MASTER THESIS

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### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>ADHOC</td>
<td>Cambodian Human Rights and Development Association</td>
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<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<td>CCHR</td>
<td>Cambodian Center for Human Rights</td>
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<tr>
<td>CESCPR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
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<tr>
<td>CNRP</td>
<td>Cambodian National Rescue Party</td>
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<td>CPP</td>
<td>Cambodian People’s Party</td>
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<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<td>ELC</td>
<td>Economic Land Concession</td>
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<td>ESIA</td>
<td>Environmental and Social Impact Assessment</td>
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<td>EU</td>
<td>European Union</td>
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<td>FIDH</td>
<td>International Federation for Human Rights</td>
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<td>HRC</td>
<td>Human Rights Council</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICERD</td>
<td>International Convention on the Elimination of Racial Discrimination</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICSO</td>
<td>Indigenous Community Support Organisation</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IO</td>
<td>International Organisation</td>
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<tr>
<td>LICADHO</td>
<td>Cambodian League for the Promotion and Defence of Human Rights</td>
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<tr>
<td>MAFF</td>
<td>Ministry of Agriculture, Forestry and Fisheries</td>
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<td>MNE</td>
<td>Multinational Enterprise</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>UNDRIP</td>
<td>United Nations Declaration on the Rights of Indigenous People</td>
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<tr>
<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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<tr>
<td>UNHCHR</td>
<td>United Nations Office of the High Commissioner for Human Rights</td>
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<td>UNPFII</td>
<td>United Nations Permanent Forum on Indigenous Issues</td>
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<tr>
<td>UNWGIP</td>
<td>United Nations Working Group on Indigenous Populations</td>
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<tr>
<td>USD</td>
<td>United States Dollar</td>
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Chapter 1: Introduction

Land grabbing is a worldwide cause of severe human rights abuse and environmental degradation. As the global demand rises for products such as timber, minerals and palm oil, companies are trying to obtain as much land as possible, mainly in countries with rich resources and weak governments.¹ Many governments allow these land grabs within their territories because foreign investment results in financial gain, both through corruption and through legally approved systems such as Economic Land Concessions (ELCs). These developments are particularly prominent in Cambodia. One of the most contentious issues in this country revolves around land and the question of who owns it and who can benefit from its resources. In recent years, the government has given out numerous ELCs which allow foreign companies to lease large plots of land for up to 99 years. This led to evictions and the resettlement of local farmers throughout the country. A small percentage of the Cambodians affected by ELCs are indigenous people who are struggling to maintain access to their ancestral lands. In this thesis, the global problem of land grabbing will be examined on a local scale through the use of anthropological field-research on the indigenous people of Cambodia. The focus in this study lies on the consequences that threats to land security have on indigenous people and on the methods that these people use to resist these threats to their livelihoods. Resulting from this research, I analyse which specific human rights abuses result from Economic Land Concessions and how they threaten the indigenous culture and cause conflict. Finally, I describe what specific forms of peacebuilding and conflict resolution methods can be used on different levels in order to resolve the land crisis in Cambodia.

1.1 General Description of the Research Context

Before introducing the research question, I will make a general description of the current political and economic situation in Cambodia in order to demonstrate the importance and relevance of my research topic. In addition, a short overview will be provided on the

situation of indigenous people in Cambodia, on the role of ELCs in this context and on the main actions of the Cambodian government in relation to these two groups.

1.1.1 The Economic and Political Situation
Cambodia is considered to be one of the poorest nations in the world. According to the latest available data, 18 percent of the population lives in extreme poverty, which equals an income of less than 1.25 USD per person per day. However, the amount of people living in poverty is strongly declining. In 2008, about 35 percent of the population was living below the poverty line, which is a decline of 17 percent in only 4 years. Around 90 percent of the poor are living in rural areas, which results in a strong divide between the rural and urban population. The rural part of the population derives their livelihood mainly from agriculture. In 2012, 67 percent of the national labour force worked in this sector. The rural population of Cambodia is therefore suffering the most from ELCs.

Cambodia has been tormented by war and political instability since its independence from the French colonial rule in 1954, preventing economic growth, development and human rights protection. The Cambodian prime minister, H.E. Hun Sen, has been in power since 1985 as leader of the Cambodian People’s Party (CPP). During this time, he has steadily increased his hold on power by forcibly and politically removing his opponents through physical and legal intimidation and media smear campaigns. Especially in the past years, civil liberties have been severely restricted and violations of economic, social and cultural rights are regularly reported by civil society organisations.

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3 There is no consensus regarding the exact poverty levels in Cambodia due to a limited availability of data. According to the Asian Development Bank, the percentage of the population living in extreme poverty was 18.9 percent in 2012 but according to the World Bank, that number was 17.8 percent. More recent estimates are currently not available. See Asian Development Bank, Cambodia Country Poverty Analysis Mandaluyong City, 2014, p. X. and: World Bank ‘Cambodia’ http://data.worldbank.org/country/cambodia (accessed 24 July 2016).
6 Ibid.
Cambodia is ranked 150 out of 168 countries on the Corruption Perception Index of 2015. Especially the judiciary is highly corrupt and under the control of politicians, which prevents access to justice for political opponents and the poor. Land rights defenders and forest activists have increasingly been the target of repression and persecution. Political opponents and critical voices in the government have been prosecuted as well. According to the Special Rapporteur on the situation of human rights in Cambodia: ‘In a number of occasions and especially in high-profile political cases, the judiciary seems to have allowed itself to be used or manipulated for political or purely private purposes.’ In line with this trend to silence dissenting voices is the new NGO law known as LANGO, which contains controversial provisions that allows the government to control and restrict the activities of independent NGOs in the country.

Corruption also plays a role in ELCs. Politicians are most likely personally benefiting from the issuing of land concessions by receiving bribes and other personal benefits. The Cambodian government is not part of any global oversight schemes such as the Extractive Industries Transparency Initiatives, for this reason, the country does not submit itself to regulations that require governments to declare their income and expenditures from money earned from contracts, bonuses and royalties. This lack of transparency facilitates forms of corruption such as bribery and embezzlement.

1.1.2 Indigenous People

Indigenous people are among the most marginalised groups in the Cambodian society. Most of them are living in the two most remote and thinly populated provinces of Cambodia, Ratanakiri and Mondulkiri. These areas are mostly comprised of forested highlands, and indigenous groups make up the majority in these provinces. It is unclear what the exact number of indigenous people in Cambodia are. According to the latest population census, which took place in 2008, indigenous people represent roughly one

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8 Erni, p.349.
percent of the population.\textsuperscript{11} With a total population of around 15 million people, this percentage translates to roughly 150,000 people. However, this number is contested by many scholars and by the Cambodian civil society, because the study determined indigenous people by their language affiliation,\textsuperscript{12} which is a highly criticised method to determine indigeneity.\textsuperscript{13}

Almost all the indigenous people in Cambodia derive their main livelihood from agriculture. The farming method that is traditionally used is known as shifting cultivation or swidden agriculture. This is a method where a plot of land is only used for a few years after which it is left to regenerate. This system is strongly rooted in collectivism since it does not include private ownership. The preparation of a new plot of land is usually done with the help of several families and after the abandonment of an exhausted piece of land, anybody is free to use it after a period of regeneration.\textsuperscript{14} Provided that enough land is available to allow soil regeneration, this method causes minimal environmental impacts and is highly efficient since no artificial fertilisers are required.

Some view this practice as contributing to deforestation, because every time a plot is abandoned, a part of the forest is converted into a new farm. However, my respondents showed me how they always leave the large trees intact and build their farms around them in order to protect the forest.\textsuperscript{15} An average time of three years regeneration only results in the growth of small trees and shrubs, which are burned down to make a new plot.\textsuperscript{16} Moreover, indigenous people are vocal proponents of sustainable forest management and the protection against deforestation, since they are heavily dependent on it to support their livelihoods. Trees are used to for fuel, to build houses and make tools. Other forest products are extracted as well, such as wild fruits and vegetables, honey, resin, bamboo, medical herbs and much more. Because of this lifestyle, indigenous communities have

\textsuperscript{13} See chapter 3.1 for an examination of different definitions of indigeneity.
\textsuperscript{14} Interview 5.4 and 5.5, Koh Kong, January 2016.
\textsuperscript{15} Interview 1.1, Mondulkiri, September 2015. Interview 4.3, Koh Kong, January 2016.
\textsuperscript{16} Interview 4.1, Koh Kong, January 2016.
traditionally lived in large territories comprised largely of forest and small agricultural plots. However, these territories became threatened through the issuing of large-scale forest and land concessions. The government only recognised privately owned land and customary ownership of large forested areas was therefore ignored. All the natural areas in Cambodia are considered as public state property\(^{17}\) that can be used for ‘development’ or to rent out to corporations.\(^{18}\) Because of this problem, indigenous people have called for the issuing of communal land titles, which would allow a large area of land to be officially titled as belonging to an indigenous community in order to prevent any infringement on their territory through logging or other types of environmental degradation. Communal land titles have however proved to be almost impossible to obtain and many indigenous groups are therefore struggling to counter the increasing infringement upon their lands.

A key element in understanding the relationship between indigenous people and their natural environment is their spiritual belief system,\(^{19}\) which is based on a combination of ancestral worship and animism.\(^{20}\) This belief is so strongly interwoven with their everyday life that many indigenous groups do not have a word to describe this system of belief.\(^{21}\) Nowadays, some indigenous people have adopted Buddhism or Christianity. These religions however do not function as a replacement, but are practiced in combination with traditional beliefs.\(^{22}\) According to my indigenous respondents, nature is believed to be inhabited by different types of spirits. When a person in the community dies, their spirit will remain in the area by attaching itself to a tree or plant near their burial site. Forests are for this reason seen as highly spiritual areas. Some parts in the forests are regarded by indigenous people as spiritual forest. These are areas with very

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\(^{18}\) Land Law, 2001, art. 16.

\(^{19}\) This statement is based on my interviews with indigenous Bunong and Chong people. Every single one of my indigenous respondents believed in the presence of spirits in nature and the spirits of their ancestors. Even the ones who identified as Christian participated in rituals related to these spiritual beliefs. The following description of spiritual beliefs is based on these interviews.

\(^{20}\) The term animism is an anthropological construction of the religion of many indigenous peoples who believe in the spirits of non-human entities. The word animism is therefore an anthropological construct and not based on self-identification.


\(^{22}\) Interview 1.1 and 1.7, Mondulkiri, September 2015.
old trees that are believed to be inhabited by especially strong and ancient spirits. Other areas are designated as burial grounds. Both of these areas are off-limits to people. Only on certain celebrations do people enter those areas to honour the spirits. This has a positive effect on biodiversity. Wild animals roam around freely in these restricted areas without the interference of people and the large old trees will not be cut down because of their spiritual value. Indigenous people have a very deep and complex knowledge of different plants and herbs that grow in the forests, and they use these for traditional forms of medicine. Sophisticated treatments of many different ailments are devised this way. However, this deep connection to the forests is severely threatened due to many different factors, ranging from old landmines to environmental degradation and from discrimination to violence. One of the most significant threats is rooted in the eviction and displacement resulting from ELCs. This separates people from their lands, resources and cultural roots and causes serious threats to their security, health and livelihoods.

Most indigenous communities in Cambodia have gone through traumatic times during the past decades. After the Cambodian independence, the government developed policies to integrate indigenous people into the mainstream Khmer society. Khmer soldiers and their families were posted in areas populated by indigenous people to implement these policies by expropriating their lands, which forced them to work on plantations. In addition, Khmer people were encouraged to settle in less populated and remote areas such as Ratanakiri and Mondulkiri. With them, they brought a more commercial oriented way of life which resulted in the introduction of industrial logging, large-scale plantation development, commercial farming and mining in these natural areas: ‘Large tracts of land under the traditional control of the indigenous communities were given away as

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26 More on healthcare and the role of traditional and modern medicine in chapter 5.2.4.
28 Erni, p.354.
concessions to individuals or commercial companies for exploitation of resources leading to environmental degradation and the denial of access for indigenous communities and their resources. These developments resulted in increased conflicts over land. In addition to these national problems, indigenous people living near the Vietnamese border such as in Mondulkiri and Kratie, were heavily affected by the second Indochina War. Due to heavy bombings, many were forced to leave their lands. Large craters and unexploded bombs are still present all over these territories.

1.1.3 Economic Land Concessions
Economic Land Concessions are long-term leases of land intended for agro-industrial exploitation. They are for instance used to build rubber, sugar, cassava, pepper and cashew plantations. There are also forest concessions, concessions for hydropower dams and concessions to extract minerals, oil and gas. The practice of granting ELCs in Cambodia dates back to the colonial times. After Cambodia’s independence, they were re-introduced on a small scale in 1992 with the aim of developing eroded forest areas in order to stimulate economic growth and to provide jobs for rural people. The Cambodian government has been trying to further increase economic growth by attracting foreign investors. This has been realised through the implementation of special policies such as the creation of special economic zones and the lowering of taxation on wages and exported goods in 1994. As a result of these efforts, agrarian companies have been able to obtain grand concessions of 10,000 hectares or higher. The amount of ELCs has increased exponentially since the year 2000. At this moment, 2.1 million hectares of land have been transferred to developers through land concessions in Cambodia. This amounts to 12 percent of the total land area. Land concessions are highly sought after

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29 Erni, p. 354.
30 Erni, p. 353.
33 FIDH, 2011, p.12.
by companies because of their profitability. For example, a concession of 2705 hectares that has been converted into a rubber plantation was estimated to make 2.1 million USD profit per year.\textsuperscript{36} This shows how profitable land is and why companies are so eager to obtain large concessions. Especially in poor countries with weak governments, land can be bought easily without too many regulations or oversight. The lack of protection measures against the negative effects of ELCs has caused severe human rights violations.

Even though the government maintains its claims that land concessions will benefit the rural population, overwhelming evidence proves that ELCs cause severe human rights violations and insecurity for indigenous people in Cambodia.\textsuperscript{37} Land concessions have been given out without paying attention to the impacts on the people that were already living in the area and on the environment. As a result, many land concessions deprived communities of vital resources and contributed therefore to poverty. According to the UN High Commissioner for Human Rights: ‘When indigenous communities are alienated from their lands because of development and natural resource extraction projects, they are often left to scrape an existence on the margins of society. This is certainly not a sign of development.’\textsuperscript{38} The UN Special Rapporteur on the situation of human rights in Cambodia adds: ‘The overwhelming conclusion drawn from petitions, letters, studies, peaceful protests, violent demonstrations, legal complaints, land-dispute statistics and my own direct observations is that land concessions are only benefiting a minority.’\textsuperscript{39} The United Nations Committee on Economic, Social and Cultural rights considers land concessions to be the largest cause of human rights abuses for indigenous people in Cambodia:

‘The Committee is also concerned about the reports that the rapid increase in economic land concessions in the last several years, even within the protected

\textsuperscript{36} FIDH, p. 19.
\textsuperscript{37} See chapter 5 for an analysis of the human rights abuses that are caused by ELCs.
\textsuperscript{39} Subedi, 2012.
zones,\textsuperscript{40} is the major factor in the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival.\textsuperscript{41}

As these experts noted, ELCs are helping the rich become richer and harm poor farmers in the process. The discourse of the government that present land concessions as the solution to poverty is therefore strongly misleading. The rampant issuing of ELCs by the Cambodian government have therefore received a flood of criticism from civil society and international organisations. As a response to these criticisms, the government increased the prosecution of dissenting voices. Activists and journalists have been targeted,\textsuperscript{42} but also opposition leaders\textsuperscript{43} and even critical members of their own party.\textsuperscript{44}

1.2 Research Question

I formulated my central research question based on the situation that has been described in this chapter. I chose to focus on this issue since land concessions are such an important cause of human rights abuses in Cambodia, and it is also a highly controversial topic on a global scale. Most studies on land concessions have focused on the effects on the Khmer population, who make up around 90 percent of the people in Cambodia. However, indigenous people are increasingly recognised to be impacted more severely by ELCs than the Khmer majority because of their unique culture and way of life. This group has

\textsuperscript{40} These are natural areas in Cambodia with pristine forests and a large biodiversity which the government has marked as protected from habitation, logging and other forms of economic development.


\textsuperscript{44} An example is the arrest of the deputy village chief in Koh Kong who criticized the construction of a large hydropower dam which would result in the flooding of his and 7 other villages: FIDH ‘Cambodia: Arbitrary detention and judicial harassment of Mr. Ven Vorn’, 9 October 2015, https://www.fidh.org/en/issues/human-rights-defenders/cambodia-arbitrary-detention-and-judicial-harassment-of-mr-ven-vorn (accessed 26 July 2016).
been marginalised and heavily discriminated. For these reasons, I decided to focus my research on indigenous people in order to shine some light on the group that is often forgotten in Cambodia. From personal experience, I found that many Cambodians are unaware of the imminent threats that this group faces and what types of abuses they suffer from on a daily basis. I therefore decided to analyse how indigenous people are impacted by ELCs. However, simply signalling the problem did not seem adequate. I wanted to present this group of people not as a victim but as creative and intelligent people who use their own agency to fight back and protect their livelihoods. So I focused on different methods and ideas from indigenous people to counter the abuses that result from ELCs. This enabled me to combine a scientific analysis of this complex problem with a practice oriented approach in order to compile best practices and recommendations. It is my hope that this research project will facilitate an increased insight into the effects of ELCs on the lives of indigenous people and that it will contribute to the realisation of possible solutions of this crisis. As a result, I formulated the following research question:

To what extent do Economic Land Concessions cause human rights violations for indigenous people in Cambodia and how can these violations be prevented in the future?

1.3 Structure of the Thesis
The point of departure in this research project was to analyse the impact of the current land crisis on the lives of indigenous people in Cambodia. During my fieldwork, I initially aimed to discover what type of human rights abuses people suffer from as a result of insecurity over land. I found that these violations were mainly caused by Economic Land Concessions, which outcomes are discussed in chapter 5. This chapter is preceded by an analysis of the indigenous identity in chapter 3 and an examination of the legal provisions in national and international law which describe the rights of indigenous people in chapter 4. Following from the abuses of indigenous people, I focused on solutions and protection mechanism that can end these violations. I separated this topic into two chapters. Chapter 6 focuses on resistance against human rights abuses on the grassroots level by indigenous people and the civil society. In chapter 7, protection measures on an institutional level are
discussed. Recommendations for indigenous people and civil society are consequently separated from recommendations at a policy level.

To give each chapter a clear direction, I formulated six sub-questions. Each one will be answered in a separate chapter. In the concluding chapter, all the main outcomes of the sub-questions will be presented in order to answer the research question in a comprehensive manner.

The six sub-questions are the following:

- Chapter 3: Who are the indigenous people of Cambodia and why are they impacted by Economic Land Concessions in a different manner than the general population?
- Chapter 4: What is the role of the national and international legal framework in the protection of human rights of indigenous people against Economic Land Concessions?
- Chapter 5: To what extent do Economic Land Concessions in Cambodia result in human rights abuses for indigenous people?
- Chapter 6: What are the grassroots methods that indigenous people and the civil society use to mitigate the human rights abuses arising from Economic Land Concessions?
- Chapter 7: What are the institutional methods that can play a role in the mitigation of human rights abuses and conflict arising from Economic Land Concessions?

Before I address these questions however, I will give an overview of the methodologies I used to collect and analyse the data on which this thesis is built in the following chapter.
Chapter 2: Methodology

This chapter will present an overview of the methodology that I used in my research design, my fieldwork and data analysis. I will explain how I chose my research population, what determined my sample size, what type of interviewing techniques I used and how the grounded theory approach influenced my data collection and analysing techniques. I will also discuss the choices I made regarding anonymisation, coding, and certain wordings I used in describing different indigenous groups.

2.1 Research Population

The conflict over land is currently one of the largest threats to the welfare and security of the lives of Cambodian people, especially those who live in rural areas. Even though this problem affects a group of mostly non-indigenous people, I made the decision to exclusively focus on indigenous people. I have several reasons for this choice. First of all, land rights is a topic on which a large body of literature has been written in the Cambodian context and the overwhelming majority of this research exclusively focuses on the impact on Khmer people, thereby ignoring or only briefly mentioning the indigenous population of the country. I believe however, that indigenous people are affected by the land crisis in a more severe manner than the Khmer population, because threats to their environment have the potential to damage their entire culture and indigenous identity. By focusing exclusively on this group, I am able to address these particular threats that are unique to indigenous people and shed light on a group that is largely marginalised and forgotten in the Cambodian society. Indigenous people have been given less attention in both policies and research because of their relatively small numbers in Cambodia and because they largely live in isolated and remote areas that are hard to reach, pushing them even further into the margins of society. A final reason to exclusively focus on indigenous people is because it narrows the scope of research and allows for a less general and more in depth analysis within the limited timeframe of this project.
2.2 Research Objectives

Even though indigenous people are a small minority in a relatively small country, researching them is hardly a straightforward task. Indigenous people in Cambodia are comprised of 24 different ethnic groups with different histories and languages. Each group is faced with different types of problems, which results in a myriad of stories and challenges, each of which requires a different solution. I was therefore faced with the choice to either take a micro-level approach and deeply explore one issue in one village or to take a broad approach and collect data in different provinces, among different groups with different challenges. Both of these approaches have been used by NGOs and academic researchers in Cambodia. I chose to adopt the middle ground for my research project. I resolved to explore the impact of one specific problem (ELCs) in different contexts in order find out what the different types of threats are that result from that one source. This broader approach also allowed me to make a compilation of the different methods that people use to overcome the threats to their livelihoods.

My first objective was to help raise awareness of the struggles and abuses that indigenous people in Cambodia are facing. Because of their geographical isolation and social marginalisation, many people are unaware of the imminent threats that these people are faced with. My starting point was therefore to research the human rights abuses that indigenous people face and the conflicts arising from that. Historically, indigenous people in Cambodia have lived relatively isolated lives. But during my fieldwork, I found that different communities are now forming social connections in an increased rate. They are trying to work together to form a united front which will allow them to fend off the threats to their lives more efficiently.45 My second objective was to contribute to this cause of uniting indigenous people by accumulating success stories about different methods to deal with threats to land security. I would often ask my respondents: If another village would encounter the same problems as you have, what advice would you give them? That is the direction I wanted this research to take. To devise a solution-oriented project that compiles the voices of indigenous people in an effort to contribute to the resolution of the current land crisis.

45 This point will be fully elaborated on in chapter 6.1.
2.3 Methodology

I chose to conduct anthropological fieldwork. The methodologies used in this type of research are based upon qualitative data collection. I partly chose for this approach because my academic background has provided me with knowledge on and experience with this research methodology. But more importantly, this method best fitted within my objectives and my timeframe.

At the same time, I knew that a quantitative approach was not possible to implement. It would have been impossible for me to take a representative sample or to even reach a sample size that allows extrapolation of data. The existing data on indigenous people in Cambodia is extremely limited. The number of indigenous people in the country as a whole or even in one province alone is unclear. The last population census that mentioned indigenous people stems from 1998 where the total number was established on 101,000 people.\textsuperscript{46} Many organisations have challenged the legitimacy of this number and after 18 years, this number would have changed dramatically. Current estimates vary strongly and range between 200,000 and 400,000 people.\textsuperscript{47} I found that even in a small village, it was difficult to establish how many people were indigenous. Financial and time constraints also prevented the construction of a sufficiently large sample group that would allow any quantification of the results. For these reasons, I decided to collect qualitative data that I supplemented with elements from the existing body of research on indigenous people in order to substantiate the claims I make based on my observations.

This qualitative approach allowed for the collection of a wide range of information that extends beyond the scope of the research question, since it provides insight into the entire research context. This allowed me to gain a significantly deeper understanding of the challenges that indigenous people are facing and of the land crisis in general. For these reasons, I was able to learn about many different topics that I could not have thought of during my research design.


2.4 Fieldwork Locations

For this research project, I used the method of multi-sited fieldwork. I organised four separate one-week visits to different indigenous communities. The reason for using this format is based on the grounded theory approach. After just one week, I was overwhelmed with new information. I would take the time to organise all this information and allow the new insights and ideas derived from the trip to steer the interviews of the next visit. This enabled me to address new arising questions and to test whether specific views or actions adopted in one village also applied to the next village. I will elaborate on this approach in paragraph 2.6.

On my first fieldwork trip, I visited several villages in the province Mondulkiri. This is one of the two provinces where the majority of the people are indigenous. It is a thinly populated area with large forests. The second trip was spent in the neighbouring province Kratie. In this province, only around 8 percent of the population is indigenous, living rather isolated from the Khmer population. I was able to compare situations between indigenous and non-indigenous groups by first visiting Khmer villages and on the third trip visiting an indigenous village in the same province. However, I decided to exclude this comparison from the findings in this thesis. I found that the challenges and obstacles of Khmer people were so different from indigenous people that it extended beyond the scope of this thesis to provide an adequate description this new topic. On my final trip, I chose to go to a different area in Cambodia. Many of the land conflicts occur in the eastern provinces - Ratanakiri, Mondulkiri and Kratie - because these areas contain large forested lands that are being targeted by agricultural companies. However, conflict over land occurs for many different reasons and I wanted to explore another cause of land insecurity in order to obtain a more complete understanding of the different facets of the problem. I therefore decided to the province Koh Kong where several hydropower dam projects are threatening indigenous communities. An overview of all my fieldwork trips and some general information of each province is presented in the following table.
Table 1: Fieldwork Locations

<table>
<thead>
<tr>
<th>Nr.</th>
<th>Time</th>
<th>Nr. of Interviews</th>
<th>Location</th>
<th>Population</th>
<th>Percentage indigenous</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trip 1</td>
<td>September 2015</td>
<td>12</td>
<td>Mondulkiri</td>
<td>61,000</td>
<td>71 percent</td>
</tr>
<tr>
<td>Trip 2</td>
<td>October 2015</td>
<td>15</td>
<td>Kratie</td>
<td>318,000</td>
<td>8 percent</td>
</tr>
<tr>
<td>Trip 3</td>
<td>October 2015</td>
<td>14</td>
<td>Kratie</td>
<td>318,000</td>
<td>8 percent</td>
</tr>
<tr>
<td>Trip 4</td>
<td>January 2016</td>
<td>13</td>
<td>Koh Kong</td>
<td>140,000</td>
<td>± 1 percent</td>
</tr>
</tbody>
</table>

2.5 Interview Techniques

During the data-collection phase, I made use of three different interview techniques: unstructured, semi-structured and in-depth interviewing. I used a list of 21 interview questions that I constructed beforehand as a guideline for the semi-structured interviews, which is included in the annexes. This list did not serve as a strict format, it simply served as a useful reminder of the different topics that I aimed to learn more about. The topic of the conversation during an interview would shift according to the knowledge of the respondent, their specific experiences and interests. This type of interviewing enabled the most useful information to flow forwards. For example, if I discovered during an interview that my respondent has been a member of a forest protection committee or has had interesting encounters with NGO personnel, the conversation would steer towards that specific topic. Throughout the fieldwork trips I found that it was not the best method to ask everybody the same questions. I increasingly let the respondents determine the course of the interview and talk about the issues that occupy them the most. I consequently got a better view of what was going on in the villages and what the gravest problems were. I also felt that this type of interviewing helped me gain better access to information. I often heard people complaining that NGOs only come in pursuit of their own agendas and lack the flexibility to listen to the stories of the villagers and the issues that they are struggling with. I did not want to reinforce this pattern by only discussing the topics that I picked out beforehand. I wanted the respondents to feel that I truly wanted to know about them and their concerns. And if those concerns were related to other topics besides land and ELCs, that was alright. This resulted in a much wider set of data than I

48 Interviews are counted, not respondents. Some interviews are focus-groups of over 10 people or have otherwise more participants than one.


50 Erni, p. 353.
initially anticipated and left me with the task of analysing a wide variety of information that was not always fully related to my initial research question. In order to incorporate this broad variety of data, but at the same time don’t lose focus on the research topic, I adopted a broader view on the direct and indirect effects that the land crisis has on people. This allowed me to include topics such as education, healthcare and water security, not as a side path, but as part of a ‘thick description’ leading to a deeper understanding on how the entirety of indigenous life is impacted by one root cause.

2.6 Data Analysis
The grounded theory approach that I used during my field research and data analysis was developed by sociologists and is widely used to analyse ethnographic interview data. This is a form of inductive research where a continuous process of iteration allows the research findings to impact the further collection of data. As explained before, I used my preliminary research to develop categories and topics that relate to the central research question. In using this method, it is advised to start with a small part of the data and identify themes or analytic categories. When more data is collected, it can be used to reflect upon these categories and new ones can be added if necessary. I consequently used the themes that emerged from the first trip to build categories and used these during interviews in subsequent trips and so on. For example, one of the effects of land grabbing in my first research location was water contamination. I considered this to be a new category and continued to ask about water contamination in other villages. By using this method, I was able to iterate the data collection process with the data analysis. I could therefore use the relations among categories to build theoretical models, constantly checking the models against the data. In the end, the theoretical models will be presented using exemplars, that is, quotes from the interviews to illuminate the theory. By allowing

51 The anthropologist Clifford Geertz describes a ‘thick description’ as a research method that does goes beyond the observation of behaviour and conducting interviews. It resembles the process of peeling an onion. By focusing on the entire context of a situation, the outer layers can be removed of one by one, allowing the access to a deeper layer of meaning. This will result in a more complete understanding of a phenomenon or situation. (C. Geertz, The Interpretation of Culture, New York, Basic Books Inc., 1973).
the interviews to guide me to new topics that I could not have thought of beforehand, I gained a deeper understanding of how the land crisis affects indigenous people.

2.7 Anonymisation of Data

In order to protect my respondents, I anonymised all my data by excluding the names of my respondents and their village and district names. I only specify in which province a particular interview has taken place in order to provide a very general level of context. This does not only apply to indigenous people but also to NGO workers and government officials. From the side of the officials, anonymisation was upon their own request. Indigenous people did not care whether their real names were mentioned or not. This level of anonymisation does diminish the specificity of the outcomes: in cases of very specific abuses or problems, it is not possible to trace these back to a certain village. However, it is not uncommon for the central government to arrest people who are considered to be ‘against the party’ because they expressed criticisms or promoted regime change. Many of my respondents have expressed criticism of the government, the court system, the police, military and other institutions. Therefore, I have the responsibility of protecting their anonymity in order to avoid putting them in danger or in a more disadvantaged position than they already are. I did decide to include the names of prominent activists who have been very public with their actions and who have appeared frequently in the news, such as environmental activists and accused civilians in renounced court cases. The information on these people used in this thesis does not go beyond what is already publicly available. My intention by using their real names is to shed light on issues that they are fighting for. Another group of people whose real names I included were people that have been murdered for standing up for the environment, indigenous rights or human rights in general. I find it important to give due recognition to their suffering and sacrifices in order to make sure that their lives will not be forgotten. Since these cases are widely known in Cambodia, I am of the opinion that the increased specificity by stating their names will not lead to any negative consequences.
2.8 Terms Used
Many indigenous groups in Cambodia have a long history of oral traditions, which is the passing on of knowledge through the spoken word instead of written texts. This oral tradition and a limited access to the official education systems caused high levels of illiteracy among indigenous groups. These factors, in addition to the existence of a large variety in local languages, resulted in confusion regarding the spelling of many types of indigenous names. My respondents from Mondulkiri and Kratie have been described in the existing body of literature as both Bunong and Phnong. My respondents in Koh Kong have been described as Chung, Jung or Chong. However, the word Phnong has been associated with racial slurs and is used as an insult. People from this group therefore prefer to be called Bunong and I chose to respect this decision. I chose to use the word Chong in accordance with the wording of the NGO Mother Nature, which is comprised of indigenous people. I consider this a form of self-identification and strive to use the wording that the indigenous people themselves prefer.

2.9 Coding
While referring to information I obtained through interviews and conversations with my respondents, I use a numerical coding system. The first number of the code provides a general description of the respondent. A ‘1’ refers to interviews during my first fieldtrip to Mondulkiri, a ‘2’ refers to my second trip, which was to Kratie, and ‘3’ to my third trip, which took place in that same province. A ‘4’ refers to my fourth and final trip to Koh Kong, a ‘5’ refers to interviews with NGO worker and a ‘6’ refers to elaborations provided by my translators during fieldwork. The remaining numbers of the code indicate the numerical order in which I collected the data. For example, 1.10 refers to the tenth interview I held in Mondulkiri and 5.1 is the first interview I held with an NGO worker. Most of my interviews are individual in-debt interviews, but some group-interviews are also included. A few of these were planned, but most occurred spontaneously when bypasses decided to join the conversation. For this reason, the number of participants per group interview varies strongly, ranging from 3 to 20 people. A group-interview is marked by the letter G followed by the number of participants, for example: 3.12G11 refers to the twelfth interview in Kratie with a group of 11 people. Not all my respondents
are referred to in this thesis, but general comments I make on indigenous people based on my experience includes my conversations with all these people.

2.10 Use of Written Sources

Besides the collection of primary data through anthropological fieldwork, I also collected data from written sources such as academic books and papers, legal documents, NGO reports and newspapers. I used these sources to compliment my own findings in order to strengthen my arguments and demonstrate that certain obstacles, actions or ideas are not isolated occurrences but represent a more structural trend. In addition, I aimed to give a more complete picture of the context of land issues and indigenous people in Cambodia by analysing legal and academic sources on the construction of the indigenous identity and on the national and international laws that relate to indigenous people and ELCs.
Chapter 3: The Indigenous Identity

In this chapter, the following sub-question will be addressed: Who are the indigenous people of Cambodia and why are they impacted by Economic Land Concessions in a different manner than the general population? In order to answer this question, I will examine how the term ‘indigenous people’ was introduced in Cambodia and how different definitions of this concept have been constructed. Then, an assessment will be made of the impact that governmental policies have on the indigenous identity and how indigenous people use their identities in the struggle for land security.

3.1 Development of the concept of ‘Indigenous People’

The definition of the term ‘indigenous people’ is highly contested, since each definition brings about different political and legal implications. The term was first introduced in the 19th century in the context of colonialism in order to distinguish the white coloniser from the colonised other.\(^54\) This means that in the context of Cambodia, all Khmer people were viewed as indigenous by the French coloniser. During the time of colonisation, the term was never taken up by the Cambodian population and it was never translated into the Khmer language. Only in 2001 was the term for indigenous people officially adopted by the Cambodian government in order to refer to a group that had previously been regarded as highland people or ethnic minorities.\(^55\) A definition of indigenous people and a description of their rights to land were included in the revised Land Law of 2001. This concept was translated into the Khmer language as ‘chuncheat daoem pheak tech’, which literally translates to ‘original ethnic minority’. In article 23 of the Land Law, indigenous people are defined as following:

An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and


\(^{55}\) Erni, p. 349.
economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.\textsuperscript{56}

This is a relatively broad and general definition which leaves the government considerable margin freedom to decide what groups are included or excluded from the indigenous status and from the accompanying rights. Even though the law provides indigenous people with the possibility of obtaining legal recognition and communal land rights protection, it also confines them into a rigid, externally imposed definition based on highly subjective terms such as ‘traditional lifestyle’ and ‘customary rules’. Since these terms are not defined, the government can freely judge whether a community lives according to these standards, and can refuse people an indigenous status when they have been forced to abandon traditional land tenure practices due to the growing scarcity of land.

\subsection*{3.1.1 Historic Discourses}
Even though the inclusion of the term ‘indigenous people’ into the Cambodian legal framework is very recent, the group of people it aims to describe has been viewed as a separate group by the Khmer majority for centuries. In the period before colonisation, which started in 1863, they had often been referred to as highlander or hill tribes.\textsuperscript{57} Even though the communities living in these areas have been referred to as one group, they actually consist of many smaller ethnic groups who have lived in relative isolation from each other, especially in the period before colonisation. Nowadays, 24 separate ethnic groups have been distinguished, who speak different languages and have different customs and lifestyles.\textsuperscript{58} The largest of these groups are: Bunong, Kuy, Tampuan, Jirai, Pear, Stieng, Brao and Rade.\textsuperscript{59} Many of these groups were looked down upon and used in slave trading, but others, such as the Jirai were respected and used as trading partners.\textsuperscript{60}

\begin{footnotes}
\item[56] Land Law, 2001, art. 23.
\item[57] Baird, 2011, p. 160 – 162.
\item[58] A full description of all the ethnic groups and their histories goes beyond the scope of this thesis. For more information on this topic, see: J. Schliesinger, \textit{Ethnic Groups of Cambodia, Volume 1 – Introduction and Overview}, White Lotus Co. Ltd., Bangkok, 2011.
\item[60] Baird, 2011, p. 161.
\end{footnotes}
In spite of their individual differences, these people have and continue to be lumped together and described as one group.

After Cambodia’s independence from France in 1954, the country worked towards national unification. In order to promote a feeling of unity, all ethnic groups in Cambodia were described as a Khmer ‘subgroup’. The Khmer majority became Khmer Kandal, which translates to ‘central Khmer’, the ethnic Cham people were referred to as Khmer Islam and the highlanders became known as Khmer Loeu. As part of the wish to unify the country, indigenous groups were subjected to assimilation policies, which will be described in section 3.3. When the Khmer Rouge regime ruled Cambodia between 1975 and 1979, extreme forms of egalitarianism were pursued based on communistic ideals. The strong emphasis on linguistic egalitarianism erased any distinction in wording based on age, gender and also ethnicity. Every Cambodian became a Khmer and was referred to as ‘comrade’. After the Khmer Rouge was removed from power, a new name came into existence to refer to the ‘highland people’: ‘chun chiet pheak tech’, which means ‘ethnic minorities’. Just as in the time of colonialism, this word functioned in the construction of boundaries between the majority, which was in power, and minority groups that were regarded as second-class citizens.

This overview of the use of different names to refer to indigenous people shows the political significance of a name. It has the potential to ‘other’ people, or to lump different groups together and it can be used as a basis for discrimination. The introduction of the term indigenous people however resulted in a categorisation with the potential for empowerment instead of mere ‘othering’. For this reason, the official recognition of the concept by the Cambodian government was a very meaningful act. Why the government decided to do this and how they arrived at their definition of indigenous people will be described below.

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61 Baird, 2011, p. 162.
63 Baird, 2011, p. 163.
3.1.2 Role of the International Community and Civil Society
The adoption of the term indigenous people in the 2001 Land Law was strongly influenced by international donors, NGOs and IOs.\textsuperscript{64} The civil war in Cambodia during 1997-1998 had damaged the economy deeply which increased the country’s dependence upon foreign aid to an all-time high. Cambodia also strived towards joining the Association of Southeast Asian Nations (ASEAN) in order to obtain economic benefits. For these reasons, external parties were in a unique position to assert strong pressure on the government and push for reforms. In a major donor meeting in 1999, donors strongly suggested that land reforms had to be implemented in order to secure continued support.\textsuperscript{65} The government consequently requested several NGOs to help draft the new Land Law. As a result, NGOs organised workshops with both policy makers and indigenous groups to discuss revisions of this. During the preparations for these workshops, the current Khmer name for indigenous people was worded for the first time, by replacing the term ‘ethnic minority’ with ‘original ethnic minority’.\textsuperscript{66} The most important international players that conducted research and facilitated consultative meetings in the period leading up to the revision of the Land Law were the UNDP, Oxfam, ADB and many smaller NGOs. In addition, King Norodom Sihanouk was also a vocal proponent of the adoption of indigenous rights and he used his influence to convince the government to adopt certain provisions that were put forwards by the civil society.\textsuperscript{67} Even after the adoption of the Land Law, NGOs continued to play an important role in the process of indigenous identification through the facilitation of trainings and meetings aimed to inform indigenous groups of their rights and through their support in the formation of connections between indigenous groups. This contributed to the awareness of the potential benefits of attaining a communal land title. It also helped people experience the benefits of unification and acting as one under the name of indigenous people. Finally, the indigenous categorisation could help receiving support from IOs and NGOs that implement projects exclusively for this demographic.\textsuperscript{68} As a result, a research project in 2010 among Bunong people in Mondulkiri found that 99% of the 733

\textsuperscript{64} Baird, 2011, p. 158.
\textsuperscript{65} Baird, 2011, p. 166.
\textsuperscript{67} Baird 2011, p. 167.
\textsuperscript{68} Baird, 2011, p. 171.
interviewed families wanted to be considered as indigenous people.\footnote{This project was carried out by a working group of civil society organisations comprised of ADHOC, CLEC, ICSO, Caritas and the UNHCR FIDH, 2011, p. 27.} This is in line with my own findings, since all my Bunong and Chong respondents described themselves at one point or another as indigenous. This indicates a general acceptance among indigenous groups of the use of the new label that is indigeneity.

3.2 Contesting Definitions
The question whether definitional standards for indigenous peoples should be established or whether there should be an unlimited right to indigenous self-identification has been the subject of a longstanding debate. Indigenous representatives have argued before the United Nations Working Group on Indigenous Populations (UNWGIP) that a definition of the concept of ‘indigenous people’ is not necessary or desirable.\footnote{United Nations Commission on Human Rights ‘Report of the Working Group on Indigenous Populations on its thirteenth session’ 10 August 1995, E/CN.4/Sub.2/1995/24, para 41-51.} Several International Organisations (IOs) such as the International Labour Organization (ILO) as well as many NGOs have adopted these views and advocate for an unlimited right to self-identification. On the other hand, the nation-states where indigenous people are living have generally contested such an open policy.\footnote{J.J. Corntassel, ‘Who is indigenous? “Peoplehood” and Ethnonationalist Approaches to Rearticulating Indigenous Identity’, 2003, Nationalism and Ethnic Politics, vol. 9, No. 1, p. 75-100, p. 51.} The Cambodian government argues that the lengthy process which each community has to complete before they are awarded an indigenous status is necessary in order to prevent non-indigenous groups from obtaining special indigenous rights.\footnote{United Nations Economic and Social Council ‘Cambodia’, Permanent Forum on Indigenous Issues, Ninth Session, New York, 16 February 2010, E/C.19/2010/12/Add.5, p.8} The establishment of clear definitions and procedures may pave the way for protection measures, but at the same time, narrow definitional standards deprives people of their right to self-determination, because the state decides who is indigenous instead of communities.\footnote{For a more elaborate description of rights of indigenous people and their violations in the Cambodian context, see chapter 5.} Furthermore, this will inevitably lead to the exclusion of some indigenous groups since the strong variety in habits and lifestyles of indigenous groups is not captured in the current definition from the Cambodian government.\footnote{International Working Group for Indigenous Affairs ‘Indigenous Peoples in Cambodia’ http://www.iwgia.org/regions/asia/cambodia (accessed 3 May 2015).} Many scientists agree that the compilation of a checklist containing the characteristics of an indigenous
identity results in the reification of indigenous people.\textsuperscript{75} It is based on the assumption that their culture is ahistorical and inflexible. These checklists can therefore not account for realities such as diversity and change within and between indigenous groups.

Resulting from the debate surrounding definition and self-identification, scholars have tried to strike a balance by forming a definition that is open to forms of self-identification and is consequently not too constricting, but which is also not that broad as to prevent a meaningful distinction between indigenous people and other ethnic or minority groups. Many attempts have been made over the past decade to provide an inclusive definition of indigenous people. One of the most widely accepted definitions was formulated by UN Special Rapporteur Martinez Cobo:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

[…]

On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognised and accepted by these populations as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.\textsuperscript{76}

Based on this text and other influential definitions of indigenous people from, for example, the ILO and the WGIP, Devasish Roy identifies some major characteristics:

\textsuperscript{75} Corntassel, p. 51.
instead of a formal system of rights, indigenous people often use a system of customary laws based on oral traditions which are usually expressed in terms of collective rights including rights over their land and natural resources. As a result, indigenous people tend to be excluded from modern nation-building processes. They are usually not involved in decision-making processes in the political and economic sphere, including the process of deciding over land and resource ownership. This results in a disadvantaged status within the society.77

3.3 The Struggle against Assimilation

Because indigenous people have a different lifestyle from the majority population in a country, their institutions are often separated as well. Examples are a separated language, healthcare system, education methods and sometimes also a different judicial system. Many governments try to counter these diversities within their jurisdiction by forcing indigenous groups into the dominant structure through assimilation policies. This trend has also been present in Cambodia for many decades. Since its independence from French colonial rule in 1954, the Cambodian government has implemented many assimilation strategies as part of their nation-building efforts, in which the indigenous culture and identity were aimed to be erased. Unique features that distinguish indigenous people such as their language, farming methods and religion were targeted specifically. For example, in order to encourage indigenous people to start cultivating wet rice, some villages in the highlands were displaced and relocated to places along the river that are better suited for this form of agriculture. In this relocation process, schools were built to teach the Khmer language in order to transform the ‘backward’ social system of indigenous people.78

Indigenous communities strongly resisted these ‘Khmerisation’ policies which led to clashes, revolts, and armed confrontations. During the Khmer Rouge regime, this situation of relocation and forceful integration in one nationwide system intensified. The indigenous language and traditional forms of clothing, hairstyles and rituals were

78 Erni, p. 353.
forbidden.\textsuperscript{79} Entire villages were displaced, which did not only impact indigenous people but also the nation as a whole. Some indigenous people living near the borders fled to neighbouring countries, but after the defeat of the Khmer Rouge, most of the displaced people tried to return to their ancestral lands.

The current government is still promoting homogeneity among its citizens by denying the existence of an indigenous identity. In 2008, prime minister Hun Sen has declared that the indigenous identity ‘should not be used to define someone’s ethnicity, since there has been a trend in many parts of the country to use this term in order to reclaim ethnicity-based land rights’.\textsuperscript{80} Similarly, some government officers from the Ministry of Interior have emphasised that ‘indigenous people are all Khmers’.\textsuperscript{81} This can be interpreted as an assimilation strategy to deny claims to special rights by indigenous people. Another example of the undermining of the indigenous culture is the claim that NGOs are responsible for the promotion of an indigenous identity and forced a label on a group of people who otherwise were normal Khmer citizens.\textsuperscript{82} The description of different names in section 3.1.1 shows that this statement is untrue. Besides the time during the Khmer Rouge regime, the people in Cambodia who identify as indigenous have always been described as ‘others’ and have been recognised as being ethnically different from the Khmer population for centuries. Aside from the denial of the existence of an indigenous culture, the government has also been trying to discredit indigenous practices. For example, traditional forms of agriculture are described by the government as an obstacle to development: ‘There is a policy to support indigenous peoples, be we are asking them to change their traditions. They need to settle down and stop being nomad, otherwise they won’t get out of poverty’.\textsuperscript{83} This view is reproduced by the local authorities. Respondent 3.11, a local village chief, described most important cause of poverty to be the traditional farming method because they cause low yields from rice and are not efficient.\textsuperscript{84} These examples shows how members in the government disregard indigenous cultural practices and hold suspicions regarding special protection measures of indigenous people. This

\begin{itemize}
\item \textsuperscript{79} Erni, p. 353.
\item \textsuperscript{80} Erni p. 350-351.
\item \textsuperscript{81} Erni, p. 349.
\item \textsuperscript{82} FIDH, 2011, p.35.
\item \textsuperscript{83} Quote from the Provincial authority, in: FIDH, 2011, p. 6.
\item \textsuperscript{84} Interview 3.11, Kratie, October 2015.
\end{itemize}
stands in stark opposition to national laws and international conventions that the Cambodian state has ratified, indicating that national laws and policies do not necessarily reflect the convictions of the people who are responsible for their implementation.

It is easier for the government to subject its citizens to one single policy and it is more profitable to include everybody in a single economic model that allows for taxation and monitoring. Even though the ILO has described shifting cultivation as one of the most ‘complex and multifaceted forms of traditional agroforestry practice in the world reflecting a robust traditional ecological knowledge’, the Cambodian government maintains that shifting cultivation does not fit into their model of land governance which designates to every hectare of land a specific purpose in order to achieve maximal profits.

These types of forced assimilation, including ‘any action which have the aim or effect of depriving [indigenous people] of their integrity as distinct peoples, or of their cultural values or ethnic identities’, are forbidden under UNDRIP article 8. Not only in Cambodia, but on a global scale have indigenous people protested against assimilation and other racist policies. Resistance against this trend is reiterated in the Manila Declaration, which has been comprised in the year 2000 by indigenous groups from all over the world:

`We have been told that the ways of the colonizer are better and superior; that we cannot govern ourselves and that we cannot be self-determining. We have been and are being forcibly integrated and constructed in systems which continue to be shaped by the same, if less overt, racism that underpinned colonization. The powers-that-be say that globalization is an inevitable reality which we should accept, even if it leads to the further appropriation and destruction of our territories`

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87 For background information on the Manila Declaration, see chapter 4.1.1.
and resources, privatization of our waters, the commodification of our human
genetic materials, and legitimization of the patenting of life.\textsuperscript{88}

This statement expresses a strong desire for self-determination. Indigenous people are structurally subjected to outside forces that seek to change their way of life and their culture. As a result, the struggle against assimilationist policies is mentioned in many different definitions of indigenous people.\textsuperscript{89} The definition in which this element takes a very central position is formulated by the political scientist Franke Wilmer. According to her, indigenous people are: ‘Peoples who in the aftermath of colonization and/or decolonisation, continue to struggle for the preservation of their cultural integrity, economic self-reliance, and political independence by resisting the assimilationist policies of nation-states.’\textsuperscript{90} This struggle can therefore be seen as part of the indigenous identity, which has interesting consequences, because it implies that the indigenous identity will disappear when a community ceases to fight and accepts policies such as evictions to areas where other forms of agriculture are necessary or schooling schemes where only the dominant language is taught. The reason for this is not because of these new attributes but because of the absence of a struggle for preservation. During my fieldwork, I noticed how some aspects of the indigenous culture have been changed by governmental policies. People were not able to continue the traditional practice of swidden agriculture in many villages due to a reduced availability of land. In some villages, the mother language was even largely replaced by the Khmer language. Young people had no knowledge of this language and only the elderly part of the community was able to communicate in the indigenous language. However, these changes did not prevent the community from continuing their fight to preserve other aspects of their cultural identity.


\textsuperscript{89} Definitions of indigeneity by scholars such as Franke Wilmer, Taiaiake Alfred, James Anaya, and Ted Gurr all include the struggle against assimilation policies.

In order to be recognised by the government as indigenous, a community has to complete a process in which they have to prove their indigeneity. However, the struggle to maintain this identity despite governmental assimilation policies seems to be a paradox. I will use the example of language to illustrate this. In the consideration process of allowing a group the indigenous status, an important marker of indigeneity is considered to be the spoken language.\textsuperscript{91} It is not just the Cambodian government that places central importance on this feature, other organisations including the World Bank also use language as one of the key markers for indigeneity.\textsuperscript{92} However, language is not present in the most influential definitions of indigeneity such as the definition of Martinez Cobo as described in the previous section, of the ILO convention 169, of the UN Working Group and of the World Council on Indigenous Peoples.

The reason why the central importance that the Cambodian government ascribes to language seems like a paradox is because Cambodian leaders have actively worked to erase the indigenous language since 1954. As has been described before, nation building policies promoting unity, assimilation strategies and the prohibition of speaking any other language besides Khmer during the Khmer Rouge regime are all contributing factors to the disappearance of indigenous languages. Nowadays, the indigenous languages are still marginalised because the government sends Khmer teachers who exclusively teach children the Khmer language to schools in indigenous villages. This obstructs the right of indigenous peoples to transmit their language to future generations, including the right to transmit their histories, oral traditions and philosophies, which are not included in the present education system.\textsuperscript{93} In addition, the marginalisation and discrimination of indigenous people also contributes to the shift from indigenous language to the dominant Khmer language. Indigenous people are systematically discriminated by Khmer people and are made to feel ashamed about their culture and language. ‘We are looked down upon by the dominant population who misrepresent and distort our way of life, and insist that we assimilate into their culture. As a result, some of our cultures and languages have disappeared and many have become endangered. Many of us are made to feel ashamed

\textsuperscript{91} The whole process of applying for a legal status of indigeneity and obtaining communal land rights will be described in the following chapter.


\textsuperscript{93} UNDRIP, art. 13.1, art. 14.1 and art. 14.3.
of our indigenous identity and try to assimilate to avoid stigma.\textsuperscript{94} This trend was confirmed during my own field research. Many people fear that their communities will disappear because of land grabbing and evictions due to ELCs. Since almost all the indigenous people are farmers, they have no other method to sustain their livelihoods outside of agriculture. Especially mothers spoke of their preference to teach their children Khmer because they thought it would help them to build a new life outside of the community. The Khmer language is considered to be more practical, because it allows people to communicate with the authorities, NOGs and other outsiders. Even the application to indigenous protection measures such as the communal land title requires the use of the Khmer language, since all the necessary forms and procedures are exclusively available in Khmer. However, when my respondents applied for an indigenous status, the authorities questioned their ethnicity based on their knowledge of Khmer.\textsuperscript{95} It is practically impossible to obtain the indigenous status without a separate language that is commonly used according to land rights experts from prominent Cambodian NGOs.\textsuperscript{96} This means that the disappearance of many indigenous languages due to governmental policies prohibits these groups from obtaining protection of their land and their culture.

Religion is another example of a marker of indigeneity that is subject to change. The importance of their territories to indigenous people is often explained through a description of the spiritual connection that indigenous people have with their natural surroundings. Traditionally, indigenous people in Cambodia have been considered to live outside of the realm of Buddhism. Instead, my respondents hold a strong belief in spirits, who reside in the forests and exercise considerable power over indigenous communities. In recent years however, rapid religious changes have been occurring among indigenous groups in Cambodia. Many people in Mondulkiri, including most of my respondents, have been converted to Christianity and Buddhist pagoda’s are being built in other indigenous communities that I visited. When I asked people about these ‘new’ religions,

\textsuperscript{95} Interview 3.2, Kratie, October 2015.
\textsuperscript{96} Interview 5.4 and 5.5, Koh Kong, January 2016.
they replied that they adopted some new practices but do not abandon their indigenous beliefs and rituals.\textsuperscript{97} According to Roy, indigenous people often practice a form of spiritual pluralism, which means that a syncretism between different religious traditions occurs.\textsuperscript{98} Polytheistic religions are especially suitable for forms of syncretism, but as indicated in the Cambodian context, Abrahamic religions can also be combined with animistic beliefs. Since the active promotion of the Khmer language has been shown to weaken the chance for indigenous communities to be recognised as such, similarly, the increased importance of Buddhist and Christian religions in these communities could potentially further weaken the chances of these communities to obtain official recognition of their indigeneity.

These examples of language and religion show how a narrow definition of indigeneity can exclude certain communities who identify themselves as indigenous. Indigenous villages have changed significantly in recent years. Young people have introduced motorbikes and mobile phones into some villages. Villages become less isolated through an increased mobility and connectivity and because of an increased use of radio’s and telephones. This contributed to the exposure to new ideas and by leaving the village people are increasingly acquiring different types of jobs besides farming. Even though these changes are causing some concerns, for example, some of the older people fear that this will bring the younger generation into contact with drugs and alcohol,\textsuperscript{99} but nobody seems concerned that these type of changes will negatively impact the indigenous culture. As one respondent put it: ‘Even if someone would leave the village to work in a factory, they will always remain indigenous.’\textsuperscript{100} This indicates the importance of self-identification. Even if a person does not dress, farm, talk or act in accordance to indigenous traditions, he or she will remain indigenous because that is how the person identifies him or herself.

\textsuperscript{97} E.g. Interview 4.2 and 4.6, Koh Kong, January 2016. Interview 1.3 and 1.10, Mondulkiri, September 2015.
\textsuperscript{98} Roy, p.66.
\textsuperscript{99} Interview 1.6, Mondulkiri, September 2015, Interview 3.5, Kratie, October 2015, Interview 4.4, Koh Kong, January 2016.
\textsuperscript{100} Interview 4.4, Koh Kong, January 2016.
3.4 Development of the Indigenous Identity

The concept of a shared indigenous identity in Cambodia has strongly increased since the turn of the century. Many changes occurred during this period, such as the increased threats to land security as a result of ELCs, the introduction of the concept of indigenous people and the 2001 Land Law that established special rights for these groups. The indigenous communities that I have been in contact with were the Bunong in Mondulkiri and Kratie and the Chong people in Koh Kong. I noticed that the Bunong people had a strong sense of this shared indigenous identity, through for example the interchanging use of the term Bunong and ‘chuncheat daoem pheak tech’ when they referred to themselves or their community. This might be due to the close connection that these people have with other indigenous groups as they work together in organising demonstrations and other forms of protests against land grabbing.\(^{101}\) The Chong however showed less signs of this shared identity. Some respondents explained that in their minds, they were in some way connected to other indigenous groups but not too closely.\(^{102}\) This difference in the identification with a national indigenous identity may be due to the demographic composition of these two provinces. In Mondulkiri, indigenous people make up the majority of the population and indigenous groups with different ethnicities live in close proximity to each other. In Koh Kong however, around one percent of the population is considered to be indigenous and most of them identify as part of the Chong ethnicity. Indigenous people in Koh Kong have only recently started to visit other indigenous groups in different provinces with the help of the NGO Mother Nature and the Cambodia Indigenous Youth Association. Some respondents in Koh Kong even noted that they were not even aware of being part of a larger group besides their Chong community until indigeneity became a topic of public debate. Respondent 4.2 for example told me that she had always thought of herself as Khmer. She was not aware that she was different from other people in Cambodia. It was only around 2012 that she learned what indigenous people are through the radio. She started to ask questions to the village elders and she learned that their way of living, their culture and beliefs are not the same as those of Khmer people. For instance, she is not a Buddhist, as 95 percent of Cambodians consider

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\(^{101}\) A full description of these activities and the cooperation between different communities will be provided in chapter 6.

\(^{102}\) Interview 4.1, Koh Kong, January 2016.
themselves to be and she practices traditional forms of agriculture that are not used by Khmer people. After she heard on the radio that indigenous people are a highly valued group and that the government supports them, she wanted to obtain recognition of this identity because she believed that it could help protect the communal land of the village against the construction of a large hydropower dam.103

3.4.1 Primordialism, Constructivism and Instrumentalism
The interpretation of social identities and explanations of their existence and usages generally fit into three main sociological schools of thought: primordialism, instrumentalism and social constructivism. In this sub-section, a short introduction into these three concepts will be provided in order to explain different views on the indigenous identity in Cambodia.

Broadly speaking, the primordialist approach assumes that a specific ethnicity is objectively present either through genetics or a shared history, which allows for a certain extent of measurability.104 According to Geertz, people identify with each other because of a set of ‘given’ characteristics such as kinship, religion and shared customs.105 The definition of indigenous people by the Cambodian government can therefore be seen as primordialist, since it only includes people who fulfil a certain list of characteristics such as language and a particular type of land use. This approach has been widely criticised for being simplistic and for a general disregard of personal agency. The constructivist approach counters these ideas by arguing that social identities are not a mere given but that they are the result of continuous processes of recreation through the interaction with others.106 An example of this is the description of the shift from mechanical to organic solidarity by Durkheim.107 This school of thought emphasises the fluidity of identities, depending on the social and historical context. Indigeneity is therefore described as a form of social organisation that can change from place to place and is dependent on intergroup boundaries. This fluidity is an argument against rigid definitions, as self-

103 Interview 4.2, Koh Kong, January 2016.
106 Sokolovskii, p. 192.
identification better facilitates the constantly changing group boundaries. The third and final approach, instrumentalism, views indigeneity in political terms and emphasises the active use of the concept as a tool in the struggle for power. Some instrumentalists are of the opinion that an ethnic or indigenous identity is only emphasised when benefits can be derived from it. This results in the increasing emphasis on the indigenous identity when nation-states are implementing policies that threaten the survival of these communities.

The fact that the discourse around the indigenous identity emerged almost simultaneously with the increasing threats to land security supports both the instrumentalist notion of the political nature of social identities and also the constructivist notion of context dependent and fluid identities. Threats to the lives of indigenous people have resulted in resistance which proved to be more efficient through the cooperation with other affected communities. In the majority of my interviews people responded to the question: ‘How do you think that land grabbing can be prevented?’ that strengthening the community was the key to successful resistance. Indigenous people found that through working together and emphasizing their rights to communal land in connection to their indigenous culture, they could resist the threats to their livelihoods more effectively and obtain international support. In one case where the threats of eviction diminished, the strong togetherness of the people decreased again. This indicates both the fluidity and political nature of social identities. Increased unity among people who are facing similar threats has become a necessity for survival. Only by working together and emphasising the unique elements of a culture can outsiders be convinced that different types or rights are necessary to ensure their protection. Non-indigenous people have the option to apply for an individual land title. Since indigenous people do not prefer to live in a system of private land ownership, this method is useless to them. The need of indigenous people to obtain a communal land

108 Sokolovskii, p. 191.
110 Cornassal p. 59.
111 Cornassal p.60.
112 Interview 4.6, Koh Kong, January 2016.
title therefore does not constitute a ‘special’ right. It provides an alternative that accommodates different needs arising from a different lifestyle.

3.5 Effects of the Land Crisis on the Indigenous Culture

The land crisis in Cambodia does not only increase social cohesion between indigenous groups, it simultaneously affects the indigenous identity in a negative way. Their cultural identity is affected through the clearance of their ancestral lands and the destruction of the spiritual forests. Many respondents noted that they are concerned by a loss of culture and identity due to these threats to their livelihood.113 As one respondent explained: ‘When the natural environment will be destroyed, our culture will be lost as well. The spirits in the forest will disappear and our traditions will be forgotten.’114 In this section, I will explain how the land crisis affects the following aspects of the indigenous culture: traditional farming, traditional medicine, cultural sites, traditional cuisine and religion.

As explained in chapter 1.2, the forest is closely connected to the religion of indigenous people because the spirits are believed to live in the trees. This is why burial grounds are located deep in the forest and why certain parts of the forest are used to worship certain spirits. These areas are not allowed to be entered and are considered to be sacred ground, known as spiritual forests. Many of the spiritual forests have been burned down and appropriated by companies because of the land concessions. Indigenous people believe that the spirits lose their place in the world when this occurs and will roam around the area in the form of an angry spirit. They are capable of harming people and illnesses that occur after companies chemically clear the forest are believed to be caused by these spirits.115 The angered spirits mainly focus their attacks on young people and make them ill or act like animals.116 There exist traditional ways to treat these types of illnesses. The person can be prayed over, a sacrifice can be made to the spirits and traditional herbs can be used to cure the disease. But practicing traditional medicine becomes more difficult because the necessary ingredients to make medicines are disappearing as a result of

113 For example: Interview 1.3 and Interview 1.5, Mondulkiri, September 2015 and Interview 3.12G11, Kratie, October 2015.
114 Interview 4.3, Koh Kong, January 2016.
115 Interview 1.3, Mondulkiri, September 2015.
116 Interview 3.12G11, Kratie, October 2015.
deforestation. The destruction of the ancestral forest will therefore impact the health of the people. Many of the treatments from traditional indigenous medicine are both safe and effective according to the research of ethno-pharmacologist Francois Chassagne among the Bunong people in Mondulkiri. Overall, he found 214 plant and 22 animal products that are used by the Bunong in traditional medicine and analysed 10 species that are presently unknown to be medicinal in the west. However, the unique medicines of the Bunong may disappear due to the degradation of flora and fauna as a result of the agro-industry and illegal logging.\textsuperscript{117}

Other forest products that are used for food, ceremonies and construction material are disappearing as well due to deforestation. One particular tree that produces the Peap leave is very special for the indigenous people because it is used in traditional dishes that are linked to certain celebrations. This tree has now become extinct in many areas.\textsuperscript{118} The disappearance of the resin tree has also had a large economic impact. This tree produces a valuable substance that is used as varnish. The extraction of resin has been supplementing incomes for many indigenous communities, but this has now largely ended.

There used to be an ancient temple in the deep forest of Kratie which was believed to be built by an old Khmer king. This building was very important to the indigenous people of that area, but it has been destroyed during the deforestation.\textsuperscript{119} Although the people tried to protect it, but now only its foundations are left now. This is an example of how very old cultural roots are disappearing in the recent years as a result of deforestation.

Aside from causing large-scale forest destruction, ELCs also take up large plots of land which limits the area where indigenous people can perform traditional agriculture. Arguably the largest change in the indigenous culture in recent years is that the traditional practice of swidden agriculture has disappeared in many indigenous communities in Cambodia. Indigenous people are now forced to work the same plot of land year after


\textsuperscript{118} Interview 1.3, Mondulkiri, September 2015.

\textsuperscript{119} Interview 3.1, 3.2, 3.3, Kratie, October 2015.
year because there is no free space to shift to. They do not have the knowledge or the necessary tools to maintain crop yields on soil that is becoming rapidly depleted.\textsuperscript{120}

3.6 Conclusion
In this chapter I have examined different factors that play a role in the construction and destruction of the indigenous identity. There are many different definitions of indigenous people formulated by different actors, but the most important factor determining indigeneity remains self-identification. Different indigenous groups have been regarded as separate from the Khmer population for a long time, but the identification of these people with all indigenous people as a single group seems to be a more recent development. This change was facilitated by forms of modernisation that allows for increased connectedness, by the influence of national and international NGOs but also by a communal threat that brought people closer together. The threats to the indigenous lifestyle, originating from assimilation policies and from deforestation and ELCs require protection measures. To adequately protect the indigenous lifestyle, a set of rights is needed that takes into account the different customs and wishes of indigenous people. This will result in different protection measures from the general population. The most prominent solution to these threats is the communal land title. How the legal framework is constructed to safeguard indigenous rights in the domestic and international context will be discussed in the following chapter.

\textsuperscript{120} Interview 3.7G20, Kratie, October 2015.
Chapter 4: Legal Framework

The Cambodian government has ratified all the major international human rights treaties and thereby expressed a commitment to their obligation to respect, protect and fulfil the human rights of all persons under their jurisdiction. In this chapter I will answer the following sub-question: What is the role of the national and international legal framework in the protection of human rights of indigenous people against Economic Land Concessions? In order to address this question, I will examine the specific obligations of the Cambodian government in relation to indigenous people in their territory and to what extent these are fulfilled. In addition, I will analyse the national and international legislation and its implementation in relation to land rights and land concessions and point out several shortcomings and gaps which prevent human rights protection of indigenous people. Besides the Cambodian government, there are other actors with responsibilities with regards to the land crisis, namely the corporations and their home countries. Their responsibilities and their role in the land conflict will also be discussed in this chapter.

4.1 International Law

The Cambodian state has recognised that indigenous people are living within its territory. This has been an important first step in the protection of indigenous rights. Many other countries in the region including its neighbours Laos\textsuperscript{121}, Thailand\textsuperscript{122} and Vietnam\textsuperscript{123} have not done so yet. The Cambodian government has also ratified several international instruments designed to protect the rights of indigenous people. According to Article 31 of the Cambodian Constitution, all international human rights standards of the United Nations are considered to be binding domestic law.\textsuperscript{124} This means that the government is bound by national and international law to uphold the provisions in all the major human rights treaties.

\textsuperscript{124} Constitution of the Kingdom of Cambodia article 31.
All the human rights that are established in international human rights law are universal, which means that all human beings should be able to enjoy them.\textsuperscript{125} This however does not prevent the restriction of certain rights to specific groups. For example, the right to vote is restricted to adults and the freedom of movement does not apply to detainees. Similarly, there are certain human rights for vulnerable, marginalised and discriminated groups in order to fulfil the principle of equality and non-discrimination, which includes the need for affirmative action until equality is attained.\textsuperscript{126} Without these ‘special rights’ for disadvantaged groups, their interests may be seriously harmed. Indigenous people are an example of such a vulnerable group that is in need of special protection measures because their existence is threatened by ‘the neo-liberal economic forces of globalisation.’\textsuperscript{127} This results in the situation that all the conventions and treaties on human rights apply to indigenous people, since they are citizens under the jurisdiction of a state that is responsible to respect, protect and fulfil all of their human rights. In addition, some special treaties apply exclusively to indigenous people focusing on protection measures for this particular group.

In this section I will discuss some of the provisions that are most relevant to the protection of indigenous people in Cambodia. I will focus solely on four instruments that are the most influential in my view: the International Convention on Civil and Political Rights (ICCPR), the International Convention on Economic, Social and Cultural Rights (ICESCR), The International Convention on the Elimination of Racial Discrimination (ICERD) and the United Nations Declaration on the Rights of Indigenous People (UNDRIP). However, there are many more relevant conventions and declaration that I will not be discussing, such as the Convention on Biological Diversity, the Rio Declaration on Environment and Development, the Convention on the Rights of the Child and the ILO Convention nr. 169.

In the international bill of rights, which is comprised of the Universal Declaration of Human Rights (UDHR), the ICCPR and the ICESCR, the basic rights to freedom and

\begin{footnotesize}
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\item \textsuperscript{127} Nowak, p. 420.
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equality are described. The ICCPR focuses on civil and political rights, such as the prohibition of arbitrary arrests (art. 9) and the right to peaceful assembly (art. 21). The most important provision in the context of this thesis is ICCPR article 27: ‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.’ According to the Human Rights Committee, this article includes the collective rights of indigenous people to choose their own development, such as the management of their land and natural resources. This also includes the right to a fair compensation if these people were to be deprived of their traditional territories. Protection against deprivation of land and the measures for compensation are more extensively described in the general comments of the Committee on the Elimination of Racial Discrimination:

The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

This Committee has expressed its concerns related to the rapid granting of concessions on land that was traditionally occupied by indigenous people. They recommend governments not to let economic development come at the expense of the rights of vulnerable groups and the Committee urges these governments to adopt protective measures to protect indigenous people against human rights violations resulting from this.

128 UN Human Rights Committee (HRC), ‘CCPR General Comment No. 23: Article 27 (Rights of Minorities)’, 8 April 1994, CCPR/C/21/Rev.1/Add.5, para. 5.
129 UN Committee on the Elimination of Racial Discrimination (CERD), ‘General Recommendation no.23 (Indigenous Peoples)’, 18 August 1997, UN Doc. A/50/18, para. 5.
An example of a protection measure is to wait with the issuing of concessions when a community has applied for communal land rights to avoid violating the land rights of these people. The protection of indigenous territories is closely related to the right to self-determination which is described in article 1 of both the ICCPR and the ICESCR.

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

These provisions show how the assimilation policies of the Cambodian government are violating the right to self-determination of indigenous people. Freedom to pursue economic, social and cultural development means that indigenous people are free to choose the type of agriculture they practice and to choose communal management over individual management. These provisions also show that ELCs result in the violation of the ICCPR and ICESCR because it prevents indigenous people from managing their own natural resources and it deprives them of their means of subsistence. The protection of indigenous people against such violations is further clarified in the UNDRIP. Even though the UNDRIP is a declaration, no member state opposes any of its provisions. It has also been acknowledged in several UN conferences and many countries have replicated its provisions in their domestic law. As a result, the legal standing of this declaration has attained the status of customary international law, which means that the entire United Nations system and all its member states are bound to implement the rights stipulated in the UNDRIP, including the countries that have not ratified it. The central
provisions in this declaration are the prohibition of discrimination and the right to self-determination. Among many others, the declaration includes the right to be protected from forced assimilation or destruction of the indigenous culture (art. 10), the right to maintain and protect their cultural traditions and customs (art. 11), the right to exercise their spiritual and traditional relationship with the land (art. 25) and the right to land (art. 26). The general aim of the convention is to achieve equality between indigenous people and the rest, which includes affirmative action to achieve not only procedural equality but also substantive equality.\textsuperscript{134} The importance of this is emphasised in the preamble by mentioning the structural discrimination of indigenous people in the history of humankind.\textsuperscript{135} The prohibition against discrimination is a Jus Cogens standard in international law, meaning that it may not be derogated from under any circumstances. The discrimination of indigenous people is therefore considered to be a very serious human rights violation.

4.1.1 Manila Declaration
The final document in international law that I will mention is the Manila Declaration, because of its great importance for this research project. This document was written down during the International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples in 2000 where more than 100 indigenous peoples from all parts of the world came together to address the threats to their culture and livelihoods. The declaration compiles the views of indigenous people on how to solve problems to their existence. The goal of this declaration is to create new systems of peace-making based on indigenous values. This is a valuable document to take into account, because the suggestions in this declaration express the agency of indigenous people in finding solutions that are suitable to them, instead of the usually imposed systems where they have had no influence over. Specific elements in this declaration will be discussed throughout the next chapters.

\textsuperscript{134} Roy, p. 67.
\textsuperscript{135} UNDRIP, preamble, p. 2.
4.2 Domestic Law
In addition to the provisions in international law, the Cambodian government has also adopted several domestic laws describing the rights of indigenous people and it has detailed specific protection measures to fulfil these rights. In the next section, four main laws will be discussed in which the land rights of indigenous people are laid down and the system of land concessions are legally established: the 2001 Land Law, the 2002 Forest Law, the 2009 Sub-Decree on Procedures of Registration of Land of Indigenous Communities and the 2005 Sub-Decree on Economic Land Concessions.

4.2.1 Land Law
The 2001 Land Law is considered to be a landmark. It marks the first time that indigenous people and their communal land rights are officially recognised in Cambodia.136 This law describes who indigenous people are and how they can obtain official ownership rights through a communal land title over the area which they have traditionally occupied. Article 25 of the Land Law describes what type of lands indigenous people can claim: ‘The lands of indigenous communities are those lands where the said communities have established their residence and where they carry out traditional agriculture. The lands of indigenous communities include not only lands actually cultivated but also includes reserves necessary for the shifting of cultivation which is required by the agricultural methods they currently practice and which are recognised by the administrative authorities.’137 The recognition of shifting cultivation and the required reserves to practice this farming method is of great importance. States are often reluctant to allow this type of farming, since it is hard to control and it is often (unjustly) seen as a contributing factor of the destruction of natural resources. This means that the law has progressive elements and potentially protects a traditional form of agriculture that is being threatened on a global scale.

The Land Law also contains a provision that allows protection of communal land even before an official title is obtained. In article 23, interim measures are described to protect indigenous peoples’ rights when their legal status as a community has yet to be determined, meaning that no lease or sale of communal land can take place before the

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136 An overview of the context in which this law has been adopted is provided in section 3.1.
137 RGC, Land Law, 2001, art. 25.
registration process has been completed. However, this provision is weakened by the inter-ministerial Circular on illegal possession of state land property which provides an exception of this right in regards to land that is designated for investment or development, meaning that areas targeted for ELCs take precedence over indigenous territories.¹³⁸

In article 26, communal land rights are further limited by the following provision: ‘[T]he community does not have the right to dispose of any collective ownership that is State public property to any person or group’.¹³⁹ This means that the 2001 Land Law allows collective land ownership for indigenous communities, but it is not possible to freely dispose of any part of that that land once the title is obtained. For this reason, article 26 of the 2001 Land Law does not align with the ICCPR which Cambodia seceded to in 1992. In article 1 on the right to self-determination, it is stated that all people may freely dispose of their natural wealth and resources and in no case may a people be deprived of its own means of subsistence.¹⁴⁰ Indigenous people should therefore be able to exercise full ownership over their land once a communal land title is obtained.

One of the remnants in the Cambodian law of state-centric and exploited-oriented forest and land laws that were initiated during the colonial periods, is the principle of Eminent Domain.¹⁴¹ This concept allows a government to forcefully take over privately owned land within its territory and impose sanctions to the exclusion of others. This principle is often invoked in accompaniment with state-granted concessions to private and corporate interests. This principle is laid down in article 26 of the 2001 Land Law: ‘The provisions of this article are not an obstacle to the undertaking of works done by the State that are required by the national interests or a national emergency need.’¹⁴² This means that the right to collective ownership subsides when the state decides that they require the land for national interest or a national emergency. The state can use this provision to legitimate

¹⁴⁰ ICCPR 1966: art1(2).
¹⁴¹ Roy, p. 75.
evictions from the land in favour of investors who want to use the land in order to achieve economic benefits.

4.2.2 Sub-Decree on Procedures of Registration of Land of Indigenous Communities

After the adoption of the 2001 Land Law, the situation for indigenous people did not improve. In spite of this law, not one communal land title was given out because the Cambodian government decided that this law did not provide the necessary legal framework to grant communal land titles. Human rights abuses resulting from evictions and land grabs consequently continued. Under pressure from the international community, an additional law was drafted to establish a legal framework with the power to issue communal land titles to indigenous peoples. This law was adopted in 2009 and is called the ‘Sub-Decree on Procedures of Registration of Land of Indigenous Communities’.

The most important regulation described in this law is registration. In order to obtain communal land rights, the indigenous community has to complete a series of legal procedures. This is a lengthy and complicated process involving three different ministries without any clear instructions provided by the government on how to navigate through this system. First, the community has to be identified as indigenous and produce the required documents in order to make a formal request to the Ministry of Rural Development to obtain its recognition. Once this step is completed, the community needs to register as a legal entity at the Ministry of Interior. This requires different steps such as the drafting of the by-laws of the community which have to be approved and registered by the Ministry of Interior. Once the by-laws are officially registered, the application for the communal land title can commence. This means that the community has to apply for land registration at the ministry of Land Management, Urban Planning and Construction. Finally, they have to go through the titling procedure in order to officially adopt the internal rules concerning land use and the management system of the community.\textsuperscript{144}

\textsuperscript{143} Ironside, p. 115.
Some of these steps are vaguely described in the 2009 Sub-Decree, other aspects of the procedures are only to be found in guides made by IOs and NGOs that support indigenous communities with the registration process.

In article 6 of the Sub-Decree, 5 different types of land are described that can be included in one communal land title: residential land, agricultural land, reserve land for shifting cultivation, spiritual forest land and burial grounds in forests.\(^{145}\) This seems to be a comprehensive list of possible land uses. However, some important limitations are attached to each land type. Forest land is only allowed to be included in a communal land title when it is used for religious and funeral purposes. This drastically limits the amount of forest that can be used by indigenous people. Spiritual forests and burial grounds may not exceed the amount of seven hectares per community.\(^{146}\) This means that a community cannot own more than fourteen hectares of forest land. This regulation has far-reaching consequences for indigenous villages since most communities rely heavily on forest based livelihood activities. Typically, such villages use large areas of forests to extract certain products, such as bamboo, honey and resin.\(^{147}\)

In addition to the forested areas, the land designated for shifting cultivation is categorised as state public land. This means that ultimately, the state remains the owner of this land. That explains the provision in the 2001 Land Law stating that indigenous communities cannot freely dispose of their land. For this reason, the land rights derived from a communal land title seems to be very superficial. Indigenous people are allowed to live on these lands until the government wishes to use it for other purposes. In addition, the situation for indigenous people that rely heavily on forests deteriorates after a communal land title is obtained, because the right to use forest lands for sustenance activities are legally taken away from them by means of this Sub-Decree.\(^{148}\) This is a violation of the UNDRIP article 8.2(b) which states that: ‘States shall provide effective mechanisms for


\(^{146}\) Ibid.

\(^{147}\) Baird, 2013, p. 275.

\(^{148}\) Ibid.
prevention of, and redress for any action which has the aim or effect of dispossessing them of their lands, territories or resources’.\textsuperscript{149}

Furthermore, the possible positive effects of the Sub-Decree are limited due to a lack of implementation. The registration process does not accept many of its applications due to the complexity of the process and the lack of support for communities that wish to apply. By 2012, 153 indigenous communities were involved in the process of indigenous registration, which is the first step in obtaining a communal land title. One year later, only 40 of them managed to register as legal entities.\textsuperscript{150} The total number of communal land titles that have been given out until 2013 was 6. Even though the government has expressed its commitment to issue 10 communal land titles per year,\textsuperscript{151} the process of registration remains extremely slow. According to a report that the CCHR published in February of 2016: ‘Of Cambodia’s 458 indigenous communities, only 11 have been able to complete the process and register their collective lands.’\textsuperscript{152}

4.2.3 Forest Law
Regulations regarding forest use are detailed in the 2002 Forest Law. The objective of this law is to manage the Cambodian forests in a sustainable manner in order to optimise their social, economic and environmental benefits.\textsuperscript{153} Included in these benefits is the protection of biological diversity and cultural heritage. This provision implies that the government has to balance different interests. The environmental value of forests needs to be protected but simultaneously, the rights of people who are dependent upon the forests for social and economic reasons, and who are culturally tied to these places have to be protected as well. These goals are aimed to be achieved through the description of several protection measures to safeguard the interests of local communities in general, including indigenous communities. According to article 4, any activity that impacts the forest’s ecosystem shall be preceded by an Environmental and Social Impact Assessment

\textsuperscript{149} UNDRIP, art. 8.2(b).
\textsuperscript{150} Baird, 2013, p. 273.
\textsuperscript{153} Royal Government of Cambodia, \textit{Law on Forestry}, 2002 Phnom Penh, Cambodia, art. 1.
These outcomes must be considered before making a final decision on forest ecosystem related activities. This means that the people who are dependent upon a certain part of a forest always have to be consulted before any major changes can be made. In addition, article 2 states that that local communities which have been extracting forest products and forest by-products on a customary basis are allowed to continue doing so.

In article 14 of the Forest Law it is stated that the government has the authority to enter into forest concessions. This means that investors or any other legal entity can make an offer on a piece of land to the Forest Concession Bidding Commission. When this commission accepts and gives out a concession agreement, the buyer receives the right to manage and extract forest products and by-products within the concession. However, in article 15 it is stated that the concession may not interfere with customary user rights on land property of indigenous communities that are registered. In article 16 this is clarified by stating that it is not allowed to enter or harvest in any indigenous community property area. This provision provides a strong precedent for the protection of indigenous forest lands, more so than communally-owned agricultural lands that cannot form an obstacle in the course of ‘national development’. However, only 14 hectares of forested area can be included in a communal land title. In addition, the law only protects forest use of the very small group of indigenous people who have managed to complete the registration process. But even this small recognised group can never obtain rights to manage, conserve or utilise the forest, because all forested areas in Cambodia are under state management. This means that the state maintains the exclusive rights to the resources in every forest within its territory, causing indigenous people to live in a constant state of insecurity, since the access to forest upon which they are dependent for their sustenance can be taken away from them at any moment. This situation is not unique in Cambodia, indigenous people in many Asian countries do not enjoy any rights in relation to the access of forested areas. This results in the possibility of criminal

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154 RGC, Law on Forestry, 2002, art. 4.
155 RGC, Law on Forestry, 2002, art. 2.
157 RGC, Law on Forestry, 2002, art. 15.1.
158 RGC, Law on Forestry, 2002, art. 16.3.
159 Roy, p. 78.
sanctions for trespassing or the extraction of products in forested areas which have been designated for a different purpose by the government. In Mondulkiri for example, the forest is fenced off and indigenous people who customarily have been using that forest are prohibited from entering the area.\textsuperscript{160}

All in all, the 2002 Forest Law contains elements that are aimed to protect indigenous land rights and elements that threaten them. As long as an indigenous community obtained a legally recognised status, they enjoy some level of legal protection from forest concessions and state-instigated repurposes of the land. However, protection measures such as ESIs are hardly ever implemented.

4.2.4 Sub-Decree on Economic Land Concessions

The general responsibility of the state to protect includes the protection of citizens against abuse within their territory by third parties, such as corporations. This means that the state has the obligation to take appropriate steps to prevent, investigate, punish and redress abuses by corporate actors.\textsuperscript{161}

Land concessions in Cambodia are subject to certain restrictions: they cannot exceed 10,000 hectares and they can only be granted for a maximum of 99 years.\textsuperscript{162} The Sub-Decree on Economic Land Concessions of 2005 elaborates on these requirements with 5 conditions: 1: The land has to be classified as State Private land. 2: A land use plan must have been adopted by the Provincial-Municipal State Land Management Committee and the proposed use of the land should be consistent with this plan. 3: ESIs must have been completed with respect to the land use and development plan before an ELC project can be implemented. 4: The land concessions must present solutions for resettlement issues and the government shall ensure that there will be no involuntary resettlement by lawful land holders and that access to private land is respected. 5: Public consultations with territorial authorities and local residents on the concession projects have to be organised.\textsuperscript{163}

\textsuperscript{160} A description of actions by the police to prevent access to forested areas is provided in section 5.3.1.
\textsuperscript{162} RGC, Land Law, 2001, art. 58 – 61.
\textsuperscript{163} RGC, Sub-Decree 146, art. 4.
According to Sub-Decree 146 of the Cambodian Government on Economic Land Concessions: ‘Economic land Concessions refer to a mechanism to grant private state land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation.’ According to the Cambodian government, the purpose of these concessions is to stimulate development and to encourage investments, which in turn will lead to increased employment and state revenues. This gives the impression that both the people and the government will benefit from land concessions. But the laws related to land concessions often neglect indigenous peoples’ customary land and resource rights. Land that is designated for ‘development’ purposes is often described as ‘vacant’ or ‘wastelands’ in order to justify their acquisition.

The so-called grand concessions, which are all concessions larger than 1000 hectares, are given out by the Ministry of Agriculture, Forestry and Fisheries. All of this is taking place in the capital city without involvement of the districts that will be impacted by a certain concession. The only form of contact with the local people is regulated through a legal procedure where a copy of the contract is sent to the Commune Councils of the affected area for review and recommendation. These Councils exist since 2002 and are comprised of representatives of communities who are chosen through local elections every 5 years. The ministry has the freedom to either accept or reject any of the recommendations that are made by these Commune Councils, meaning that this institution has no important say in deciding whether a concession is given out in their area.

Even though the Cambodian government has laws in place regulating the conduct of businesses in their territory and provisions that are aimed towards ensuring the protection of human rights against actions of corporations, these safeguards are incomplete and lack an involvement of local communities, furthermore, the existing safeguards which are in practice are not adequately fulfilled.

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165 RGC, Sub-Decree 146, art. 3.
166 Roy, p. 76.
167 RGC, Sub-Decree 146, art. 29.
168 RGC, Sub-Decree 146, art. 35.
4.3 Implementation
A compilation of the shortcomings regarding implementation of the above-mentioned laws is presented in this section.

Even though the 2001 Land Law states that land concessions can only be given out after a careful Environmental and Social Impact Assessment to ensure that the concessions will not severely impact communities and the natural environment, these assessments are hardly being carried out. According to my respondents, nobody ever asked them any questions before a company would start clearing the land. Another breach of the 2001 Land Law is the neglect of the right to free, prior and informed consent. The clearing of land often starts before any negotiations have been completed or even commenced. So when the environment is already destroyed, people often have no other choice but to accept the conditions set by the company, because otherwise they risked not receiving any type of compensation. This is a violation of the right to an adequate and fair compensation mechanism for communities whose lands have been infringed upon. Many people who have been dispossessed received either nothing in return or only an outrageously low payment per hectare. Others have been resettled, but for many, this only meant that they were removed from their lands without any or only a vague indication on where their replacing lands were located.\footnote{FIDH, 2011, p. 7.} These breaches of national and international legislation puts the legality of ELCs into question and also attests to the lack of transparency surrounding the process.\footnote{FIDH, 2011, p. 7.}

The current level of forest protection in Cambodia is very weak due to a lack of oversight and widespread corruption. Illegal logging is consequently occurring at drastic levels. Especially the rare and valuable rosewood trees, which are prohibited to be cut under the 2002 Forest Law\footnote{RGC, Law on Forestry, 2002, art. 98.2.5.}, are exported to Vietnam and Laos in large quantities. With a value ranging between 30,000 and 50,000 USD per cubic meter, millions of dollars of profit are made off this trade with the help of corrupt border managers who profit alongside the loggers.\footnote{Paviour, B., Cambodia Daily, ‘Rosewood Exports Undercut UN protections’ 25 June 2016, https://www.cambodiadaily.com/news/rosewood-exports-undercut-un-protections-114612/ (accessed 25 June 2016).} Besides illegal logging, state sanctioned forms of deforestation occur
systematically. Some land concessions are for example situated in protected areas that were originally meant to preserve the forest.\textsuperscript{173} As a result, numerous concessions, and especially forest concessions, were sold to domestic and foreign companies. More than half of Cambodia’s total arable land has been granted to industrial projects.\textsuperscript{174} As described in the Land Law, only State Private Property can be privately possessed, owned and sold. In contrast, State Public Property, including forests, serves public interest use.\textsuperscript{175} However, not all the land in Cambodia has been clearly identified and mapped which blurs the distinction between the two types of land. This makes transfers from State public to private land possible in order to allow for land concessions to occur in forested areas.\textsuperscript{176} In the case of the company called Sethikula, which is part of the umbrella organisation Socfin, the government had to pass a Sub-Decree where they officially reduced the size of the protected area in order to facilitate the company.\textsuperscript{177} Another example is a concession of 9000 hectares for a rubber plantation in the largest protected area of the country, Virachey National Park, located in the province of Ratanakiri.\textsuperscript{178} This same park has been used for gold mining by an Australian company since 2007. Even the Cardamom Mountains, which contains the most threatened forest in the world according to Conservation International, has been subject to mine concessions of more than 20,000 hectares.\textsuperscript{179} The FAO global forest survey stated that Cambodia has lost 29 percent of its primary tropical forest in a period of 5 years. This deforestation is accelerated by granting much larger concessions than the allowed 10,000 hectares. Companies with different names but under the control of the same group have acquired hundreds of thousands of

\textsuperscript{175} RGC, Land Law, 2001, art. 16.
\textsuperscript{176} FIDH, 2011, p. 26.
\textsuperscript{177} FIDH, 2011, p. 6.
hectares of land. An example of this is land acquisition by the Vietnamese military, land acquisition by Socfin and by the extended family of prime minister Hun Sen. In order to counter this rapid destruction, the state has to stop converting protected zones into economic concessions. Further harm can be avoided by conducting environmental and social impact assessments. Only by consulting the communities that are impacted by concessions can their interests and rights be accounted for.

Many local NGOs and advocacy groups argue that the state does not prioritise indigenous land rights above economic gains. This results in relocations or disownment of land when an economic opportunity presents itself despite of the laws that protect indigenous land rights. Apart from national legislation, the evictions and land grabbings violate international standards on the protection of human rights of indigenous people as discussed in chapter 4.1. Implementation of these standards however, is dependent upon political will. The state has the power to decide who is recognised as indigenous. If this process of recognition is very difficult to complete, which is the case in Cambodia, only a very small portion of indigenous people will be recognised as such, leaving the majority of indigenous people with no legal claim on the above-mentioned laws. Many indigenous villages who possess all the required elements for indigenous registration are denied this right due to numerous political, administrative and procedural obstacles. These delays allow companies to clear the forest before communities have been able to secure communal land. The 2001 Land Law provides interim protection measures on the level of the regional authority, but often, these authorities question the indigeneity of communities and are unlikely to help. There are many examples where the local

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authorities have blatantly refused to cooperate in the process of application to obtain communal land rights. Respondents in Mondulkiri indicated having made a formal request at the district level, but never received a response.\textsuperscript{187} Other villages have also encountered refusal by their communal chief, who argued that it was too late to start up the process.\textsuperscript{188} This indicates a total disregard of the existing legislation protecting indigenous peoples’ rights.\textsuperscript{189} In addition, research of FIDH indicates that many members of the local authority do not even clearly know how the process works and how a collective land title is to be obtained.\textsuperscript{190} This is both due to the complexity of the process and the lack of clear guidelines on how to navigate the process, which makes it even incomprehensible to the authorities themselves.

The CERD committee recommends that the Cambodian government should develop appropriate protective measures, such as a delay in the issuance of a concession on lands inhabited by indigenous communities to allow time for a proper assessment of current land use and for a legal registration in case indigenous groups wish to obtain a communal land title.\textsuperscript{191} Nowadays, there are daily reports on human rights abuses related to ELCs such as forced evictions, destruction of property, use of violence, arbitrary arrests, deprivation of means of subsistence, and much more. Only by upholding legislative safeguards and international standards can these human rights abuses be avoided.

\textbf{4.4 Legal Position of Corporations}

Multinational Enterprises (MNEs) are among the most prominent non-state actors in the international system. Their size and power has led to a long debate regarding how such entities should be regulated. The fear of MNEs as unaccountable actors, who are able to disregard state policies and play states off against each other in a global ‘race to the bottom’ in terms of regulatory standards is not new.\textsuperscript{192} According to the Human Rights

\textsuperscript{187} Interview 1.13, Mondulkiri, September 2015.
\textsuperscript{188} Interview 4.1, Koh Kong, January 2016.
\textsuperscript{189} FIDH, 2011, p. 35.
\textsuperscript{190} FIDH, 2011, p. 36.
Watch: ‘The government continues to turn a blind eye to the fraudulent confiscation of farmers’ land, illegal logging and the widespread plundering of natural resources.’¹⁹³ On the other hand, companies continue to be seen as beneficial to development, as they bring investment and technology to their host countries.¹⁹⁴ The question is how to attract and benefit from foreign direct investment by MNEs while avoiding possible adverse economic and social effects. The issue of regulation exists within this balancing process of investor protection and investor accountability.¹⁹⁵ Standards for the protection of MNEs are written down in binding international investment agreements but the responsibilities of these same actors are described mainly in soft law instruments of a non-binding nature, which results in an imbalance that favours the protection of investors over their responsibilities. The enforcement of human rights obligations of companies remains therefore a major challenge.

The largest foreign investors in ELCs are Vietnamese and Chinese companies. There are also Cambodian companies with large land holdings and companies from Singapore and Japan that play a large role in land concessions. Besides stakeholders from Asia, there are also companies from the United States of America and Europe that operate in Cambodia. All these companies are expected to act ethically and with due diligence, but especially the European-based companies are expected to uphold the highest standards of conduct with regard to human, labour and environmental matters.¹⁹⁶ According to the Human Rights Committee (HRC), the home countries of corporations should take measures to prevent abuses abroad as part of their obligation to protect with due diligence. In addition, ‘States have to take appropriate steps to prevent, punish, investigate and redress harm by private entities.’¹⁹⁷ At the moment, states are not required under international human rights law to regulate the extraterritorial activities of businesses situated in their territory. For this reason, some human rights treaty bodies recommend that home states take steps

¹⁹⁴ Muchlinski, p. 9.
¹⁹⁵ Ibid.
¹⁹⁶ FIDH, 2011, p. 10.
to prevent abuses abroad by businesses within their jurisdiction.\textsuperscript{198} There are several measures that states could adopt to ensure extraterritorial oversight. Examples include requirements on parent companies to report on the global operations of the entire enterprise. Another option is a direct extraterritorial legislation and enforcement.\textsuperscript{199} The guidelines for multinational enterprises of the organisation for economic co-operation and development gives more suggestions. In spite of these regulations however, the European companies in Cambodia act no different from companies with other nationalities.

One of the most influential initiatives designed to motivate corporations to uphold human rights is the UN Global Compact. Another example is the UN Framework and Guiding Principles on Business and Human Rights, which identifies three main pillars for the protection of human rights in the context of corporations. The first pillar confirms that the main responsibility for protection against human rights abuses lies with the state. The second pillar points to the responsibility of the corporations themselves: the corporate social responsibility to respect human rights, the final pillar relates to the necessity to provide victims an effective remedy in cases of abuse. So even though the primary responsibility lies with the national government, companies have also a corporate responsibility to respect human rights, no matter the country of origin or the country where they operate.\textsuperscript{200} This means that they have to address adverse human rights impacts resulting from their own actions. Given the political context in Cambodia with its high levels of corruption and impunity, a company should conduct due diligence processes to ‘adequately assess potential adverse risks their operation might cause’.\textsuperscript{201} This should be an ongoing process in which the company identifies, prevents, mitigates and accounts for how they address their impacts on human rights.\textsuperscript{202} Companies should implement adequate social and environmental impact assessments and consult indigenous communities before the implementation of a concession. These considerations should already start during the drafting of the contract, but even when this occurs, it needs to be continuously implemented in later stages, since the impact of a company may change

\begin{flushleft}
\textsuperscript{198} OHCHR, 2011, p. 4.  \\
\textsuperscript{199} Ibid.  \\
\textsuperscript{200} OHCHR, 2011, p. 13.  \\
\textsuperscript{201} FIDH, 2011, p. 7.  \\
\textsuperscript{202} OHCHR, 2011, p. 16.  \\
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through the development of activities or a changing context. According to the UN Framework, companies should also consult potential affected groups and other stakeholders. These standards are disregarded in Cambodia on a consistent basis. Indigenous people are kept outside of negotiations and their interests are thereby continuously ignored. When a company commits human rights violations, it is ultimately up to the host state to penalise them or to break the contract. This however occurs only on rare occasions. When a government receives financial or other benefits from such a company, chances are low that they will hold them to account for their abuses.

4.5 Role of other Non-State Actors
There are other non-state actors besides corporations who play an important role in the land crisis in Cambodia. Some of these actors contribute to the fulfilment of land rights of indigenous people and others enable extractive industries to contribute to the violation of these rights. In order to provide a more complete overview of the context in which violations of land rights occur, I will briefly discuss the role of other non-state actors such as NGOs, the Word Bank and the European Union.

4.5.1 Supporting Communities in Registration
The process of registration for a communal land title is lengthy, complicated and costly. Indigenous communities are therefore dependent upon support from NGOs and IOs for the fulfilment of their right to communal land, since the government does not provide sufficient funds to implement their legal obligations and realise land titles for all indigenous groups. The German state has played a large role in financing NGOs in their assistance in the process of obtaining collective land titles. For example, the Gesellschaft für Technische Zusammenarbeit has provided grants to NGOs to assist 6 indigenous communities in Mondulkiri to obtain a communal land title. Other important actors are the ILO and the OHCHR, who are involved in several projects that support communities to obtain communal land titles. There are also many local NGOs such as Adhoc and Licadho who play an important role in supporting communities to navigate

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204 FIDH, 2011, p.36.
205 FIDH, 2011, p. 36.
the legal procedures necessary for a communal land title since indigenous people often have limited knowledge in this regard.\textsuperscript{206}

\subsection*{4.5.2 Financing Land Concessions}

The World Bank has played a large role in the Cambodian land crisis through the endorsement and financing of large land concessions. In 2010, it started to promote the idea that new land deals have the potential for rural development. This new discourse is captured in their phrase ‘making a virtue out of necessity’.\textsuperscript{207} In the context of Cambodia, the World Bank has been involved in land concessions through the issuing of loans that companies require for the implementation of large projects. However, their involvement in the disastrous Boeung Kak Lake project which led to the forced eviction of around 20,000 people, led to the decision in 2011 to stop all new loans to Cambodia.\textsuperscript{208} However, in May 2016, the World Bank decided to resume granting loans under pressure of development discourses.\textsuperscript{209}

Another actor that plays a role in the financing of Land Concessions is the European Union. This organisation has endorsed the UN Framework on Business and Human Rights, additionally it expressed its commitment to take the lead on CSR and to ensure that European corporations respect human rights wherever they operate.\textsuperscript{210} In practice however, the results of these commitments are largely absent in Cambodia since there are many examples of human rights abuses by European companies. In addition, certain policies and programmes of the European Union can have harmful effects on the human rights situation in Cambodia. An example is the Everything But Arms (EBA) scheme from the European Union where 49 of the least developed countries, including Cambodia, are given duty free access into the EU for any products except for arms and

\begin{footnotesize}
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\item \textsuperscript{206} The role of NGOs in the protection of land rights of indigenous people is further elaborated in chapter 6.2.
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ammunition.\textsuperscript{211} This scheme has led to a deterioration of the human rights situation in Cambodia since businesses that directly benefit from the EBA initiative have evicted farmers, destroyed their property, used violence and caused the arrest of innocent people.\textsuperscript{212} The EBA has been especially beneficial for the sugar industry in Cambodia. But because of all the harm that has been done in this sector, its production has become known as blood sugar. Civil society has requested that the EBA suspends favourable import conditions regarding sugar from Cambodia but the EU has not given a response on this contentious issue.\textsuperscript{213}

\section*{4.6 Legal Pluralism}

In this chapter it has been shown how different bodies of law operate in relative independence of each other. Customary laws grants indigenous people ownership over the lands that they have possessed for generations, which has been re-emphasised in the UNDRIP. At the same time however, land concessions are given out in accordance to domestic laws. This means that each party, both the companies and the indigenous people, have legitimate reasons to contest the claims of the other. The three generations of human rights\textsuperscript{214} exemplify how legal plurality can cause contradictory rights. The first and second generation of human rights are grounded in individual rights, which allows companies and governments to alienate collective lands from indigenous peoples in accordance with national laws. But the third generation of human rights emphasises the collective rights of peoples and the validity of custom. As a result of this, customary laws and international law reinforce each other and can be used by indigenous people to oppose national laws.\textsuperscript{215} A demonstration on how different types of law result in different claims is illustrated in a quote from the Ministry of Rural Development: ‘People accuse the

\textsuperscript{212} FIDH, 2011, p. 14.
\textsuperscript{214} The first generation of human rights centres around civil and political rights. The second generation focuses on economic, social and cultural rights. The third generation of human rights is based on collective rights.
government of taking indigenous peoples’ land, but the land belongs to the state.\textsuperscript{216} Indigenous people face the challenge of combatting discriminatory state laws, which is made even more difficult when the interests of states align with the interests of private corporations. This results in a strong asymmetry in political power between indigenous people on the one hand and the state and market forces on the other. However, international human rights law can be invoked by indigenous people, since they support indigenous claims to exercise control over the management of their land as part of their right to self-determination.

4.7 Conclusion
The political and economic asymmetry between indigenous peoples on the one hand and the state and market forces on other, makes the challenge of land security difficult to realise. The Cambodian government may have detailed legislation where human rights are described and seemingly protected, but in practice however, customary resource rights often have to make way for contradictory laws that facilitate the construction of commercial plantations and extractive industries.\textsuperscript{217} Top-level authorities regularly circumvent their own legislation, for example to allow concessions on the land of indigenous communities or in protected areas.\textsuperscript{218} The failure to implement the laws related to indigenous people renders them ineffective and constitutes a widespread problem. For example, the fact that companies infringe on communal lands while indigenous people are still in the process of obtaining their land titles breaches the Land Law. Corporations should receive guidance on respecting human rights by sharing best practices, due diligence and information on the protection of vulnerable groups such as indigenous people.\textsuperscript{219} Moreover, corporations should also be held accountable when they cause human rights violations. In the next chapter I shall give detailed descriptions on how the abuse and disregard of the legal standards set out in this chapter lead to human rights abuses of indigenous people in Cambodia.

\textsuperscript{216} Yorn Sarom, Director of Mondulkiri Development Department Ministry of Rural Development, 16 December 2010, in: FIDH, 2011, p. 35.
\textsuperscript{217} Roy, p. 74.
\textsuperscript{218} FIDH, 2011, p. 7.
\textsuperscript{219} OHCHR, 2011, p. 5.
Chapter 5: Human Rights Violations

Human rights abuses as a result of agribusinesses are a worldwide phenomenon. During my field research, I found that all of my respondents were facing a wide range of different problems, some of which were the same in all villages but other challenges were unique to a certain area. In this chapter I will examine the causes and effects of the broad range of abuses that I encountered during my research in order to address the following sub-question: To what extent do Economic Land Concessions in Cambodia result in human rights abuses for indigenous people?

5.1 Land Grabbing

Land grabbing is the act of obtaining power over a piece of land and all its associated resources such as water, minerals and forests in order to control the benefits of its use. This means that land grabbing is not illegal by definition. The granting of ELCs by the government is a form of legalised land grabbing. When corporations keep increasing their land after a concessions was granted, it can be considered as an illegal form of land grabbing. Land grabbing is an inherently political process where the strongest player uses its power to decide how to utilise the land. Corporations often reveal themselves as the strongest party and they use land in order to obtain as much profit as possible. Existing systems of meaning and use on a local level are usually neglected in this process. This trend occurs on a global level where a general shift of land ownership is notable. Small-scale and labour-intensive systems such as subsistence agriculture is increasingly replaced by large-scale, capital-intensive and resource-depleting systems such as industrial monocultures, raw material extraction and large-scale hydropower generators geared towards global markets. This rapid change in ownership is visible in the Cambodian context and results in severe human rights abuses of indigenous people.

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220 Transnational Institute, ibid.
5.1.1 Evictions

Despite official regulations, the local communities are usually not informed when a company obtains an ELC. Indigenous people are therefore living in insecurity because of the constant fear that a company might show up and claim their lands. This causes a lot of stress: ‘If another company comes, I might not have a place to live anymore. I am afraid that they will take my land and my house. Then I have nothing. I might die, because there is no other place I can go.’ A company usually starts clearing the land completely after it obtains an ELC. If part of that land is inhabited by indigenous people, they are either forced to accept a relocation regulation or otherwise brutal force is used: ‘Last year, the company cleared the land. All our farms were burned down. That year we had no source of food or income, which forced us to go into the forest and dig in the ground for wild cassava. This is hard work, because the roots can be as deep as five meters underground. But now the access to the forest is restricted as well. One of the villagers went in anyway and the company shot him. People are too scared to do anything about it.’

This example shows how companies can brutally disregard the rights of indigenous people and how this can lead to deep fear, poverty and hunger. This results in the breach of the right to an adequate standard of living, including the right to adequate food and housing and the continuous improvement of living conditions.

Relocation regulations are usually forced upon indigenous communities. People receive a very low price for the land that they own or a vague promise of a similar territory in another area. Because people know that they will get nothing at all when they do not agree, they are forced to agree to sell their land usually for a price between 50 and 200 USD per hectare. The land of the people who refuse this is taken away without compensation. The normal price for one hectare of land would typically be around 2000 USD. This shows how outrageously low the compensation is that indigenous people get for their land. This is a violation of the right to fair compensation, which is stipulated in both article 5 of the Land Law as in article 10 of the UNDRIP: ‘No relocation shall take

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221 Interview 1.6, Mondulkiri, September 2015.
222 Interview 1.6, Mondulkiri, September 2015.
place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation.²²⁴

5.1.2 Land Grabbing by Other Actors

The cause of the insecurity in the lives of my respondents was often allocated to the companies that have been coming to their area in the last decade. These are however not the only actors that pose threats to land security. One respondent noted: ‘I am not scared of companies but of rich tycoons, because they are the ones that take the land and sell it to the company. When I tried to fight back, a Vietnamese person came to my house and threatened to cut me with a knife.’²²⁵ This example shows how illegal forms of land grabbing occur. Companies constantly seek to increase their land and this facilitates the rise of so-called ‘middle men’ who take the land from local people and sell it to corporations, allowing companies to acquire more land in a legal manner while it was illegally obtained. This illustrates how land grabbing is more complex than the standard image of company versus villager. It becomes even harder for the victim to get his land back if the land grab was facilitated by middle men: ‘When I went to the middle man who took my land, he said that he could not help me because he did not have the land anymore. When I went to the buyer of the land, he showed me the contract proving that he obtained the land legally.’²²⁶ Since indigenous people use land collectively and almost never have an individual land title, it is impossible for the victim to prove that the land originally belonged to him. These middle men can be rich Khmer people known as tycoons, but some respondents have spoken of Vietnamese and even indigenous middle men. The situation becomes especially difficult when indigenous people are compelled to work as middle men, because villagers are less inclined to fight them. One respondent explains: ‘When my land was taken by a middle man, I threatened to file a complaint, but when I found out that the culprit was an indigenous person from the village, I stopped myself. I know the wife and children of this man. If I would have had him arrested, I would have caused the whole family to regress into poverty. So I decided to do nothing.’²²⁷

²²⁴ UNDRIP, art.10.
²²⁵ Interview 1.4, Mondulkiri, September 2015.
²²⁶ Interview 1.6, Mondulkiri, September 2015.
²²⁷ Interview 1.7, Mondulkiri, September 2015.
A third and highly unusual type of land grabbing occurs in regions near the Vietnamese border. It is not a company who claims the land in this area, but the Vietnamese military. Around 40,000 hectares of land have reportedly been transferred from Cambodia to Vietnam. According to respondent 1.6, Vietnam has confiscated 50 km$^2$ since 1980.

5.2 Effects of Land Grabbing on People

These different forms of land grabbing have far-reaching consequences on indigenous people in Cambodia. In the remainder of this chapter I will discuss both direct and indirect human rights abuses resulting from these breaches of the land rights of indigenous people. The cultural impacts of land concessions have largely been addressed in chapter 2. Other impacts that will be discussed in this chapter are: financial pressure, health concerns, climate change and police violence.

5.2.1 Financial Insecurity

Indigenous people are heavily dependent upon the forests to complement their incomes and their diets. One popular forest product that can supply the income is resin. Other products such as wood and honey are sold as well. However, financial insecurity increases now that the forests are being cut down on a massive scale and have been prohibited from entering in some areas. An additional cause of environmental degradation is climate change. My respondents have noted a change in the weather conditions due to the destruction of the forests. When the trees are cut down, the rain stays away which results in erosion of the soil and lowered yields of agricultural products. Rain has diminished significantly in the last couple of years, harming crop yields and endangering the forest. When people try to access the fenced off parts of the forest, they can be fined or arrested by the authorities. This adds to the financial insecurity, since people have very limited financial resources. ‘Last year, my son went to collect dry sticks in the forest. He wanted

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229 Interview 1.6, Mondulkiri, September 2015.
230 Interview 1.7, Mondulkiri, September 2015.
232 Interview 1.9, Mondulkiri, September 2015.
to use them as pillars for his pepper plants. When he entered the forest, he was arrested. They put handcuffs on him and asked for a 3000 USD fine. He had to borrow this money from a loan shark, which took him two years to repay. ²³³ In addition, indigenous people believe that when a person is put in handcuffs, he becomes cursed in a way. Only by making a substantial sacrifice can this burden be lifted, which provides additional financial burdens. ‘He had to buy a cow, a pig, a duck and a chicken and kill them in order to lift the curse. This is very expensive for people, but they feel that they don’t have a choice.’ ²³⁴

Besides the limited access to the forest, the amount of land that is available for agriculture is diminishing as well. The land is usually taken without warning. As one respondent illustrates: ‘One morning I would go to my farm and the company had put a big pole on my land. I was unable to remove the pole so I lost all of my land.’ ²³⁵ Additionally, because people are not able to shift anymore due to the scarcity of land, they have to work the same plot of land year after year which significantly reduces its yields due to soil degradation. So if for any reason people have no access to sufficient agricultural land, indigenous people become forced to look for work as a day labourer. This has a negative effect on the family structure and on financial security. When the parents work on the clock for a company, nobody can remain at home to take care of the children. So the children will have to leave school to help collect food and wood. And should a worker fall ill, there will not be any money that day to buy food. ²³⁶

Besides indigenous people, companies also attract many newcomers to the area who work for them. This puts additional pressure on natural resources in an area. These new people need to be fed and need land to live on, which harms the traditional way of living of indigenous people ‘There is less land to find wood to cook and less food to eat, the benefits of the resin tree have stopped because there are too many people who want to share in its profits.’ ²³⁷

²³³ Interview 1.6, Mondulkiri, September 2015.
²³⁴ Interview 1.10, Mondulkiri, September 2015.
²³⁵ Interview 1.6, Mondulkiri, September 2015.
²³⁶ Interview 3.7G20, Kratie, October 2015.
²³⁷ Interview 1.9, Mondulkiri, September 2015.
5.2.2 Water Contamination

In Mondulkiri, I was first confronted with one particular effect of the presence of the companies that caused death and disease of indigenous people and also of their animals and crops. The cause of this disaster is water contamination, a very serious problem that is completely ignored by the government, and largely by NGOs and researchers. In the village where I first heard about this problem, the cause of the contamination was suspected to be a company located upstream from the village. The people were not sure what the company was doing to the land, since its property was fenced off and guarded. I was told how these type of companies use strong chemicals to clear the forest and prepare the soil for growing rubber trees, pepper plants and other crops. The river that flows through their village passes through the property of the company. The affected water ends up in their food, their animals and in the people. Since the company arrived in the area, many people have fallen ill and some even died. ‘My father died, my wife had a terrible rash all over her body and my son is currently in the hospital.’238 These kind of problems used to be very rare in the village, but since 2011 it has happened more and more. The main victims of these problems are vulnerable people, children and elderly people. Respondents do not know what exactly is wrong with them, but many note illnesses related to ‘bad blood’ meaning high blood pressure, poison in their blood and problems with joints. According to one respondent, this contamination results in the death of about 3 or 4 people per month. But he notes that the number of deaths is decreasing. Now that people recognise the symptoms, they are quicker to send someone to the hospital.239 There are strong suspicions that the chemicals used by companies are the cause of these sudden illnesses.

In 2013, there was a period when many fish died in the near an indigenous community in Mondulkiri. At first, people were happy with this, because the fish were very easy to catch that way. But after they ate the fish, people became ill. Now, everything that used to live in the water has died and there are no fish left.240 Similar health issues occur in Kratie. However, in the indigenous village that I visited everybody was affected – not just the vulnerable groups. Everybody I spoke with reported

238 Interview 1.1, Mondulkiri, September 2015.
239 Interview 1.6, Mondulkiri, September 2015.
240 Interview 1.6, Mondulkiri, September 2015.
having stomach issues. The symptoms are different and the cause of the problems are also different. Upstream from the river that flows through the town is a gold mine. The company uses chemicals to extract the gold that have other properties than chemicals used to clear forests and pesticides. When confronted with the health issues by the indigenous community, the company argued that they are located 2 or 3 kilometres away from the village and that this distance proves that they are not the cause of the problem. Some indigenous people believe that angry spirits are the cause of these health issues. Because the companies have destructed many holy sites, people believe that the spirits take revenge on indigenous people by making them sick. People try to reconcile with the spirits by praying and bringing them offerings. People would normally deal with spiritual-related illnesses with traditional herbs, but these are not available anymore due to deforestation.

Neglecting these problems violates the ICESCR article 12 which focuses on the right to health. The state should take steps to prevent diseases and improve environmental hygiene. The deputy village chief of this village in Kratie recognises the existence of health issues, but attributes very different causes to it. He noted that there is malaria and TBC in the village and that people have stomach issues and problems with their liver due to alcohol abuse. He acknowledged that people drink water that is not clean. According to him, the water was tested by Oxfam and they found that 64% of the water was contaminated with viruses that cause the stomach problems. They also found chemical substances caused by the gold companies. To counter the negative effects, they provided water purification equipment in 2003. Now, this equipment has become old and many are not usable anymore. The project of Oxfam however has finished even though the problems remain. The chief in this same village recognises that the river is probably

241 Interview 3.2, Kratie, October 2015.
242 Interview 3.4, Kratie, October 2015.
243 Interview 1.1, Mondulkiri, September 2015 and Interview 3.8, Kratie, October 2015.
244 ICESCR, art 12.2(b),(c).
246 Interview 3.5, Kratie, October 2015.
contaminated due to chemicals from the goldmine upstream. He said that he tried to contact many NGOs to help. He also wants to build a well to diminish the dependency on the river and start a community project to achieve this.\footnote{Interview 3.11, Kratie, October 2015.}

5.2.3 Pesticides

Death of animals is not only linked to water contamination. As one respondent explained, the animals of the indigenous people used to walk around freely and ate whatever was available to them. But the crops of the companies are treated with strong pesticides that can kill these animals. The indigenous people try to prevent this by putting pigs, ducks and chickens in cages. But this is not possible for cattle. Cows and buffaloes need to roam around freely, so they continue to die. And when people eat a diseased animal, they get diarrhoea, an upset stomach and blood-related illnesses.\footnote{Interview 1.8, Mondulkiri, September 2015.} In a second village in Mondulkiri, the problems started with the death of many buffaloes. In this area, buffaloes are the main source of income for the indigenous people. Their meat is very expensive and can be sold in the markets. According to my respondents, nothing has been done about these problems. Nobody has done research or provided help. The Ministry of Health stated that these illnesses were caused by the depletion of the forest, the hot weather and stress caused by increased insecurity.\footnote{Interview 1.9, Mondulkiri, September 2015.} People have to pay a lot of money for hospital bills, and lose income due to the dying cattle.

5.2.4 Healthcare

The level of healthcare in Cambodia but especially in the remote areas where most indigenous people live is very low. The doctors are unable to diagnose these illnesses described in the previous subsection. Some people have brought their ill relatives to Phnom Penh for treatment or even to Vietnam, but no definitive diagnose has been given.\footnote{Interview 1.6, Mondulkiri, September 2015.} Besides health problems caused by the companies, there are other health concerns in the villages. In Koh Kong, many children have contracted malaria for which
there are no medical services available. Traditional forms of medicine are still being used, including tree leaves to cure malaria. Due to the destruction of the forest, indigenous people lose the access to forest products such as herbs, tree bark and other natural products on which the traditional medicine is based. Because of this, people become dependent upon western healthcare through health centres which are often far away and ill equipped. This replaces an effective system of cheap and accessible medicine for short-staffed and underfunded clinics.

Financial insecurity is also a factor in the limited access to healthcare. It prevents people from building a buffer in case an accident happens. For example, when a person falls ill, they usually do not have money to go to a hospital or health centre. In some areas, people can still depend on traditional healers. In other areas people depend on NGOs to pay the fees for transportation and medical care.

5.3 Violations in relation to the Police Force
Police violence and intimidation is a widespread problem in Cambodia and most of my respondents reported to having negative experiences with the police as a result from the land conflict. In this subsection I will discuss human rights violations by the police force such as infringing on the freedom of movement, conducting arbitrary arrests, extrajudicial killings and discrimination.

5.3.1 Restricting access to the Forest
In Mondulkiri, a large part of the forest has recently been fenced off and declared off limits by the authorities. This prevents people from extracting forest products such as firewood and edible plants which are essential for sustenance. Furthermore, access to the spiritual forests and burial grounds of indigenous communities is denied as well. Because the access to the forest is a necessity for the community, they try to enter the area in spite of these restrictions, which has resulted in many arrests. This has frightened many people and they feel that they are being treated as criminals for living their traditional way of life. This is a violation of the Forest Law, which allows the traditional use of forest

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251 Interview 1.3, Mondulkiri, September 2015.
252 Ibid.
253 Interview 4.6, Koh Kong, January 2016.
products for sustenance by local communities.\textsuperscript{254} Examples of traditional uses in this law which are allowed, include the collection of timber for the construction of houses, collecting dead branches serving as firewood and picking fruit and plants meant for consumption and traditional medicine. In addition, the restriction to the forest violates the UNDRIP which states that a dispossession of indigenous resources and territories is a violation of indigenous rights.\textsuperscript{255}

5.3.2 Disturbing Indigenous Protests and Celebrations
In addition, police forces are also disturbing traditional holidays. Every year in August, indigenous people organise a celebration of their culture and their rights. In 2012, this celebration was violently disturbed. The authorities send military forces to crack down on the festivities. Such examples shows how the indigenous traditions are disturbed by the police. Other forms of assembly such as peaceful protests are also disturbed and dispersed by the police, which violates the right to peaceful assembly.\textsuperscript{256}

5.3.3 Arbitrary Arrests
Violations to peaceful assembly during protests is closely related to another human rights violation namely, arbitrary arrests. It is very common that peaceful protesters are arrested by the police under the cover of made-up charges. This violates the right to liberty and security which prohibits arbitrary arrests.\textsuperscript{257} An example of a large police intervention in relation to peaceful protests was during the protests against a hydropower dam in Koh Kong. This protest was organised by several indigenous communities and supported by the deputy chief of the village and a local NGO called Mother Nature. The police arrested three of the Mother Nature staff members.\textsuperscript{258} Since participation in peaceful protests is not a crime, these people are accused of other crimes such as illegally dredging sand. Subsequently, the headquarters of Mother Nature were raided by the provincial and military police without a search warrant.\textsuperscript{259} Afterwards, another 17 people were arrested in September 2015 while they were protesting outside of the Koh Kong provincial court

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\textsuperscript{254} RGC, Law on Forestry, 2002, art. 40. \\
\textsuperscript{255} UNDRIP, art. 8.2(b). \\
\textsuperscript{256} ICCPR, art. 21. \\
\textsuperscript{257} ICCPR, art. 9.1. \\
\textsuperscript{258} Interview 4.8, Koh Kong, January 2016. \\
\textsuperscript{259} Ibid. \\
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for the release of the Mother Nature staffers. And finally in October 2015, the deputy chief was arrested with charges of illegally using timber from the forest to build a community centre. The police took him away and said that they would take him for questioning, but upon arrival in Koh Kong city, he was put under arrest and sent to jail. All these arrests and the violent and dishonest manner that the police has used to deal with the members of the community has caused a lot of fear. People are scared that they will be put into jail for no reason, which causes insecurity and distrust of the authorities.

5.3.4 Military Violence
Military and police violence against indigenous people and other land rights activists is increasing worldwide. The year 2015 is now on record as the year with the most killings of land and environmental defenders. Most killings occurred in the mining industry, followed by agribusinesses, hydroelectric dams and logging. The people living in these areas who become victims of these extractive industries are standing up for their rights and struggle to protect their land, forests and rivers through peaceful actions. But the private security of companies and police forces of the government act heavy-handedly against resistance. Even though indigenous people only make up about five percent of the global population, they represent nearly 40 percent of the victims on land-related killings. This disproportionate targeting of indigenous people is not entirely surprising. Indigenous people possess in general very weak land rights and live in isolated areas, which makes them vulnerable to exploitation. But simultaneously, they can be seen as the foremost protectors of the natural resources in the world. Their specific lifestyle and culture contributes to the sustainable management of the natural environment upon which they are dependent for their own survival.

Ibid.
Global Witness, p. 4.
Ibid.
Global Witness recorded 185 documented killings in 16 countries, however, they mention that the real number is probably much higher, since most violence occurs in remote areas with little international attention. Source: Global Witness, p. 4.
Global Witness p. 4.
Ibid.
Cultural Survival ibid.
The crack down on the demonstrators in Koh Kong is merely one example out of many heavy-handed actions by the Cambodian military and police against peaceful protests. In other provinces, military action against protesters have even been more severe. Peaceful protests in Kratie against infringements upon the land by companies in 2012 were violently ended when the military started to shoot at demonstrators. Many people were severely injured and a 14 year old girl called Heng Chantha was shot and killed by the military police for no other reason than participating in the demonstration.267 Besides rural villagers, there are also activists and advocacy groups who are targeted by the military. The corrupted governmental system and the power over the military that prime minister Hun Sen has, allows him to make fast money by selling land and forest to the highest bidder regardless of the consequences this has on his country and its people. This collusion between the state and corporate actors perpetuates impunity of killings related to land rights activists. Probably the most famous case is the murder of activist Chut Wutty in 2012 by the Cambodian military police.268 There is little evidence that the government is fully investigating these types of crimes by the police force in order to bring the perpetrators to justice.

These examples of extrajudicial killings and the impunity of the perpetrators show the relentless and inhuman manner in which the Cambodian government deals with criticism and activism. As a result some international organisations that work to promote and protect human rights are starting to leave the country because of these dangers. The OHCHR for example has downsized its staff and closed all its provincial offices in 2003. The indigenous people however continue to protect the forest, but the police uses weapons against them that they cannot match. But even when this causes deaths in the community, people will still keep on trying to protect the forest and their way of life,269 which will be further described in the next chapter.

269 Interview 1.5, Mondulkiri, September 2015.
5.3.5 Indigenous people in the police force
The violence of the police against indigenous people and their role in preventing people from accessing vital resources contributes to a growing feeling of antagonism between indigenous people and the police. Most of my respondents do not trust the police and many even fear them. An illustration of the growing gap between these two groups is the changing position of indigenous people within the police force. In the time before the companies came to the indigenous villages in Mondulkiri, some indigenous people in that area worked as police officers. They would protect the Vietnamese border, the forest and the animals. In that time, the forest was well protected. But around 2004, indigenous people were removed from their field stations and placed in the office. Under the watch of their Khmer replacements, the area started to degrade. This change from indigenous officers to Khmer officers seems to be a necessary step in explaining the treatment of indigenous people. When an indigenous person tries to cut a tree, he is stopped by the police force, but an indigenous person would not act in this manner against a person of his own group because he knows the importance of the forest for their culture and survival. Nowadays, police officers contribute to the destruction of the forest for reasons of personal gain. In 2006, all the remaining indigenous people were fired from the police force for no apparent reason and until now, no indigenous people have been allowed to join the force. This shows that there is a conscious effort to discriminate against indigenous people. This is a violation of the right to work and of the absolute prohibition of discrimination. Furthermore, it shows that the separation between indigenous people and their natural environment was planned, since their removal from the police force occurred before the forest became fenced off.

5.3.6 Estrangement from authorities
The effects of these types of human rights violations by the government is an estrangement from the authorities and a growing feeling of us versus them. The feeling that the police is against indigenous people is strengthened by the fact that in conflicts with a company, the police always takes the side of the company. For example, the people

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270 Interview 1.10, Mondulkiri, September 2015.
271 Ibid.
272 ICESCR, art. 6.
273 ICERD, art.2 and UNDRIP art. 2.
in Mondulkiri came into conflict with a company after negotiations over land were rejected. The police came in to protect the equipment of the company against possible destruction by the angry indigenous people. This shows how the government and the police are supporting the land grabbing without aiding the indigenous people in their struggle to protect their livelihoods.

Some respondents reported that it is not just the police force but every governmental institution seems hostile to the indigenous community. The six women who were going to court to testify to the innocence of the deputy chief in their village said that they were insecure and feared that the court would not trust their accounts.

5.4 The development paradox

Indigenous communities in Cambodia are mostly situated in the most remote areas of the country, only accessible through small dirt roads through the forest. This isolation has both positive and negative consequences. One problem that results from this is a lacking infrastructure. This makes it difficult for people to access markets to sell their produce. It limits the access to information which isolates people socially and politically. The isolation also makes it difficult for basic services to be implemented such as health centres and schools. These are often far apart in rural areas where indigenous people live and they are usually very ill equipped. This results in weak services and shortages in help and goods. These problems largely remain untold due to the above mentioned social and political isolation. On the other hand, the isolated position of these communities makes their territories harder to subject to resource extraction and destruction of the environment. When there are valuable resources to be mined or forests to be cut down, the government will improve the infrastructure by building good roads, which result in the destruction of the living environment of these people. So when isolation is ended, the threats increase. I call this phenomenon the development paradox. This phenomenon is not limited to Cambodia, it is present on most poor countries where resource extraction both leads to modernisation and increased poverty. This phenomenon is related to a similar concept known as the ‘resource curse’. This is an internationally recognised

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274 Interview 1.6, Mondulkiri, September 2015.
275 Interview 4.1, Koh Kong, January 2016.
process in countries with rich natural resources who are becoming poorer due to its resource extraction.\textsuperscript{276} For example, the United Nations Permanent Forum on Indigenous Issues found that Road development, had a serious impact in indigenous communities.\textsuperscript{277} And a study conducted by CCHR: ‘confirmed that this development has led to an increase in instances of land conflicts in previously remote areas of Cambodia such as Ratanakiri and Mondulkiri, as well as other regions bordering Vietnam.’\textsuperscript{278}

In this sub-section I will give examples from my fieldwork illustrating the development paradox.

5.4.1 Education

The level of education in indigenous communities is very low. School buildings are mostly too small, old and lack adequate furniture or teaching materials. In the villages I visited, children would only go to school for a maximum of three years.\textsuperscript{279} Teachers People in the village are not educated enough to fill the post as teacher and teachers from outside the community are often not willing to work in such remote and poor areas where facilities are scarce. As a result, the few teachers that are present are often unmotivated and hardly qualified. Many respondents complained that teachers often don’t show up because they are working on their land. In addition, their low wages cannot motivate them enough to work in difficult circumstances with large classes with no chairs or tables and only very few books. Added difficulties of absence of clean water and the dangers of malaria and dengue fever in these areas prevents teachers from coming. Because the regular absence of teachers, children become unmotivated to go to school. According to interview 3.12G11, there are usually only classes around three days a week, depending on when the teacher decides to show up. Children complain that they don’t learn anything and do not want to go to school. Many mothers that I spoke to wish that they could send their children to secondary school, but they cannot afford that. These schools are far away


\textsuperscript{279} Interview 3.12G11, Kratie, October 2015.
and secondary school children are too young to live on their own in a city. They are also concerned that they would face discrimination by Khmer people if they would live in a city.

As described in chapter 3.2, the education in indigenous villages is not sensitive to the indigenous culture and is used as an assimilation strategy. According to the Manila Declaration:

> States should reform the educational system, such that it reflects the views and values of indigenous peoples, promotes respect, tolerance and acceptance of cultural differences. Education should become a conduit for cultural survival. Education should help strengthen the community by instilling pride and generating a shared commitment to improve their situation.\(^{280}\)

The role that education can play in empowerment and protecting the indigenous culture is completely neglected in the Cambodian context. Education is Khmer-centred and has low standards, creating a vicious cycle. When indigenous people receive low education, they cannot become teachers. Meaning they cannot be taught in their own languages, in accordance with their own culture but instead they are taught by outsiders who have no knowledge of the indigenous language or culture.

The lack of education contributes to the isolation based on information. In addition, the vast majority of indigenous people does not have access to television or internet and hardly any indigenous people speak English. The only indigenous person that I met during fieldwork who could speak some English was respondent 3.1. He went to university and lives in one of the larger cities in the country. According to him, he was exposed to a lot of new ideas as a result of his English language skills which allowed him to access international ideas through the internet. He would have never know all of that without his education. Respondent, 3.5 a deputy village chief, confirms this notion. He says that people often don’t know what is going on in the country because of the lack of information and education. The majority of the people cannot read or write, they are all farmers. But education will allow people the choice to practice other professions. When

\(^{280}\) Manila Declaration, art. 1.4.
people get educated, they should return to their home town to help develop the community for example by becoming a teacher.  

5.4.2 Development by Corporations

This example of education shows how indigenous people are disadvantaged due to their isolated position. Many of my respondents talked about development. Besides education, the mostly noted areas that people wish became better developed were healthcare, infrastructure and electricity. People expressed their wishes that services would improve, but at the same time, they expressed awareness that these forms of development would lead to the destruction of their forests and livelihoods.

In many cases, a company would try to convince an indigenous community to allow them to settle in their area by promising an improvement of these 4 services that people wanted the most: education, healthcare, infrastructure and electricity. These services would only be given if the community would cease their fight to protect their land. This has caused division in many villages. People want to believe that their future and that of their children will improve and hope that the promises of the companies are true. But others are sceptical and say that it is the job of the government to provide these services, and that they don’t have to sacrifice their land and their way of life to get adequate services such as healthcare and education.  

5.4.3 Case: Hydro-Dam

This same dilemma was occupying the indigenous people in Koh Kong. In this area, plans were made to construct a large hydropower dam. People were promised electricity and good roads and schools by the government when the dam would be allowed to come. However, the dam would mean that their entire territory would be flooded and that they would have to abandon their ancestral homes. This means that the villagers had to choose between fighting to maintain the uncertain status quo and the promise of development combined with relocation. Some people still hope that they will be able to stay in their villages and that development will come at the same time. But the simple truth of the matter is that the construction of the dam requires good roads and electricity. So when

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281 Interview 3.5, Kratie, October 2015.
282 Interview 3.6 , Kratie, October 2015 and 3.7G20, Kratie, October 2015.
these services will be implemented, it means that the construction of the dam has been made possible. These forms of development which require large investments, only occur when the government can profit from it, meaning that they are built to facilitate companies and not the citizens. One company who was supposed to build the dam abandoned the project because there was no adequate access to electricity. This pushed the government to resolve this problem and as a result, electricity lines are being built right now. People see this construction and hope that the lines will be connected to their village, but in truth, it means that relocation is one step closer.

5.5 Conclusion
In this chapter I have examined different types of human rights abuses related to ELCs. I have tried to show that different type of abuses have different causes. There are direct abuses caused by the nature of a land concessions such as the infringement on the indigenous territory. There are abuses as a result of the mismanagement of a concession such as water contamination. There are abuses resulting from resistance against ELCs such as arbitrary arrests and police violence. And finally, there is the added pressure of existing problems such as lack of infrastructure, healthcare and education which is strategically used by both the government as corporations to convince indigenous people to relinquish their rights. As a result from this complex whole of human rights violations, there can be no simple solution that protect indigenous people from all the different forms of abuse. Each violation contains a complexity of causes. They can only be ended through adjustments and developments on different levels and related to different actors. In the next chapter I will examine the role that indigenous people and the civil society can play in resisting abuses instigated by ELCs.
Chapter 6: Grassroots Resistance

Indigenous people in Cambodia are faced with serious threats to their livelihoods as shown in the previous chapter. They are becoming increasingly aware of their rights and want to fight back to preserve their way of live. However, they are also aware of the dangers that resistance brings. In the absence of government protection, people are dependent upon themselves and their community to resist abuses to their livelihoods. In this chapter I will discuss the different methods that indigenous people use to defend their rights and resist the negative effects of land grabbing. In addition, I will discuss the role of civil society in the protection of the rights of indigenous people. These two groups are acting on the grassroots level, meaning that action is mainly carried out from the bottom-up, where the direct victims work together to address immediate threats to their lives.

6.1 Peasant resistance

Indigenous people in Cambodia are increasingly organising themselves and carry out more visible forms of resistance. Most forms of resistance are peaceful and aimed towards the government, such as protests and petitions. Other forms of resistance are the instigation of new local institutions aimed at protecting indigenous rights and the environment. There are however also more aggressive forms of resistance. People resolve to the destruction of property, blockades of roads and traditional cursing when they become desperate and no other measure seems to help. These different forms of resistance will be discussed in this section.

6.1.1 Unified protesting

The main method of open resistance among indigenous people in Cambodia is peaceful protesting. Almost all the respondents included in my research have participated in at least one protest. There are two different types of demonstrations that are being organised. The first one is local and aimed at direct threats. People come for example together on the land to prevent the companies from taking it. Another type of demonstration is addressing the general public or the government as a whole. These are typically organised in the national or provincial capital and aim to attract press and media attention in order
to involve the general public and the international community in the fight. The first type
is aimed at ad hoc problems and the second on structural problems. It may not be
surprising that the first type of protesting has proved to be much more effective.
Indigenous communities organise peaceful protests amongst themselves, but they also
collaborate with other villages. At first, each village acted on its own, but they found that
it was more effective to cooperate because companies and local authorities are more
inclined to take a larger group more seriously.\textsuperscript{283} For example, when a company took
away his land, respondent 1.2 initially tried to fight back by himself. When this did not
work, he asked for the help of his village. Together, they went to his land and managed
to convince the company to retreat from that area. This example shows how a unified
voice against land grabbing can have immediate effects on a local level.
Cooperation between villages is further motivated by shared interests such as a communal
water source or forest that many villages are dependent upon. In Mondulkiri, 6 villages
work together to safe the last forest in the province that is designated by the government
to be cut down and in Koh Kong, 8 villages work together to avoid the construction of a
hydropower dam that will result in the flooding of their lands.\textsuperscript{284} Such demonstrations
have in many cases proved to be effective to a certain extend. It has halted further land
grabbing in some cases\textsuperscript{285} or postponed plans for evictions\textsuperscript{286} and in a rare case, protests
even succeeded in the retreat of a company.\textsuperscript{287} Other protests are not directed towards
companies, but towards the courts. Some communities have organised protests against
arbitrary arrests of people who have resisted land grabbing. This has led to the successful
release in some cases,\textsuperscript{288} especially when these cases generated interest from international
press and international organisations such as the OHCHR.

6.1.2 Petitions
A second widely used method of resistance is writing petitions to provincial governors
and the national government. In Cambodia, an official document is not signed with a

\textsuperscript{283} Interview 5.3, Mondulkiri, September 2015.
\textsuperscript{284} Interview 4.4, Koh Kong, January 2016.
\textsuperscript{285} Interview 3.4, Kratie, October 2015.
\textsuperscript{286} Interview 4.8, Koh Kong, January 2016.
\textsuperscript{287} Interview 1.6, Mondulkiri, September 2015.
\textsuperscript{288} Interview 1.5, Mondulkiri, September 2015.
signature, but with a thumb print. This makes it possible for the largely illiterate indigenous communities to collect support in a petition. When a village petitions the authorities, they need the recognition of the village chief to confirm that the thumbprints in the document are true, since the government has no way of verifying this. In Koh Kong, one village chief refused to acknowledge this, for he was in favour of the dam project. The deputy-chief in that village did support the community and provided his recognition instead. As a result, the petition was send to the central government. In repercussion to this sign of support towards the community instead of the party, the CPP put the deputy-chief out of office and arrested him.\textsuperscript{289}

6.1.3 Local Governing Initiatives

Since the authorities have proved to be unable to protect indigenous people effectively, new ideas emerge in regards to local governing. This is a form of self-determination which is supported in the Manila Declaration,\textsuperscript{290} which calls for self-governance structures. In this declaration, governments are advised to grant indigenous people: ‘control over social plans, education and health programs that are implemented in their communities.’\textsuperscript{291} As explained in chapter 5.4, national education schemes and health programmes can be harmful to the indigenous culture and by ignoring the indigenous culture and traditional practices it can even diminish their access to effective healthcare and inclusive education. Local control over these institutions has the potential to increase the effectiveness of its implementation thought the recognition and inclusion of the needs of indigenous people.

An example of local governing initiatives is found in Mondulkiri, where an active group of indigenous representatives are working towards the realisation of local committees aimed towards the protection of the rights of indigenous people. One of the representatives, respondent 1.3 explained how they are planning to form 3 committees. The first will focus on forest management, the second on cultural preservation and the third one on raising awareness of human rights. Forest protection initiatives present in several indigenous communities. Volunteers go on regular patrols in the forest to prevent

\begin{itemize}
  \item [289] Interview 4.2, Koh Kong, January 2016.
  \item [290] See chapter 4.1.1.
  \item [291] Manila Declaration, art. 1.5.
\end{itemize}
illegal loggers to cut down trees and evidence is collected on logging activities by the military and other governmental agencies. Some of these forest protection units collaborate with the environmental department. They take the logging machinery from illegal loggers and give them to the department. 292 A common obstacle with forest patrols is the financial burden. Money for gasoline to make the patrols is sometimes provided by NGOs. The WWF has been one of the organisations in Cambodia that sponsors such local initiatives of forest protection.

Cultural preservations committees are more rare. It shows the commitment to counter the harms of assimilation strategies and protect the indigenous culture. A human rights committee is also a rather unique example. In most cases, the NGOs take the task upon themselves to educate indigenous groups on their rights. An initiative by indigenous people to fulfil this role lessens their dependency on outside actors which are often inconsistent and temporary.

Another example of a local leadership initiative is the assembly of a round table discussion among the key stakeholders in the land conflict, including the companies, the government and the indigenous community. 293 It is in general very difficult for a single indigenous community to establish an open line of communication with the company that resides on their lands. A round table discussion with the inclusion of the government might make companies more inclined to participate in a dialogue. The aim is to discuss land use and land ownership and come to a conclusion that all parties can live with.

6.1.4 Traditional cursing

Instead of these diplomatic and peaceful initiatives, some communities resolve to more pervasive methods, since the official political process changes only very slowly and reaps uncertain results at best. Indigenous people do want to vote and try to change the government in that way, but this does not address immediate threats such as deforestation. They see their natural surrounding being destroyed and become desperate. Therefore, some communities resolve to more active forms of resistance as a last resort such as

292 Interview 1.2, Mondulkiri, September 2015.
293 Interview 1.5, Mondulkiri, September 2015.
traditional cursing rituals. This ritual roughly consists of sacrificing an animal such as a pig or a cow in combination with pouring alcohol on the ground. It is believed that these types of curses are highly effective and can result in the death of the managers of a company or any other target. For example, a community in Mondulkiri organised a cursing ceremony in 2010 where a group of people went into the forest to perform the cursing rituals against a Korean company that was destroying the forest at the time. I was told in several interviews that two of the forest managers died shortly after the cursing ceremony. One died in a car crash and the other one was hit by a falling tree. After these events, the company was scared off and left the area. In other villages there existed similar stories of cursing and deaths that resulted from this.

6.1.5 Aggressive forms of resistance
Cursing may have aggressive intentions, but it does not constitute a direct act of violence. There are examples however where indigenous people do break the law. In the summer of 2015, a group of 300 protestors went to a company in Mondulkiri in an effort to engage in negotiations. When the company refused to talk, the protesters attempted to burn their equipment. In this instance, the police intervened and protected the property of the companies. I have not encountered stories of actual physical violence. But some villagers have confided in me that if they had the option, they would use weapons to defend their lands. According to respondent 1.6: ‘If our people would have guns, there would be no problem. I know how to defend myself, because I was a soldier for twenty years and I fought in the army against Vietnam and the Khmer Rouge.’ When I asked if people would try to obtain guns to protect themselves, he responded that he did not know.

Another example of more pervasive forms of resistance can be found during the protests in 2013 against the construction of a hydro dam in Koh Kong. When the company started to bring equipment towards the area for its construction, the villagers asked for proof of

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294 Interview 1.5, Mondulkiri, September 2015.
295 Interview 1.5, Mondulkiri, September 2015.
296 Interview 1.7, Mondulkiri, September 2015.
297 Interview 1.6, Mondulkiri, September 2015.
298 Interview 1.5, Mondulkiri, September 2015.
299 Interview 1.6, Mondulkiri, September 2015.
official permission to come in and build a dam.\footnote{Interview 4.3, Koh Kong, January 2016.} When the company was unable to present this, they started to work together to build a roadblock at the entrance of the valley to prevent the heavy machinery to enter the area. This roadblock was guarded day and night for 9 months until the military police destroyed it.\footnote{Interview 4.4, Koh Kong, January 2016.} ‘Around 80 police officers came to the village with guns. Some of us made a video of this as proof, but the cameras were destroyed or taken away. This means that we don’t have any evidence of these police actions.’\footnote{Ibid.} This shows that pervasive actions carried out by indigenous people, provoke a more aggressive response from the authorities. While a petition or protest can be ignored, actual intervention in policies are violently disrupted. Because of the fear of these types of responses, many people resolve to more covert forms of resistance.

6.1.6 Conflicting views on resistance
These different forms of resistance do usually not have the support from the entire village. When the first companies came to indigenous villages, people would typically become divided on how to act. Communities were faced with a completely new situation, where different actors provided conflicting information, which confused people on who to believe. The company would make beautiful promises of development. According to them, life would become much easier because they would provide steady jobs, good roads and even better schools. But NGOs challenged these promises and told the indigenous communities about their human rights and their right to keep their land as it is. This created division and confusion. People want development but they also want human rights. Therefore, they did not know what to do and who to trust.\footnote{Ibid.} One woman in Kratie told me: ‘Representatives of the company try to persuade people to believe their false promises. They say that the company will not cause harm, but instead, they will bring development. My father believed them and tried to persuade me to stop resisting and just do what the company says. But I did not listen and kept on fighting.’\footnote{Interview 3.12G11, Kratie, October 2015.} Pressures on land are therefore causing division in communities.
This variety of opinions regarding the presence of the companies has divided many villages into three groups.\textsuperscript{305} One group is fiercely against the companies, they stand at the forefront and organise demonstrations and other acts of resistance.\textsuperscript{306} However, this group is not the majority, the majority is more moderate and does not really understand or care about the issues with companies. The final group supports the plan of the government either because they believe the promises of the companies or because they support the CPP and are dependent upon this party. This has diminished solidarity in the village. Some people even say that there is no solidarity left. Because of this division, the people are in a weaker position to negotiate with the company and the local authorities. According to respondent 3.13, the people have no clear aim of what they want. They first need to reach a consensus, but not all people are willing to talk.

\textbf{6.1.7 Opposition to resistance}

Other villagers oppose protests not because they believe the promises of the companies, but because they fear authority and do not want to disobey. According to respondent 1.2, many indigenous people are afraid of doing something wrong and of being arrested. Other people are reluctant to involve themselves in the conflict with the companies because they fear death of themselves or their loved ones.\textsuperscript{307} This is in line with the words of one NGO worker: ‘Indigenous people are very honest and obedient which is another reason why they are hesitant to resist governmental policies.’ In addition, many indigenous people in Mondulkiri have been converted to Christianity. Some of these people have used their faith as a reason for refraining from resistance. ‘Because I am a Christian, I do not want to demonstrate. People use bad words against those who lead demonstrations and that will lead to a clash. I want to prevent violence.’\textsuperscript{308} For these different types of reasons, many people refrain from stronger actions against the companies.\textsuperscript{309}

\textsuperscript{305} Interview 3.6, Kratie, October 2015.
\textsuperscript{306} Interview 3.12G11, Kratie, October 2015.
\textsuperscript{307} Interview 1.6, Mondulkiri, September 2015.
\textsuperscript{308} Interview 1.7, Mondulkiri, September 2015.
\textsuperscript{309} Interview 5.3, Mondulkiri, September 2015.
6.1.8 Everyday forms of Resistance
Alternate forms of resistance that do not challenge the status quo and result in less danger to indigenous people are described by James Scott. He focuses on the ways in which the peasantry uses small, persistent, everyday forms of resistance, that can have just as great an effect as the overt forms of resistance.\textsuperscript{310} This form of resistance does not challenge the status quo openly such as with protests or roadblocks, but though the use of more covert methods, the same results may be achieved without provoking a rapid response from the ones in power. For subordinate classes with little prospects of improving their status, this may be preferable, because the slow changes in policy do not protect them from imminent threats to their survival. The benefits of such an approach is that they do not require coordination or planning, they are focused on achieving immediate benefit and avoid a direct confrontation with the authorities.\textsuperscript{311} Examples are non-compliance, evasion, slander and sabotage.\textsuperscript{312} A good example of everyday forms of resistance is going into the prohibited forested areas to extract forest products instead of openly challenging the ownership of the forest and destroying the fences.\textsuperscript{313} Accessing the forest occurs on an informal level and does not need coordination, but it results in immediate benefit through the products that are extracted. Because these actions occur anonymous and hidden, it is difficult for the rulers to assess blame or apply sanctions.\textsuperscript{314} Such methods of everyday resistance are also used to voice discontent with the local authorities in a subtle manner. People for example do not show up at meetings organised by the authorities or they avoid buying products from the ones in power. In a village in Koh Kong, everyone who earns money from tourists through providing food, transportation or pension have to turn over the profits to the village chief.\textsuperscript{315} They were told that this money will go into a fund that will be used to improve the village, but this is not a transparent fund. People do not know how much money is in there and what it is used for. Therefore, people became distrusting of this system and tried to circumvent it without openly challenging the authorities. They would keep some money aside or ask

\textsuperscript{311} Scott, p. XV.
\textsuperscript{312} Scott. p. 29.
\textsuperscript{313} Interview 1.5, 1.9, 1.10, Mondulkiri, September 2015.
\textsuperscript{314} Scott, p. 34.
\textsuperscript{315} Interview 4.2, Koh Kong, January 2016.
for in-kind payment instead of money. This method shows how people achieve immediate gain without challenging the system openly.

6.2 Role of NGOs

Just like the presence of Corporations in Cambodia due to ELCs, the presence of NGOs in the country is relatively new. A so-called NGO boom occurred in the 1990s, and when they first appeared, people were unsure what their role would be and whether these institutions were trustworthy. Many people were suspicious at first because of the word that was used to refer to NGOs: ‘Angkar’, this word literally translates to ‘organisation’. It seems like a neutral word, but during the genocidal regime of the Khmer Rouge, the ruling party used the same word to refer to themselves. Since the Angkar during the Khmer Rouge started out with great promises and ended up in the most terrible massacre that the country has ever seen, people were wary of promises that these NGOs were making, especially people living in isolated areas who has no way of verifying whether the claims made by NGOs were true. In recent years, however, people learned more about this new type of organisation and started to trust more in their intentions. Nowadays, have taken an important place in the support of indigenous peoples and in defending their rights. There are almost 3500 registered NGOs in Cambodia, which makes it the country with the second highest number of NGOs per capita. These organisations work on a wide range of topics, such as forest conservation, conflict prevention and legal support. The methods of each organisation are different which can lead to greater or smaller involvement of the community and in turn this results in greater and smaller amounts of trust. Because each NGO works in a different manner and has a different relationship with the community, it is very difficult to make generalisations regarding the contributions of NGOs and level of cooperation with local communities. In this section I assess the role that NGOs play in the protection of human rights of indigenous people by describing some best practices and some pitfalls that I encountered.

317 Interview 1.10, Mondulkiri, September 2015.
319 Domashneva, ibid.
during my fieldwork. This will contribute to the formulation of recommendations on how the protection of indigenous rights can be improved.

6.2.1 Contributions of NGOs
There are some excellent NGOs active in Cambodia who work closely with indigenous groups and are able to listen to their needs. These organisations have been essential in supporting communities on an economic, social and political level. For example, NGOs have been providing information where the government does not provide this. For example in the case of the dam in Koh Kong, most people were made aware of its construction and negative consequences through the NGOs that are active in this region.\textsuperscript{320} Possible ways to resist such threats are facilitated by NGOs. They help organise and fund demonstrations, write petitions and use their connections to involve news agencies in order to attain media coverage of these protests.\textsuperscript{321} NGOs also provide workshops on human rights and indigenous rights, which helps people to understand their rights and that they are entitled to help and support.\textsuperscript{322}

Secondly, NGOs help to build connections and strengthen the community of indigenous people throughout the country by organising visits to indigenous communities in other provinces and to the capital for meetings. This way, parts of the isolation of indigenous people can be broken down. Many of my respondents have expressed the wish to organise themselves both on the village level and on the national level in order to strengthen their voices and create unity.

A third strong contribution of NGOs is their help in navigating the legal and bureaucratic machine that is the government. Since many indigenous people are illiterate and lack the knowledge of government structures to effectively deal with legal issues, obtaining a communal land title is essentially impossible without the support of NGOs. Examples of these contributions are preparing the forms in order to apply for communal land rights, but NGOs also help to write petitions, file complaints to the courts or to obtain official permission to organise a demonstration.

\textsuperscript{320} Interview 4.3, Koh Kong, January 2016.
\textsuperscript{321} Interview 1.5, Mondulkiri, September 2015.
\textsuperscript{322} Interview 4.3, Koh Kong, January 2016.
Another important contribution of NGOs is its function as watchdog of the government. The Cambodian government has been proved to spread misinformation with the aim to manipulate its people and gaining support. NGOs question these statements and provide facts to unveil the truth. For example, the Minister of Environment, Say Sam Al declared: ‘I can say here, today, at this hour, that the large-scale timber logging that we used to see is entirely ended and we have shut down the Cambodia-Vietnam border,’ he said. ‘I can say that large-scale logging has ended and only small-scale logging remains, like with families.’ In one short statement, he is both denying one of the largest threats to the Cambodian environment and is blaming the current problems of logging on local, largely poor people. However, NGOs have disagreed with this statement and provided evidence showing that illegal logging is carried out by powerful actors, which remains a serious threat to the environment and to local communities.

These examples of support for indigenous communities in their fight against land grabbing show the indispensable role of NGOs. NGOs can mitigate between the needs of indigenous people and the official regulations of the government. In addition, the national networks of NGOs can help to connect indigenous people to other sectors such as the media but also to other provinces to coordinate indigenous groups and bring them in contact with each other.

6.2.2 Replacing Governmental Tasks
These contributions that NGOs make are highly important but at the same time, they are not sufficient to protect the livelihood of indigenous people. This brings me to the first pitfall: NGOs are put in a position where they have to replace governmental responsibilities by filling the gaps that economic and political policies leave. However, the capacity of NGOs is limited and they cannot successfully replace the tasks of the government whose ultimate responsibility it is to aid indigenous people in regards of threats to their livelihoods. For this reason, some of my respondents conclude that NGOs do not play an important role because ultimately they are not able to protect them against the imminent threat of ELCs: ‘NGOs do not have the power to stop the companies,

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324 Interview 1.5, Mondulkiri, September 2015.
they only have verbal power, but this is not enough to protect our livelihood. However, organisations that focus on smaller and more concrete issues such as funding of forest patrols and giving workshops on the prevention of domestic violence have more success because these goals are more attainable. When help from the government does not come, indigenous people turn to the only ones that do promise help, which are NGOs. This puts them in a difficult position, because people are on the one hand grateful for help but on the other hand they are also disappointed because it does not solve their fundamental problems.

6.2.3 Involving the Indigenous Perspective
The second pitfall is the lack of involvement of indigenous communities in the projects of NGOs. Before I started with my field trips, I visited several NGOs who work with indigenous people. In order to prepare me for my visits, I would ask about their opinion regarding their situation, what type of problems they are facing and how they contribute to resolving these problems. During my fieldwork, I would find some surprising discrepancies between the ideas that some NGO workers had about indigenous people and the ideas of indigenous people about themselves. Some NGO workers for example would tell me that indigenous people prefer to work on one plot with fertiliser instead of practicing shifting agriculture. However, every single one of my indigenous respondents told me that they prefer the traditional method of shifting agriculture. This example of misunderstanding between NGOs and indigenous people could be a sign of a broader problem where NGOs, but also policy makers, assume that they know what people need without involving or consulting them beforehand. According to respondent 6.1, the cause of this might be the respect for hierarchy. Indigenous people don’t want to criticize NGOs because of the power difference and because they don’t want to seem ungrateful for the help that they receive. ‘If someone helps you and you cannot do anything back, the least you can do is not to criticize them, even if they are wrong.'

Some respondents judge the sincerity of NGOs through their personal involvement. ‘When our community organises a gathering, we will send out invitations to NGOs to

325 Interview 1.7, Mondulkiri, September 2015.
326 Interview 6.1, Mondulkiri, September 2015.
join us. But some don’t even respond. Representatives of NGOs should attend meetings or celebrations of the Indigenous People.\textsuperscript{327} This example further illustrates a discrepancy between expectations of indigenous people and what NGOs give them. It shows the importance that indigenous people ascribe to personal relations in establishing trust. In the eyes of this particular respondent, adequate help can only be given when an organisation engages with the community. And this relates to the problem of disconnection as described above. Too often, NGOs think that they know what people need and start projects without sufficient participation of indigenous communities. This is a general problem with NGOs worldwide where local agency and participation is disregarded.

6.2.4 Coordination between NGOs
The third pitfall is the lack of coordination between NGOs. In some areas, many NGOs are active at the same time, but in other more isolated areas only one organisation is present or even none at all. Many respondents noted that they welcome all help even if it is not perfect, but little help is coming.\textsuperscript{328} This can be attributed to a lack of coordination. Every NGO has its individual projects and they do not coordinate on a national level to equally distribute help and to create an overview of where help is given and where more support is needed.

There are some attempts at coordination however. For example, all NGOs in Mondulkiri come together every two months to exchange information regarding progress and future project. Also on a smaller scale does cooperation occur, for example between leading NGOs Licadho and Adhoc. They carry out joined missions and align their projects with each other. This can play an important role in making NGO projects more efficient. Often, research on the same topic is being replicated due to a lack of information sharing, which wastes resources that could have been utilised otherwise. This results in indigenous people being interviewed for many times but without supporting measures being implemented. This results in a feeling of frustration as the following statement of a victim of eviction exemplifies: ‘You are the sixth research team who came to ask me questions,\textsuperscript{327} Interview 1.3, Mondulkiri, September 2015.\textsuperscript{328} Interview 1.2, Mondulkiri, September 2015.
please remember while you get compensation to do this study, the victims of land grabs are still suffering.’

An additional problem resulting from the lack of cooperation and coordination is that different organisations working with the same target group often provide different levels of services. For example, when there is a demonstration, different NGOs provide different systems of compensation. Some organisations provide reimbursements for travel costs, other provide a per-diem of varying amounts. This can lead to jealousy between communities and mistrust of the organisations who provide lower levels of support.

6.2.5 Mistrust of NGOs

The three pitfalls that I have discussed so far all contribute to disappointment and misunderstanding between indigenous groups and NGOs. This leads to my fourth observed obstacle, which is mistrust. In general, most respondents were of the opinion that NGO personnel have good intentions and that their help is positively received. However, there are others who start to believe that many of these organisations only come to serve their own interests. The reason for this is that some staff members do not act in a correct manner, which makes people angry. For example, some NGOs promise to help but they don’t fulfil their promises. When a problem occurs and the community asks for help to an NGO that has been active in their area, they sometimes respond by saying that the mandate is over or that they don’t work on that particular issue. Especially in areas where many NGOs are active, this results in frustration. In Mondulkiri, where this is the case, some people say that they are fed up with NGOs. ‘There are 30 different NGOs active in this region but they have accomplished very little. The goal of NGOs is to meet the needs of people, but nobody has a project for us or money when we need it.’ Two respondents even accused NGO workers of working as middle men to buy land and sell it to the companies. ‘NGOs are good, but sometimes there are problems. The man who sold my land to the tycoon was an NGO worker. He worked on human rights

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330 Interview 5.3, Mondulkiri, September 2015.
331 Interview 1.3, Mondulkiri, September 2015.
332 Ibid..
333 Interview 1.3, Mondulkiri, September 2015 and 1.4, Mondulkiri, September 2015.
advocacy." Others accused NGOs of discrimination against indigenous people. For example, in one district in Mondulkiri, the Red Cross one handed out rice to people. But they only helped Khmer people and did not give anything to indigenous people.

Lack of flexibility in adjusting to the needs of the community, exclusion of certain groups in projects and the abuse of power all cause mistrust. There are even reports of NGOs who are founded for the sole purpose of making money. These organisations are known as ‘for-profit NGOs’. They utilise tax exemptions and the absence of a regulatory system to make money for themselves.

A final cause for mistrust is unprofessional conduct and inadequate support. For example, five people in Kratie were accused of a crime they did not commit and the only legal aid that they were able to obtain was provided by an NGO. The lawyer that was appointed to them was not able to prepare the indigenous people for the trial, and during the trial he never spoke up on defence of the accused. The only advice he gave these five people was to speak the truth. This exemplifies how NGOs are becoming responsible for the fulfilment of key civil rights such as providing legal aid but lack the funding or expertise to fulfil this task appropriately. For this reason, people start to blame NGOs for inadequately providing a service that was the responsibility of the government in the first place.

6.2.6 The Role of Information
One of the root causes of all these obstacles is a lack of information. Due to the isolation of many indigenous groups through their geographic location, illiteracy and limited access to the internet and phone services, they have limited capabilities in finding out the reputation of an NGO and to initiate contact with them. This puts indigenous community in a weak and relative powerless position. Sometimes, an NGO does not maintain regular contact with a community, leaving them uncertain whether they are still working on a particular topic. Sometimes, an organisation discontinues their aid due to a lack of funding and people are not notified by this. This results in confusion and false expectations. Most of my respondents who spoke of NGOs could not recall their names and therefore always

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334 Interview 1.4, Mondulkiri, September 2015.
335 Interview 1.6, Mondulkiri, September 2015.
336 Domashneva, Ibid.
spoke of NGOs in general, which gave me the impression that all NGOs are viewed as one large institution. So when one NGO proves to be untrustworthy, this may damage the faith in all NGOs. If NGOs can make improvements in regards to information sharing and maintaining regular contact with the communities, the relationship between indigenous people and NGO may improve drastically.

6.2.7 Relation between NGOs and the Government
The relationship between civil society and the government in Cambodia is strained. The government is unwilling to engage in partnership with NGOs and it ignores concerns and recommendations that civil society brings forwards from the grassroots of the Cambodian society.337 I believe that the government sees the civil society as a source of criticism against their regime and they therefore seek to control and discredit NGOs. Local authorities, for example, reinforce the feelings of mistrust between communities and NGOs by blaming NGOs when they prove to be unsuccessful in replacing government duties. This occurs in the process of communal land rights registration. The authorities rely on NGOs for filing the communal land right registration. But when the process of registration is obstructed through institutional obstacles within the government, they blame the ineffective system on the NGOs by describing them as dishonest and abusing their position.338

The civil society is attempted to be controlled through the new NGO law known as ‘LANGO’. This law aims to control actions of NGOs for example to prevent for-profit NGOs to continue to exist. However, the contents of this law are so vague that it is criticised for giving the government the ability to shut down any NGO without providing an explanation.339 Which allows the government to silence critical voices.

6.3 Conclusion
In this chapter, I have shown the different manners in which indigenous people react to threats to their livelihoods. Some people accept the violations out of fear for being arrested, or simply the fear of being seen as a bad person. Others dream of taking up

337 Cooperation Committee for Cambodia, 2013.
338 Interview 3.5, Kratie, October 2015.
339 Domashneva, ibid.
weapons to forcibly remove the companies from their lands. But in recent years, more
and more organised and professional attempts are made to connect indigenous people and
collectively fight injustice within the bounds of the law. James Scott describes these forms
of collective resistance that involves the whole community as a social movement. However, this is a movement with no formal leaders, manifestoes or names. As shown in
this chapter, local protests and actions have led to small victories in halting the expansion
of ELCs, continuing access to resources in spite of obstacles and increased awareness on
a national and international scale of the problems at hand.

NGOs have played a large role in these successes and in helping indigenous people in
other areas. When people are faced with a problem, they have a better chance of receiving
help from an NGO than from a governmental agency. For example, when a person is in
need of medical services, they can go to an NGO to attain funds for transportation and
medication. NGOs build schools and bring teachers to remote areas. They teach
indigenous people about their rights and support farmers by providing seeds and new
techniques. And it is only with the help of NGOs that indigenous people are able to even
enter the process to obtain communal land rights. In a way, NGOs have played a key role
in helping indigenous people to escape the isolation of their village and bring them in
contact with different people and inform them on the wider processes in the country. This
helps people to gain new ideas and broaden their knowledge.

However, in many ways, NGOs are not capable of effectively filling the gaps that the
government has made. Several key issues that NGOs work on may just be above their
reach. NGOs cannot protect people from companies as long as the government supports
the companies and not the people. They are put in a position where people are dependent
upon their help and put their trust in them regarding topics that are not their responsibility
to solve. On top if this, most NGOs are terribly underfunded and lack experienced
professionals who can take the time to invest in the personal relations with a community
and can adequately explain and inform indigenous people of all the processes and
obstacles that are in place. This results in confusion, distrust and disappointment among
indigenous people which harms a fruitful collaboration between NGOs and indigenous

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340 Scott, p.35.
341 Interview 5.1, Phnom Penh, January 2016, Interview 5.2 Phnom Penh, September 2015 and 5.3 Mondulkiri, September 2015.
people. Anybody can found an NGO without having to adhere to a certain standard. This can allow the wrong people to get in a position of power where they can abuse people who are dependent upon them. At the same time, NGOs are very fragmented and poorly coordinated amongst each other which creates inconsistencies and gaps. But this is to be expected since the history of NGOs in Cambodia is very young. There are already many improvements to be observed in recent years and initiatives are made to allow better coordination between organisations. Especially the larger and better funded organisations such as Licadho, Adhoc, NGO forum and CCHR show great promise in professionalism and a solid level of expertise.
Chapter 7: Institutional Protection Measures

Grassroots resistance can play an important role in addressing local problems in a timely manner. They also contribute to larger, nationwide solutions which need the support of the people to make its implementation effective. However, it requires more than a bottom-up approach to solve a structural and widespread problem such as the land crisis. While grassroots initiatives are indispensable and help to strengthen the position of indigenous groups, a structural and widespread problem such as the land crisis requires institutional changes and innovations in order to systematically address this problem. Therefore, the following sub-question will be addressed in this chapter: What are the institutional methods that can play a role in the mitigation of human rights abuses and conflict arising from Economic Land Concessions? Several methods on an institutional level will be discussed in this chapter, such as pro-poor agricultural investments, the founding of a national tribunal, the use of mediators and the founding of a national indigenous commission. Both best practices and unsuccessful initiatives will be examined in order to establish which approaches work and which do not.

7.1 Regulating Land Concessions

Proposed solutions to mitigate the negative effects of ELCs largely fit into two categories. The first category views ELCs as a potential for growth and development. The second position, which will be discussed in section 7.2, rejects ELCs as a whole. The negative consequences of ELCs are interpreted by the supporters of the first category as resulting from mismanagement. Therefore, they seek to develop stricter regulations and stronger implementation in order to increase accountability and transparency. Examples are the full implementation of ESIAs, consultation of local communities in the granting of land concessions, maintaining strict control of the boundaries of each concession to prevent further land grabs, ensuring the creation of jobs for local people within a concession and enforcing regulations regarding the use of pesticides and other chemicals that could negatively impact the environment. When all these regulations would be effectively implemented, the threats to the human rights of indigenous people and other rural

342 See chapter 4.2.3 for a description of these assessments in the 2001 Land Law.
villagers would certainly diminish. Most IOs support this more moderate position which does not challenge the status quo. The FAO for example describes conditions that ELCs should adhere to: ‘The Committee strongly recommends that the granting of economic concessions take into account the need for sustainable development and for all Cambodians to share in the benefits of progress rather than for private gain alone.’ These organisations are in favour of the continued existence of ELCs but they want operational changes to be implemented to allow all the Cambodians to benefit from the concessions instead of only a small group of rich and powerful people.

7.1.1 Regulation by the Government
The Cambodian government has several instruments available to counter human rights abuses resulting from ELCs. The National Authority for the Resolution of Land Disputes was established in 2006 in order to deal with encroachments upon state land. This institution however has not been effective in protecting the human rights of the poor. The Ministry of Agriculture, Forestry and Fisheries (MAFF) has the ability to suspend contracts with companies when they fail to administer or adhere to ESIA reports or when disputes occur with the local communities. However, this has hardly ever happened. This shows that even though there are measures available to limit human rights violations of ELCs, these rights will not be protected without the political will from the central government.

The Cambodian government has however shown signs of criticism against land concessions. It has made several attempts to halt the future granting of ELCs for example through the issuing of Directive 001. In this directive, a moratorium on new ELCs was announced, which resulted in the cease of granting any new ELCs in 2013. It also resulted in the seize of around 330,000 hectares from ELCs that were redistributed to the people. But this policy only resulted in the granting of individual land titles, which prevented indigenous people from benefiting from it. In 2015, the government has stated

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345 Ibid.
that it would reduce the lease of all existing ELCs from 99 years to 50 years.\textsuperscript{346} Prime minister Hun Sen even declared in 2012 that the long-term ELC ban will last for as long as he is in power.\textsuperscript{347} Opposition leader Sam Rainsy has also called for a halt to the land concessions.\textsuperscript{348} However, these statements have been interpreted as a political move to gain support in the 2013 elections, as the granting of grand concessions have resumed after the elections. It has been recorded that the government already gave out more than 630,000 hectares of land since the 2012 moratorium,\textsuperscript{349} which shows the inconsistency and weakness in the implementation of governmental policies related to ELCs.

7.1.2 Self-Regulation of Corporations

Even though the main responsibility of the protection of human rights lies with the government, in recent years, more attention has been given to the responsibility of private actors such as corporations. Corporations have had long-standing obligations towards those who are most directly impacted by their existence, such as their employees and also the environment. The framing of corporate obligations in terms of human rights is however a new development, involving a broader scope of responsibilities beyond their direct employees to all the people whose lives are impacted by their actions. In determining the responsibility of a company to respect, protect or fulfil any particular human right, the possible negative effects of their existence should be taken into consideration. Examples of such impacts which have been discussed in this thesis are evictions, land grabs, deforestation and water-contamination. These factors form a direct threat to the lives of indigenous people and are a direct result of the actions of corporations. Therefore, corporations need to be held accountable for the consequences of their actions. A company has the responsibility to act with due diligence and should collect information on the impact of their actions by talking to local communities before

\textsuperscript{349} Aun, 2015.
they implement their business model, especially in countries where the governments are known to disregard the human rights of its citizens. Corporations carry the responsibility to inform the people that are impacted by their actions of their plans and to ensure that consent from local communities actually reflects the will of the majority and is not simply a misrepresentation by its leaders.

Several attempts have been made to build a voluntary framework where these responsibilities are laid down in order for companies to openly attest their commitment to uphold these duties. The following initiatives are amongst the most influential in the world. First of is the Global Compact, a voluntary code of conduct devised by UN Secretary General Kofi Annan in the year 2000. This code is comprised of nine core principles. Many corporations, including some of the world largest and most powerful have joined this initiative. Also in 2000, the United States of America and the United Kingdom, along with a group of companies and NGOs agreed to a set of principles known as the Voluntary Principles on Security and Human Rights. Furthermore, the HRC adopted the ‘Protect, Respect and Remedy’ framework in 2008 which provides guiding principles on business and human rights. And finally, the World Bank developed seven principles for responsible agricultural investment which has attained global recognition.

Most standards that exist for companies, such as the ones mentioned above, consist of voluntary codes of conduct rather than legally binding regulations. Human rights standards therefore tend to be referred to as guidelines, rather than legal provisions. This has led to ineffective policies and inconsistent levels of human rights protection, since voluntary guidelines will not effectively end human rights abuses by corporations. The system of corporate land grabbing through ELCs is in my view inherently exploitative. Instead of reflecting a true commitment, provisions promising to uphold human rights are mostly used to project the appearance of compliance to popular discourses of social corporate responsibility. As a result, the self-regulation of corporations cannot be

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350 See ESIAs in chapter 4.2.3.
regarded as a realistic option to protect people from land grabbing. The only way that people can be protected from companies is for the national government to actively control the actions of corporations. But when weak and corrupt states benefit from these companies, chances are slim that they will act firmly against them. For example, the children and extended family of prime minister Hun Sen control significant shares in more than 100 companies with a combined capital of over 200 million USD. Global Witness describes this as showing merely ‘the tip of the iceberg’ of the nepotism and corruption that connects private interests in the political sphere to endorsement of ELCs. This also suggests that the governmental resolutions to apply stricter regulations on ELCs are to be taken with a grain of salt.

7.1.3 Regulation by the International Community
The international community has reacted to the severe human rights abuses related to ELCs in different manners. There have been international attempts by for example the UN and the FAO to establish guidelines for large-scale land acquisitions and land concession management by national governments. Most notably, the Voluntary Guidelines on the Responsible Governance of Tenure is an important frame of reference. However, there is little sign that governments are adhering themselves to these rules. Similarly, the EU has been in negotiation with a special government committee in Cambodia to establish a system of fair compensation to evictions. These talks started in 2014 and a draft of the process has been made. Again, no signs of progress have occurred yet. Using another strategy, the international community has also imposed financial sanctions in an effort to pressure the Cambodian government into taking action with regards to ELC related human rights abuses. International donors and organisations play an important role in the economic landscape of Cambodia, since bilateral aid makes up roughly 40 percent of the government’s budget. The international community is

therefore in a position to exercise pressure on the Cambodian government because of its economic dependence. The World Bank has for example frozen all loans to Cambodia as a result of forced evictions in the Boeung Kak Lake concession. The US has also taken drastic action to make aid dependent upon improvements in the human rights record of the Cambodian state: ‘A spending bill approved by the U.S. Senate Appropriations Committee last week proposes to make U.S. aid to Cambodia in 2017 contingent on an end to the government’s harassment of the opposition and civil society.’\footnote{P. Zsombor, Cambodia Daily, ‘US Spending Bill Ties Aid to End of Government “Violence”’, 4 July 2016, https://www.cambodiadaily.com/news/us-spending-bill-ties-aid-to-end-of-government-violence-114950/ (accessed 4 July 2016).} With European and other ‘Western’ donors reducing financial support, the importance of Japanese and Chinese donors increases, which has been known for not having any ‘human-rights-strings’ attached. This has resulted in a strong increase in political alignment with China and increased criticism of Western donors and their ‘imposition’ of rules and conditionality of aid.

### 7.2 Rejection of Land Concessions

Because of these political and institutional obstacles, the second perspective on ELCs is a rejection of the whole institution. The first position emphasises the potential benefits that land concessions can have in terms of development and prosperity. Proponents of the second position however view ELCs as inherently exploitative and argue for other methods to bring about economic development. Opinions within this category vary from halting new concessions to be granted, to nullifying all contracts and releasing all the land in favour of the rural population and the environment. These views are strikingly captured in the following quote: ‘[T]he contemporary expansion of production of food, biofuels and other products are not really meant to solve world hunger, poverty and environmental degradation, but to further capital accumulation for the insatiable corporate hunger for profits.’\footnote{Transnational Institute, 2012.} In order to fight the destructive effects of industrial exploitation such as evictions and environmental degradation, property rights of people need to be


strengthened and environmental standards need to be developed and consistently implemented.\footnote{Ibid.}

\subsection*{7.2.1 Economic Independence}
Cambodia is a weak state with high levels of corruption and a strong dependence upon foreign aid. The question arises whether the Cambodian economy can afford the discontinuation of ELCs that provide the government with both direct and indirect financial gains.

According to the Cambodian government, the state revenue from Economic Land Concessions up to 2012 have been 80 million USD.\footnote{Open Development Cambodia, ‘Economic Land Concessions (ELCs)’, 1 October 2015, http://www.opendevelopmentcambodia.net/briefing/economic-land-concessions-elcs/ (accessed 23 July 2016).} In that same year, the government announced the introduction of a land concession tax of 5 USD per hectare, which would only amounts to 10 million USD tax revenue per year.\footnote{T. May, The Phnom Penh Post, ‘Land Concessions Halt Extended: MP’ 1 October 2012, http://www.phnompenhpost.com/national/land-concession-halt-extended-pm (accessed 28 February 2016).} However, due to a lack of transparency in government finances, the real amount of income from ELCs differs in all likelihood significantly from this number. In addition, this amount does not account for the bilateral aid that might be dependent upon the granting of ELCs. According to economist Srey Chanthy, the government could earn triple of the documented amount from tax revenue on ELCs.\footnote{Chan M., Phnom Penh Post, ‘ELCs Economic Benefits not Realised’ 18 July 2014, http://www.phnompenhpost.com/business/elcs-economic-benefits-not-realised (accessed 6 March 2016).} This would result in a profit of 30 million USD per year. However, the profits that companies make from land concessions are many times higher than the profit that the government makes from them. Exemplifying this is the Vanarisi concession of 2705 hectares which was bought for 15 million USD. This investment was planned to be paid off within only eight years and was estimated to make an annual profit of 2.1 million USD.\footnote{FIDH, 2011, p. 19.} Since there are around 2 million hectares of land given out as Economic Land Concession, which is around 740 times the land that the Vanarisi concessions contains, the revenue of 2.1 million dollars times 740 could amount to 1.5 billion USD revenue per year. Taken into consideration that this calculation is based on
the revenue of one plot of land and every plot of land may yield a different amount of profit, the total revenue will probably differ greatly from this rough estimate. However, it does give an indication of how companies achieve much higher financial benefits from land concessions than the government. The focus on short-term benefits is evidently harming the Cambodian State in the long run, making the country dependent upon foreign states through financial aid and leaving its population powerless with regards to extractive corporations. If the government would manage and develop their own land instead of leasing it, they will be able to make much larger profits while ensuring that the local population will benefit at the same time. This will result in nationwide sustainable development and economic independence. The government would also be able to exploit smaller areas of land while obtaining higher profits, which in turn benefits indigenous people and the forests they are fighting to protect.

7.2.2 Motivations for Engaging in Grand Concessions
In this sub-section, I will examine the motivations of the Cambodian government to continue to engage in Land Concessions, in spite of the evidence that self-governance of resources will result in larger benefits. Cambodia does not possess many means to attract foreign investment besides its natural resources. Developed countries lack the space and natural reserves for logging, farming and mining and are therefore eager to lease land from countries that can provide large and cheap concessions without a strict regulatory system. For the Cambodian government, this became an easy method to generate quick and large amounts of money. In addition to public interests, individual politicians can have private interests in ELCs. I already discussed the investments in different companies by the family of the prime minister. Such interests are shared by other powerful actors such as military leaders and prominent policymakers.

An additional reason to continue the issuing of ELCs is the dependence of Cambodia on the financial aid of donor countries which increases its vulnerability to foreign interests in land. China for example is the largest development partner of Cambodia. They gave over 400 million USD bilateral aid in 2013 alone.\(^{363}\) That is double the amount of all the

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financial contributions from Europe and the United States of America combined. China is known for giving large sums of money without any ‘strings’ attached, as opposed to ‘western’ aid, which is often given in exchange for human rights protection measures. China does however appear to receive something in return. According to the data of LICADHO, China is the largest foreign concession holder with a total surface of 370,000 hectares divided in 42 concessions.\(^{364}\)

Some argue that land concessions are necessary in Cambodia, since the government does not have the capacity to develop the land themselves. Instead, investors have the capital, technology and access to a distribution market which allows them to undertake land exploitation.\(^{365}\) However, as the example of the Vanarisi concessions shows, the investment necessary to turn a piece of land into a profitable rubber plantation can be earned back in only 8 years. So getting a loan from for example the World Bank that can be paid back within a decade seems to be a feasible option.

### 7.2.3 Alternatives to ELCs

A rejection of ELCs will have to be accompanied by alternatives that can replace the current system of land use. In this sub-section, alternative methods to bring about development in a human-rights and environment friendly manner will be explored.

The industrial revolution in Europe, in which the continent transformed from an agrarian to an industrial economy, shows parallels with the situation in Cambodia with respect to the methods of natural resource extraction combined with a disregard and exploitation of the poor. Does this result in the conclusion that economic development and human rights protection are incompatible with each other? I will assess this question by examining successful poverty alleviation programmes in Southeast Asia.

Some scholars believe that the economic success of the ‘Asian Tigers’ does not originate in the commonly presumed method of export-oriented industrialisation, which for example has been propagated by the World Bank.\(^{366}\) Instead it is proposed that development was achieved through governmental policies that focused on pro-poor

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\(^{365}\) Ibid.

agricultural and rural development. Henley cautions that rural development does not equate pro-poor development, as we have seen in the case of Cambodia. The countryside is ‘developed’ through Economic Land Concessions, but the poor become the victim instead of benefitting from the concessions.

The economic growth in Indonesia for example, rested on the export of manufactured goods instead of raw material. New technological developments in agriculture as part of the ‘green revolution’ such as the introduction of artificial fertilisers resulted in large-scale poverty alleviation. This revolution has been described as state-driven, market-mediated and small-farmer-based. This project became a success, mainly because the state resolved to become self-sufficient in rice production and made investments in new technologies. Aside from agricultural investment, the government focused on developing the countryside through investments in roads, electrification, schools and public health.

Indigenous people who have been forced to give up their traditional practice of swidden agriculture and have to stay in one plot of land, see a degradation of soil quality and as a result, crop yields go down. Many of my respondents attested to this trend: ‘The largest change that occurred is the shift from the system of swidden agriculture to farming one set plot of land. This resulted in lower crop yields.’ ‘After one or two years, the soil becomes exhausted.’ ‘In recent years, rice fields are bringing lower yields.’ Soil-degradation and the decreased yields resulting from this, can be prevented through the issuing of communal land rights that safeguards the amounts of land that is needed to practice swidden agriculture. In addition, government led programmes to increase yields through fertilisation would most probably reduce poverty and stimulate the economy. Obviously, fertilisation programmes will not only benefit indigenous people, but the rural population at large. Some indication that this method can be highly effective in Cambodia is shown in recent years. Between 2008 and 2012, the poverty in Cambodia has decreased with 15 percent. According to the World Bank analysis, this decrease in poverty was caused by the global financial crisis, which led to an increase in rice prices. For this

368 Henley, 2012, p 27.
369 Ibid. p. 29.
370 Interview 3.7G20, Kratie, October 2015.
371 Interview 1.7, Mondulkiri, September 2015.
372 Interview 3.12G11, Kratie, October 2015.
reason, Cambodian farmers started to produce more rice and this increased profits allowed for a growth in agricultural wages and a higher income for self-employed non-agricultural businesses.\textsuperscript{373} This shows that a rise in the production of rice will benefit the poor and gives the whole economy a boost. In this case, the cause of the growth was a global crisis, but the government could also stimulate agricultural production through their own policies such as subsidising and supporting methods that increase yields. It is very important however to combine agricultural policies with a human-rights-based approach. Development programmes cannot be implemented successfully without the involvement of local communities. The Khmer Rouge regime for example also wanted to increase rice production to achieve a nationwide level of self-sustenance, but the coercive methods that were used to achieve this goal resulted in terrible atrocities. The forced assimilation policies that evicted indigenous people to areas suitable for wet rice cultivation also proved to be counterproductive. These examples show the importance of including indigenous people in the realisation of government policies. As part of their right to self-determination, indigenous people should have a voice in the establishment of development policies that affect their lives. It is a long-standing problem that development initiatives are uniform and disregard the importance of local input, rendering these programmes both ineffective and oppressive.\textsuperscript{374} Agrarian innovation and stimulation needs to be implemented in a human rights friendly way. As the example of Indonesia shows, development of the countryside occurs not only through increased production but also through electrification, improved education and healthcare. The implementation of such pro-poor rural development measures will fulfil the right to be free from hunger. The ICESCR describes the fulfilment of this right through governmental programmes aimed at improving methods for production of food by using technical and scientific knowledge and developing agrarian systems.\textsuperscript{375}

The Cambodian civil society is in favour of such policies where people are regarded as the most important manager of the land and where they are supported by the government with materials and technologies to help increase effective land use. The director of

\textsuperscript{373} Asian Development Bank, p. XI.
\textsuperscript{375} ICESCR, art 11.2.
ADHOC, Thun Saray stated: ‘The government should keep the land for villagers. [It could] ask the private companies to bring good crops to plant and good planting techniques, but let the villagers farm and have the companies just wait to harvest and process it’.376 This is one example of how companies could continue to play a role in agricultural development. Not by extracting resources and profiting from large-scale land ownership but by providing support to local communities in an ethical manner.

7.2.4 Impact on the Indigenous Lifestyle
As described in chapter 3.2, the Cambodian government holds the opinion that traditional farming practices contribute to the poverty of indigenous people and they want this practice to be abandoned, despite their ratification of conventions that state otherwise. Some scholars agree with this premise. For example, Henley argues that it is a better option for indigenous people to convert their farming methods into smallholder tree crop planting as a preferable alternative to displacement by a company or becoming day labourers on their plantations.377 Some NGOs are supporting indigenous groups in this regard and sponsor plantations that are managed by the community as a whole.378 The question rises whether the proposal to have the government sponsor nationwide agricultural technologies and methods to increase yields can be viewed as another assimilation policy to change the indigenous lifestyle into a commercial and taxable spoke in the large wheel of the national economy. Or can this development be viewed as a positive change with the potential to reduce poverty and insecurity? They key aspect in answering these questions is the concept of self-determination. If indigenous people wish to construct a communal plantation and if NGOs are willing to help them realise this, they should be able to. But if indigenous people wish to continue their traditional form of agriculture, they should also be able to. It is not a matter of what is the better option. It is a question whether indigenous people are given the freedom to direct their own lives. Education can be an important tool to protect indigenous groups from manipulation by different actors forcing them to choose the option that serves other benefits than their own. It can help them to develop their understanding of global processes and power

376 Vandenbrink, 2012.
378 Interview 5.2, Phnom Penh, September 2015.
dynamics in order to gain insight into the interests and motives behind the actions of powerful stakeholders.

7.3 New Institutions for Conflict Resolution

The remainder of this chapter will be used to discuss different ideas with regards to the instalment of new institutions that could contribute to conflict resolution between indigenous people and corporations. The focus will be on ideas developed by local stakeholders such as the Cambodian civil society and indigenous people in order to avoid the criticised trajectory of externally imposed conflict-resolution systems, emphasized in the Manila Declaration:

‘The concept of justice may be universal, [but] the processes by which it is achieved and the values which underpin its understanding are culturally defined. However, experience has taught us that colonization has also sought to universalize the western processes of achieving justice and resolving conflict so that we are constantly forced to turn away from our own institutions and operate within those of western legal paradigms.’

As shown in this citation, indigenous people have need of conflict resolution mechanisms that suit their cultural paradigms and are not solely comprised of western institutions. It is stressed in this declaration that as part of their right to self-determination, indigenous people have the right ‘to create new systems and institutions of peace making that are sourced in indigenous values and that co-exist with existing bodies such as the International Court of Justice and similar regional bodies.’ Three different proposals will be presented in the remainder of this chapter which are aimed to increase the access to justice of indigenous people and to give their opinions a legitimate position in the national and international sphere: a land concession tribunal, a national indigenous council and mediation in land disputes.

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379 Manila Declaration, preamble.
380 Ibid.
7.4 Land Concession Tribunal

Indigenous people in Cambodia have very weak access to the judicial system. As shown in chapter 5.3.6, complaints are often disregarded and courts systematically rule against indigenous claims in favour of the government or corporations. International legal instruments are inaccessible as well. The International Court of Justice does not provide legal aid to indigenous individuals or collectives since it only operates on a State versus State basis. Regional courts such as the Inter-American Court have been accessed by indigenous groups, but their decisions are not binding or enforceable and often ignored by offending states. Even if they were enforceable, there is no regional court in Asia that indigenous people in Cambodia can appeal to. Thus indigenous efforts in these fora have not had significant results in the resolution of conflicts.

To circumvent these obstacles, a possible method to re-evaluate ELCs and to separate the corporations who committed human rights abuses from those who have acted in an ethical manner is by establishing an independent court or tribunal in Cambodia. This tribunal has to be accessible by civilians whose human rights have been violated by corporations in order to receive justice and reparations.

Such a tribunal regarding human rights abuses related to ELCs has been proposed by opposition leader Sam Rainsy, leader of the Cambodian National Rescue Party (CNRC). He proposed that an independent tribunal should review all the land concessions that have been issued under the rule of current prime minister Hun Sen. The goal is to provide justice to the victims whose land was stolen from them by corporations by returning all assets that have been taken away.381 The need to review existing concessions has been stressed by several parties, for example Mr. Subedi, former Special Rapporteur on the Situation of Human Rights in Cambodia.382 More importantly however, indigenous people themselves have called for the founding of such a tribunal where indigenous people are included and represented.383

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383 Manila Declaration, preamble.
The structure of such a land tribunal in Cambodia may reflect the Extraordinary Chambers in the Courts of Cambodia’ (ECCC), also known the Khmer Rouge Tribunal. This is a hybrid court comprised of both Cambodian and international judges, established with the aim to bring the leaders of the Khmer Rouge regime to justice. The hybrid form of the court came into existence because the government insisted that Cambodian perpetrators would be tried by Cambodian people. At the same time, foreign judges were invited in order to achieve a certain standard of quality and independence, since the Cambodian legal system was and still is very weak. A tribunal for land disputes could follow this same hybrid structure, not only including national and international judges, but also indigenous judges.

Another court which organisational structure can serve as inspiration for the Land Concession Tribunal, is the European Court of Human Rights. This court is independent, free, open to individual submissions and does not require complicated application procedures. There are many elements of this court that would not suit the context in Cambodia, but its low threshold for individual applications can serve as example in the draft of an organisation structure for a Land Tribunal in Cambodia.

7.4.1 Conflict Resolution through the Legal System in Malaysia

In Malaysia, as in many other countries in Southeast Asia, indigenous people have systematically suffered from human rights violations as a result of land concessions. Just as in Cambodia, traditional claims on land by indigenous people are recognised and legitimised by the central government. In Cambodia, it is known as communal land rights, in Malaysia as native customary rights. In both countries, these rights clash with other laws, the Land Code in Malaysia and the Land Law in Cambodia. Even though customary rights are recognised, they largely have not been titled nor legally determined to be property of indigenous groups. Indigenous claims on traditionally owned land are therefore always weaker than the measured and documented land concessions. The Malaysian government does not have an exact idea of what land belongs to indigenous people and what is timberland. It has therefore approved large logging concessions on

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indigenous territories that threaten the livelihoods of the indigenous people living there.\textsuperscript{385} In this situation, the court system has been used by indigenous people to defend their land rights.\textsuperscript{386} Some positive examples are available where the court ruled in favour of indigenous groups and forced companies to release the land on indigenous territory. These decisions were not made by a separate tribunal concerned with land concessions. Cases were tried in the general legal system of Malaysia. This however would not be possible in Cambodia. The rule of law in Malaysia is much stronger as illustrated by their respective rankings on the Corruption Perception Index of Transparency International with Malaysia on the 54\textsuperscript{th} place, opposed to Cambodia who ranks 150\textsuperscript{th}.\textsuperscript{387} But the fact that a court system in Southeast Asia has been able to review the conflicting claims indigenous people and corporations, shows that legal solutions can have a positive effect on land conflicts. The fact that the High Court in Malaysia has been able to make decisions on hundreds of contentious land disputes between indigenous people and corporations gives hope that it could be possible to achieve in Cambodia as well.\textsuperscript{388}

Using the established judicial powers of a country to resolve conflict between indigenous people and states is cautioned by Special Rapporteur Miguel Alfonso Martínez. Looking at history, "the legal establishment can be seen serving as an effective tool in the process of domination."\textsuperscript{389} These processes also require time and resources, which indigenous people often lack.\textsuperscript{390} For these reasons, an independent tribunal would be preferable over the national judicial system. In addition, indigenous people are not represented in the Malaysian court system. However, indigenous people call for a system that represents their voices in conflict resolution between themselves and other actors. Therefore, they need to be included in the organisational structures that seeks to solve these points of contention.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{386} Colchester, p.41.
\item \textsuperscript{388} See for the decisions for example: Bulan, R. and A. Locklean, \textit{Legal Perspectives on Native Customary Land Rights in Sarawak}, Alkauthar Press SDN, Kuala Lumpur, 2008, p. 60-75.
\item \textsuperscript{389} Martínez, M.A. ‘Study on Treaties, agreements and other constructive arrangements between States and Indigenous Populations’, 22 June 1999, United Nations Economic and Social Council, UN Doc. E/CN.4/Sub.2/1999/20, para. 196.
\item \textsuperscript{390} Martínez, para. 254.
\end{itemize}
\end{footnotesize}
7.4.2 World Court of Human Rights
A Land Concession Tribunal can address abuses by ELCs on a relative short term basis. It is a local solution focused on one issue, which allows for optimal attention to this specific problem. However, a more structural solution is needed to prevent human rights violations by corporations on a global scale. One suggestion to address the accountability gap of corporations is the founding of a World Court of Human Rights. Many people have doubts whether such a large and influential organ could ever come into existence, but its founding would provide a highly effective tool to end impunity of the many human rights violations by non-state actors such as corporations.

7.5 National Commission of Indigenous People
Aside from legal solutions to address the land crisis, the second suggestion to protect indigenous people from human rights abuses by ELCs will focus on representation. Because of the continuing violation of the rights of indigenous people, the need for representation on different levels has been reiterated by many indigenous groups. There are different ideas on how this representation can take place. For example, an indigenous commission on an international level was propagated in the Manila Declaration as part of the right to self-determination of indigenous peoples:

Art. 1: An Independent International Commission of Indigenous Peoples for Mediation and Conflict Resolution be organized not later than the year 2002. The mission of this body will be to promote and defend the rights of indigenous peoples and to expose and denounce aggression and abuses of the rights of indigenous peoples in different parts of the world.  

Apart from the Commission, the Conference planned to found a global network for research with the goal to disseminate information, build partnerships, contribute to education and to policy advocacy. Even though the objective was to establish such an institution before 2002, as of today, it has not been realised. This shows the difficulty of establishing a worldwide institution that is effective and functional. However, there

391 Manila Declaration, art. 1.
392 Manila Declaration, art. 2 – 4.
continues to be a need for conflict resolution mechanisms, at an international and national level. I view the international commission as an important long-term goal. However, in order to address the specific challenges of indigenous people in Cambodia, I will suggest a solution that is more focused on this local issue, and which can be realised on a more short-term basis. Therefore, I suggest the founding of a National Indigenous Commission. Such as council will fulfil the right to representation described in the UNDRIP, where it is described that indigenous people have the right to participate in decision-making in matters that affect their rights by representatives chosen by themselves. Currently, indigenous people in Cambodia lack a central body that represents their interests, and can play a role at the national political level. There are many NGOs working with and for indigenous peoples, but there is no centrally organised institution who represents the interests of this group.

7.5.1 Role of the Commission
The Cambodian Commission for Indigenous People can fulfil different roles. First, it can serve as a contact point and information centre for indigenous people. As described before, due to their isolation and inexperience with negotiations with powerful actors, indigenous people are easily taken advantage of where land issues are concerned. Many people do not know how the national laws exactly are formulated and what rights they have. This council can be a place where indigenous people can report violations and can get information regarding issues in their area. This way, the council can compile the experiences of indigenous people throughout the country and can give advice on how to deal with land issues. However, the council can exceed the issue of land. As shown in chapter 5, there are many threats to indigenous groups and many people don’t have a place to go when their rights are violated. If there is a suspicion that the water source is contaminated or that a particular NGO might act unethically, people need a place to go that is dependable and knowledgeable. The council might even develop a research branch that secures funding for projects such as testing of water or even measuring indigenous

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394 UNDRIP, art. 18 and art. 19.
territories. At the same time, through publication of the research outcomes, awareness of the challenges and threats to the lives of indigenous people can be increased. Secondly, the council can represent indigenous people in matters that affect this group. In the formulation of new laws, the council can provide the perspective of indigenous people and voice their position and concerns. It can represent indigenous people in dialogue between companies and the government, and it can take a position in the international level to represent Cambodian indigenous people.

7.5.2 Examples from the Region
There are several examples of such an overarching national institution in Southeast Asia. An example of such a national institution can be found in Bangladesh, where a commission was founded named ‘The Chittagong Hill Tracts Commission’. This organisation works to raise awareness of human rights violations of indigenous people in the region and to facilitate dialogue between different actors. The organisation collects data through fact finding missions and writes publications and reports to disseminate their findings. Their mandate is ‘To promote respect for human rights, democracy, and restoration of civil and political rights, participatory development and land rights in the Chittagong Hill Tracts in Bangladesh.’

A second example is the Indigenous Peoples Network of Malaysia, also known as Jaringan orang Asal SeMalaysia, or JOAS. This is an umbrella network that connects the 51 local organisations that work on indigenous issues. The organisation functions as the focal point for advocacy of indigenous rights in Malaysia. It acts on a national level, but simultaneously on the international and regional level. It conducts studies on the effect of certain national laws and policies and by doing this, they help to generate international attention to the situation of indigenous people in Malaysia. Through their policy studies, shortcomings in the laws are highlighted. An example that also applies in the case of Cambodia is their exposure of assimilation policies and their attention to the lack of local representation, which is appointed by the government, instead of freely chosen by the people.

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396 Wessendorf, p. 327.
397 Wessendorf, p.328.
These types of activities would be highly valuable in Cambodia. Indigenous people remain a highly marginalised group and many people in Cambodia do not know what type of abuses they suffer. Many indigenous communities have an oral tradition which results in high levels of illiteracy. In addition, many indigenous communities have no or very little access to electricity and the internet. This makes it more difficult to engage in a public discussion and advocate for their rights. A central commission of indigenous people that speaks with a unified voice can be a strong asset in advocacy. Especially to counter the imbalance of power between the organised and legally protected corporations and the unorganised largely illiterate groups of indigenous people who are often hardly aware of their rights and know little of negotiation techniques that allows them to interact with these corporations.

7.6 Conflict Resolution through Mediation
A third proposal for conflict resolution and the protection of indigenous rights is the utilisation of mediators in order to resolve conflict between companies and indigenous villages. International legal expert Augusto Willemsen Diaz proposed that the United Nations itself might facilitate mediation or arbitration processes, provided that the indigenous communities themselves freely and formally request such United Nations intervention. There are also other international organisations that provide mediation. In 2015, fourteen indigenous communities reached an agreement with a Vietnamese rubber company through mediation by an organisation called Inclusive Development International. Meetings between the parties were facilitated by the Compliance Advisor Ombudsman of the International Finance Corporation. The agreement that was reached during these meetings determined that the company would not leave the area, but they agreed to give the land back that belongs to the indigenous communities after official boundaries between plantations and villages were agreed upon. The company also agreed to support the community in receiving an official land title. The use of chemicals was agreed not to exceed environmental regulations and affected water resources were

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398 United Nations Department of Economic and Social Affairs, p. 224.
promised to be restored. A grievance mechanism was installed where future complaints could be made. The company made official apology to all villages and gave a cow and 500 USD to every village as offering to their spirits. This example shows that it is possible for a company and indigenous communities to come to an agreement without legal intervention. The reason that this case was dealt with in such a highly successful manner, is because the corporation used a loan from the International Finance Corporation of the World Bank, which has a complaint mechanism for cases of human rights abuses resulting from projects funded by them. This explains why the company would have been so ready to make compromises, because their funding depended on it. Other corporations who are not involved with World Bank funding schemes will not be able to be included in mediation procedures by this institution. However, other independent and local organisations are available in Cambodia that offer mediation and have already proved their effectiveness, such as the Cambodian Centre for Mediation.

Mediators need to have special skills to reach connectedness and authority in dealing with corporations and indigenous communities. The mediator has to give specific attention to make sure that indigenous parties are adequately involved in constructing a type of mediation that they feel comfortable with. Their specific culture should be infused in the mediation process by using their own skills and knowledge in order to empower them and allow self-determination. In facilitating this, it may be useful to include indigenous staff in the mediation organisation. An awareness of culture is one of the principle concerns in dealing with mediations with indigenous peoples. Indigenous people have been practicing their own methods in dispute resolution, which may differ especially from western models. For example, the concept of an independent and impartial third party in the mediation process might not fit indigenous ideas of trust and connectedness. Confidentiality is another cornerstone in western mediation processes, but the communal lifestyle of indigenous people may require more sharing of information and openness about the process. Local mediation organisations who are able to include the indigenous

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400 Ibid.  
401 Croft, H. ‘The Use of Alternative Dispute Resolution Mechanisms with Aboriginal and Torres Strait Islander Communities’, 2015, Australian Centre for Justice Innovation, Access to Justice, paper 36, p.46.  
402 Croft, p.41.  
403 Croft, p. 43.
perspective in their work may be more equipped to deal with land conflicts involving indigenous people. Therefore, I suggest the development of independent mediation organisations in Cambodia who offer free services to corporations and indigenous communities in conflict-resolution.

7.6.1 Examples of Mediation in other Countries

Mediation as a means for conflict resolution has been attempted at several countries. I will examine the process of mediation in Indonesia and Australia in order to distil best practices and pitfalls where future mediation processes can learn from.

One of the first uses of mediation in regards to land conflicts with indigenous people occurred in Australia in 1994. The mediation was facilitated by the National Native Title Tribunal, which is part of the Australian court system. The procedure was between the indigenous group, the Yorta Yorta, and a large number of claimants consisting of companies but also private land users. After 9 months of mediation, the process proved unsuccessful to establish an agreement. Problems in the mediation process were abundant. The indigenous people made up only a marginal portion of the stakeholders that were invited and were therefore overwhelmed by the large numbers who opposed their claims. The government was invited as one of the stakeholders and spoke out negatively against the indigenous claims which resulted in a more overall negative tendency where other stakeholders sided with the government.\(^\text{404}\) The mediation process proved to be an enormous burden on the indigenous community, the distance they had to travel to the mediation meetings and the time that the mediation required disadvantaged the already vulnerable and marginalised group. It was impossible for many to attend the meetings and not being able to work in that time, which resulted in a representation by mostly elderly members of the community. The process was further skewed to disadvantage the indigenous groups because the burden of proof rested largely on them to demonstrate their indigeneity and their customary land rights. The concept of equality before the law was therefore put into question.\(^\text{405}\)


\(^{405}\) Atkinson, p. 98.
Lessons from this case are that the mediation process needs a more tailored approach that facilitates the needs of the indigenous community and that negotiations have to be carried out in a manner that is fair to all parties.\textsuperscript{406} A positive element in the mediation process was the preparation by the Yorta Yorta people. They issued a claim statement, meant to influence the media coverage of the issue. As mentioned before, representation is a crucial issue in the coverage of indigenous issues in the media, because it often portrays a distorted image of indigenous issues, including land justice.\textsuperscript{407} The Yorta Yorta people also developed protocols to be observed during the process which described circumstances in which their interests could be protected and represented most effectively. They described confidentiality measures and the limitation to the included parties to only those who are directly involved in this issue. They also wanted the mediation to take place on the land in question, to make attendance easier.\textsuperscript{408} Even though the suggestions were disregarded during the process, these are valuable points to keep in consideration for future mediation initiatives.

A second and more recent example of mediation will be taken from Indonesia, where the governor of South Sulawesi appointed a mediation team in 2004 in order to resolve the land dispute between local farmers and a corporation known as PT Lonsum. The villagers made adat\textsuperscript{409} claims of traditional ownership of the same land that the government had designated for land concessions.\textsuperscript{410} In this case, the mediation team consisted mainly of government officials. All other relevant stakeholders were represented as well in the team. In addition, the team coordinated closely with the District Government. The outcome of this mediation process was that 414 hectares of the land concession were released to the villagers, instead of the 540 hectares originally owned.\textsuperscript{411} The local inhabitants were pushed to accept this compromise with the same ‘take it or leave it’ discourse that has been used to evict indigenous people in Cambodia. The agreement included that the

\begin{footnotesize}
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\item \textsuperscript{406} Croft, p. 22.
\item \textsuperscript{407} Atkinson, p. 97.
\item \textsuperscript{408} Atkinson, p. 97.
\item \textsuperscript{409} Adat is an Indonesian term that means custom or tradition. After the authoritarian regime of Suharto came to an end, villagers have been fighting to obtain land rights based on customary ownership, this has become known as adat.
\item \textsuperscript{411} Ibid. p. 149.
\end{itemize}
\end{footnotesize}
villagers would not ask for more land and that the company would not take more land.\footnote{Tyson, p. 148.} The villagers complained that the mediators allowed the released land to be used by people who were not involved in the original mediation process. They accused the government of selling land to third parties that was supposedly designated to them. In the end, the mediation team glossed over the political conflict and with the approval of the provincial government pushed their final recommendations.\footnote{Tyson, p. 149.} This failed example shows the need for a truly independent mediator without ties to the government. It was recorded that the company did not make any serious efforts to reach an agreement with the villagers.\footnote{Kate, ten, A. and A. Zakia, \textit{Palm Oil Sustainability Assessment of Indofood Agri Resources}, 2015, Aidenvironment, Amsterdam, 2015, p. 5.} The mediation process however did result in some achievements: A social impact analysis was made, which functioned as the basis for a compensation. In addition, villagers were promised to be prioritised as workers and staff members in the company.\footnote{Kate, p. 24.} However, the Indonesian state supported the expulsion of the villagers that lived on the lands that were still part of the concession and the police helped evicting people, just as we have seen in Cambodia. Both these examples show the influence that governments have in these mediation processes, taking the side of the corporations and skewing the outcomes in their favour.

\subsection*{7.6.2 Best Practices on how to Exercise Mediation}

The previous examples of mediation illustrate that this method for conflict resolution can only be effective when the right methods are adopted. The mediator should be an independent outsider who has no personal interests in the conflict. For this reason, the government cannot act as mediator. A truly independent mediator has to lead the mediations without hidden agenda’s to push a quick solution through that favours one side over the other. In the mediation process, there has to be an equal representation between the parties in order to allow for a balanced and equal negotiation. To ensure a fair process, the specific situation of indigenous people, their obstacles and cultural differences need to be taken into consideration. Indigenous people often have limited financial means, so the process should not result in the exhausting of the financial means
of this group. Their own wishes such as the time and place that mediation shall take place should therefore be taken into consideration.

7.7 Conclusion
This chapter examined methods to prevent human rights abuses of indigenous people by corporations who obtained ELCs. In these methodologies the role and agency of indigenous people is constantly emphasised. Time and time again, policies have been made that affect indigenous people without including them in the process. It is important to recognise that these groups have a different culture and way of life than the majority population, and these differences should not be ignored but embraced in the process of conflict resolution. Three types of solutions have been presented. A legal solution is the organisation of a tribunal. This would be a highly effective method, but the likelihood of it being implemented short term is very small. More informal forms of conflict resolution that are focused on case by case issues such as mediation are more accessible and have been proven to be effective in Cambodia. However, structural solutions are needed as well. As we have seen in the previous chapter, the social organisation of indigenous people is important in advocacy and in spreading awareness of their struggles and rights. The founding of a national or even international council of indigenous people as a valid player in the international field would strengthen the position of indigenous people and allow for more agency of this marginalised group.

Even in a scenario where ELCs will remain in Cambodia or when their numbers would increase, there are possible solutions to mitigate human rights abuses through increased control and implementation of the existing laws. However, it would benefit the country as a whole much more to replace the concessions with pro-poor methods of rural development where local people are supported in doing agriculture in order to increase their yields. This helps to develop the economy and protects people from poverty and abusive corporations at the same time.
In this thesis, I addressed the following research question: How do Economic Land Concessions cause human rights violations for indigenous people in Cambodia and how can these violations be prevented in the future? In order to answer this question as thoroughly as possible, I adopted an approach that allowed for the inclusion of a wide range of different perspectives. I divided attention to the political, economic, social, cultural, human rights and legal elements that the problem at hand is comprised of. In addition, the role of a wide range of stakeholders has been analysed, such as local communities, the government, NGOs, IOs, corporations and third states. A sustainable solution can only be found by including all these different actors and perspectives.

In this concluding chapter, I will provide an overview of the answers to all the sub-questions that have been formulated in chapter 1 in order to arrive at a comprehensive answer of the central research question. I will provide recommendations to different actors. In the final paragraph I will discuss external application of the outcomes from this thesis and their relevance to other parts of the world.

Who are the indigenous people of Cambodia and why are they impacted by Economic Land Concessions in a different manner than the general population?

The extent to which indigenous people can claim their human rights is strongly influenced by the definition of indigenous people that is used by their governments. A primordialist definition based on a list of characteristics will inevitably lead to the exclusion of people who see themselves as indigenous. As a result, self-identification should always take the central place in a definition of indigeneity, because it facilitates the ongoing process of ever-changing identities.

The customs, languages and lifestyles of indigenous people in Cambodia are at risk of disappearing because of systematic discrimination, attempts by the government to assimilate these people into mainstream society and increased pressure on land due to ELCs. One particular custom that is highly valued by indigenous people in Cambodia and which forms the basis of sustenance is the practice of swidden agriculture. This type of farming is based on collective land use and requires large spaces of natural land. Standard
policies of land ownership exclude ownership claims of natural areas and are centred around private ownership. Special protection measures are therefore necessary to protect these forms of land ownership in order to prevent the infringement upon indigenous territories by other actors. This example shows how different lifestyles require different protection measures in order to achieve substantial equality.

What is the role of the national and international legal framework in the protection of human rights of indigenous people against Economic Land Concessions?

National governments carry the primary responsibility for the protection of the human rights of its citizens. The realisation of the protection of indigenous people against abuses by ELCs takes place in the following three steps. The first step is the recognition of indigenous people and their territory, the second step is the inclusion of laws and policies geared towards the protection of indigenous rights and the final step is implementation. Cambodia adopted many laws describing the protection of indigenous people. However, some of these laws contain problematic elements. In addition, a lack of implementation of good laws renders these frameworks useless. The following list of recommendations addresses elements in the Cambodian law and their implementation which are forming obstacles for the protection of indigenous people against ELCs:

- The customary land use and other indigenous rights which are described in the UNDRIP are restricted to communities who have completed a long and complex process of official recognition. The rigid definition of indigeneity prevents many groups from a successful registration. This is further complicated by assimilation policies which aim to remove characteristics that are part of the definition, such as language. Therefore, the application process for a communal land title should be made much easier and quicker and it should exclude the procedure where a community has to prove its indigeneity based on a pre-determined list of characteristics.

- Communal land titles do not allow full ownership by indigenous people over the land. The government remains the ultimate owner of the area and is able to take the title away for economic goals, such as the issuing of ELCs.
- Forest use for sustenance is protected in the 2002 Forest Law, but limited in the 2009 Sub-Decree to spiritual forest and burial grounds with a maximum of 14 hectares. This prohibits the full protection of spiritual areas and prevents essential sustenance activities.
- Interim protection measures for territories of indigenous communities who are in the process of obtaining a communal land title are described in the 2001 Land Law, but the inter-ministerial circular 001 nullifies these protection measures where ELCs are involved.
- A corporation that obtained an ELC cannot start with their activities without the implementation of an ESIA in which local communities are consulted and findings from ESIA cannot be disregarded in order to prevent human rights violations.

The recognition of indigenous people and of collective land rights is an important first step by the Cambodian government, but the current implementation of these policies has been extremely weak. Land is supposed to be an inalienable right, but the Cambodian government has enabled itself to legally take away the land from which economic benefits can be obtained. These obstacles demonstrate the limited capability of legal solutions. There are many excellent procedures in the Cambodian and international law, but its implementation hinges upon political will. The international community has proven to be able to exercise some influence on the actions of the Cambodian government as seen in the revision of the Land Law and the temporary moratorium of the World Bank to issue new loans. Human rights protection is consequently not only dependent on the national government but many other actors can also play a role in contributing to the implementation of indigenous rights.

**To what extent do Economic Land Concessions in Cambodia result in human rights abuses for indigenous people?**

The human rights abuses of indigenous people are largely due to structural problems in the Cambodian society. The government lacks the necessary resources and expertise to implement and interpret the existing laws adequately. The governmental system is
controlled by one authoritarian party that will retaliate against dissenting voices. The rule of law is weak and high levels of poverty facilitate clientalism and corruption. This for example leads to widespread illegal logging, but also to impunity of the police force and to military violence. This situation enables corporations to disregard regulatory standards aimed towards environmental and human rights protection. The four main abuses caused by ELCs are:

- Evictions, causing a violation to the right to self-determination, housing, land and indigenous territory.
- Land grabbing, which limits the access of indigenous people to natural resources, prevents traditional farming methods, decreases yields, in turn causing insecurity, poverty and hunger.
- Deforestation, leading to the destruction of religious sites and the deprivation of indigenous people from essential resources of sustenance, traditional medicine and products that play a central role in indigenous customs. It also decreases biodiversity and contributes to climate change and the change in rain patterns.
- Water contamination, causing illnesses and in some cases resulting in the deaths of livestock and people, contributing to poverty and financial insecurity.

The Cambodian government gains substantial financial benefits from ELCs, which leads them to disregard abuses caused by corporations, further harming human rights of indigenous people. The following rights are infringed upon as a result of this situation: the right to an effective remedy, equality before the law, the prohibition of arbitrary detention and the prohibition of discrimination. This leads to the weakened position of indigenous people in relation to corporations because their access to legal remedies is obstructed.

**What are the grassroots methods that indigenous people and the civil society use to mitigate the human rights abuses arising from Economic Land Concessions?**

Indigenous people utilise many different methods to counter human rights abuses caused by ELCs, such as the organisation of protests, writing petitions, organising patrols to
protect the forest, destroying machinery from companies, obstructing roads and cursing company managers. Most of these methods directly address problems that cannot wait before institutional changes are achieved. A roadblock for example yields direct results and is easily implemented. This however does not provide a sustainable solution to the problem. Larger changes are required for this, which are difficult to achieve. Protests and petitions are aimed at making such changes a reality. This shows how grassroots action works at different levels; it addresses ad hoc problems and also aims to create institutional changes. At an increasing rate, indigenous communities are working together to strengthen their voices and help each other. NGOs have played an important role in this increasing unification. They helped to construct the concept of indigenous people and create awareness of this shared identity through workshops and trainings. They also facilitated visits and shared activities which brought people from different villages together, financed activities such as protests and helped writing petitions. This has been very important, but at the same time NGO support has proved to be uncertain. Projects are short, not always dependable and have been criticised for imposing their frameworks and agendas on indigenous communities. If indigenous people could start to fulfil the role that NGOs currently play and build their own structures and frameworks to protect their own interests, an important shift would occur from dependence upon outsiders towards self-determination and empowerment.

What are the institutional methods that can play a role in the mitigation of human rights abuses and conflict arising from Economic Land Concessions?
Many of the existing regulatory standards related to ELCs are currently not implemented in Cambodia. To prevent human rights abuses by corporate actors, strict supervision is needed to ensure the implementation of ESIAs, the consultation of indigenous communities, to ensure that companies do not exceed the boundaries of their concession and to monitor the safe usage of pesticides and other chemicals. A better solution however would be to halt the issuing of all new ELCs and to review existing land concessions in order to establish their adherence to human rights standards. This process could be facilitated through the founding of a land concession tribunal that can review accusations of human rights abuses related to ELCs.
There are many alternative forms of land use that are more environmentally friendly and benefit all layers of society. Pro-poor agricultural development will lead to an increased production of food and export products, such as pepper and rubber. This shift can be achieved by the government through subsidies and the facilitation of the introduction of technical innovations. These policies have to be implemented in close cooperation with indigenous communities in order to prevent the imposition of changes to their lifestyle.

My central recommendation that will contribute to the empowerment of indigenous people and enable them to better protect their own interests is the founding of a national indigenous commission. The main goal of this organisation would be to represent indigenous people, to provide support to indigenous communities and to disseminate information regarding human rights abuses of indigenous people. Overall, the indigenous commission can play a large role in removing indigenous people from the margins of society and give them a voice in important matters that affect them. This will provide a more stable and dependable form of support as opposed to the services that the government or NGOs provide. It will also decrease the dependency upon outsiders and the vulnerability to abuses. The indigenous commission can therefore provide stability, unity and empowerment.

My third recommendation is the increased utilisation of mediation between indigenous communities and corporations. It has been demonstrated in the examples of other countries that powerful actors can use their influence to ridge the outcomes of these processes in their favour. Therefore, these processes need to be truly independent from the government and ensure a balanced input from both indigenous people and companies. The commission could play a role in balancing the power between these parties.

8.1 External Application

Even though I decided to exclusively focus on indigenous people in this thesis, the majority of the people in Cambodia that is suffering from human rights abuses as a result of ELCs is not indigenous. Some of my recommendations are specifically tailored to the needs of indigenous people, but many suggestions also apply to the Khmer majority. They can for example also organise themselves and use mediators to negotiate with companies more effectively and will also benefit from pro-poor agricultural developments.
Furthermore, the struggle for land rights extends far beyond the borders of Cambodia. In the whole Southeast-Asian region the rural poor suffer from land grabs and even in other continents such as Africa, South-America and Eastern Europe do very similar problems occur. The recommendations provided in this thesis are broad enough to be applicable to many different contexts and therefore carry a relevance that stretches beyond the indigenous people of Cambodia.
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Annexes
Interview Questions

All the questions below were presented as open questions. A list of different answers from the respondents is provided after each question. This list was compiled after the data collection process.

Land and forest management
1 What do you think is the best way to manage forests and land?
   1: Communal
   2: Other
   3: Don’t know

2 How is that different from the situation now?
   1: Same as they want
   2: Different

3 What needs to change before this goal can be achieved?
   1: Nothing
   2: Companies must leave and give back the land
   3: Improved farming methods
   4: Communal land rights
   5: Stop land grabbing
   6: Political change
   7: Access to justice

Human Security
4 At this moment, do you have a secure livelihood?
   1: Yes
   2: No
   3: Only for a short while

5 What types of insecurity to you face?
   1: Facing relocation/ eviction
   2: Lack of education
   3: Lack of healthcare/ Problems with health
   4: Lack of infrastructure
   5: Financial insecurity
   6: Access to clean water/ chemical contamination
   7: Lack of natural resources: not enough land or forest
   8: Culture is threatened
   9: Intimidation and arrests by police

6 What needs to change in order to get a secure livelihood?
   Listen for their own categories what they come up with
   1: We need communal land rights
   2: We need to stop the construction of the dam
   3: We need electricity
4: We need a good school
5: We need a health centre
6: We need better infrastructure
7: Deal with corruption
8: Protect the forest
9: Better farming methods
10: Prevent land grabbing

7 Is owning a piece of land providing you with security?
   1: Yes
   2: I don’t own land
   3: No

**Land grabbing**
8 Describe land grabbing in your community.
   1: No problem
   2: Big problem

9 -What have you done to resist land grabbing?
   1: Protest
   2: Petition to authorities
   3: Ask NGO help
   4: Roadblock
   5: Destroy property of company
   6: Patrols on the land
   7: Negotiate with company
   8: Look for help from the court
   9: Traditional cursing

10 What are the effects of land grabbing in your community?
   1: Poverty
   2: Fear/uncertainty
   3: Conflict
   4: Disease, health problems
   5: Destruction of environment/forest

11 How do you think that land grabbing can be prevented?
   1: Land title
   2: Strengthen the community
   3: Convince authorities to stop
   4: Fighting back and protesting
   5: Negotiations
   6: Political reform: self-governing / change the government

**Conflicts in the community**
12 Do people within the community agree on how to act against land grabbing?
   1: Yes
13 People are affected in different ways by land grabbing, does that result in different opinions on how to handle land grabbing?
   1: Yes
   2: No

14 Has the land crisis led to conflict within the community? individual land titles?
   1: Yes
   2: No

Conflicts with NGOs
15 Is there a good relationship with NGO’s?
   1: Yes
   2: No
   3: There is no NGO

16 Do you think that NGO’s understand what people need?
   1: Yes
   2: No

17 Do you trust the help from NGO’s or is there suspicion?
   1: There is trust
   2: There is suspicion

18 Has there been conflict with NGO’s?
   1: Yes
   2: No

Conflicts with the State
19 What has the role of the local authorities been in land grabbing?
   1: Helpful
   2: Not listen
   3: Actively work against

20 Is there a good relationship between the community and the local authorities?
   1: Frustration
   2: No trust
   3: Good relationship

21 Has there been conflict with local authorities?
   1: Yes
   2: No
   3: Not openly but people are discontent
Abstract

This thesis deals with the global problem of land grabbing through an examination of its effects on a local level. It focuses on the indigenous people of Cambodia, who suffer severe human rights abuses resulting from Economic Land Concessions, most of which are centred around environmental degradation and the infringement on indigenous territory. The research includes an analysis of the role of the government to explain the particular vulnerability of indigenous people to abuse. The main institutional obstacles are described as being impunity and a restricted access to justice on the one hand, and the structural marginalisation and discrimination of indigenous people on the other. Different methods are subsequently described that are used by indigenous groups and the civil society to counter these abuses. Finally, several suggestions for conflict resolution are provided, including mediation, establishing a land tribunal and the founding of a national indigenous commission. The aim of this research project is to shine a light on the destructive impacts of land grabbing and to provide insight into the effects of human rights abuses on indigenous people. In addition, it aims to contribute to conflict resolution and human rights protection through the examination of possible solutions and strategies.

Keywords: Cambodia, Indigenous People, Land grabbing, Economic Land Concessions
German Abstract


Schlüsselwörter: Kambodscha, Indigene Völker, Landnahme, Wirtschaftliche Landkonzessionen