

International Expert Group Meeting
Indigenous peoples, business, autonomy and the human rights principles of due diligence,
including free, prior and informed consent

(December 8, 2021)

An 8-minute Presentation, by Sek Sophorn, Attorney-at-Law, Head of R&L Law Office

Topic: *Effective remedy and redress for human rights impacts of businesses on indigenous peoples*

Since I have experiences in Cambodia, let me focus this topic on situation of Indigenous Peoples in Cambodia. I have so far no much experience on effective remedy and redress concerning HR impacts of business but a few including impacts of businesses through Economic Land Concession (ELC) to indigenous peoples' human rights. Most case decision were not in favor of indigenous peoples.

1. One of the cases I experienced in remedies is concerning the rubber plantation and indigenous peoples in Busra commune of Mondulkiri province, Cambodia.
The IPs have spent years to get remedies with local, district, provincial and national authorities in Cambodia since the company started the land clearing for their rubber project. They got no satisfied outcome in particular the traditional land rights claims. They were negotiated by the company representatives. Some of them accepted a family rubber plantation contract with the company, some said no to that offer.
2. Some Bunong were fed up with national process to address the rights. In July 2015, almost a hundred family took civil claim in the French Court procedure.
On July 2, 2021, the 6e Civil Chamber of the Judicial Court (TJ) of Nanterre – judicial jurisdiction on which the company depends – ruled “inadmissible” the action of the 80 Bunongs who accuse the Breton industrialist of having illegally seized their lands and their sacred forest, destroying their places of life, of worship, as well as hundred-year-old trees considered as divinities, to install there rubber plantations, the rubber tree.
Lack of Title Deeds: “None of the 80 applicants and voluntary interveners can justify a real or personal right to exploit the disputed lands”, “the action taken by each of them will therefore be declared “inadmissible” for lack of quality and interest to act”.
3. In this case, the IP human rights are not considered by the judge at all. They decided on the ground of document evidence that issued by the Government. In fact in Cambodia has no Governance on IP's legitimate rights. The Law recognized traditional way of lives, cultural practice, however it is just a law that has no executive regulation to materialize on the ground so far. Therefore all the IPs in the case had no document to identify their legitimate rights to land and resources that the Government has signed agreement with Business. The legitimate rights in the Laws are not formally communicated to the community and their members including social, cultural and economic rights. As civil law state system, Cambodia judiciary considers only “document” of Government as valid to make decision. I believe it is the same as in France.
4. What to do to promote this from this situation?
My experience, consultation and decision making is fundamental for any business concerning indigenous issues even if we know more about laws and other stuff. Indigenous peoples have strong knowledge and skill of what they can do, what they wanted and what their priority is. For the rule of law purpose, the field support to them in a way that they can have official documents for their rights is the key.

Thank you for attention!