for schools to teach their fundamental curriculum in languages other than Khmer¹⁸. The Royal Government recognises 25 languages as being spoken in Cambodia. The ability for ethnic minority groups, especially indigenous groups who are less likely to speak Khmer, to receive education in their vernacular language is recognised by the Ministry of Education as crucial for their economic development, improvement of their health status, as well as their harmonious integration into Cambodian society¹⁹.

Providing this bi-lingual education is very important, as often very few persons in an indigenous community can speak, read or write Khmer²⁰. By teaching in indigenous languages, not only educational outcomes are improved, but also indigenous communities' ability to contribute to, and benefit from Cambodia's economic development, and their ability to meet the literacy requirements necessary to sit on Commune Councils²¹, and contribute to Cambodia's stability through the better political integration of their communities²².

1.1 Realising these rights – problems and solutions

In 2003, then Under-Secretary of State for Education, HE Chay Chap, recognised that the "linguistic barrier is the foremost challenge to accessing development and education as few people from the ethnic minority communities speak [Khmer]"²³. This linguistic divide meant that the bulk of RGC's efforts to improve education in many remote, indigenous communities largely failed, as the lessons were only given in Khmer, which many prospective students could not understand, and did not find immediately relevant to their lives²⁴.

Since 2002 it has been the Royal Government's policy to address these issues by developing a bi-lingual education programme²⁵. This policy was further developed in the *Guidelines on implementation of bilingual education programs for indigenous children in highland provinces*, issued in 2010 by the Education His Excellency Minister Sethy²⁶. This expanded upon a smaller pilot project conducted by CARE, an international non-government organisation (NGO). CARE's original Highland Children's Education Project was a trial consisting of six community schools in Ratanakiri²⁷.

¹⁶Carol, *Bilingual Education in Cambodia*. p. 6.

¹⁷"Workshop on Multi-Languages Education in Cambodia," accessed March 3, 2014, <http://www.moeys.gov.kh/en/minister-page/423.html>.

¹⁸Kingdom of Cambodia, *Education Law, NS/RKM/1207/032*, 2007.

¹⁹"Workshop on Multi-Languages Education in Cambodia."

²⁰Carol, *Bilingual Education in Cambodia*. p. 6.

²¹"Workshop on Multi-Languages Education in Cambodia."

²²Noorlander, Interview on indigenous rights issues with CARE Cambodia's Programme Coordinator on Marginalised Ethnic Minorities.

²³Chap, In, and Thomas, "Bilingual Education in Cambodia." p. 1.

²⁴Ibid.

²⁵Ministry Of Education, Youth and Sport (MoEYS), *Policy of Non-Formal Education* (Phnom Penh: MoEYS, 2002). pp. 6; 31-44.

²⁶Carol, *Bilingual Education in Cambodia*. pp. 4-6.

²⁷Ibid.

These schools were run by the local communities who adapted timetables and curricula to suit local needs, and provided local teaching staff, who were able to provide bilingual instruction²⁸. This project identified the four major challenges to improving education amongst geographically remote ethnic minority communities as:

- 1) Lack of suitable infrastructure;
- 2) Lack of local support for education;
- 3) Lack of trained teachers from the community; and
- 4) Little to no suitable materials in the local language²⁹.

The first two challenges were largely addressed through the project's community based approach. The reason for this is that because the village leaders who ran the school commanded significant respect and influence within the village, the communities were willing to provide the necessary infrastructure³⁰. Similarly, the village leaders were able to both adapt the curriculum to local needs, and to encourage greater support for education within their communities. The third challenge was addressed by giving prospective local teachers the first opportunity to take an intensive training course, and then undertake continuous on-the-job training. This is part of a long-term approach to establish regional teacher training colleges which specialise in bilingual teacher training³¹. The fourth major challenge was addressed by developing a written script, based on the Khmer script, for the indigenous languages which lacked a writing system³². This was accomplished by a special committee within MoEYS, in collaboration with the publishers of Ethnologue– the leading international language reference resource³³, which adapted the Khmer script to the needs of indigenous languages³⁴. The model envisaged 80 per cent of teaching to be conducted in the vernacular language in grade 1 and gradually transitioning to 100 per cent Khmer tuition in grade 4³⁵.

Bilingual schools are currently run in Kratie, Monduliri, Preah Vihear, Ratanakiri and Stung Treng, using five different indigenous languages³⁶. MoEYS, with technical assistance from CARE Cambodia, operates 52 such schools, with 207 indigenous teachers who teach the approximately 4,000 students currently enrolled³⁷. MoEYS is in the process of developing plans to sustainably increase the number of provinces and languages which bilingual education is available in³⁸.

1.2 Field research

The field research conducted reiterates the same issues raised in the above literature: languages represent a significant challenge to providing education in indigenous communities. Of the seven communities visited, four native languages (Pnong, Kachok, Jarai and Kreung) were the communities' primary language. The Borsa commune in Pech Chenda district, Monduliri, had a combination of

²⁸Jorn Middleborg, *Highland Children's Education Project: A Pilot Project on Bilingual Education in Cambodia* (Bangkok: UNESCO, 2005). pp. 1-3.

²⁹Ibid. pp.11-14.

³⁰Ibid. p. 2.

³¹Ibid. p. 15.

³²Ibid.

³³Ethnologue, published by SIL International, is the standard academic reference work for languages.

³⁴Middleborg, *Highland Children's Education Project*.p. 3.

³⁵Ibid. p. 27.

³⁶Carol, *Bilingual Education in Cambodia*; "Workshop on Multi-Languages Education in Cambodia."

³⁷Noorlander, Interview on indigenous rights issues with CARE Cambodia's Programme Coordinator on Marginalised Ethnic Minorities.

³⁸Ibid.

both native Khmer speakers and Pnong speakers³⁹. Communities such as these, with mixed populations of native Khmer speakers and indigenous language speakers, could require both Khmer and bi-lingual education streams, in order to afford all members access to education.

However, a lack of buildings and teachers were also cited as common problems with education in these communities. Although six of the seven communities had access to a primary school, one reported not having a school or a school within traveling distance, while two others complained of inadequate teaching staff, such as only receiving undedicated short term contractors rather than MoEYS teachers, or simply not having enough teachers. Two communities mentioned that many of their children do not understand the relevance of school, however they credited the provincial authorities with regularly visiting to explain to the children the importance of education. One village noted that many more girls than boys attend primary school, as boys are expected to work from an earlier age⁴⁰.

Four of the seven communities stated that they had sufficient access to secondary schools, either close to their community or by the provincial authority providing scholarships for students to study at secondary schools further afield. The other three communities stated that they did not know of any such scholarship programmes, and stated that no one from their communities could access secondary education⁴¹.

Approximately 3 students from the communities studied are now continuing their studies at universities in Phnom Penh⁴².

2. Access to health services

Cambodian indigenous peoples largely have a worse health status than the general population⁴³. Thus, of the three provinces to be visited by Senate Commission One, Kratie and Monduliri have large indigenous populations and correspondently poor health statuses⁴⁴. Conversely, Kampong Cham does not have a large indigenous population and has a health status in line with the national average⁴⁵. This trend for indigenous communities to have poorer health statuses in Cambodia is further evidenced by Ratanakiri and Stung Treng, which also have significant indigenous populations, and report health indicators significantly below the national average⁴⁶. This pattern can be seen below in Map 3, which respectively compares child mortality rates by province, and can serve as a general indicator for a population's health status⁴⁷. It should be noted that the Ministry of Health figures cited in this paper do not distinguish between Monduliri and Ratanakiri for most issues, which is why the two provinces are grouped together in the below analysis. These mortality rates are

³⁹Indigenous community leaders in Ratanakiri and Monduliri, Field research interviewing indigenous community leaders in Ratanakiri and Monduliri., interview by Sebastian Abjorensen, trans. San Sokprapey, 09/04 2014.

⁴⁰Ibid.

⁴¹Ibid.

⁴²Ibid.

⁴³Corinna Heineke and Sarah Edwards, *Health Inequalities of Indigenous Peoples and Ethnic and Cultural Minorities – Turning the Tide through the Post-2015 Development Framework*, The World We Want: Addressing Inequalities (Geneva: United Nations Development Group, 2012).

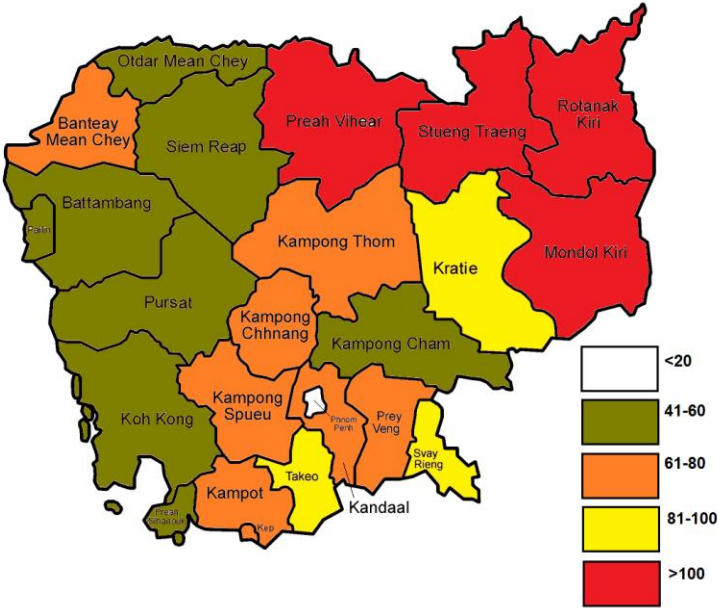
⁴⁴Ibid.

⁴⁵Indigenous Community Support Organisation, "Indigenous People In Cambodia," 2010, <http://www.icso.org.kh/indigenous-people/indigenous-people-in-cambodia/>.p. 6.

⁴⁶Heineke and Edwards, *Health Inequalities of Indigenous Peoples and Ethnic and Cultural Minorities – Turning the Tide through the Post-2015 Development Framework*.p. 6.

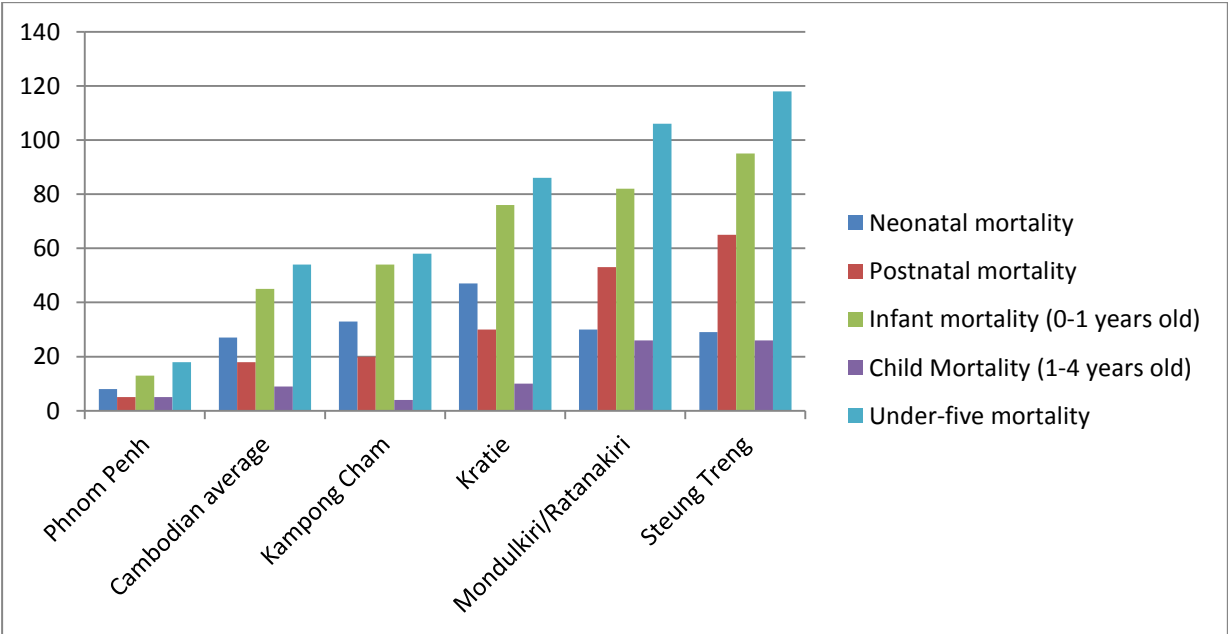
⁴⁷Ministry of Health, *Health Strategic Plan 2008-2015* (Phnom Penh: Ministry of Health, 2008).p. 10.

important, as they can be used as an overall indicator as to the status of a health system, and the health status of the population it serves⁴⁸.



Map 3. Under 5 child mortality rate per 1,000 children⁴⁹

Cambodia has an average neonatal mortality rate of 27 deaths per 1,000 live births, and post neonatal rate of 18 deaths per 1,000 live births, an infant mortality (less than one year old) rate of 45 per 1000 children born. Out of 1,000 children, on average 54 will die before their fifth birthday⁵⁰. By comparison, each of the provinces in question score significantly worse than the national average for each of these indicators, as represented below in Figure 3. Most notable amongst these are Stung Treng, Monduliri and Ratanakiri’s under-five mortality rates, which are nearly double the national average, at 118, 106 and 106 deaths per 1,000 children respectively⁵¹.



⁴⁸ibid.p. 10.
⁴⁹ Map compiled using data from: National Institute of Statistics (NIS) and Directorate General for Health, *Demographic and Health Survey 2010*.
⁵⁰National Institute of Statistics (NIS) and Directorate General for Health, *Cambodia Demographic and Health Survey 2010* (Phnom Penh: NIS, 2011).p. 114.
⁵¹ibid. p. 116.

Figure 3 – Mortality rates per 1000 by province⁵²

2.1 Realising these rights – problems and solutions

The literature review and field research identified the greatest specific barriers to accessing health care are as follows:

1. Money – as many indigenous communities still heavily rely on subsistence farming, they have neither a great need for money, nor much money. This, however, makes even the small cash payments which are common in Cambodian health care a large burden that many indigenous families simply cannot meet.
2. Transport – this also relates to money, as families without a motorcycle are often unable to pay the transport costs necessary to access a health clinic in a neighbouring village.
3. Poor health facilities – A lack of trained staff, and often out-of-date medicines, mean that available healthcare is often of very low quality.
4. Language – Many indigenous people, most especially women, cannot speak Khmer. This creates another barrier to accessing health care, especially when friend or relative may not be available to translate
5. Traditional beliefs – traditional beliefs regarding illness being caused by spirits are still strong in many indigenous communities, and their traditional remedies are much cheaper than modern health care. This often delays indigenous people seeking health care, which can have dire outcomes especially in an emergency⁵³.

This shows indigenous communities' poor health outcomes to be largely caused by a combination of their remoteness, lack of money, language barriers, and traditional beliefs⁵⁴.

2.2 Field research

The field research largely confirmed what existing research states: access to health care is still lacking, although significant improvements have been made over the last decade⁵⁵.

Five of the seven respondents reported that their communities were adequately served by health clinics, while two communities were too far from health clinics. A common theme which emerged was that women often preferred to travel to the provincial hospitals when giving birth, as they are better staffed and resourced than local health clinics⁵⁶.

All the communities interviewed reported that their health and sanitation situation has improved over the last decade, however two of these communities primarily attributed this to health training provided by NGOs, and wells for clean drinking water provided by NGOs and logging companies, rather than by Government services⁵⁷.

⁵²Ibid.p. 114.

⁵³Health Unlimited, *Indigenous Women Working Towards Improved Maternal Health* (Ratanakiri: Health Unlimited, 2006); Noorlander, Interview on indigenous rights issues with CARE Cambodia's Programme Coordinator on Marginalised Ethnic Minorities; International Labor Organization (ILO) and Centre for Advanced Study, *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cambodia* (Geneva: ILO, 2005); Indigenous community leaders in Ratanakiri and Mondulkiri, Field research interviewing indigenous community leaders in Ratanakiri and Mondulkiri.

⁵⁴Health Unlimited, *Indigenous Women Working Towards Improved Maternal Health*.

⁵⁵Indigenous community leaders in Ratanakiri and Mondulkiri, Field research interviewing indigenous community leaders in Ratanakiri and Mondulkiri.

⁵⁶Ibid.

⁵⁷Ibid.

Despite these improvements, however, basic health problems persist in these indigenous communities. Three villages reported that their biggest problems are related to maternal health, as their villagers' have no understanding of the importance of medical attention during pregnancy or when sick, and instead rely upon traditional medicine. One community reported that their biggest health problem was malaria; one reported it was tuberculosis; three communities reported their biggest challenges to be equally malaria and tuberculosis⁵⁸.

3. Political inclusion of indigenous people in commune councils

Participation in politics is important for indigenous communities so that they can have input into government policies which affect their lives, and also to enable the government to better implement policies in indigenous areas where local expertise is required⁵⁹.

Although there is an increasing number of indigenous commune councillors, requirements to speak and read Khmer excludes many indigenous people, especially women who have a lower literacy rate, from participating⁶⁰. Similarly, a study of the 2012 Commune Elections found that language barriers and a lack of education resulted in many indigenous people being unable to vote or otherwise participate in the electoral process⁶¹.

In general, women are underrepresented in Commune Councils, accounting for approximately 20 per cent of Councillors in the provinces covered in this report⁶².

3.1 Realising these rights – problems and solutions

Improving indigenous participation in local politics has been a major aim of the RGC's decentralization and de-concentration programme. This has been pursued to shift political decision making from Phnom Penh to the Commune level. Part of this policy involves encouraging greater involvement of indigenous peoples in Commune politics, which is the level that deals with issues which effect communities most directly. This approach can be to the benefit of Cambodia as a whole, and indigenous peoples, in particular for two major reasons:

- 1) It will strengthen and expand local democracy and governmental capacity; and
- 2) It will involve indigenous peoples in the design and delivery of development policies and resource management, thus improving the outcomes for both indigenous communities and Cambodia as a whole⁶³.

The most significant political priorities for indigenous peoples in Cambodia are land rights, and having their collective land titles recognised and protected from encroachment⁶⁴. Secondary

⁵⁸Ibid.

⁵⁹International Labor Organization (ILO) and Centre for Advanced Study, *Indigenous and Tribal Peoples*.p. 50.

⁶⁰Noorlander, Interview on indigenous rights issues with CARE Cambodia's Programme Coordinator on Marginalised Ethnic Minorities.

⁶¹The Committee for Free and Fair Elections in Cambodia (COMFREL), *Final Assessment and Report on 2012 Commune Council Elections* (Phnom Penh: COMFREL, 2012).p. 51.

⁶²Sithi, "Commune/Sangkat Election 2012," 2012,

http://sithi.org/temp.php?url=commune/commune_election.php&tab_id=1#.U1SO7PmSzX5.

⁶³Ministry of Planning, *National Strategic Development Plan Update 2009-2013* (Phnom Penh: Ministry of Planning, 2009).p. 16.

⁶⁴Feiring, *Including Indigenous Peoples*.p. 38.

problems are difficulties in accessing basic public services such as health and education, however, generally these problems are improving⁶⁵.

3.2 Field research

The field research revealed four broad trends regarding the political integration of indigenous Cambodians.

Firstly, the majority of surveyed communities were generally pleased with the political representation and inclusion provided to them by their Commune Councils. The four communes in Mondulkiri were completely satisfied with their Councils, however two of the communities in Ratanakiri reported complete dissatisfaction and one reported that they felt their Council's performance to be merely "OK". The biggest issue which led to dissatisfaction was a perceived lack of action by the Commune Council to address land rights issues. Conversely, the Communities in Mondulkiri stated that they found not only their Commune Councils, but also the provincial authorities to be responsive and helpful in resolving similar disputes⁶⁶.

Secondly, each of the seven Commune Councils we investigated had a majority of indigenous councillors. Most communities reported that four out of their five Councillors were indigenous, while two communities reported having completely indigenous Commune Councils and administrative staff. This is good, as it represents a significant success for the RGC's policy of decentralisation and including indigenous peoples into the political system. From the interviews we conducted, it became apparent that many of the communities felt well represented and served by the government, largely due to their Commune Councils consisting of predominantly indigenous people who understand their needs and concerns⁶⁷.

Thirdly and less positively, our research confirmed that the low level of inclusion of indigenous women in Commune Councils and political affairs remains an on-going problem⁶⁸.

Fourthly, most of the communities interviewed stated that their access to state services, such as health, education, and to a lesser extent improved roads, had been noticeably improving over the last decade. With the exception of two communities in Ratanakiri, they were generally pleased with these efforts by the Cambodian state. This made them feel broadly included in the country's development⁶⁹.

4. Indigenous land rights

The rights of indigenous Cambodians' to both collective and individual title over their traditional lands is well established by law and sub-decrees. The Land Law of 2001 recognises indigenous peoples' collective land. Land subject to collective indigenous title refers to lands they actually cultivated, and required for the agricultural and animal raising practiced by the indigenous people⁷⁰. These collective rights are only issued on leases of up to 15 years, during which period the land must

⁶⁵Indigenous community leaders in Ratanakiri and Mondulkiri, Field research interviewing indigenous community leaders in Ratanakiri and Mondulkiri.

⁶⁶Ibid.

⁶⁷Ibid.

⁶⁸Ibid.

⁶⁹Ibid.

⁷⁰Kingdom of Cambodia, *Land Law, NS/RKM/0801/14, 2001*.Article 25.

remain essentially unaltered⁷¹. The dimensions of land for collective title is determined by indigenous communities' claims of what constitutes their traditional land, in agreement with their neighbours', and approved by the Ministry of Interior (Mol)⁷². As for other state lands where the community used to harvest products from the forest or get water for example, the community can maintain access rights to continue these practices, providing an agreement is reached with the relevant authorities which have jurisdiction over the land⁷³. The details of these processes of measuring and granting collective land are spelled in Sub-Decree number 83, 2009⁷⁴.

Collective land title essentially allows indigenous peoples the same rights and protections to use the land as enjoyed under individual land title. The major distinctions are that collective ownership remains state public land, the custodianship of which cannot be transferred to another person or group⁷⁵, and collective titles are held by the community as a whole, rather than by individual members of the community⁷⁶. In other words, any individual member of the community has no private ownership or rights over the land⁷⁷. A caveat exists that the collective titles can be modified in order to facilitate state works in the national interest, or national emergency measures⁷⁸. The management of collective land is provided by the indigenous communities' traditional authorities⁷⁹. Nevertheless, indigenous peoples also have right to individual ownership. In such cases, the relevant indigenous individuals can quit the community and negotiate for part of the communal land to be distributed to the said individual⁸⁰.

To be eligible for a collective land title, a community must be registered with the Mol as both indigenous, and a legal entity⁸¹. Once officially recognised by the Mol, the traditional authorities or chairman of the community committee⁸² shall launch the procedure of registration of their land with the Municipal/District Office of Land Management, Urban Planning, Construction and Cadastre to have the land registered under collective title deed and on single cadastral map⁸³. The land eligible for registration as collective title includes: (a) State private land, i.e. residential land or land on which members of the community have built their houses and land on which members of the community have practiced their agricultural activities, (b) State public land, i.e. reserved land necessary for shifting cultivation⁸⁴ which has been recognised by relevant administrative authorities and agreed by their neighbours, spiritual land⁸⁵ of not more than seven hectares and burial ground forest land of not more than seven hectares⁸⁶.

⁷¹Kingdom of Cambodia, *Sub-Decree No. 118 HNK/BK State Land Management*, 2005. Articles 15 and 18.

⁷²Ibid.

⁷³Kingdom of Cambodia, *Sub-Decree No. 83 ANK/BK, Procedure of Registration of Land of Indigenous Communities*, 2009. Article 7.

⁷⁴Ibid.

⁷⁵Kingdom of Cambodia, *Land Law*. Article 7.

⁷⁶Kingdom of Cambodia, *Sub-Decree No. 83*. Article 4.

⁷⁷Ibid. Article 14

⁷⁸Kingdom of Cambodia, *Land Law*.

⁷⁹Ibid.

⁸⁰Ibid. Article 27.

⁸¹Kingdom of Cambodia, *Sub-Decree No. 83*. Articles 3 and 5.

⁸²Refers to the leader of the community, selected by all members thereof. See article 4, Sub-Decree No. 83 ANK, BK, Op. cit

⁸³Kingdom of Cambodia, *Sub-Decree No. 118*. Articles 5 and 8.

⁸⁴ Refers to land used previously by member of indigenous community as rice field or farm for traditional shifting cultivation. See Article 4, Sub-Decree No. 83 ANK, BK, Op. cit.

⁸⁵Refers to the place that the community keeps for worship or traditional ritual celebration. See article 4 of the Sub-Decree No. 83 ANK, BK, Op. cit.

⁸⁶Kingdom of Cambodia, *Sub-Decree No. 83*. Article 6

Economic Land Concessions (ELCs) can only be authorised by the Ministry of Agriculture, Forestry, and Fisheries. This power was established by sub-decree in 2005⁸⁷. Such concessions for private economic activity can only be issued if the land has already been registered for private use, the proposed use for the plan meets an existing provincial land use plan, environmental and social impacts assessments have been conducted, and solutions for any problems identified have been addressed⁸⁸. In theory this should safeguard the interests of indigenous peoples, whose land is either public land or privately held, making it ineligible to be granted as ELCs⁸⁹.

4.1 Realising these rights – problems and solutions

Indigenous communities in Cambodia identify continued access to land, predominantly in the form of large areas of undeveloped forest, as their most important right. This is because it forms the basis of their social, economic and cultural existence⁹⁰. However, a basic conflict can be seen between this perspective, and a core tenet of the RGC's rectangular policy for development, which envisages the establishment of higher productive agricultural industries, such as rubber, sugar cane and cashew plantations, in order to generate income to both reduce rural poverty and strengthen Cambodia's economy in general⁹¹.

A 2008 study found that 53 per cent of indigenous land disputes involved farm land, with the remainder being split between residential, village and communal forest lands⁹². This study, and subsequent research identified two main themes which lead to these disputes: indigenous people agreeing to sell their land, without realising or accepting the consequence that they can no longer use it for farming; and indigenous communities losing control of their land⁹³. This latter problem can take a number of forms, such as powerful people applying pressure upon indigenous communities, obtaining permission from one villager to appropriate much of a village's land which he is not authorised to sell, unclear or poorly applied regulations leading to ambiguity over who holds title to land, or simply taking the land without permission⁹⁴.

Part of this issue can be traced back to what the International Labour Organisation (ILO) in 2008 identified as complete lack of information transfer between indigenous communities, and the laws, policies and development strategies which affect them⁹⁵. This same report identified land related issues as of greatest importance to Cambodia's indigenous populations, adding that the registration of these indigenous lands and communities is crucial to safeguarding their land rights⁹⁶.

⁸⁷ Kingdom of Cambodia, *Sub-Decree No. 146 ANK/BK Economic Land Concessions*, 2005. Article 42.

⁸⁸ *Ibid.* Article 4.

⁸⁹ Surya P. Subedi, *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia :A Human Rights Analysis of Economic and Other Land Concessions in Cambodia* (New York City: UN General Assembly, 2012), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/175/03/PDF/G1217503.pdf?OpenElement>.

⁹⁰ Feiring, *Including Indigenous Peoples*. p. 39.

⁹¹ Samdech Decho Hun Sen, *Rectangular Strategy: Phase III* (Phnom Penh: Royal Government of Cambodia, 2013), <http://www.cambodiainvestment.gov.kh/content/uploads/2013/11/2013-Rectangular-Strategy-III-En8.pdf>.

⁹² p. 7.

⁹³ Moul Phath and Sovathana Seng, *Country Technical Notes on Indigenous Peoples' Issues: Kingdom of Cambodia* (Rome: International Fund for Agricultural Development, 2012).

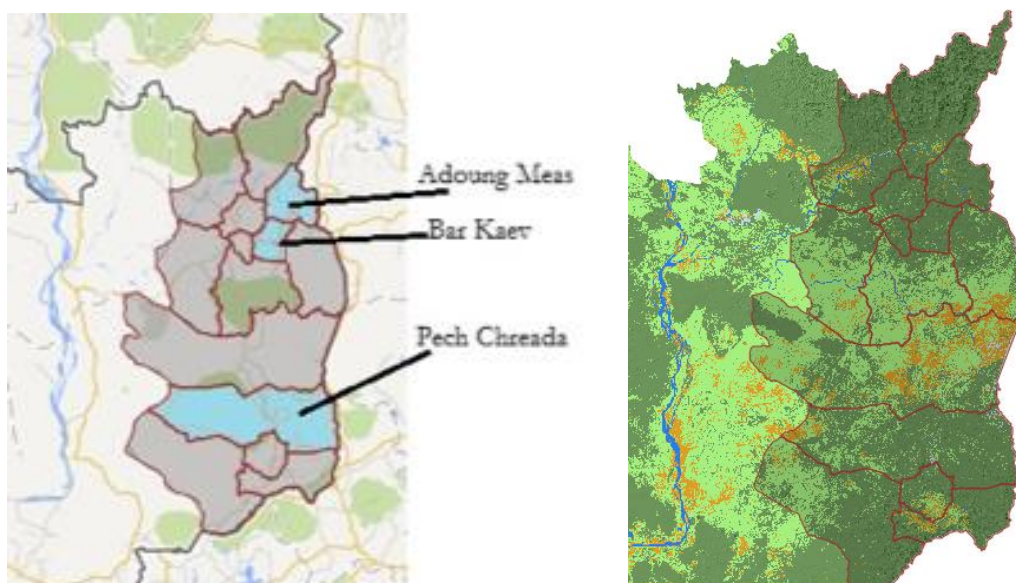
⁹⁴ *Ibid.*

⁹⁵ Feiring, *Including Indigenous Peoples*. p. 18.

⁹⁶ *Ibid.* p. 39

While the RGC has made progress towards rectifying these problems, primarily by allowing for collective land title of registered indigenous communities⁹⁷, this process still requires greater resources to effectively guarantee indigenous communities' land rights⁹⁸. Often, the outcome of this is a slow process of registration of indigenous communities with the MoI, followed by a second lengthy process of registering communal lands with local authorities. This has resulted in a number of cases whereby indigenous communities' land has been appropriated for commercial use such, as forestry concessions or ELCs, while the communities application for collective title have been pending approval⁹⁹.

Consistent development, forestry and the establishment of industries such as rubber plantations, have left a marked affect upon Cambodia's indigenous populations¹⁰⁰. These changes are evident in the maps displayed below. Map 4 highlights the districts in Ratanakiri and Mondulkiri where the PIC conducted field research for this project, while map 5 shows the region's forest cover in 1973, where the dark green represents dense forest, light green represents lighter forest and orange represents no forest.



Map 4 – Ratanakiri and Mondulki districts visited¹⁰¹ Map 5 – Forest cover in 1973¹⁰²

Similarly, maps 6 and 7 below show the respective forest levels in 2004 and 2013. These maps, based upon NASA satellite imagery, show a large and continual reduction of forest area within districts with high indigenous populations.

⁹⁷ Asian Development Bank (ADB), *Indigenous Peoples Safeguards: A Planning and Implementation Good Practice Sourcebook Draft Working Document* (Manila: ADB, 2013).

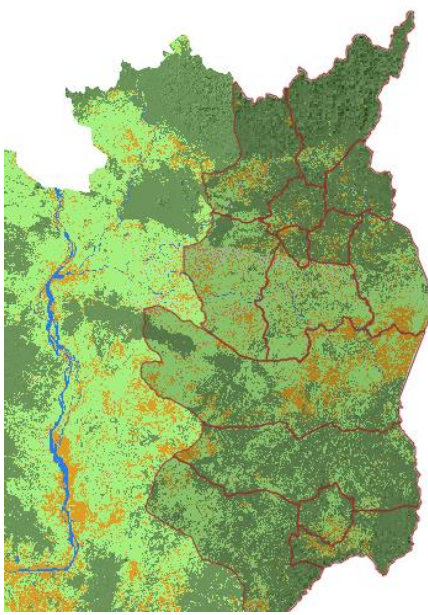
⁹⁸ *The Rights of Indigenous People in Cambodia* (New York City: NGO Forum on Cambodia, 2010). pp. 7-8.

⁹⁹ Ibid.

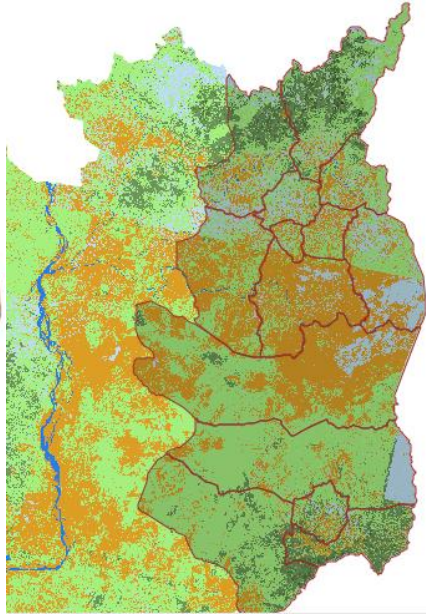
¹⁰⁰ Indigenous Peoples Representatives Network, *Facing-Crisis Indigenous People of Cambodia: Submission by Indigenous People of Cambodia to the Asia Preparatory Meeting for United Nation Permanent Forum on Indigenous Issues Held in Malaysia on 4-6 March, 2009* (Malaysia, 2009).pp.3-4.

¹⁰¹ Open Development Cambodia, "Socio-Economic Atlas of Cambodia."

¹⁰² Ibid.

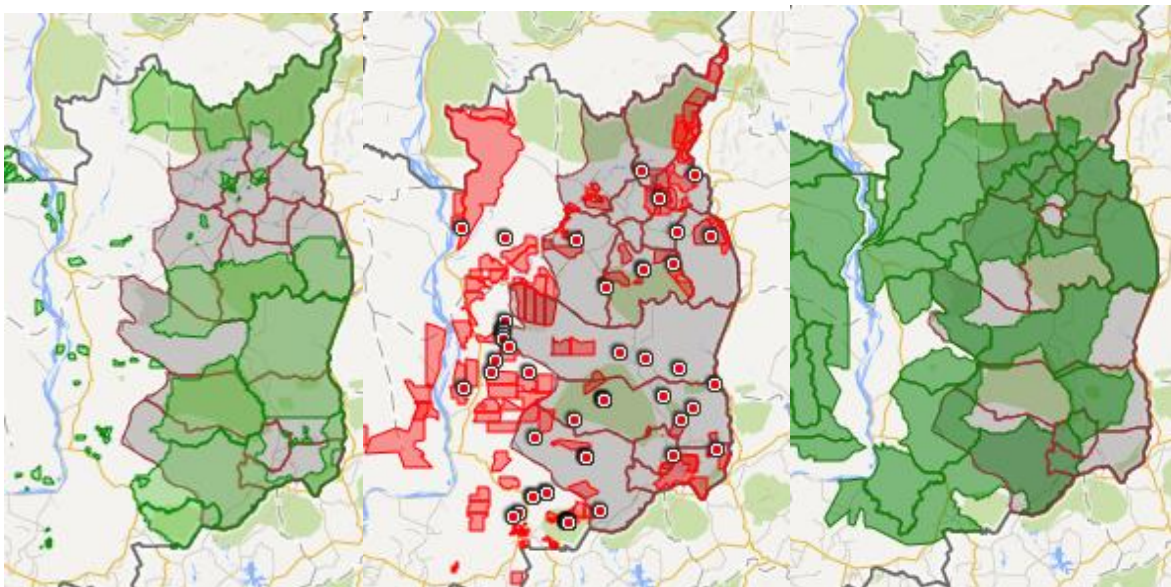


Map 6 – Forest cover in 2004¹⁰³



Map 7 – Forest cover in 2013¹⁰⁴

The contention between economic development and the provision of communal lands, as well as nature reserves, is further evident in the maps below. Map 8 shows the protected community forests, national parks wildlife sanctuaries in the surveyed area, while map 9 shows the location of ELCs and map 10 the location of forestry concessions. Significant overlapping of these conflicting land zonings are visible in these maps, which appear to show a friction in the area, between providing the degree of conservation needed to protect indigenous land rights and customs, and increasing economic activity which is undertaken to promote Cambodia’s economic growth and development.



Map 8 – Protected forests¹⁰⁵

Map 9 – ELCs¹⁰⁶

Map 10 – Forestry concessions s¹⁰⁷

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

4.2 Field research

The field research conducted in Ratanakiri and Mondulkiri broadly confirmed the existing research reviewed: Cambodia's indigenous populations are concerned and affected by economic developments such as ELCs forestry activity, which reduces their access to forest¹⁰⁸.

However, regarding land issues there was a large difference between the experiences and opinions of the indigenous communities interviewed in Ratanakiri and Mondulkiri, with the first being broadly negative and the latter being broadly positive.

Specifically, the villages in Ratanakiri all reported land being their biggest concern. The largest problems related with those identified in the above section: that often information about how to apply for recognition as an indigenous community, and how to register collective land with the MoI is poorly understood in indigenous communities, and it is a slow process¹⁰⁹. Two of the three villages in Ratanakiri reported that they had registered as an indigenous community. One of these two had commenced applying for collective land title, but reported that during this process some of their forest was being cleared, while the other village was not aware of how to apply for collective land title. The third village was unaware of how to register as an indigenous community, or apply for collective land title¹¹⁰. A similar problem was the acceptance of individual titles by members of these communities. While it guaranteed their right to land, the village leaders reported that it also weakened the indigenous communities' identity, which they see communal land as crucial to¹¹¹.

In Mondulkiri, however, the situation reported by the indigenous communes interviewed was very different. While all of the communes reported that their land has decreased over the last decade, they said that their communal forest satisfied their needs, and that they were broadly happy with the arrangement. Three of the four communes had also all accepted individual land titles in addition to their collective title over their communal forest. One commune was rejecting individual title as they feared it would weaken their indigenous cultural practices. The biggest land related issue these communes reported was that villagers' animals were sometimes killed when they foraged on legally purchased private farm land or plantations¹¹². This broadly confirms the findings of the International Fund for Agricultural Development, cited in the above section, which observed that a common problem was that members of indigenous communities did not always properly understand that selling their land means they can no longer continue using it for farming or raising animals¹¹³.

Because of the differing requirements of land, the indigenous populations' basic wish to maximise conservation of forest¹¹⁴, and the RGC's need to promote plantations in order to increase rural productivity to decrease poverty and develop the economy¹¹⁵ this will necessarily result in a degree of friction. However the field research conducted suggests the relevant provincial and district authorities in Pech Chreada, Mondulkiri, have applied the central government's land policies in a swift and effective manner, which has resulted in both satisfying the needs of the local indigenous communities, and meeting the requirements of the Third Rectangular Strategy to improve rural productivity through large scale plantations¹¹⁶. This is somewhat counter-intuitive, given the scale

¹⁰⁸Indigenous community leaders in Ratanakiri and Mondulkiri, Field research interviewing indigenous community leaders in Ratanakiri and Mondulkiri.

¹⁰⁹Feiring, *Including Indigenous Peoples; The Rights of Indigenous People in Cambodia*.pp.7-8.

¹¹⁰Indigenous community leaders in Ratanakiri and Mondulkiri, Field research interviewing indigenous community leaders in Ratanakiri and Mondulkiri.

¹¹¹Ibid.

¹¹²Ibid.

¹¹³Phath and Seng, *Indigenous Peoples' Issues*.

¹¹⁴Feiring, *Including Indigenous Peoples*.p. 39.

¹¹⁵Samdech Decho Hun Sen, *Rectangular Strategy: Phase III*. pp. 17-8.

¹¹⁶Ibid.

deforestation in the district which is evident in Map 7, above, however it suggests that effective implementation of existing government policy at the district level can achieve a beneficial balance between indigenous land rights and national economic development.

Conclusion

Although Indigenous Cambodians are afforded equal rights under the nation's laws, they still register poorer outcomes than the national average in terms of education and health care status. However, both of these areas are improving, and Cambodia is now recognized as a regional best practice example of providing indigenous populations with education. Cambodia's indigenous population appears well integrated into the country's political system, with commune councils being an effective means to communicate indigenous communities' needs to higher levels of government, and to implement governmental policy in indigenous communities. Issues relating to land rights remain the most complex, however the district of Pech Chreada in Mondulkiri offers a promising example of protecting indigenous land rights, and facilitating economic growth, through the swift and fair application of existing laws and regulations.

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