



Challenging Khmer Citizenship:
Minorities, the State, and the International Community in
Cambodia

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Contents

1. The Incomplete Internationalization of Liberal Multiculturalism.....	1
1.1. Introduction	1
1.2. Research Design and Methodology	4
1.3. Multiculturalism and Liberal Values	7
1.4. Liberal Limits of Multiculturalism	9
1.5. Conservative Multiculturalism	10
1.6. Minority Rights as Response to State Nation-Building.....	12
1.7. Minority Categories in the West	12
1.8. Preconditions of Liberal Multiculturalism in the West.....	14
1.9. Assessing Preconditions outside the West	16
1.10. Partial Internationalization of Multiculturalism: “Indigenous Peoples”	17
1.11. Internationalization Inconsistent, Unstable, and Unsustainable?	22
2. Cultural Diversity and Citizenship in Cambodia	26
2.1. Categorizing Cambodia’s Cultural Diversity: Polyethnic and Multinational	26
2.1.1. The Chinese	29
2.1.2. The Vietnamese	30
2.1.3. The Cham and Cambodia’s Muslims	32
2.1.4. Highland Peoples and the Lao	34
2.1.5. Small Scale of Minority Challenges to State Authority.....	40
2.1.6. Absence of Assertive Minority Rights Claims.....	41
2.1.7. Absence of Willingness to Accommodate Minority Rights Claims	45
2.2. Independent Cambodia and the Emergence of the ‘Khmer Citizen’	48
2.2.1. Post-Independence Colonization of Highland Peoples	50
2.2.2. Minorities under the Khmer Republic	53
2.2.3. Minority Destruction during the Khmer Rouge.....	54
2.2.4. Subsiding of Nationalist Violence under the PRK and SOC.....	56
2.2.5. Contestations of Vietnamese’ Legal Status within UN Peace Initiatives	57
2.3. Ethnic Minorities and Khmer Citizenship under the New Constitution.....	59
2.3.1. Khmer Insecurity.....	61
2.3.2. Neo-Patrimonial Governance	63
2.3.3. Immigration and Nationality Laws: From Foreigners to Citizens?	67
3. Perpetually Temporary: Citizenship and Ethnic Vietnamese	71
3.1. The Prospect for Citizenship.....	71
3.2. Low Level of Institutionalization	72
3.3. Contested (Co-) Habitation Histories: ‘New’ and ‘Old’ Vietnamese.....	73
3.4. Detached from Land and Citizenship – Living on the Water	77
3.5. Livelihoods Limited by Law.....	78
3.6. Factors Constraining Khmer Language Acquisition and Use.....	79
3.7. Factors Constraining Participation in Public Education.....	80
3.8. Exclusion from Local Governance.....	82
3.9. Few Benefits from Development and Poverty Reduction	85
3.10. Obstacles to Ethnic Vietnamese’ Inclusion: the ‘Vietnamese Threat’	86
3.11. Why Ethnic Chinese are Citizens and Ethnic Vietnamese are not	88
3.12. Compensation for Historical and Contemporary Injustice.....	88

3.13.	Integration into What? Conceptions of Khmer National Identity.....	89
3.14.	The Dynamics of Party Politics.....	90
3.15.	Conclusions.....	91
4.	Facets of Failure: International Indigenous Rights Promotion.....	94
4.1.	International Support to the Inter-Ministerial Committee (IMC).....	94
4.1.1.	The UNDP's Highland Peoples Program.....	95
4.1.2.	Diversity-Friendly Rhetoric amid Growing Challenges	99
4.1.3.	Attempting to Incorporate ILO Indigenous Rights Standards via the IMC.....	101
4.2.	The New Land Law and Nominally Improved Legal Protection.....	103
4.2.1.	Misrecognizing Highland Peoples as Backward Khmer Entities.....	105
4.2.2.	Land Law Implementation Challenges.....	108
4.2.3.	Conserving Collectivist Communities	110
4.2.4.	ADB-Support for 'Indigenous Peoples/Ethnic Minority Issues'.....	113
4.3.	UNDP Access to Justice and Conservative Multicollectivism.....	116
4.3.1.	'Impunity, Corruption, Power of Position ... De Facto Law of the Country'	119
4.3.2.	Fabricating Traditions and Proposing Legends for Legislation.....	121
4.3.3.	Documenting Ancient Past and Fixed Rules as Approach to Law-Making.....	126
4.4.	Why the International Attempt to Promote Indigenous Rights Failed.....	130
5.	Decentralization and Indigenous Peoples' Empowerment.....	136
5.1.	Cambodia's Decentralization Reform	139
5.2.	International Support to Decentralization: RILGP	140
5.3.	Indigenous Development Priorities and Negative Impacts.....	142
5.4.	Commune Councils and Land Conflict.....	146
5.5.	The Significance of Draft Rights in a Predatory State	147
5.6.	Engineering Consent and Institutionalizing Misrepresentation.....	148
5.7.	Mainstreaming Indigenous Peoples Instead of Indigenous Rights.....	150
5.8.	The Unequal Benefits of Standardized Participation	152
5.9.	Expanding the Scope of Unmade Agreements and Broken Promises	153
5.10.	Capacity Building and Discontinued Institutions	153
5.11.	Monitoring the Other Way	154
5.12.	Conflict-Resolution or Conflict-Creation?	155
5.13.	A Strategy of Avoiding Safeguard Obligations.....	156
5.14.	Conclusions.....	157
6.	Khmer Citizenship and Highland Peoples – Voices from the Field.....	160
6.1.	Self-Identification and Identification by Others	160
6.2.	Separateness vs. Integration	162
6.3.	In-Migration Undermining Realization of International Norms.....	165
6.4.	Modernization vs. Integration: Becoming Khmer?	167
6.5.	Shifting Pattern of Language Use and Comprehension.....	170
6.6.	Centralizing Transfer of Authority from Minority to State Institutions.....	172
6.7.	Changing Attitudes and Inter-Ethnic Relations	174
6.8.	Increasing Poverty and Threats to Traditional Livelihoods	176
6.9.	Commune Boundaries and Territorial Concentration of Indigenous Communities	179
6.10.	Minority and State Institutions: Marginalization and Hybridization.....	180
6.11.	Decline of Meaningful Local Representation.....	183
6.12.	Linguistic Exclusion from Local Governance	187
6.13.	Misprioritization of Roads Facilitates Imposition, Dispossession	191

6.14.	Local Governance Institutions Unresponsive, Often Predatory	193
6.15.	Perceptions of Conflict Resolution: ‘Many Institutions, No Justice’	197
6.16.	Indigenous Peoples’ Disadvantages in Education	202
6.17.	The Politics of Minority Education: Integration, not Accommodation	206
7.	Conclusions.....	211
7.1.	Cambodia’s Minorities and the Internationalization of Minority Rights.....	211
7.2.	International Minority Categories and Cambodia’s Diversity	213
7.3.	Incomplete Inclusion: Immigrant Groups and Khmer Citizenship.....	214
7.4.	International Failure to Promote Indigenous Rights.....	216
7.5.	Why International Rights Promotion Failed and What to Learn from It.....	223
7.6.	China and the International Community’s Decreasing Influence.....	227
7.7.	The Complicity of the International Community	229
7.8.	Recommendations.....	230
8.	Literature.....	235

Acronyms

ADB	Asian Development Bank
ADHOC	Cambodian Human Rights and Development Association
ASEAN	Association of Southeast Asian States
A2J	Access to Justice Program
CARERE	Cambodia Area Rehabilitation and Regeneration Project
CCHR	Cambodian Center for Human Rights
CGDK	Coalition Government of Democratic Kampuchea
CIA	Central Intelligence Agency
CIDSE	Coopération Internationale pour le Développement et la Solidarité
CIYA	Cambodian Indigenous Youth Association
CLP	Council for Land Policy
CoM	Council of Ministers
CPP	Cambodian People’s Party
DEMD	Department for Ethnic Minority Development
FULRO	United Front for the Liberation of Oppressed Races
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia
GDP	Gross Domestic Product
HPP	Highland Peoples Program
HP Plan	Highland Peoples Development Plan
IASG	UN Inter-Agency Support Group on Indigenous Issues
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDRC	International Development Research Centre
ILO	International Labour Organization
IMC	Inter-Ministerial Committee for Highland Peoples Development
IPOA	Indigenous Peoples’ Organizations Alliance
IRAM	Indigenous Rights Active Members
IYDP	Indigenous Youth Development Project

KPNLF	Khmer People’s National Liberation Front
LICADHO	League for the Promotion and Defense of Human Rights
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NTFP	Non-Timber Forest Products
OD 4.20	Operational Directive 4.20
OHCHR	Office of the High Commissioner for Human Rights
OPKC	Organization to Promote Kuy Culture
PBC	Planning and Budgeting Committees
PDK	Party of Democratic Kampuchea
PRK	People’s Republic of Kampuchea
RGC	Royal Government of Cambodia
RILGP	Rural Investment and Local Governance Project
SOC	State of Cambodia
SRN	Sangkum Reastr Niyum (People’s Socialist Community)
SRP	Sam Rainsy Party
UN	United Nations
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration of the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children’s Emergency Fund
UNIPP	UN Indigenous Peoples Partnership
UNTAC	United Nations Transitional Authority for Cambodia
US	United States

Illustrations

Illustration 1: Map of Cambodian Provinces	4
Illustration 2: Minority Categories according to Kymlicka	25
Illustration 3: Territorial Distribution of Ethnic Groups	29
Illustration 4: Territorial Distribution of Highland Peoples	39
Illustration 5: Map of Concessions in 2012	67

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1. The Incomplete Internationalization of Liberal Multiculturalism

1.1. Introduction

The idea of a distinctly ‘liberal’ form of multiculturalism has emerged in the theory and practice of Western democracies, and the international community has become actively engaged in its global dissemination via international norms and organizations. Liberal multiculturalism defends some forms of minority rights as advancing basic liberal values of individual freedom, democracy, and social justice. The internationalization of liberal minority rights norms faces many challenges. To help identify these challenges, it is useful to focus on one country and one particular interpretation of liberal multiculturalism. To this end, this thesis explores state-minority-relations in Cambodia in light of Will Kymlicka’s theory of multicultural citizenship. Kymlicka’s conception of multicultural citizenship shares many of the basic assumptions of other liberal theorists of multiculturalism and helps making sense of Western multiculturalism as well as of emerging international minority rights norms. Unlike other theorists, Kymlicka has explicitly discussed the potential for adopting liberal multiculturalism in non-Western societies.

The following analysis focuses on two broad sets of questions about the potential transferability of liberal multiculturalism to non-Western countries raised by Kymlicka’s account. Firstly, Kymlicka argues that Western multiculturalism is not just a response to the value of cultural membership, but also a response to practices of state nation-building, and that the dialectic of nation-building and minority rights may be equally applicable to non-Western societies, even where majorities and minorities are more ‘communitarian’ (Kymlicka, 2001b). Secondly, Kymlicka defends the position that Western multiculturalism depends on being able to distinguish between different kinds of groups that have different types of rights. In particular, it depends on a distinction between historic national minorities entitled to language and self-government rights and immigrant groups entitled to weaker cultural rights aimed at full membership in mainstream institutions (Kymlicka, 2007: 66-75). This distinction may not be equally applicable to non-Western societies. In short, Kymlicka’s account suggests that there are important commonalities, specifically the prevalence of state nation-building, as well as important differences, specifically the types of ethnic groups that need to be considered when discussing the relevance of liberal multiculturalism for Cambodia. This thesis takes these questions as a starting point for a more extended exploration of citizenship and state-minority-relations in Cambodia.

Like many countries where the international community promotes application of international minority rights norms, Cambodia is not a liberal state (McCargo, 2005). The ruling Cambodian People’s Party retains a firm grip on power through its control of patronage and government resources (Lizee, 1996; Peou, 2000). Prime Minister Hun Sen has ruled Cambodia for 27 years, and his Cambodian People’s Party (CPP) in various

reincarnations has been in power since 1979. Virtually all provincial and district governors, provincial line department directors, office chiefs, and military officers as well as 98 per cent of commune chiefs and the great majority of ordinary bureaucrats are loyal to the CPP (Pak & Craig, 2008: 63). The abuse of power, land seizures, deforestation, and environmental destruction are all common in Cambodia and often involve members of the police, the military, or others well connected to the ruling elite. Cambodia's human rights record is poor. The courts lack independence and are regularly used to silence and jail critics (LICADHO, 2012; Subedi, 2012b). The freedom of speech and assembly are severely restricted (CCHR, 2012; LICADHO, 2010, 2011). The state is seen by many as an instrument of the rich and powerful to exploit the poor and vulnerable (Global Witness, 2007; Heder, 2005; Hughes, 2008). Poor communities all over Cambodia suffer from land grabbing, illegal land sales, and large-scale commercial concessions, which routinely involve high-ranking state officials (Ghai, 2007; Leuprecht, 2004; Subedi, 2012a). On the Corruption Perception Index published by Transparency International, Cambodia ranks 157th out of 176 countries and territories listed (Transparency International, 2012). Cambodia also scored the lowest in the entire Asian region for the 2012 Rule of Law Index, an annual measurement by the World Justice Project (Agrast, Botero, Ponce, Martinez, & Pratt, 2012: 72).

Predictably, the lawless and predatory nature of governance in Cambodia poses great challenges for the promotion of compliance with international human and minority rights norms. Nevertheless, Cambodia has a distinctly liberal Constitution. Liberal values are prominent in public discourse and regularly invoked by Cambodia's political parties, civil society organizations and, if less enthusiastically, the Kingdom's government. These are indications that liberal principles have some relevance in Cambodia, and that liberal multiculturalism, too, might resonate well with the aspirations of the Cambodian people. Moreover, Cambodia's national budget relies heavily on international assistance, and the international community is actively promoting liberal values, including international minority rights norms. From 2000-2005, aid as a percentage of domestic revenue varied from 45 to 60 per cent (Pak & Craig, 2008: 36). Between 1993 and 2005, foreign aid totaled over US\$ 5.66 billion (Richmond & Franks, 2007: 42). Between 1992 and 2001, 4 billion were spent through non-governmental organizations (NGOs) (Richmond & Franks, 2007: 33). About 80 per cent of Cambodia's development programs are financed from international aid (Pak & Craig, 2008: 7). The United Nations (UN) nominally governed Cambodia from March 1992 until September 1993 through the United Nations Transitional Authority in Cambodia (UNTAC) and organized an election under conditions of relative freedom and democracy. Numerous UN agencies continue to operate in Cambodia, as well as large numbers of international NGOs. Throughout and since the UNTAC-period, various UN-organizations and many NGOs have taken initiatives specifically aimed at promoting application of international minority rights norms across a wide range of reform sectors. Cambodia's reliance on international support and a large presence of sympathetic UN agencies and international NGOs are factors that would plausibly be conducive to the

promotion of international minority rights norms.

Arguably, the particular structure of Cambodia's cultural diversity, too, makes the realization of international minority rights more feasible than it is in many other non-Western countries. An overwhelming majority of Cambodia's population of nearly 15 million consider themselves to be ethnic Khmers and speak Khmer as a first language. Cambodia's ethnic minorities include the ethnic Vietnamese, Chinese and Lao. Cambodia is also home to a significant population of Muslim Cham, descendants of the Kingdom of Champa that existed in present-day central Vietnam until the middle of the nineteenth century, as well as at least 23 small, linguistically distinct highland peoples. Reliable data of Cambodia's cultural diversity is not available. The CIA World Factbook estimates that ethnic Khmer account for 90 per cent of the population, ethnic Vietnamese for five per cent, Chinese for one per cent, and 'other' ethnic groups for four per cent (CIA, 2012). Cambodia's most recent census, undertaken in 2008, puts the total population at 13.4 million individuals. It does not differentiate between ethnic groups. According to census data on mother tongue, Khmer speakers make up 96.31 per cent of the population (12.9 million individuals), followed by speakers of Cham (1.52 per cent, 204,000 individuals), Vietnamese (0.54 per cent, 73,000 individuals), Bunong (0.28 per cent, 38,000 individuals), Tampuan (0.23 per cent, 31,000 individuals), and Kuy¹ (0.21 per cent, 29,000 individuals) (National Institute of Statistics, 2008). The latter three languages belong to highland groups, of which 23 are mentioned by the census. Highland groups combined make up 1.34 per cent of the population, or about 179,000 individuals, according to the census. Speakers of Lao account for only 0.14 per cent, or 19,000 individuals while Chinese speakers make up 0.05 per cent of the population, or 6,500 individuals (National Institute of Statistics, 2008). Numbers based on mother tongue underestimate the membership of the respective minority groups, because many who self-identify as minority members speak Khmer as a first language or would report Khmer as their mother tongue to census officials. Nevertheless, census data accurately indicate that Cambodia's population is culturally relatively homogenous and that there are no large, homeland-based historical minorities. This particular multicultural configuration means that the scale of state reorganization that would be required to realize international minority rights norms is comparatively modest, as the following analysis demonstrates.

Given Cambodia's liberal Constitution, the state's considerable financial dependence on the international community, the presence of numerous international organizations and the opportune structure of Cambodia's cultural diversity, one might expect the international community's encouragement to adopt international minority rights norms to fall on relatively fertile grounds. However, almost 20 years of international minority rights promotion did not move Cambodia towards convergence with international norms. The following analysis investigates the reasons for this failure.

¹There are many different ways of spelling the names of Cambodia's various highland groups in the literature. For the sake of consistency, this text utilizes what appeared to be the most common spelling of particular names, unless in direct quotations.

1.2. Research Design and Methodology

The analysis draws on extensive field research conducted in 2007-08 by a team consisting most of the time of the author and the Cambodian anthropologist Chen Sochoeun². Empirical research was exploratory in nature and covered considerable ground, in terms of geography, ethnicity, and topics. Interviews and focus group discussions were carried out in the provinces Ratanakiri, Mondulhiri, Stung Treng, Kratie, Kampong Cham, Kampong Chhnang, Kandal, Pursat, Kampot and in the capital, Phnom Penh. Consultations took place among ethnic Brao, Bunong, Cham, Chinese, Chong, Jarai, Kavet, Khmer, Kreung, Kuy, Lao, Por, Stieng, Tampuan, and Vietnamese. A total of more than 250 interviews and group discussions were undertaken in more than 90 villages in 35 communes. The following map provides an overview of the location of Cambodia's provinces.

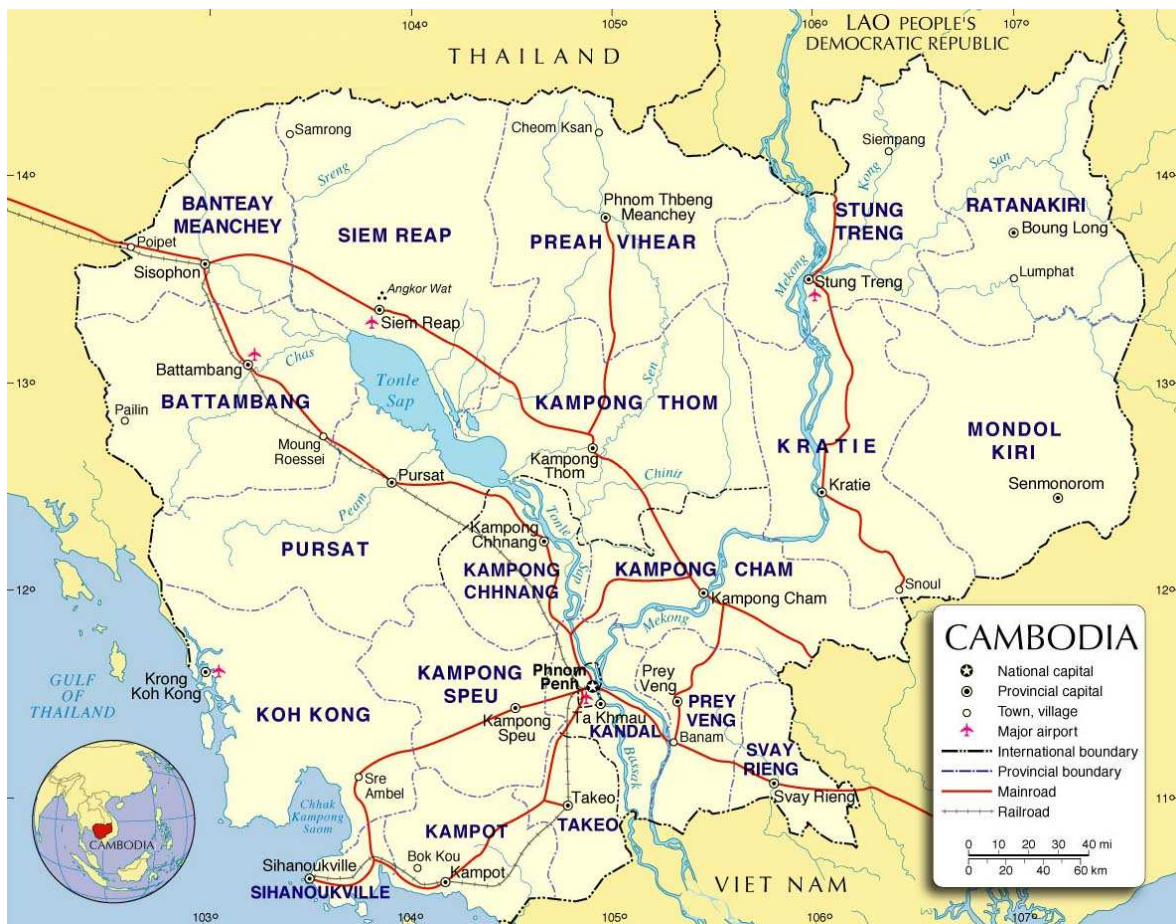


Illustration 1: Map of Cambodian Provinces (Source: UN Department of Peacekeeping Operations, 2004)

Field research covered a wide range of topics related to the situation and aspirations of various minority groups as well as to the attitudes of the Khmer majority and state officials. An initial list of topics was drawn up in light of the theoretical framework and literature review. Based on these topics, an extensive list of guiding questions was developed in consultation with experts and tested among different minority communities.

²In the interest of full disclosure, I would like to mention that, prior to embarking on this doctoral project, I have worked for several development organizations in Cambodia, such as the International Labour Organization and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

In the course of testing, it became clear that any catalogue of questions would not do justice to the diversity of situations and aspirations of different minority communities in different parts of the country. Many questions that were relevant to some groups were irrelevant to others. Therefore, a list with topics and sub-topics that proved to be relevant to different target communities was drawn up and served as a basis for interviews and group discussions. In preparation of individual interviews and group discussions, topics of particular interest to the respondent or focus group and to the local situation were selected. Discussions typically started with broad questions about the cultural composition of the village and commune, the history of habitation of various ethnic groups in the constituency, and the major challenges they faced in the views of respondents. Subsequent discussions featured topics such as:

- (self-) identification;
- language use and preferences;
- education;
- presence and role of minority institutions, minority capacity for self-organization and collective action, relationship to state authorities;
- presence and role of civil society organizations;
- poverty, absolute and in relation to other ethnic groups;
- ethnic composition of local authorities and their responsiveness to distinct minority needs;
- minority attitudes towards the state and its institutions, participation in state institutions;
- actual and desired degree of linguistic and institutional integration or separateness;
- adequacy of and benefits from local development projects;
- interethnic relations, attitudes towards members of other ethnic groups and migrants;
- conflicts within and between ethnic groups, role of state and minority institutions in mediation and resolution, perception of outcomes;
- dissenting voices, human rights concerns, women's and children's rights.

Most respondents were members of minority communities. Research also included large numbers of ethnic Khmers as well as many government officials, in order to analyze relevant majority attitudes and state practices towards minorities. In the selection of respondents from among government officials, one focus was on members of commune councils, because of the increasing weight these locally elected bodies are supposed to carry in the context of Cambodia's decentralization reform and because of the significance of decentralization reform for the realization of minority rights. Field research utilized primarily focus-group discussions and, to a lesser extent, individual interviews. Group-discussions not only allowed to simply, quickly, and conveniently collect data from several people simultaneously but also to make participants an active part of the analysis, encouraging them to explore issues they consider important, generating their own questions, and pursuing their own priorities. Group discussions enabled examination of attitudes and identification of common experiences, by exploring peoples' knowledge, by

analyzing how people think and why they think this way, by capitalizing on interaction between participants, by tapping into the operation of consensus and dissent, and by examining different types of narratives used within the group. Group discussions facilitated the elaboration of taboo and sensitive topics. Often, more outspoken participants ‘broke the ice’ for reluctant group members. Participants provided mutual support in expressing views and attitudes that are common to the group but considered to deviate from mainstream culture. Because women rarely spoke up in mixed groups, separate discussions were organized with female participants. In addition to group discussions, interviews with individual respondents were conducted where the organization of groups was unfeasible or where individual respondents were expected to be particularly insight- and resourceful with regard to particular questions.

Most interviewees, villagers as well as officials, were careful to avoid statements that could be perceived as criticizing the government. To enable an open debate and to protect participants from negative consequences, respondents were ensured anonymity and interviews were conducted without voice recording. For the same reasons, the particular villages in which interviews took place will not be identified. To reduce the risks of disadvantages for interviewees and to ensure an environment of trust, discussion with community members were organized separately from discussions with state officials.

Most group discussions and interviews were conducted in Khmer language or with ad hoc interpretation from the midst of the respective community. In Ratanakiri Province, several local interpreters joined the team to match languages spoken among the various communities visited. That interviews were conducted in Khmer language and with a Khmer colleague constitutes one of the limitations of the research design. Plausibly, minority members are less frank in talking about their relationships to the Khmer majority and the Cambodian state in such a setting and might answer questions differently. Another limitation is that the team typically spent only a few days in one village, sometimes only a few hours. This timeframe allowed meeting significant numbers of people but it did not allow building relations of trust and familiarity with many respondents.

Target provinces, communes, and villages were selected in consultation with minority organizations, NGOs, and government officials, with a view at reflecting the fullest feasible range of state-minority-situations in Cambodia. Efforts were made to cover longstanding homeland minorities as well as communities of relatively recent migrants, communities in remote and border areas as well as in accessible and urban settings, culturally homogenous as well as diverse constituencies, highland as well as lowland and coastal areas, communities that are highly integrated with Khmer society as well as groups that retain distinct languages and institutions, communities that experience intense conflict as well as communities that do not, communes and villages in which minority members form the minority as well as the majority of residents, territorially concentrated as well as dispersed groups, poor as well as prosperous communities, and communities based on a wide range of livelihoods and ecosystems.

The remainder of the present chapter characterizes the theory and practice of liberal multiculturalism in Western democracies and the internationalization of liberal minority rights norms. Drawing on Kymlicka's work, the chapter investigates why this attempt was largely unsuccessful. The second chapter discusses state-minority-relations in Cambodia in light of the earlier account of Western and international developments. The third chapter analyzes the situation and aspirations of Cambodia's ethnic Vietnamese, based on extensive field research. Chapters 4 and 5 investigate various initiatives undertaken by the international community in Cambodia aimed at promoting international minority rights norms application to Cambodia's highland peoples. The analysis shows that these initiatives have largely failed. Building on the discussion in the first chapter as well as on field research among highland peoples presented in Chapter 6, the analysis examines the current situation and aspirations of highland groups and the reasons for the failure of international initiatives.

1.3. Multiculturalism and Liberal Values

Liberal multiculturalism can be described as the position that some forms of minority rights advance basic liberal values such as individual freedom, democracy, and social justice. However, not all advocates of multiculturalism are liberals, and not all liberals support minority rights. Multiculturalism is not a homogeneous school of thought but rather a philosophical perspective that draws on a wide range of intellectual sources, including liberalism. In fact it is only during the last two decades that distinctly liberal theories of multiculturalism were developed and that support for minority rights emerged as a prominent position among liberal theorists (Kymlicka, 2001a: 17-38).

Several liberal multiculturalists identify individual autonomy as the defining value of liberalism and argue that it presupposes cultural membership. For Joseph Raz, liberalism "*upholds the value for people of being in charge of their life, charting its course by their own successive choices*" (1994: 181). In his view, people's ability to freely make and, if necessary, revise their choices requires the availability of meaningful options, which only culture can provide: "*options presuppose a culture*" (1994: 182). Buchanan, too, argues that

"culture not only makes salient a manageably limited range of alternative goals; ... it also does so in such a way as to endow certain options with meanings that allow the individual to identify with and be motivated by them ... culture serves to connect what otherwise would be fragmented goals in a coherent, mutually supporting way, offering ideals of wholeness and continuity, not only across the stages of a human life but over generations as well" (1995: 356).

Similarly, Kymlicka argues that liberalism rests on "*the importance of allowing individuals to make free and informed choices about how to lead their lives*", adding that

"what enables this sort of autonomy is the fact that our societal culture makes various options available to us. Freedom, in the first instance, is the ability to

explore and revise the ways of life which are made available by our societal culture” (2001a: 53).

The choices people make between conceptions of the good life requires understanding of the meanings assigned to these choices by culture, language, and history. Cultures not only provide options to citizens, but make these options meaningful to them. Only access to a societal culture provides individuals with meaningful choices. Because access to a societal culture is a precondition of individual autonomy, liberalism mandates support for group-differentiated rights that help secure this access for members of minority cultures (Kymlicka, 1995: 75-106).

Margalit and Raz, too, highlight that cultural membership

“greatly affects one’s opportunities, one’s ability to engage in the relationships and pursuits marked by the culture ... if the culture is decaying, or if it is persecuted or discriminated against, the options and opportunities open to its members will shrink, become less attractive, and their pursuit less likely to be successful” (1995: 87).

The well-being of individuals is linked to the flourishing of the “*encompassing groups*” to which they belong:

“Individuals find in them a culture which shapes to a large degree their tastes and opportunities, and which provides an anchor for their self-identification and the safety of effortless secure belonging” (Margalit & Raz, 1995: 86).

Several liberal theorists interested in issues of nationalism, too, highlight the strong link between individual autonomy and cultural, or national, identity (D. Miller, 1995; Spinner-Halev, 1994; Tamir, 1993). Yael Tamir, for example, defines liberalism in terms of its respect for personal autonomy, reflection, and choice. David Miller, as part of his liberal defense of nationality, says that

“the nationalist case for protecting a common culture as a source of identity and a condition for personal choice can be extended to sub-national cultures, which may be equally essential to a person’s sense of her own identity, and equally important in providing a rich array of options to choose between” (D. Miller, 1995: 147).

Many of the authors commonly described as ‘communitarians’, while often critical of the priority liberals assign to individual autonomy, endorse the view that culture is important for individual well-being. Charles Taylor, for example, highlights the importance of recognizing and affirming culture as a matter of ensuring the well-being of individuals, noting that

“a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and

reduced mode of being” (1992: 25).

Culture is also closely linked to the liberal value of deliberative democracy. Several liberal theorists interested in how the institutions of a liberal-democratic state can ensure genuine inclusivity have demonstrated that group rights and deliberative democracy can be mutually supportive (Phillips, 1995; Spinner-Halev, 1994; Williams, 1998). These authors argue that democracy involves not simply the aggregation of individual preferences but their transformation through public reasoning in an uncoerced discussion. On this view, decisions resulting from inclusive deliberation are more impartial and legitimate than others. Deliberative democracy is linked to culture in several ways. Its practice requires participants’ willingness to moderate their claims in order to find common ground. This willingness to compromise, in turn, requires trust that other participants will reciprocate. In Miller’s view, “*only a common nationality can provide the sense of solidarity that makes this possible*” (1995: 98).

Another link between the liberal value of deliberative democracy on one hand and culture on the other concerns the role of language. Democratic deliberation presumes that participants understand each other and is greatly facilitated by a language that is common to all participants. Therefore, in Kymlicka’s view,

“national political forums with a single common language form the primary locus of democratic participation in the modern world, and are more genuinely participatory than political forums at higher levels that cut across language lines” (2001a: 227).

The third liberal value to which culture is closely linked by liberal theorists is social justice. As Miller argues, the functioning of a liberal democratic state requires the voluntary cooperation of citizens and thus presupposes the presence of trust in the state as well as in other citizens’ willingness to comply with the state’s demands (1995: 91). This is particularly the case where states are committed to ideals of social justice that involve the redistribution of resources to anonymous others who are less well off. Liberal nationalists argue that cultural, or national, membership can generate this trust and motivate the kind of ongoing sacrifices necessary to sustain a welfare state (Kymlicka, 2001a: 225).

1.4. Liberal Limits of Multiculturalism

Of course, not all minority rights promote liberal values of autonomy, deliberative democracy, and social justice. Consequently, one task for liberal promoters of minority rights is to identify the liberal limits of multiculturalism, to differentiate between minority rights that advance liberal values from minority rights that contradict these values. Liberal theorists take different positions on the question of how liberal states should respond to illiberal groups. Many argue that the state should encourage illiberal groups to comply with liberal values, such as Walzer (2003). Joseph Raz, in his *The Morality of Freedom*, stipulates the centrality of autonomy to Western society and suggests that illiberal cultures are inferior and harm their younger members (1986: 423-429). Therefore, nonliberal cultures should be tolerated only to the extent that they are viable, do not harm outsiders, and offer their members adequate and satisfying lives. Cultures that do not meet these

conditions should be assimilated. In his more recent *Ethics in the Public Domain* (1994), Raz takes a more nuanced view. Because even repressive cultures make meaningful options available to their members, they deserve to be tolerated, as long as they are not oppressive and provide their members with an effective right to exit as well as adequate opportunities to participate in the wider economic and political life (1994: 181).

Kymlicka, in contrast, aims to limit minority rights to measures that promote liberal values. To this end, he distinguishes between ‘internal restrictions’ and ‘external protections’. Internal restrictions are minority rights that involve claims of a group against its own members aimed at protecting unity from the destabilizing impact of internal dissent. Because internal restrictions limit group members’ freedom to question and revise group values and practices, these measures are not acceptable from a liberal point of view. In contrast, external protections are minority rights that involve the claims of a group against the larger society designed to reduce the group’s vulnerability to external pressures (Kymlicka, 1995: 34-48). Certain external protections, aimed at protecting minority groups from the exercise of majority power, can and should be endorsed in order to promote liberal values:

“a liberal view requires freedom within the minority group, and equality between the minority and majority groups. A system of minority rights which respects these two limitations is, I believe, impeccably liberal. It is consistent with, and indeed promotes, basic liberal values” (Kymlicka, 1995: 152).

1.5. Conservative Multiculturalism

Liberal multiculturalism can be distinguished specifically from ‘communitarian’, ‘conservative’, or ‘traditionalist’ variants of multiculturalism that aim at protecting supposedly pure, traditional ways of life and practices that are said to be essential to the authenticity and unity of particular minority groups. Conservative conceptions of minority rights contradict liberal principles, because they limit the choices group members may make about how to lead their lives. Underlying conservative conceptions of culture is a view that sees cultural hybridity and evolution as undesirable, and ignores that hybridity and cross-cultural borrowing, rather than ‘purity’ and ‘authenticity’, represent the normal state of cultural affairs (Kymlicka, 2007: 150). This point is also made by the flagship publication of the United Nations Development Programme, the Human Development Report, which highlights that culture *“is constantly recreated as people question, adapt and redefine their values and practices to changing realities and exchanges of ideas”* (2004: 4), while the *“insistence on cultural conservatism can discourage – or prevent – people from adopting a different lifestyle”* (UNDP, 2004: 16). Therefore, *“‘culture’, ‘tradition’ and ‘authenticity’ ... are not acceptable reasons for allowing practices that deny individuals equality of opportunity and violate their human rights”* (UNDP, 2004: 16).

Moreover, accepting political claims based on the supposed ‘authenticity’ of particular practices ignores that such claims tend to be internally contested and risks privileging interpretations of traditions that are advanced by conservative elites to protect their own

exercise of power over the community. Thus, conservative multiculturalism tends to delegitimize and marginalize reformers within minority groups and to remove conflicts over cultural practices from democratic debate. As the Human Development Report puts it: “it is not rare for groups to be dominated by people who have an interest in maintaining the status quo under the justification of ‘tradition’ and who act as gatekeepers of traditionalism to freeze their cultures” (UNDP, 2004: 4). The report concludes that “those making demands for cultural accommodation should also abide by democratic principles and the objectives of human freedom and human rights” (UNDP, 2004: 4). Kymlicka, too, argues that conservative interpretations of multiculturalism, by imposing a duty on group members to maintain their culture, represent “an abridgement not expansion of individual freedom” (Kymlicka, 2007: 101). In contrast, the liberal multiculturalism advocated by Kymlicka is, in his own words,

“inevitably, intentionally, and unapologetically transformational of people’s cultural traditions. It demands both dominant and historically subordinated groups to engage in new practices, to enter new relationships, and to embrace new concepts and discourses, all of which profoundly transform people’s identities and practices” (Kymlicka, 2007: 99).

Many theorists of multiculturalism are not liberals, and many critics assume that communitarianism drives the trend towards multiculturalism in the West. However, multiculturalism in the West is distinctly liberal, in its motivation as well as its effects. Communitarianism, or conservatism, is clearly not what shapes multiculturalism in the West, where minority rights come with robust legal mechanisms to safeguard human rights. “*Really-existing multiculturalism in the West*”, notes Kymlicka, “*is liberal multiculturalism*” (Kymlicka, 2007: 108). International minority rights norms, too, are distinctly liberal and incompatible with conservative conceptions of multiculturalism, as the following discussion shows.

Several governments in Asia, such as those of Singapore, China, Malaysia, and Indonesia, have rejected ideals of universal, individual human rights, arguing that these norms are an expression of particular Western ideas about the relationship between individuals and the state. In contrast, Asian societies are said to be characterized by distinctly communitarian, ‘Asian values’ that emphasize social harmony and consensus³. Similarly, some commentators have argued that liberal multiculturalism and international minority rights norms are in conflict with Asian values (Huat, 2005). However, even if one accepts this dichotomy between an individualistic West and a communitarian East, minority rights are often claimed precisely based on communitarian, ‘Asian’ values of protecting community welfare and respecting traditions, ancestors, parents, and elders. So-called Asian values support minority rights, whereas the integration or assimilation of minorities contradicts these values (Kymlicka, 2001b). Nevertheless, the following chapters show that the

³For a useful overview of the debate, see (Bauer & Bell, 1999).

international community in Cambodia has ended up supporting conservative minority rights conceptions that correspond neither to liberal or international ideals nor to the actual aspirations of minority groups.

1.6. Minority Rights as Response to State Nation-Building

Before turning to the situation in Cambodia, it is useful to consider one particular interpretation of liberal multiculturalism. Kymlicka's conception of multiculturalism shares many of the assumptions of other liberal promoters of multiculturalism. Unlike other theorists, however, Kymlicka explicitly discusses the applicability of liberal multiculturalism outside Western countries. Specifically, he demonstrates that liberal multiculturalism in the West is usefully understood as a response to various practices of state nation building. Modern states engage in deliberate projects of disseminating a national identity among diverse populations. To this end, states employ a wide range of policies, such as adopting the dominant group's language as exclusive, official, 'national' language, establishing nationalized systems of universal education that privilege the language and history of the dominant group, centralizing political power in the institutions of the dominant group, constructing national legal and judicial systems based on the language, traditions, and norms of the dominant group, encouraging members of the dominant group to migrate to minority homelands in order to dilute their territorial concentration, and dispossessing minorities of their lands and natural resources (Kymlicka, 2007: 62-3). Even where the human rights of individuals are respected, state nation-building systematically privileges members of the dominant group and disadvantages minority members, not just symbolically but also economically, politically, and socially: "*State nation-building is not just about recognizing a particular majority identity*", highlights Kymlicka,

"but also about building public institutions around that identity, so that it becomes a source of economic opportunity, political power, and social prestige. Liberal multiculturalism has the same aspiration to link identities and interests. It not only recognizes particular minority identities, but seeks to transform the economic opportunities, political powers, and social status available to bearers of that identity" (2007: 81).

Liberal multiculturalism does not seek to replace state nation-building, but to balance it with group-differentiated rights that protect minorities from the standard threats they face in nation-building states. On this view, minorities need protection from states not only as a matter of liberal values, but as a matter of universal, basic norms of equality and fairness between groups and their members in modern states (Kymlicka, 2001a: 242-253).

1.7. Minority Categories in the West

Western experience suggests that different kinds of minorities relate differently to the institutions of aspiring nation-states and respond to nation-building with different strategies and claims. Specifically, multiculturalism in the West depends, in theory and in practice, on

a distinction between ‘old’ minorities, or ‘homeland groups’, on one hand and ‘new’ minorities, or immigrant groups, on the other (Kymlicka, 2005: 23-28). The presence of immigrant groups results from voluntary decisions by individuals and families to leave their culture and migrate to another country. Typically, immigrant groups do not resist nation-building and do not seek to establish distinct societies within the state. Instead, they aspire to full membership in the larger society and participation in its institutions on par with members of the majority culture (Kymlicka, 1995: 10-26). Liberal states that contain immigrant groups, ‘polyethnic states’ in Kymlicka’s terminology, have responded to the claims of migrant groups with measures designed to make public institutions more accommodating and respectful of immigrant identities, in order to enable full membership in the institutions of the larger society (Kymlicka, 2001a: 91).

Old minorities, or homeland groups, on the other hand, typically result from the involuntary incorporation into a state of territorially concentrated, historically self-governing societies. ‘Multinational state’ is the term Kymlicka proposes to refer to polities that contain this kind of minorities. Homeland minorities typically resist the state’s nation-building enterprise and seek the perpetuation of their cultures as separate societies alongside the majority culture, by claiming self-government and language rights (Kymlicka, 1995: 10-12). Within this category of homeland minorities, Western democracies distinguish between national minorities and indigenous peoples. National minorities were historically active contenders but losers in the process of European state formation, such as the Basques, Flemish, Catalans, and Québécois. Indigenous peoples, in contrast, were isolated from the system of European states, such as American Indians, Sami, First Nations, Maori, and Inuit. This sub-distinction, however, is secondary to the operation of multiculturalism in the West, where national minorities as well as indigenous peoples today enjoy self-government based on historical inhabitation and official recognition of their languages (Kymlicka, 2001a: 120-132). Primary to Western multiculturalism is the distinction between national minorities and immigrant groups. In liberal states today, there is virtually no sizeable national minority that does not enjoy substantial language and self-government rights and there is no group of recent immigrants that does.

A third category of minorities is excluded from membership of mainstream societal institutions, even if their members want to integrate. ‘Metics’ is what Kymlicka calls this diversely constituted category of long-term residents who are denied citizenship, such as irregular and temporary migrants, ‘guest workers’, and refugees. In the past, Western democracies responded to the claims of metics not with linguistically and institutionally more inclusive policies but with policies of exclusion. However, in the experience of Western countries, it has become clear that these policies have largely failed. Metics who have become de facto permanent residents in their new country and who may have established families are unlikely to leave unless they are forced to (Kymlicka, 2002: 357-359). Depriving long-term residents of citizenship creates conflicts and tensions that may

affect the entire society. It is increasingly recognized that such policies have not only been empirically demonstrated to be flawed but also are normatively inadequate. As Carens puts it, “*human beings who have been raised in a society become members of that society: not recognizing their social membership is cruel and unjust*” (Carens, 2009: 3). Kymlicka argues that legitimate nation-building in a liberal context requires that everyone living on the territory is able to become an equal member of the nation. Moreover, the nation into which immigrants are required to integrate should be ‘thinly’ defined in terms of institutions and language, rather than ‘thickly’ in terms of particular sets of customs, religious beliefs, or lifestyles. Finally, homeland minorities should be allowed to maintain themselves as distinct societies alongside the majority culture (Kymlicka, 2001c: 48).

1.8. Preconditions of Liberal Multiculturalism in the West

Kymlicka argues that liberal multiculturalism is fairly successful in the West:

“liberal multiculturalism is not just compatible with the basic functioning of a liberal-democratic state, but actually helps to deepen liberalization and democratization. It can challenge inherited ethnic and racial hierarchies, and reduce cultural stigmatization, political marginalization, and economic disadvantages” (2007: 166).

However, it is important to differentiate liberal multiculturalism as a normative theory from the actual policies of liberal states, which often do not match theoretical ideals. The success of liberal multiculturalism has varied greatly between different kinds of groups, according to Kymlicka. The model of multilingual, multinational federalism for the accommodation of national minorities has been the clearest example of success (Kymlicka, 2007: 146). Western multiculturalism was also relative successful in integrating immigrant groups and in reducing cultural, political, and economic inequalities facing them (Kymlicka, 2007: 158). Indigenous peoples have benefited from greater control over land and resources, increased respect for their languages and cultures, enhanced self-government and representation, as well as from greater consultation and opportunities for political participation. However, these improvements have not translated into substantial reductions of the considerable social and economic disadvantages faced by indigenous peoples in the West (Kymlicka, 2007: 147-148). That these inequalities are lower in countries with stronger indigenous rights policies suggests that further progress depends on strengthening these policies (Kymlicka, 2007: 148-154).

Given the destabilizing impact of ethnic conflict in many parts of the world, the contribution liberal multiculturalism has made to transforming sometimes violent minority-state-relations in the West into conflicts managed peacefully within the confines of democratic process and human rights norms merits consideration of liberal multiculturalism as a way to pacify ethnic politics in other regions of the world. However, any attempt to promote liberal multiculturalism internationally should be cautious of the particular conditions that enabled its emergence in the West. What explains the pervasive

trend towards the adoption of liberal multiculturalism across liberal democracies, according to Kymlicka, are a number of factors that have enabled increasingly assertive claims-making by minorities on one hand and on the other hand, made dominant groups and states more willing to accept such claims.

The first factor that has enabled assertive minority claims-making concerns the human rights revolution, which replaced an international order based on racial and ethnic hierarchies with the idea of the inherent equality of human beings, as individuals and as peoples. This idea, manifest in the adoption of the Universal Declaration of Human Rights in 1948, both inspires and constrains the emergence and operation of multiculturalism in the West. It triggered a sequence of political movements that led from decolonization through desegregation to contemporary multicultural struggles, by challenging inherited ideas of inequality (Kymlicka, 2007: 89). These ideas have inspired a strong rights-consciousness on the part of subordinated groups of their entitlement to equality, which is increasingly demanded as a right (Kymlicka, 2007: 91). Democracy is the second factor that has facilitated assertive minority claims making. Democratization has helped removing minorities' fears that states may respond to rights claims with oppression. Thus, democratization has encouraged minority mobilization. Furthermore, argues Kymlicka, democratization has opened up multiple access points to decision-making that allow minorities to pursue their claims through different political parties, at different levels and through different branches of government, or via international mechanisms (2007: 110). The third factor that has facilitated minority claims-making in the West, according to Kymlicka, is demographics. The long-held expectation that ethnic minorities would gradually disappear, not least as a result of nation-building, has turned out to be wrong. To the contrary, immigrant populations cherishing their distinct heritages are growing in most Western countries, and national minority populations are not diminishing, leading Kymlicka to conclude that "*the numbers are shifting in the direction of non-dominant groups*" (2007: 111). Taken together, the human rights revolution, democracy, and demography have enabled the emergence of increasingly vocal minority mobilization in liberal democracies:

"Increasing rights-consciousness, increasing access to multiple arenas of safe political mobilization, and increasing numbers all help to explain the growing strength of political mobilization by ethnic groups in the West" (Kymlicka, 2007: 111).

Liberal multiculturalism owes its widespread adoption in the West not only to pervasive and assertive minority claims-making but also to the increasing willingness of dominant groups to accept minority claims. This has been made possible by two factors in particular.

Firstly, while human rights ideals have inspired claims for minority rights, they also constrain such claims. The protection of human rights and civil liberties is robustly institutionalized in liberal democracies, leaving no legal space for tyrannical minority rule within the state. Moreover, there is an inter-ethnic consensus on liberal-democratic values

that is shared by most minorities and that, together with legal protections, assures members of the majority that liberal multiculturalism will operate within the boundaries of liberal-democratic constitutions and human rights (Kymlicka, 2007: 93).

The second factor that increased majorities' willingness to accept minority claims in the West is what Kymlicka calls the 'desecuritization' of ethnic relations. Until recently, the treatment of minorities in Western states was shaped by geo-political fears of neighboring enemies. In the context of concerns that domestic minorities might collaborate with foreign powers to destabilize the state, ethnic relations were a matter of national security rather than democratic process (Kymlicka, 2007: 118-121). Minority claims were rejected or suppressed on the grounds that they might endanger the existence of the state. However, the establishment of NATO, argues Kymlicka, has successfully desecuritized ethnic relations, by removing the possibility of one Western state being invaded by another (2007: 119).

1.9. Assessing Preconditions outside the West

In contrast to liberal democracies, post-colonial states in Africa, Asia, and the Middle East continue to pursue ideals of monolingual, unitary statehood based on undifferentiated citizenship. According to Kymlicka, this can be explained by the absence of the preconditions of liberal multiculturalism. In these countries, autonomy claims by homeland minorities usually occur prior to the establishment of a well-functioning state and a democratic political culture, which dramatically increases the perceived risks of accepting such claims. In the absence of robust assurances that the operation of autonomy will respect the rights of minority as well as majority members, states and dominant groups are much less willing to accept minority rights claims (Kymlicka, 2007: 254-255). Moreover, many post-colonial states perceive of at least one of their neighbors as hostile and of certain domestic minorities as potential collaborators. In this context, accepting minority claims to autonomy is seen as a threat to the security of the state. This is particularly so in the case of so-called 'kin-state-minorities', homeland minorities whose ethnic kin make up the dominant group in a neighboring state. Kin-state-minorities are often assumed to be more loyal to their kin-states than to the state in which they find themselves in and to have irredentist aspirations. "*Where homeland minorities take the form of irredentist kin-state minorities*", says Kymlicka, "*there is a much higher likelihood that ethnic relations will be perceived as a threat to state security*" (2007: 184). Securitization tends to be even more pronounced where the state perceives of itself as weak in relation to the minority's kin state. This configuration often leads dominant groups to think of themselves as victimized minorities whose existence continues to be threatened. This 'minoritized majority' phenomenon does not exist in liberal democracies but is common in other parts of the world (Kymlicka, 2007: 185). Securitization of ethnic relations also occurs where a homeland minority is divided by an international border, raising the state's fear that the minority might be disloyal and collaborate with its kin-group and external powers to undermine the state's stability. Even where minorities appear powerless and marginalized,

securitization “*is likely to arise wherever states are weak, and regional security organizations do not exist, or are ineffective*” (Kymlicka, 2007: 257). The following chapters show that the minoritized majority phenomenon fittingly characterizes the relationship of Cambodia’s Khmer majority to its ethnic Vietnamese minority and the state of Vietnam, even though ethnic Vietnamese in Cambodia are not a homeland minority. Cambodia’s ethnic Lao are a homeland-based kin-state-minority but because they form a small group and because Laos is a weak state, securitization is less significant than it is with regard to the ethnic Vietnamese.

Another factor that inhibits the adoption of liberal multiculturalism in post-colonial states, according to Kymlicka, is widespread distrust of the international community, specifically the perception that international organizations are not committed to promoting the stability and integrity of non-Western states, and that international support for minority rights in fact serves to undermine these states (2007: 257-258). Moreover, he argues, moral arguments that support minority rights claims in the West might not apply with equal force in many non-Western states. Specifically, minorities claiming rights in the West have usually a history of unjust treatment by majority groups. In many post-colonial states, in contrast, imperial powers have privileged certain minorities in order to counterbalance challenges to their authority from dominant groups. The historic injustice argument almost always reinforces minority claims in the West but, as a result of colonial legacies, the same argument often weakens claims made by minorities in post-colonial states that are seen as historically privileged (Kymlicka, 2007: 261-263).

1.10. Partial Internationalization of Multiculturalism: “Indigenous Peoples”

The United Nations Charter in 1945 introduced “*the principle of equal rights and self-determination of peoples*” into international law. This principle was reaffirmed in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which were adopted in 1966 and state:

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

Nominally, the right to self-determination was accorded to all peoples. However, the relevant unit for self-determination in the actual process of decolonization became the colonial territory. The population as a whole was deemed the bearer of the right to self-government, regardless of how colonial boundaries related to the homelands of actual peoples or pre-colonial political arrangements (Anaya, 2004: 54). Decolonization thus accorded independent statehood to peoples who happened to dominate a given colonial territory and bypassed peoples that did not. As Anaya notes:

“the universe of values that promoted the emancipation of colonial territories during the middle part of the last century simultaneously promoted the assimilation of members of culturally distinctive indigenous groups into the dominant political and social orders that engulfed them”, adding that “nation building was a corresponding policy ... of breaking down competing ethnic or cultural bonds, a policy engaged in ... especially by newly independent states” (2004: 55).

The period after World War II was characterized by a rejection of minority-specific rights in international law and their replacement by an approach aimed at protecting minorities through guaranteeing the human rights of minority and majority members alike. The absence of minority rights from the Universal Declaration of Human Rights (1948) and the Charter of the United Nations highlights this approach, as well as Article 27 of the UN’s International Covenant of Civil and Political Rights (1966):

“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”.

The article accords rights not to minorities but to their members. Basically, Article 27 only re-states universal human rights and anti-discrimination norms already recognized in other international instruments but it does not accord positive group rights (Kymlicka, 2007: 35). The article does not target particular categories of minorities but applies generically to all minorities.

The only exception from the post-war rejection of targeted, positive minority rights at the UN-level pertains to the category of ‘indigenous peoples’ and specifically the adoption of Convention 107 by the International Labour Organization (ILO) in 1957. ILO Convention 107 concerning the *“Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries”* deviates from the generic approach of the ICCPR’s Article 27 in that it targets particular kinds of minorities. Article 1 distinguishes between tribal populations *“whose social and economic conditions are at a less advanced stage”* on one hand and on the other, populations *“regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation”*. Despite the distinction between indigenous and tribal populations, the Convention accords the same rights to both categories of groups. The concept of ‘indigenous people’ had long before emerged in international law in the context of European overseas colonization (Anaya, 2004: 15-47). Correspondingly, James Anaya’s accounts of indigenous peoples in international law starts from the European colonization of the *“people living on the continents now called North and South America”*. Highlighting the presence of *“similar patterns of empire and conquest”* in other parts of the world, Anaya adds that

“those who already inhabited the encroached-upon lands and who were subjected to oppressive forces became known as indigenous, native, or aboriginal. Such designations have continued to apply to people by virtue of their place and condition within the life-altering human encounter set in motion by colonialism. Today, the term indigenous refers broadly to the living descendants of preinvasion inhabitants of lands now dominated by others” (2004: 3).

By grouping ‘indigenous’ and ‘tribal’ populations together in the same category, ILO Convention 107 explicitly provides for the widening of the ‘indigenous’ category and for the extension of its applicability beyond post-colonial states in the ‘New World’ (Kingsbury, 1999: 345-346). While Convention 107 targets particular kinds of groups, it accords positive rights primarily to individuals, as the reference to ‘populations’ rather than ‘peoples’ indicates. The attribute ‘less advanced’ highlights the paternalistic assumptions about the inferiority and backwardness of indigenous and tribal peoples on which the convention is based. Convention 107 accords rights not to enable self-government but to the contrary, as a provisional measure to facilitate integration into the institutions of the nation-state. For example, Article 2 declares the concerned population’s *“progressive integration into the life of their respective countries”* to be the *“primary responsibility”* of governments and Article 3 calls for the adoption of *“special measures”* of protection only *“so long as the social, economic and cultural conditions of the populations concerned prevent them from enjoying the benefits of the general laws of the country to which they belong”*.

Over time, however, the paternalistic and assimilationist approach of Convention 107 came to be seen as inadequate and a new generation of international instruments concerning indigenous peoples was developed. A ‘Meeting of Experts’ convened by the ILO in 1986 considered Convention 107’s principle of integration into the dominant national society to be *“destructive in the modern world”*, highlighting that, in practice, *“it had become a concept which meant the extinction of ways of life which are different from that of the dominant society”* (quoted in: Das, 2001: 47). The adoption of ILO Convention 169 concerning *“Indigenous and Tribal Peoples in Independent Countries”* represented a profound shift from assimilationist principles to an ideal of self-government. This ideal is well captured by the preamble’s recognition of

“the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live”.

The use of the term ‘peoples’, rather than ‘populations’, too, marks this shift, because of its close association with the right to self-determination in international law, where it is conventionally understood to include the right to independent statehood (Anaya, 2004: 60). Article 1 of the Convention determines that it applies to

- a. *“tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;*
- b. *peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”.*

To groups in both categories, Convention 169 accords a wide range of substantial, positive, group-differentiated rights in areas such as land, natural resources, and education, as well as far-reaching rights to consultation and participation. For example, according to Article 7, indigenous and tribal peoples

“have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly”.

Convention 169, in Kymlicka’s view, was *“perhaps the first real example of a ‘multiculturalist’ international norm in the post-war era, unambiguously accepting the principle of positive, group-specific rights”* (2007: 32). The adoption of Convention 169 and the *“decolonization-based model of indigenous rights”* (Kymlicka, 2007: 281) underlying it is one of many instances that exemplify a veritable internationalization of minority rights as well as a profound shift in international norms from assimilation to accommodation of indigenous groups. Other instances are the institutionalizing of a UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples in 2001, the UN General Assembly’s designation of 1993 as ‘The International Year of the World’s Indigenous People’, the proclamation one year later of ‘The International Decade of Indigenous Peoples’, and the establishment of the Permanent Forum on Indigenous Issues within the UN Economic and Social Council in 2003. The World Bank adopted a safeguard policy for indigenous peoples, Operational Directive 4.20, in 1991. Similar policies were adopted by regional development banks such as the Asian Development Bank and the Inter-American Development Bank. The United Nations Development Programme (UNDP) issued a ‘Practice Note on Engagement’ with indigenous peoples in 2001 (UNDP, 2001), and the United Nations Development Group (UNDG) adopted ‘Guidelines on Indigenous Peoples’ Issues’ in 2008 (UNDG, 2008). The UN Inter-Agency Support Group (IASG) on Indigenous Issues was established in 2002 and in 2011, the UN Indigenous Peoples Partnership (UNIPP) was created, bringing together

the ILO, the Office of the High Commissioner for Human Rights (OHCHR), the UNDP, the United Nations Population Fund (UNFPA), and the United Nations Children's Fund (UNICEF). Arguably, the most significant step in this process of minority rights internationalization was the adoption of the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) in 2007. This instrument attributes to indigenous peoples an extraordinarily wide range of the strongest possible minority rights, including the right to 'self-determination'. Consider just a few of the articles that the UN Declaration describes as "*minimum standards*":

Article 3: Indigenous peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 26: Indigenous peoples have the right to own, develop, control and use the lands and territories ... which they have traditionally owned or otherwise occupied or used.

The shift towards recognizing the need for certain targeted minority rights is not limited to norms targeting indigenous peoples. In parallel to international developments pertaining to indigenous peoples, the UN International Covenant on Civil and Political Rights' Article 27 was updated with the adoption of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities in 1992, which reinterprets the right to one's culture to encompass positive minority rights (Kymlicka, 2007: 35). Several UN-institutions dedicated to 'minorities' were established, such as the UN Working Group on Minorities in 1995 and the UN Independent Expert on Minority Issues in 2005. Together, emerging international minority rights norms and their global dissemination mark a profound transformation in the ideals of statehood and citizenship promoted by the international community:

"In contemporary international discourse", notes Kymlicka, "the idea of a centralized, unitary, and homogenous state is increasingly described as an anachronism" whereas "pluralistic, multilingual, and multilevel states with complex internal structures for recognizing and empowering regions and minorities are increasingly seen as representing the more truly 'modern' approach" (2007: 42-43).

As with liberal multiculturalism in the West, human rights norms inspire and constrain new international minority rights norms. International instruments and declarations all explicitly state that minority rights are meant to promote universal human rights and do not provide legal grounds for minority rights to limit enjoyment of individual rights. Article 46 of the UN Declaration of the Rights of Indigenous Peoples, for example, determines: "*In the exercise of the rights enunciated in the present Declaration, human rights and fundamental*

freedoms of all shall be respected". Similarly, ILO Convention 169 states in Article 3 that indigenous and tribal peoples "*shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination ... no form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned*". Relevant international minority rights instruments promote a distinctly liberal form of multiculturalism which rules out illiberal and oppressive practices and constrains the exercise of minority rights with universal human rights.

Indeed, argues Kymlicka, it was the apparent success of liberal multiculturalism in the West that inspired new international minority rights norms, and it was the escalation of ethnic conflict in many post-communist and post-colonial countries that triggered the rapid diffusion of these new norms starting in the early 1990s (2007: 171). The profound change in international norms and discourse, argues Kymlicka, hides a deeper failure. Elites in Africa, Asia, and the Middle East remain unconvinced of the new international norms and committed to building centralized, homogenizing, monolingual nation-states based on undifferentiated citizenship. The idea of territorial autonomy in particular is intensely resisted in most of these states (Kymlicka, 2007: 251). The failure of the international community to achieve adoption of international minority rights norms outside liberal democracies, Kymlicka contends, can be explained by the uneven occurrence of the five enabling conditions mentioned earlier, namely rights-consciousness, demographic changes, the availability of multiple access points for minorities' safe political mobilization, desecuritization, and robust human rights protections. Outside the West, argues Kymlicka,

"it remains a rather rare occurrence for all five conditions of liberal multiculturalism to converge, and there is no general tendency for this constellation of factors to become more common around the world" (2007: 133).

While the factors that enable greater demand for liberal multiculturalism, increasing rights-consciousness and democratization, are becoming more common around the world, a similar trend towards the conditions that enable acceptance of such claims to be more widely in place is not in sight. The result of this imbalance, argues Kymlicka, is

"serious political turbulence, as the demand for liberal multiculturalism exceeds its supply ... there is an obvious danger that the efforts of the international community ... might unintentionally exacerbate this imbalance, inciting greater demands for liberal multiculturalism without strengthening the conditions that enable their acceptance" (2007: 133-134).

1.11. Internationalization Inconsistent, Unstable, and Unsustainable?

The political turbulence is exacerbated, according to Kymlicka, by the particular way in which the internationalization of minority rights occurred along two separate and disconnected trajectories. On the one hand, there is the generic approach of the 1992 UN Declaration on the Rights of Persons Belonging to National, Ethnic, Religious, and Linguistic Minorities based on the right to enjoy one's culture. This approach accords

rights to all minorities regardless of their incorporation history, size, previous self-government, territorial concentration, and so on. It offers only minimal group-rights and does not address any of the distinct issues pertaining to territory, history, or maintenance of distinct cultures raised by homeland minorities (2007: 265). On the other hand, the targeted approach of the UNDRIP based on the category 'indigenous peoples' does accord very strong rights of the kind that respond to the history- and territory-based claims and the aspiration to maintain distinct societies that indigenous peoples and national minorities have in common. International multiculturalism singles out 'indigenous peoples' for recognition of far-reaching rights to land, resources, and self-government but it does not provide any substantial minority rights to any other category of minority groups. This sharp distinction between indigenous and other minorities has no equivalent in the theory or practice of Western multiculturalism. Its emergence in international law, according to Kymlicka, can be explained by the different motivations and different levels of risk associated with the two trajectories (2007: 270).

The development of targeted norms for indigenous peoples was driven by a humanitarian concern for particularly disadvantaged and vulnerable groups, and it was made possible by the low scale of geo-political risk perceived to be involved in accommodating indigenous groups (Kymlicka, 2007: 264-268). In contrast, the potential threats to regional peace and security often associated with the claims of national minorities made the development of targeted norms at the UN impossible. As a result, rights that respond to the aspirations of both categories of homeland minorities are accorded to indigenous peoples only, and national minorities are granted merely the minimal rights attributed to all other minorities. This sharp legal distinction in international law between 'indigenous peoples' and 'minorities', argues Kymlicka, is not only morally inconsistent but also conceptually unstable and politically unsustainable. It is morally inconsistent because any principled argument in favor of according autonomy and self-government rights to indigenous peoples supports granting the same rights to national minorities, even though the initial priority given to indigenous peoples might be morally defensible based on the often greater vulnerability of these groups (2007: 275). The sharp legal distinction is also conceptually unstable, because the notions of 'indigenous people' and 'national minority' are linked to Western historical processes of state-formation. Distinguishing between the two categories is straightforward in most Western and European settler states, where the categories originate, but may be impossible outside these countries (Kymlicka, 2007: 278).

There are plausible ways of extending the distinction between indigenous peoples and national minorities to the larger world. There are groups in Asia that have a lot in common with indigenous peoples in the New World, such as Montagnards in Vietnam, Aborigines in Taiwan, Papuans in Indonesia, numerous 'scheduled tribes' in India, Ainu in Japan, and a large number of 'hill tribes', 'tribal peoples', or 'forest peoples' in virtually all Southeast Asian states (Barnes, Gray, & Kingsbury, 1995; Kingsbury & Gover, 2004; Kymlicka, 2005: 46-52). In East and West, these groups have not had, or aspired to establish, modern states. They also tend to share characteristics such as cultural vulnerability, political

marginalization, close relationships to their lands, small numbers of members, and geographical remoteness. In contrast, other groups in Asia share important similarities with European national minorities, groups that have struggled to maintain or establish a state of their own but did not succeed, or populations on territories that were removed from kin-states. After independence, these groups found themselves in a subordinate position to a dominant group in control of the state, such as Acehnese in Indonesia, Tamils in Sri Lanka, Tibetans and Uighurs in China, Karens and Shans in Burma, Baluchis in Pakistan, and Moros in the Philippines (Kymlicka, 2005: 36-46). Thus, the distinction between national minorities and indigenous peoples may be a plausible way of thinking about cultural diversity in Asian states. But there is great continuity in the situation, characteristics, aspirations, and claims of these homeland minorities, and there is not in Asia, as there is in European settler states, such a thing as a discreet category of groups readily identifiable as 'indigenous peoples'. An indication of this difficulty is that there is no internationally agreed upon definition of that term. ILO Convention 169 identifies indigenous and tribal peoples but regards "*self-identification as indigenous or tribal*" as "*fundamental criterion for determining the groups to which the provisions of this Convention apply*". The UN Declaration of the Rights of Indigenous Peoples does not attempt to define the groups it protects. Indeed, any criterion to distinguish indigenous peoples from other minorities is a matter of degree, warns Kymlicka and therefore, incapable of carrying the weight international law has come to place on the distinction between indigenous peoples and minorities. "*Once we start down the road of applying the category of indigenous peoples beyond the core case of New World settler states, there is no obvious stopping point*" (2007: 282). Kingsbury, too, argues that a broadening of the 'indigenous peoples' concept runs the risk that "*the highly functional international political distinction between 'indigenous peoples' and ethnic and other minorities will erode, galvanizing opposition to claims of 'indigenous peoples'*" (1999: 334).

Because so much depends on the distinction between indigenous peoples and national minorities, and because drawing a sharp line between the two categories is impossible in most parts of the world, argues Kymlicka, is the distinction not only morally and conceptually inadequate but politically unsustainable. In terms of the international norms a minority can invoke, to be or not to be regarded as indigenous has become a question between all and nothing, between the right to self-determination on one hand and on the other, minimal generic rights vastly insufficient to sustain a distinct culture (2007: 284). Therefore, any homeland minority has very strong incentives to identify as indigenous people and utilize international norms and mechanisms to gain international legitimacy for strong minority rights claims (Kingsbury, 1999: 337). Kymlicka shows that there is an increasing tendency of homeland minorities to re-identify as 'indigenous'. Among the groups that have adopted the indigenous label, or are discussing its adoption, are groups such as the Crimean Tatars, the Roma, Afro-Latin Americans, the Kurds, the Palestinians, the Abkhaz and Chechens, as well as the Tibetans (Kymlicka, 2007: 285).

This trend of re-identification, triggered by the distinction between indigenous peoples and

minorities in international law, is politically unsustainable, argues Kymlicka, and “*may well lead to the total collapse of the international system of indigenous rights*” (2007: 287). The international community has consistently failed to develop targeted norms for national minorities because of the potential geo-political risk associated with these groups’ self-government aspirations. It was not least the mildness of such risk associated with indigenous peoples that enabled the remarkable progress in the development of international norms targeting these groups. States who feel threatened by homeland minorities’ claims to self-government and territorial autonomy will not continue to support international indigenous rights norms they perceive as legitimizing and encouraging minority challenges to their rule. The following table illustrates Kymlicka’s minority typology.

	‘Old’ Minorities, Homeland Minorities		‘New’ Minorities	
	National Minorities	Indigenous Peoples	Immigrant Groups	Metics
Multicultural States	Multination States		Polyethnic States	
Source of Cultural Pluralism	Colonization, Conquer, Annexation, Ceding		Immigration	
Rationale/Aspiration	Accommodation, Separation, Autonomy, Competing Nation-building		Integration	
Territorial Concentration	Yes		No	
Mode of Incorporation	Involuntary		Voluntary	
Response to state nation-building	Resistance		Acceptance of institutional and linguistic integration	
Group-Differentiated Rights	Self-government rights, special representation rights, language rights, land rights, legal pluralism		Polyethnic rights	
Model in Western Democracies	Multination Federation	Internal Decolonization	Multicultural Integration	Access to Citizenship
(Right to become) Citizen	Yes	Yes	Yes	No
Participation in State-Formation	Yes	No		
Sub-Categories	Kin-State Minorities	State-less Nations		
Kin-State	Yes	No	No	
Example in Cambodia	Ethnic Lao	(Cham)	Highland Peoples	Ethnic Chinese Ethnic Vietnamese

Illustration 2: Minority Categories according to Kymlicka

2. Cultural Diversity and Citizenship in Cambodia

2.1. Categorizing Cambodia's Cultural Diversity: Polyethnic and Multinational

This chapter provides an overview and initial account of Cambodia's cultural diversity and state-minority-relations in light of above discussion of Western and international developments. The analysis tentatively assesses the relevance of the dialectic of nation-building and minority rights claims in Cambodia, sketches the incorporation histories and current situation of various minorities, and considers plausible ways of classifying these groups. This overview will also touch on the presence and relevance of the factors that, according to Kymlicka, constitute enabling conditions of liberal multiculturalism in the West and the factors inhibiting its adoption in post-colonial states.

Regarding the dialectic of nation-building and minority rights claims, it is clear that Cambodia is not, and does not pretend to be, a culturally neutral state. As Penny Edwards notes:

“Cambodian nationalism has from its earliest beginnings been strongly ethnic in content ... concepts of nationhood have remained continuous with concepts of blood lineage and common culture” (1995: 68).

The ruling elites of all post-independence regimes in Cambodia have *“relied upon the unifying force of Khmerness, the spiritual sense of belonging to a discrete cultural group, to legitimize their use of power”* (Slocomb, 2006: 376). That the Cambodian state is widely seen as being essentially Khmer is also manifest in the following lines from Cambodia's national anthem:

“Like a rock the Khmer race is eternal. Let us trust in the fate of Cambodia, the empire which challenges the ages ... heaven will lavish its bounty towards the ancient Khmer country”.

Khmer nation-building has deep roots in the colonial period (Edwards, 2007; Heder, 2007: 294). The imagination of a Khmer nation and the concept of a territorially defined Khmer nation-state emerged from within the colonial-era interaction of local and European ideas:

“the very notion of a national culture, let alone its inner core, were products of the colonial encounter ... The dynamic intersection of European and indigenous worldviews fostered a self-conscious demarcation of a national religion, a national space, a national past, and a national culture. In the protectorate, the multistranded construction of a national, geocultural body of Cambodia would ... expand the horizons of individual belonging from a local to a national community ... In Cambodia, nationalists did not produce a national culture. Rather, the elaboration of a national culture by French and Cambodian literati eventually produced nationalists” (Edwards, 2007: 7).

The colonial state actively built the institutional infrastructure around which the imagination of the Cambodian nation and national culture crystallized. This infrastructure included colonial schools and reformed pagoda schools as well as the Buddhist Institute and the National Library, to name just a few. The colonial state systematically diffused Khmer language, including for political ends in areas where Khmers formed minorities and where Khmer was not the language of administration (Edwards, 2007: 180). By establishing an official system of education in Khmer language, introducing Khmer print production, disseminating Khmer language literature, and promoting Buddhism as national religion, the colonial state contributed to the emergence of a shared culture and set of institutions, promoted identification with a linguistically defined Khmer nation, and paved the way for its eventual consolidation (Edwards, 2007: 169). Part of this process was the remaking of the Angkor temples as “*the embodiment of Khmer national essence and an irretrievable, unachievable, and impossible moment of cultural perfection*” (Edwards, 2007: 163).

The Cambodian state today is actively engaged in diffusing a thickly defined Khmer national culture and identity throughout the territory of the kingdom, through a wide range of policies. Khmer language is constitutionally recognized as Cambodia’s sole official language in which all public institutions operate (Article 5). Buddhism is Cambodia’s sole official, constitutionally recognized, religion (Article 43). The official system of education privileges Khmer history and operates virtually exclusively in Khmer language. Article 66 charges the state with establishing “*a comprehensive and standardized education system throughout the country*”. Article 65 mandates the state with taking the “*necessary steps*” for “*education to reach all citizens*”. Cambodia’s legal and judicial systems, too, operate exclusively in Khmer language and privilege the legal traditions and norms of the majority. The state enables and encourages the migration of lowlanders to the traditional homelands of highland peoples and the dispossession of their lands and natural resources. Political powers are effectively centralized in the political institutions and elites of the Khmer. Indeed, Khmer nation-building systematically privileges members of the Khmer majority and marginalizes minority members, by making a Khmer identity a source of economic opportunity, political power, and social status. Therefore, the aspiration of liberal multiculturalism to transform the economic opportunities, political powers, and social statuses available to minority members is a normatively adequate response to the situation in Cambodia.

Applying Western minority categories to Cambodia’s cultural diversity identifies the country as a polyethnic and multinational state: there are both immigrant groups and homeland minorities (Ehrentraut, 2008: 197). To oversimplify, Cambodia’s ethnic Chinese and Vietnamese are on the immigrant-side of the Western distinction whereas Cambodia’s highland peoples and ethnic Lao are homeland minorities. More specifically, most of Cambodia’s ethnic Vietnamese can be considered as metics, because, unlike ethnic

Chinese, they are regarded as foreigners by the state and mainstream society. The ethnic Lao can be classified as a national minority and a kin-state-minority, whereas highland peoples are usefully considered indigenous peoples in Cambodia. Western and international distinctions are insufficient to account for Cambodia's Muslim Cham, who do not form a homeland minority but nevertheless constitute a stateless people or nation. The following sections sketch the incorporation histories and contemporary characteristics of Cambodia's various minorities in more detail. The map below indicates the territorial distribution of Cambodia's ethnic groups, though rather inaccurately and incompletely. Specifically, this map does not account for substantial populations of highland groups in the northern and central regions, for Lao communities in Lomphat and along the upper parts of the Srepok River⁴, or for the complex and increasing cultural diversity within areas traditionally inhabited by ethnic minorities. 'Mountain Cham' refers to ethnic Jarai and Rhade, who, like the Cham, belong to the Austronesian language family, whereas the other highland groups in Cambodia belong to the Mon-Khmer language family. There are also longstanding communities of Malay Muslims in Cambodia, specifically in coastal areas. These communities have in many ways merged with the Cham. The historical influence of Malay culture on Islam in Cambodia is very significant (Blengsli, 2009; Féo, 2004).

⁴Personal communication with Ian Baird, February 2013.



ETHNIC GROUPS

AUSTROASIATIC	MALAYO-POLYNESIAN	TAI
 Khmer (Cambodian)	 Cham	 Lao
 Khmer Loeu (Tribal)	 Mountain Cham	
 Vietnamese		

NOTE: Chinese are located mainly in urban centers

Illustration 3: Territorial Distribution of Ethnic Groups (Source: University of Texas Libraries, 1972)

2.1.1. The Chinese

Cambodia's ethnic Chinese can be rather unambiguously classified as an immigrant group. People from China arrived in Cambodia at least since the 13th century, facilitated by an open immigration policy maintained by successive Cambodian monarchs (Chandler, 2008: 87; Mabbett & Chandler, 1995: 181). A Chinese community existed at least since the 14th century and grew over the following centuries. Until the early 20th century, almost all Chinese immigrants were men who settled permanently in Cambodia, married Khmer women, and integrated into the host society (Edwards, 1996: 128; Heder, 2007: 292). Chinese and Sino-Khmers played important economic roles, specifically as economic intermediaries between the Khmer peasantry and the court, where many served in prominent positions (Chandler, 2008: 95; Edwards, 1996: 116; Goshal, Ku, & Hawk, 1995: 14). A convention adopted in China in 1860 recognized the rights of Chinese citizens to

emigrate and triggered a new wave of Chinese migrants to Cambodia (Edwards, 1996: 117). Migration from China rose again sharply from 2,000 to 5,000 annually from the 1920s to the 1930s, partly due to favorable economic developments in Cambodia and economic crisis in China (Willmott, 1967: 112). Accordingly, the Chinese population grew from about 170,000 in 1905 to 300,000 at the beginning of World War II (Chandler, 2008: 195).

Ethnic Chinese in Cambodia were always a predominantly urban and territorially dispersed minority whose presence and aspirations never raised questions of territorial autonomy or self-government. Today, at least 85 per cent of Cambodia's ethnic Chinese live in Phnom Penh or provincial towns (Edwards, 1996: 113). Ethnic Chinese are accepted as full and equal citizens of Cambodia and participate successfully in mainstream institutions. Chinese cultural institutions flourish and are highly visible in public space, such as Chinese temples, schools, associations and newspapers (Edwards, 1996: 150). Virtually all ethnic Chinese Cambodians speak Khmer as a first language (Goshal et al., 1995: 14). Given the high degree of institutional and linguistic integration as well as centuries of intermarriage with ethnic Khmer, the boundaries of Cambodia's ethnic Chinese community are more blurry than those of other minority communities. Based on data from Cambodia's Chinese association, Edwards in 1996 estimates the Chinese community to number 300,000-340,000 members, of which at least 90 per cent were born in Cambodia (Edwards, 1996: 109). In contrast, only 6,530 persons identified 'Chinese' as their mother tongue in the context of the 2008 census. Today, ethnic Chinese are not only the most integrated minority in Cambodia but also the least disadvantaged. Ethnic Chinese and Sino-Khmers are well represented in government and enjoy great freedom of cultural expression, which compares favorably to the political and cultural restrictions on ethnic Chinese in other countries in the region (Edwards, 1996: 165). Economically, ethnic Chinese Cambodians tend to be better off than members of other ethnic groups, and there is no obvious way in which they are politically or socially disadvantaged.

2.1.2. The Vietnamese

The incorporation of Cambodia's ethnic Vietnamese, as well as that of Cambodia's Muslim Cham, is closely linked to the history of Vietnam's expansionism. From the tenth to the nineteenth century, the Vietnamese state expanded southwards into the kingdom of Champa and further into the Mekong Delta, an area that Cambodia historically considered to be under its jurisdiction and that was previously largely inhabited by ethnic Khmer (Chandler, 2008: 94). Vietnamese colonization of Champa led to successive waves of Cham migration to Cambodia and the disintegration of Champa by the middle of the nineteenth century (Filippi, 2011: 16). Vietnamese control over the Mekong Delta was consolidated, and a steady stream of Vietnamese migrated into what is today's Cambodia, dominating the fertile lands along the Mekong River and around the Tonle Sap Lake. Vietnamese expansion culminated in the partial annexation and occupation of Cambodia between 1835 and 1845 by the Vietnamese emperor in Hue, partly in return for Vietnamese protection of Cambodia from Siam, as Thailand was formerly called. Despite the sharp

cultural divide between the two peoples, Vietnam sought to impose Vietnamese administration, language, and customs and treated Cambodia like a new Vietnamese province (Chandler, 2008: 141-161). The removal of large territories from Cambodian jurisdiction, together with the incorporation of a considerable ethnic Khmer population into the Vietnamese state, resulted in a perception of geopolitical insecurity and historical injustice among Cambodians that continues to constitute a great obstacle to the ethnic Vietnamese' full membership of the Cambodian state today, as the following discussion will show. Over the past centuries, Cambodia has also lost considerable territory to its neighbor Siam, resulting in a significant minority of Khmer-speakers in the northeast of present-day Thailand (Vail, 2007) and contributing to shaping Khmer self-perception as a minoritized majority that considers itself existentially threatened by its more powerful, mutually antagonistic neighbors to the east and west (Chandler, 2008: 297).

The expansion of the Vietnamese state into Cambodia experienced a serious setback in the 1840s, when the Vietnamese were expelled from Cambodia by a rebellion supported by Siam (K. Sok, 1991). The establishment of the French protectorate halted Vietnamese territorial encroachment, but it did not stop Vietnamese immigration. To the contrary, the French encouraged Vietnamese migration to Cambodia, in order to staff the colonial administration and rubber plantations (Chandler, 2008: 185; Mabbett & Chandler, 1995: 233-234). Ownership of the Mekong Delta remained disputed during the colonial period until it was 'given' by the French to Vietnam in 1947. This decision made permanent the presence of a Vietnamese immigrant minority in Cambodia and of a substantial Khmer homeland minority in Vietnam. Members of both minorities find themselves on the 'wrong' side of a contested border, but as a result of different modes of incorporation. The Khmer minority in Vietnam was previously part of a self-governing, territorially-compact Khmer culture and was involuntarily incorporated into Vietnam. Therefore, Western multiculturalism, at least of Kymlicka's persuasion, suggests that the Khmer minority in Vietnam should have the self-government and language rights needed to maintain a distinct society alongside Vietnam's majority culture. In contrast, the incorporation of ethnic Vietnamese into Cambodia was voluntary, in as far as there was no coercion on the part of the Cambodian state. Therefore, ethnic Vietnamese in Cambodia are on the immigrant side of the multiculturalist distinction, which suggests that they should have access to citizenship but are not entitled to self-government and language rights.

Ethnic Chinese as well as the Cham have come to Cambodia for centuries and were welcomed by successive Cambodian kings. In contrast, the Cambodian state neither invited nor encouraged the immigration of ethnic Vietnamese. There were few Vietnamese residents in Cambodia before the 1830s (Chandler, 2008: 121). Ethnic Vietnamese did not historically come with the expectation to integrate into Cambodian society. On the contrary, their coming to Cambodia was linked to Vietnamese as well as French attempts to colonize Cambodia, to integrate Cambodians into an alien culture, and to impose upon them foreign languages and institutions. Ethnic Vietnamese are clearly not a homeland minority in Cambodia but on the immigrant side of Western distinctions. The following

discussion demonstrates that it is useful to think of most ethnic Vietnamese in Cambodia as metics, because of their uncertain legal status and treatment as foreigners and outsiders. The historical circumstances of ethnic Vietnamese' incorporation into Cambodia indeed shape their contemporary relationship with the state and its majority culture. Their uncertain citizenship prospects can be explained, in part, by the way these circumstances differ from those surrounding the incorporation of ethnic Chinese and Cham, as well as from the narratives of immigrants and metics in Western states.

2.1.3. The Cham and Cambodia's Muslims

The Cham are among Cambodia's largest minorities. The great majority of ethnic Cham in Cambodia are Muslims, and the great majority of Cambodia's Muslims are Cham. According to the 2008 census, 204,000 individuals identified Cham as their first language and 257,000 individuals identified Islam as their religion. These numbers are at the lower end of available estimates, the more plausible among which estimate the Cham to number between 320,000 and 500,000 (ESCUP, 2008: 11). The US State Department considers that there are 500,000 to 700,000 Muslims in Cambodia (2008). What the Cham have in common with the Chinese and Vietnamese is that they came to Cambodia and that their incorporation is not the result of coercion by the Cambodian state. Champa, the historical Cham homeland and jurisdiction of historical Cham self-government, lies outside the borders of Cambodia and always did. Historically, Champa was a formidable adversary to the Khmer empire (Chandler, 2008: 69-80; Mabbett & Chandler, 1995: 105-106). It was the Vietnamese state that colonized and incorporated Champa, not unlike the Khmer national minority in the Mekong Delta, causing many Chams to flee to Cambodia. For centuries, Chams were welcomed by successive Cambodia kings, given land to settle, and served in important positions at the court (Filippi, 2011: 17).

In terms of Western multiculturalism, the Cham form a homeland minority with claims rooted in history and territory, but they have these claims in Vietnam. In Cambodia, the Cham never formed a self-governing, regionally concentrated culture. There are territorially compact, ethnically homogenous Cham communities in Cambodia, some of which date back to the arrival from Champa, such as at Oudong, the former Cambodian capital, as well as in Tbong Khmum and Stung Trang districts in present-day Kampong Cham Province (Mak, 1981: 84). But there is no one single, continuous region that is plausibly considered the homeland of the Cham in Cambodia. As Agnès De Féo puts it, "*the Cambodian Muslims are in minority everywhere and thus cannot aspire to any territorial nor independence claims*" (2007: 2). Cham communities are found in many of Cambodia's 23 provinces as well as in the capital and rarely form majorities above the commune-level. A 1974 statement from the Central Islamic Association, for example, indicates a fairly high degree of territorially dispersion, claiming that the

"Chams or Khmer Muslims ... represent more than 10 percent of the Khmer population of the capital of Phnom Penh and the provinces of Kandal, Kampot, Kompong Cham, Pursat, Battambang and Kompong Chhnang. Other small Cham

villages are found throughout the rest of the Khmer territory ...” (quoted in: Kiernan, 2003: 589).

The Cham are relatively mobile domestically as well as internationally. For example, the Cham are well represented among migrants to remote areas in Cambodia as well as to other countries in the region. The Cham have since their arrival had a home in Cambodia but never a homeland. Many refer to their situation in Cambodia as ‘guests in someone else’s house’ (Filippi, 2011: 21). Individually, it is clear that the Cham are citizens, not guests in Cambodia. What the phrase indicates is that, collectively, the Cham are a stateless as well as a homeland-less people in Cambodia (Ehrentraut, 2008: 199).

Some authors have referred to the Cham in Cambodia as an indigenous people (e.g. Grabowsky, 2004: 197; Helmers & Wallgren, 2002: 4) while others consider them an immigrant group (Féo, 2007: 2). It is tempting to consider the Cham in Cambodia as an immigrant group. However, the Cham did not, arguably, come to Cambodia as individuals or families but as a people. Moreover, the historical terms of admission did not involve the expectation that the Cham integrate into the institutions and language of a nationalizing Khmer state. Likely, the choice to migrate to Cambodia for many was taken on the expectation that it would enable maintaining a distinct Cham identity in Cambodia. The Cham have preserved a degree of cultural difference and separation that in many ways resembles those present among highland peoples. Cham identity is linked to historical self-government and statehood in Champa (Filippi, 2011: 18). The Cham are plausibly considered a distinct people, a homeland-less national minority entitled to protection of their distinct culture. William Collins notes that the Cham have for several hundred years

“served a moderating influence as “outsiders-insiders”. They maintained a distinct ethnic, cultural, and religious identity from the majority Khmers, yet apparently felt a responsibility to safeguard the Khmer throne from usurpers. My guess is that this loyalty was perceived in terms of a debt of honor or a debt of gratitude they owed to Khmer kings for having given them asylum. In effect, with the loss of Champa, the Khmer King was acknowledged by Chams as the King of the Chams as well” (1996: 37).

This is plausible, but Collins goes further in claiming that the

“Khmer Islam are ... at the very center of the country, a separate minority core of great social solidarity, surrounded by the majority Khmer with their perennial divisions and divergence of interests. The political function of the minority Cham has traditionally been to mediate between divided Khmer, especially between rivals to supreme power in the country” (1996: 99).

In relation to the Khmer, the Cham have made a remarkable transformation, from ancient rivals and historical adversaries into Khmer citizens. However, it would be implausible to most Cambodians that the Cham, or Khmer Islam, form the political center or core of the country. But Collins’ account rightly highlights that the Cham are not at the periphery of Cambodian politics but rather form a constituent people of the Cambodian state. The Cham

are not politically or economically marginalized but successfully participate in public institutions, are well represented in government and various political parties, and are active in many sectors of the economy (Féo, 2007: 3). The Cham do not enjoy substantial self-government or language rights and are not mobilizing to claim such rights. Western distinctions as well as international law categories are insufficient to account for the distinct situation and aspirations of Cambodia's Cham.

2.1.4. Highland Peoples and the Lao

In contrast to the Chinese, Vietnamese, and Cham, the historical incorporation of highland peoples into Cambodia was not the result of migration. These groups did not come to Cambodia and did not ask to become citizens. Rather, Cambodia came to them. Highland peoples formed de facto autonomous, self-governing, institutionally complete societies within their historical homelands and were involuntarily and often violently incorporated, for the most part during the period of the French protectorate. The term 'highland peoples' is misleading in that the lands historically occupied by these groups extended well into the river valleys and coastal plains, and because their ways of life were and are more closely related to the forest than they are to the mountains (Guérin, 2003: 3). According to Chandler and Mabbett, the Khmer historically occupied a corridor that ran from southeast to northwest through the center of what is now Cambodia, whereas vast remainder of the territory was occupied by scattered highland communities (1995: 30). For lack of a better term, however, and because of its wide use in the literature, the term 'highland peoples' will be used to refer to these groups.

Before the period of French colonialism, the mountainous, forested highland area that encompasses what is today northeastern Cambodia constituted a space where state power was absent. The political and social organization of the culturally highly diverse population was based on largely autonomous villages (Chandler, 2008: 125). While the Lao began gaining colonial control in the area before the French arrived (Baird, 2009c), most highland villages "*knew no exterior authority and had no experience of state control*" (Guérin, Hardy, Hwee, & Chinh, 2003: 3). Within their ancestral village territories, highland people typically practiced shifting cultivation along with hunting, fishing, and gathering of non-timber forest products. Commercial relationships existed between highland and lowland society and were focused mainly on trade in forest products for manufactured goods and salt, as well as trade in rice (Chandler, 2008: 9, 19; Guérin, 2001). It appears that a roughly similar situation prevailed across large parts of today's northern provinces as well as in the vast Cardamom Mountains area that stretches across Cambodia's southwest (Chandler, 2008: 121; Mabbett & Chandler, 1995: 30). In the northeast, a frontier emerged around the middle of the 19th century between expanding lowland society and retreating highland villages. This frontier followed the eastern bank of the Mekong River and rarely reached further than 30 km east of it (Guérin, 2003: 235). Tributary relations existed between some of the more accessible highland villages and the Cambodian King. The payment of tribute marked the formal submission of a village under the King's authority. In return, the King provided protection from the aggressions of

independent villages and from slave hunters, which was often ineffective. Tributary villages retained far-reaching autonomy (Guérin, 2003: 106).

The actual independence enjoyed by many highland groups and their determination to resist colonization was well noted by French authors and colonial officials and caused frequent setbacks to the attempt of the Franco-Khmer state to establish effective control over the region (Baird, 2009b: 8). This attempt began only late in the 19th century with the installation of several military posts inside the highland areas, such as in Sre Khtum, Koh Niek, and Sre Chi. Local governors were appointed and Khmer soldiers stationed. The installation of these posts was motivated by geopolitical concerns that Siam might claim possession of these territories and by the desire to counter a series of violent insurrections originating from the restive northeast (Guérin, 2003: 30). With the exception of military posts, however, the physical presence of the colonial state remained confined to the vicinity of the Mekong River banks and left the autonomy enjoyed by most highland villages intact. Nevertheless, this presence generated considerable resistance. The state's attempt to violently suppress a 1885 revolt supported by Khmer as well as Stieng and Mnong⁵ people failed (Guérin, 2003: 124-125). It took the French two years to put down the revolt, which prevented them from establishing effective control over the hinterland of the northeast.

The French created the residential district of Kratie on the upper Mekong in 1884. This district covered what are today Kratie and Mondulkiri Provinces. A French resident was installed in Kratie Town to oversee a renewed attempt to impose external control upon the northeastern territories and their populations (Guérin, 2003: 133). At the end of 1904, the French transferred the province of Stung Treng from Laos to Cambodia (Baird, 2010). This transfer marked the nominal incorporation of the territory that today encompasses the northeastern provinces of Stung Treng and Ratanakiri⁶ (Baird, 2009c: 47-50). Among the inhabitants of this new territory, highland people formed the great majority. Based on 1904-05 tax roles, Guerin estimates that highlanders numbered around 30,000 while ethnic Khmer formed a small minority of about 3,000 persons (Guérin, 2003: 134; 2006). Ethnic Lao were a minority, too, counting about 9,000 persons. Lao settlement of the region began in the 15th century (Baird, 2010). Grabowsky considers that the majority of ethnic Lao in the region were assimilated members of highland groups (2004: 208-209). French provincial statistics of Stung Treng and the adjacent region of Veunsai from the early 1930s estimate that among the 44,000 inhabitants, 9,000 were Khmer, 12,000 Lao, and 22,000 belonged to highland groups (Grabowsky, 2004: 211). However, the ethnic Lao were politically dominant (Baird, 2009d: 24) and remained in control of local affairs, because the colonial state relied heavily on Lao elites to govern the region (Guérin, 2003: 134).

⁵The term 'Mnong' refers roughly to the same populations as the terms 'Phnong' or 'Bunong' but it is, and was, also used as a generic term for all highland peoples. At least in some contexts, these terms also have derogatory connotations, meaning 'slave' or 'barbarian' (Goudineau, 2003: 6).

⁶Stung Treng was divided in 1923 into the provinces of Stung Treng and Moulapoumok. The latter was subsequently renamed Ratanakiri (Grabowsky, 2004: 216-217).

The Franco-Khmer state progressively sought to impose taxes, forced labor requirements (corvée), as well as external justice, while the presence of military posts encouraged the movement of Khmer settlers into and beyond the zones that had previously separated Khmer from independent villages (Guérin, 2003: 108; Guérin et al., 2003: 48, 22). The replacement of the tribute system with a system of personal tax and corvée increased the fiscal pressure on highland villages considerably (Guérin, 2003: 150-154). Upon inclusion in tax rolls, villages were considered submitted. At the turn of the century, the proportion of nominally submitted villages in Kratie had grown to an estimated three quarters of those inhabited by highland groups within the limits of what are Cambodia's borders today (Guérin, 2003: 109). Official submission, however, did not imply villagers' consent to external control or to the subsequent settlements of lowlanders in their homelands. Local resentment rose in response to the increasing exactions of the Franco-Khmer state (Colm, 1997: 2). An attack of Mnong villagers against the military post in Ban Bu Sra in 1912 developed into an "*ethnic war*" that unified the entire eastern Mnong territory, present-day Mondulakiri Province and led to its effective emancipation from colonial rule (Guérin, 2003: 161). The French delegate in Kratie pointed out to his superior in 1914 that the aim of the Mnong's uprising was to regain their "*complete independence*" (quoted in: Guérin, 2003: 59). The great majority of formerly tributary villages joined the insurgency. Between 1912 and 1918, Mnong raids resulted in more than 200 casualties, including the French delegate in Kratie (Testa, 2010: 487). The resistance of highland peoples against the intruders eventually halted and reversed the penetration of their homelands and defeated the colonial state. In response to the emancipation of virtually the entire Mnong-inhabited territory from colonial rule, the French opted to effectively close the highlands to Khmer settlement, leaving the Mnong villages to regain their self-government (Guérin, 2003: 60-64; Guérin et al., 2003: 23).

The incorporation of the 'new' northeast, present-day Stung Treng and Ratanakiri Provinces, generated less resistance among its population than did the incorporation of the 'old' northeast, a difference that Guerin attributes to the comparative mildness of integration through schools and pagodas and the utilization of local elites within a slow Khmerization of administrative practices (Guérin, 2003: 141). The administrative structure devised by the French for the new northeast represented, in Guerin's words, "*a compromise between the legitimate desire of the Mnong to govern themselves and the determination of the administration and the army to control the country*" (Guérin, 2003: 77). The new northeast was divided into communes, of which the chiefs were elected by inhabitants in relatively free local elections in 1906-07. This arrangement reflected the state's desire "*to govern populations of diverse culture while marking their integration into the Khmer Kingdom*" (Guérin, 2003: 138).

In the 'old' northeast, the administration renewed its efforts to occupy the highlands and impose its rule towards the end of the 1920s. Previously abandoned posts were reoccupied and the military presence strengthened. The résident of Kratie, Jerusalem, was put in charge of advancing the construction of colonial road 14 as a gateway for the penetration

of the highlands. In 1926, he was able to report to his superior that

“the road has now passed the first so-called ‘non-submitted’ villages, that is to say those escaping all our control. The deserted zone of the light forest which isolated the land of the Phnong from the Cambodian region is already passable by car eight months a year” (quoted in: Guérin, 2003: 189).

The establishment of the autonomous delegation of High-Chhlong, coinciding with the territory of present-day Mondulhiri Province, in 1931 concentrated administrative powers in the hand of the French delegate, until High-Chhlong was put under the direct authority of the *résident supérieur* in 1932 (Guérin, 2003: 191). The colonial state pursued not only the colonization but also the deliberate Khmerization of highland groups as an explicit objective, at least most of the time. As the colonial project was increasingly justified in terms of a French ‘civilization mission’ and because the Khmer were considered more civilized than highland people, ‘Khmerization’ was increasingly invoked by the French as a means of civilizing Cambodia’s highland groups. In-migration, education, and the promotion of Cambodia’s ‘national’ religion, Buddhism, among mainly Animist highland groups were among the policies employed towards this end (Guérin, 2003: 257). Military operations intensified towards the middle of the 1930s and utilized enhanced military intelligence and cartography, as well as airplanes for reconnaissance missions and occasional bombing campaigns (Guérin, 2003: 194). Colonial road 14 and the ability of the military to act across the borders with the French possessions Annam and Cochinchina facilitated Franco-Khmer penetration of the highland areas. It was the onslaught of a modern army that finally subdued highland rebels and accomplished the effective occupation and pacification of Cambodia’s northeast (Guérin, 2003: 190-197). Troops were withdrawn from the northeast following France’s entry into the World War II. They left behind the institutional and physical infrastructure to sustain state control over the homelands of highland peoples.

Clearly, Cambodia’s highland peoples are not immigrant groups, but on the homeland minority side of the Western multiculturalist distinction. Highland groups have for centuries not only settled in their traditional territories but formed landed, self-governing societies, albeit small and decentralized ones, with institutions operating in their distinct languages that governed the full range of social life. The historical sovereignty highland peoples exercised over their traditional territories was taken from them against their will, without them having ceded their rights over their homelands to a state. The memory of the time when they were independent from the Khmer is still vivid in many places (Guérin, 2008). The following chapters show that the process of involuntary incorporation is ongoing. Highland groups have resisted Khmer nation-building and, following periods of intense colonization, assimilation, and destruction, have attempted to reestablish their distinct societies. Today, most highland peoples continue to form not just sub-groups of Cambodia’s mainstream Khmer society, but largely autonomous cultures with distinct societal institutions that continue to make meaningful choices available to group members. Cambodia’s highland peoples are not unitary but they have in common many of the

challenges they face vis-à-vis the state. They make up a small proportion of the population that is marginalized from the exercise of political power, divided into numerous, widely dispersed groups with different languages, and with very little political organization beyond the village level. Highland peoples are among the most marginalized, vulnerable, and impoverished segments of Cambodia's population today. One indication of their marginalization is that the UNDP's human development index, comprising health-, education-, and income-related indicators, in the northeastern provinces ranges from 0.375 to 0.495, which is much lower than the national average of 0.7 (UNDP, 2011: 162-176). Ratanakiri ranks at the bottom of many of Cambodia's Millennium Development Goal performance indicators (Ironsides, 2009: 93). Another indication is a 2010 UNESCO-report that identifies Ratanakiri and Mondulakiri as one of only 20 regions worldwide that face 'acute education deprivation' (UNESCO, 2010: 152).

Cambodia's highland peoples have not historically had, or aspired to creating, a centralized state. If there are such things as 'indigenous peoples' in the region, these groups can be fairly counted into that category. Indeed, given the colonial character of these groups' historical incorporation into Cambodia, the international, decolonization-based model of indigenous peoples' rights appears to be a particularly suitable remedy. The term 'indigenous peoples' has been consistently used by the international community to refer to Cambodia's highland peoples and this usage is rarely disputed. Occasionally, the Cambodian government appears to accept applicability of international indigenous rights norms to highland peoples, such as in the 2010 submission to the UN Permanent Forum on Indigenous Issues. This report states that the "*Kingdom of Cambodia recognized human rights as stipulated in ... the United Nations Declaration on the Rights of Indigenous Peoples*" (RGC, 2010: 10). Therefore, 'indigenous peoples' will be used alongside 'highland peoples' to refer to highland groups, even though divergent views about what these terms means and what the implications are of this classification remain (Baird, 2011). The following illustration, prepared by the non-governmental NGO Forum based on informant interviews, represents a relatively recent attempt to map the current territorial distribution of Cambodia's highland peoples.

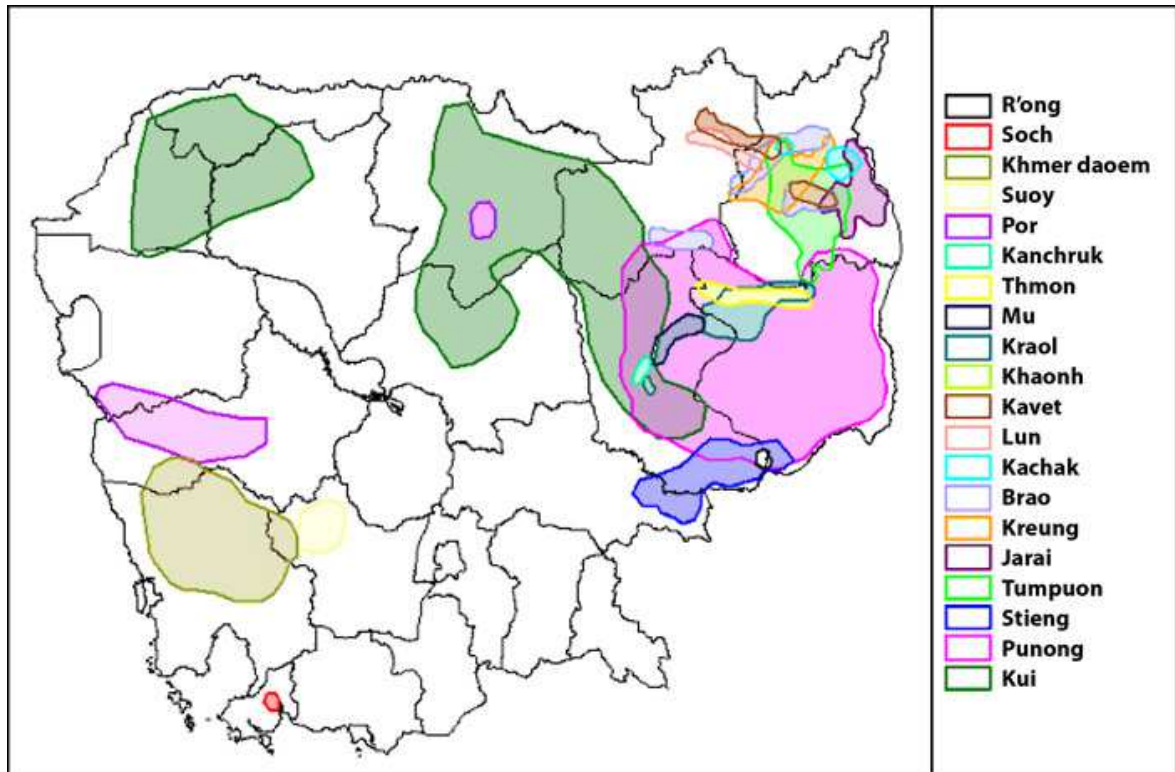


Illustration 4: Territorial Distribution of Highland Peoples (Source: NGO Forum, 2004)

Like many of Cambodia's highland peoples, the ethnic Lao are an involuntarily incorporated homeland minority with aspirations to maintain their distinct culture (Grabowsky, 2004: 221). Unlike highland peoples, the Lao were politically powerful when the French colonial project commenced and remained dominant in local governance after the transfer of their homelands to Cambodia. The colonial state utilized Lao elites to govern Cambodia's new northeast (Baird, 2009c: 47-50). The Lao were often discriminated against – people were fined for speaking Lao in the 1960s, for example (Baird, 2010) – but they were not conquered and colonized with the same intensity as highland peoples and are not nearly as politically and economically marginalized today. Cambodia's Lao do not match going attempts to define 'indigenous peoples' because they are a minority whose ethnic kin dominate neighboring Laos, demonstrating the group's participation in the process of state formation. Indeed, irredentism is not unheard of among Cambodia's ethnic Lao (Baird, 2010). Despite these differences, the Lao have in common with highland peoples that they are homeland-based, that they were involuntarily incorporated, and that they find themselves in a Khmer nation-building state in which space for the maintenance of their distinct culture and language is constantly shrinking.

Taken together, Cambodia is usefully understood as a polyethnic and multination state that contains immigrant groups, metics, national minorities, and indigenous peoples. The difference between homeland minorities and immigrant groups characterizes two markedly different patterns of cultural diversity and accurately reflects the aspirations of most minorities but not those of Cambodia's Cham. Cambodia's ethnic Chinese and Vietnamese are clearly on the immigrant side of the distinction. Members of both groups aspire to full and equal participation in mainstream institutions rather than to creating and maintaining

parallel societal cultures. While ethnic Chinese have been admitted to the nation and enjoy full citizenship rights, a considerable proportion of ethnic Vietnamese are metics, long-term residents without secure access to Cambodian citizenship.

In contrast to immigrant groups, the Lao as well as various highland peoples can be considered as homeland minorities in Cambodia. The ethnic Lao can be classified as a national, kin-state-minority and highland groups as indigenous peoples. The following chapters show that many highland people aspire to maintaining the existence of their distinct societies alongside the Khmer majority. The Lao have maintained distinct communities in what are often their traditional homelands, too, though they tend to be much less marginalized and considerably more integrated into mainstream Khmer institutions and language than highland peoples (Grabowsky, 2004: 217).

2.1.5. Small Scale of Minority Challenges to State Authority

Highland peoples are most readily identified as indigenous peoples in Cambodia and as Cambodia's politically, economically, and socially most marginalized minorities. Therefore, the international approach of distinguishing between indigenous peoples and other minorities, and of giving priority to promoting group-differentiated rights for the former is, to some extent, justified in Cambodia. Both the Cham and the Lao, in contrast, are unlikely candidates for the indigenous category, the Cham because their ancestral homelands are not in Cambodia and the Lao because they form a kin-state minority (Ehrentraut, 2008: 203). Because highland peoples can be rather clearly classified as indigenous peoples and rather unambiguously differentiated from other minorities, the international distinction is, arguably, less conceptually unstable in Cambodia than it is in most post-colonial states. Because there are no large national minorities, the distinction would also seem to be more sustainable politically.

However, according a right to self-determination to highland peoples but no substantial, group-differentiated rights to the Lao and the Cham, as international norms suggest, would be normatively inadequate. This is most apparent with regard to the Lao, who were incorporated through the transfer of Stung Treng, much like many of Cambodia's highland peoples. That there happens to be the kin-state of Laos on the other side of the border is arbitrary as a basis for not according group-differentiated rights to ethnic Laotians in Cambodia. The scale of coercion and disruption involved in the historical incorporation of Cambodia's Laotians is lower than it is for most highland peoples and so is the scale of these Laotians contemporary marginalization and vulnerability. Nevertheless, these are gradual, rather than categorical, differences, which do not justify applying the stark international distinction between indigenous peoples and other minorities in Cambodia. The only option to seek international protection for group-related interests of the kind that the Lao and the Cham plausibly have in common with highland groups is the Lao and the Cham to identify as indigenous peoples. That these groups do not fit conventional definitions does not prevent the Lao and the Cham from self-identifying as indigenous peoples and from using international norms and institutions to seek group-differentiated

rights. This has not happened and might seem unlikely, but it is possible and would make the distinction between indigenous peoples and other minorities harder to sustain in Cambodian politics. Indeed, organizations representing the ethnic Khmer in Vietnam, whose incorporation and situation somewhat mirrors that of ethnic Lao in Cambodia, do routinely identify their group as an indigenous people and use international institutions and mechanisms to claim indigenous rights (Ehrentraut, 2008: 204; Kinchen, 2007). The Vietnamese government is resolutely opposed to both the categorization and the rights claims and has successfully sought the revocation of some of these organizations' status at the UN (WSJ, 2012).

What sets Cambodia apart from most post-colonial states with regard to international minority rights norms is not that the normative, conceptual, and political problems of the international distinction between indigenous peoples and other minorities do not exist. What sets Cambodia apart is, rather, the relatively small scale of these problems. Cambodia's population is ethnically rather homogenous and numerically strongly dominated by the Khmer majority group. Homeland minorities make up only a minuscule proportion of Cambodia's minority population. All of Cambodia's homeland minorities are very small. Moreover, with the exception of the Lao community, all homeland minorities can be rather unambiguously identified as indigenous peoples. These groups have no history of, or apparent aspiration for statehood and virtually no political organization above the village-level. There is no sizeable, territorially concentrated homeland group who's actual or conceivable claims to territorial autonomy challenge the authority or integrity of the Cambodian state. There is, in contrast to most Asian states, very little history of minority nationalism in Cambodia. Even if all of Cambodia's homeland minorities were to claim the rights indigenous peoples have in international law, their accommodation could be managed relatively securely within the territorial framework of the Cambodian state and its general reform. Even if the Cham claimed autonomy, this aspiration would not raise major territorial questions because the Cham are not a homeland minority and settle dispersed across the kingdom's provinces and districts. Thus, liberal multiculturalism in Cambodia is, in contrast to most Asian countries, a relatively low-risk policy choice. Conceivable autonomy claims occur well below any threshold that concerns the security or integrity of the state. There are few countries in Asia where the potential challenges posed by minorities to the authority and integrity of the state are smaller than they are in Cambodia. The reorganization of the Cambodian state that would be required to implement international minority rights norms or complete liberal multiculturalism is minor compared to what it is in most post-colonial states.

2.1.6. Absence of Assertive Minority Rights Claims

The following chapters show that the international community has taken a considerable number of initiatives to promote liberal multiculturalism in Cambodia. These initiatives in almost all cases aimed specifically at promoting application of international indigenous rights norms to highland peoples. Given Cambodia liberal Constitution, given furthermore the state's considerable financial dependence on the international community and the

opportune structure of Cambodia's cultural diversity, one might have expected the state in Cambodia to respond positively to these initiatives. However, almost 20 years of international minority rights promotion in Cambodia did not result in significant convergence with the substance of these norms. This failure despite seemingly favorable conditions makes Cambodia a particularly interesting case to study the challenges faced by the international community in promoting minority rights norms outside liberal democracies. The following sections offer a tentative assessment of the relevance of Kymlicka's factors in explaining the international community's failure to achieve respect for international minority rights norms in Cambodia.

As was discussed in the first chapter, Kymlicka suggests that the emergence of liberal multiculturalism in the West was dependent on factors that enabled more assertive claims-making by minorities and on factors that helped states and majorities to respond more positively to such claims (2007: 87-134). Increased rights-consciousness, democracy, and demography make up the first set of factors, and robust human rights guarantees and the desecuritization of ethnic relations the second. The uneven presence of these factors contributes to explaining why post-colonial states resist application of international minority rights norms, according to Kymlicka, and so does distrust of the international community, the problem of kin-state-minorities, the minoritized majority phenomenon, and the tendency of historical injustice arguments to work against minority rights claims outside the West (2007: 133).

Awareness of human rights is increasing among minority members in Cambodia, as it is among the general population (CAS & World Bank, 2006: 16). However, this increase, much of which can be attributed to activities of the international community, starts from a very low level. Minority interests are usually articulated as special pleading or appeals to the generosity of political leaders, rather than as assertive claims to rights or entitlements. Rights-awareness focuses on individual human rights rather than group-differentiated minority rights. Only a few activists are aware of the rights indigenous peoples have in international law and an overwhelming majority is unaware of the rights indigenous communities have even in domestic legislation. The low level of rights-awareness among Cambodia's minorities, and in particular among highland peoples, quite plausibly limits rights claims made by these groups and thereby, the realization of such rights.

Increased awareness of rights is of limited significance in a state that does not respect and enforce these rights. Reasonably functioning democratic institutions, though provided for by the Constitution, do not exist in Cambodia (Ear, 2012; Heder, 2012; Peou, 2000; Kheang Un, 2011). In the absence of the rule of law, separation of state power, a professional bureaucracy and police, independent judiciary, and so on, minority mobilization and claims-making remain unsafe. Therefore, minorities abstain from expressing even modest demands in public. Moreover, there are few access points to state decision-making. The formal political system is ill-suited to minority participation and representation. Public institutions operate exclusively in Khmer language. The election formula favors large political parties that have little incentive to respond to small

minorities. No minority political party would have a chance to gain a seat in parliament. Cambodia is a unitary state without access points for democratic participation at the provincial or district level. Elected councils at the commune-level tend to be unresponsive to minority interests, particularly those of highland peoples and ethnic Vietnamese, as the following chapters show. Highland peoples are often intimidated when seeking to defend their lands and resources from encroachment. *“Threats of arrest from the government, company representatives and police”* are *“common”* among highland groups and *“usually have the intended effect. The community members are afraid even to ask questions, let alone stake a claim for their rights”* (IWGIA, 2012: 306-307). As one Kuy villager from Preah Vihear Province was quoted saying in a newspaper article: *“although we are so fed up for being mistreated, we are so scared to protest since we have been under threat ... We’ve been intimidated to face arrest or detention for leaking information to outsiders”* (Vrieze & Naren, 2012: 10). Chapter 6 demonstrates that such fear is widespread among highland people in other provinces, too. Fear is a factor in accounting for the absence of minority rights claims made by the Cham as well. Collins, in explaining a shift towards identification as Khmer Islam among the Cham, suggests that:

“Many Chams believe that stressing Cham ethnicity or nationality in Cambodia is dangerous, quickly leads to violence, whereas religion in Cambodia is much less a problem. According to many devout Muslim Chams, an emphasis on religion might assure peace and security for their community in Cambodia, while an emphasis on Cham ethnicity and national heritage might lead to controversy and violence” (1996: 82).

As was mentioned before, reliable data to assess the significance of Kymlicka’s third enabling factor, demography, is not available. However, it is implausible that minority groups in Cambodia are growing much faster than the general population. The rate of migration is an estimated -0.33 migrants per 1,000 inhabitants (CIA, 2012). Interestingly though, available numbers of highland peoples have constantly and substantially risen over the past years. The 1998 population census identified only 17 highland groups and put their number at only 101,000, or 0.9 per cent of the total population of then 11.4 million (NIS, 1998). A study commissioned by the World Bank in 2003 identified several groups in provinces outside the northeast as indigenous (such as the Sui in Kampong Speu Province and the Chong in Kratie Province) and provided estimates for other groups and provinces that far exceeded previous numbers (Helmert & Wallgren, 2002). For example, the study estimated the population of highland people in Preah Vihear Province to be 21,170, more than three times greater than suggested by 1998 census data (Helmert & Wallgren, 2002: 9). The 2008 census identifies 23 groups of highland peoples with a combined membership of 179,000 individuals, or 1.34 per cent of the population (NIS, 2008). In 2009, the Department of Ethnic Minorities Development at the Ministry of Rural Development estimated the total number of indigenous persons to be 200,000 and listed 24 different indigenous groups in 15 of Cambodia’s 23 provinces (IWGIA, 2012: 305). A recent newspaper article about deforestation in the Prey Lang Forest that straddles Kampong

Thom, Stung Treng, Kratie, and Preah Vihear Provinces claims that the majority of the 350,000 residents of this area are ethnic Kuy (Boyle & Titthara, 2012), whereas the 2008 population census put the total number of Kuy-speakers at only 28,612 (NIS, 1998). Thus, the increase in estimated numbers of highland people indeed creates the perception that these groups are growing considerably faster than the rest of the population.

In all plausibility, however, the actual numbers of highland people in relation to the rest of the population have not shifted substantially. Some of the increase in available numbers is attributable to people who were not previously counted, such as because of the isolation of their communities or the security situation. The greater part of the increase is likely due to people who were previously counted as Khmer, often in provinces that were not thought to be home to highland groups. There is a shift in self-identification in people who previously avoided being considered as members of highland groups. Census data based on mother tongue, for example, is largely derived from self-reporting. Plausibly, the shifting self-identification is in part due to the perception that publicly bearing a highland identity is relatively safe today. In some contexts, identification as indigenous might well be perceived as advantageous, such as because of certain rights to land that only indigenous communities have under the 2001 Land Law and because development organizations might give special consideration to indigenous communities when selecting beneficiaries for their programs (Baird, 2011: 4). Thus, there is a sense in which numbers are changing in favor of highland groups. However, this increased demographic weight, or the perception thereof, has not so far encouraged significantly more assertive claims-making by highland groups. Indeed, much of the increase results from the inclusion of highland communities which were thought of as assimilated, which settle dispersed among Khmers, and in which distinct languages and institutions play only minor roles. Claims to strong minority rights are unlikely to arise from within these communities, and their inclusion might well reinforce the view that highland peoples are not different enough from the Khmer mainstream to justify group-differentiated treatment.

In contrast to other minority groups, numbers of ethnic Vietnamese residents are politically highly contested. The Khmer Rouge claimed that there were four million whereas the 2008 census suggests that there are only 73,000 individuals whose mother tongue is Vietnamese (NIS, 2008). More plausible estimates range from 500,000 to one million (D. Pen, 1996: 13). Opposition leaders routinely claim that there are much higher numbers of illegal Vietnamese immigrants and that they threaten Cambodia's sovereignty and integrity. These claims indicate that an increase of ethnic Vietnamese residents, or the perception thereof, would not lead to more assertive claims making. More plausibly, it would reinforce the majority's sense of insecurity and thus work against the interest most ethnic Vietnamese have in being accepted as Cambodian citizens. Taken together, the low level of human rights awareness, the lack of security for minority mobilization, and of access points to relevant decision-making do help explain the absence of assertive minority claims. The absence of the conditions that enable minority rights claims makes it difficult to determine the actual aspirations of various minorities.

2.1.7. Absence of Willingness to Accommodate Minority Rights Claims

What has facilitated the willingness of dominant groups to accept liberal multiculturalism in the West, according to Kymlicka, is, firstly, the presence of human rights guarantees and legal protections that assure dominant groups that minority rights will not compromise the safety of individuals or enable islands of tyranny within the state and, secondly, the desecuritization of ethnic relations (2007: 245-255). In Cambodia, human rights are not effectively protected and enforced (Ghai, 2008; Subedi, 2011, 2012b). However, the concern that granting minority rights would lead to a deteriorating human rights situation is relatively mild. There will not be islands of tyranny within the state because of the tyrannical nature of the state itself. The scale of human rights abuse actually committed by institutions and officials of the state against minority and majority members is far greater than the rights abuse that could plausibly be committed by empowered minority institutions. The concern that some traditional practices of highland groups might contradict human rights is occasionally invoked by government officials. However, this concern is often exaggerated, as the analysis in Chapter 6 shows, or must be considered insincere given the scale of abuse committed by the state these officials represent. Moreover, the small size of these groups and the limited scale of autonomous functions that could plausibly be handled by village-based communities means that potential rights abuse by customary institutions is a minor concern compared to the actual abuse committed by the state. A genuine concern for the human rights of majority or minority members is not what motivates the state's resistance to minority rights in Cambodia.

Considerably more significant in explaining the state's and the dominant group's unwillingness to accept minority rights in Cambodia is the securitization of ethnic relations and specifically, the minoritized majority phenomenon. Since its zenith between the 10th and 13th centuries, the power and size of the Khmer empire declined, not least due to attacks and invasions by Siamese, Cham and later, Vietnamese armies. Cambodia became a weak state wedged between its more powerful, often antagonistic neighbors Siam and Vietnam, which "*have consistently tried to patronize or absorb their neighbor*" (Chandler, 2008: 297). For most of the past few centuries, Cambodia was a vassal state to either Vietnam or Siam and forced to make considerable territorial concessions (Mabbett & Chandler, 1995: 219). Between 1835 and 1845, Cambodia was partly occupied by Vietnam and treated like a Vietnamese province (Chandler, 2008: 141-161). When King Norodom placed Cambodia under French protection in 1863, it was to avoid further territorial loss and indeed the disappearance of Cambodia as a recognizable political unit (Chandler, 2008: 142). As recently as 1941, Thailand took control of Cambodia's north-west, incorporating Batambang and Siem Reap Provinces including the Angkor Temples. These territories were relinquished under international pressure in 1946 (Mabbett & Chandler, 1995: 238). When Cambodia gained full independence from France in 1953, it had lost the Mekong Delta, home at this time to some 400,000 Cambodians, surrounded by more than four million Vietnamese (Chandler, 2008: 97). Vietnam's historical annexation of Champa and the Mekong Delta powerfully demonstrate to many Cambodians the possibility of Cambodia being taken over by its eastern neighbor. Since independence, Cambodia ceased

twice to exist as a self-governing state, during ten years of Vietnamese occupation following Vietnam's invasion in 1978 and when Cambodia was administered by the UN in 1992-93. Territorial integrity has been a major preoccupation of all post-independence Constitutions (Slocomb, 2006: 376). Not least due to Cambodia's history of territorial decline and fragile sovereignty, the Khmer continue to think of themselves as a victimized minority whose existence continues to be in danger. This perception of existential threat makes state-minority-relations in Cambodia a matter of national security and contributes to explaining specifically the involuntary exclusion of ethnic Vietnamese and the involuntary inclusion of highland peoples, as the following chapters will show in more detail.

Further inhibiting the adoption of liberal multiculturalism in many post-colonial states is widespread distrust of the international community, according to Kymlicka. International organizations are often perceived as promoting minority rights with the aim of undermining the stability of the state (2007: 257-258). Distrust is plausibly a factor in the international community's failure to promote minority rights in Cambodia, but not a major one. International organizations enjoy considerable goodwill among the population but indeed not a trustful relationship with the government. Parts of Cambodia's political elite likely perceive the international community as uncommitted to promoting the stability of the state, specifically where international efforts to promote transparency and good governance threaten elite power and interests. It is common for government officials, for example, to blame international and non-governmental organization for inciting protest and for supporting the opposition (CAS & World Bank, 2006: 15; Ghai, 2007: 19). However, few Cambodians would subscribe to the notion that the international community aims at undermining the stability of the Cambodian state. Even less plausible would be the assertion that international minority rights promotion aims at undermining Cambodia's stability, given the structure of Cambodia's diversity and the relatively modest scope and scale of the respective international efforts.

As Kymlicka points out, minorities demanding rights in the West are usually historically disadvantaged groups. Therefore, arguments about righting past wrongs tend to work in their favor. In contrast, arguments about historical injustice work against minority claims in many post-colonial states, particularly where colonial powers have historically privileged minorities. In Cambodia, however, not ethnic minorities but the Khmer were privileged during the period of French colonialism, with the partial exception of the ethnic Vietnamese. The colonial state established the institutional basis for Khmer nation-building, systematically elaborated and disseminated a Khmer national culture, diffused Khmer language and Buddhism throughout the territory of the protectorate, and pursued specifically the deliberate 'Khmerization' of highland groups (Guérin, 2003: 257). One colonial legacy is that the Khmer are stronger and minorities weaker than they would have been in the absence of the colonial intervention.

The colonial state did utilize ethnic Vietnamese to help govern the Khmer, with the result that ethnic Vietnamese are today perceived as having unjustly occupied privileged positions of authority vis-à-vis the Khmer majority. The continued exclusion of ethnic

Vietnamese is seen by many Cambodians as being justified by the past injustices suffered by Khmers at the hands of the Vietnamese state and the ethnic Vietnamese in Cambodia. The next chapter demonstrates in more detail that the historical injustice argument supports exclusion of ethnic Vietnamese in Cambodia. The ethnic Chinese, too, are not historically a marginalized group in Cambodia. Rather, ethnic Chinese have for many centuries dominated Cambodia's trade and commerce and held privileged positions in the economy vis-à-vis ethnic Khmer. For example, the King enabled Chinese business people to monopolize certain industries, such as by granting concessions to opium production, pig farming and gambling, in return for assistance with tax collection (Edwards, 1996: 132). During the colonial period, the French weakened Chinese dominance in the economy, by imposing discriminatory taxes on the Chinese (Edwards, 1996: 118-119). Despite their historical and contemporary privileges, ethnic Chinese enjoy full citizenship today and considerable success in Cambodia's mainstream institutions, as well as generous accommodation as an immigrant group, in contrast to the ethnic Vietnamese. The following analysis demonstrates that much of the difference in the contemporary treatment of ethnic Vietnamese and Chinese can be explained by geopolitical insecurity, which shapes Cambodian perceptions of Vietnam much more than that of China. Furthermore, because ethnic Chinese are not disadvantaged and do not seek autonomy, they are not making claims of the kind that historical injustice would tend to weaken.

The Cham were not involuntarily incorporated into Cambodia but rather generously accommodated with land and titles when they arrived (Filippi, 2011: 20). The French considered the Cham as equals of the Khmer, because they served as officials with the same titles, and governors of districts predominantly inhabited by Chams were often themselves Cham. Therefore, the Cham were legally considered as part of the Cambodian community during the colonial period (Collins, 1996: 46). However, the Cham did not want to send their children to French schools because of fears for their Muslim identity. Therefore, the Cham quickly lost access to influential positions in the colonial state (Collins, 1996: 46). Most Cambodians consider the Cham victims of historical injustice in Vietnam but not in Cambodia. Because the Cham were not particularly privileged during any recent period, the historical injustice argument is less significant to claims made by this group.

Highland peoples are the Cambodian minority groups that can be most clearly identified as victims of historical injustice. Villages of these groups were raided for slaves for centuries, and slave trade in highland people was legal well into the period of French colonialism (Chandler, 2008: 85). Highland peoples were systematically colonized and violently incorporated into the colonial state. Assimilation and dispossession of highland peoples characterized most post-colonial regime, as the following sections show. Highland people have consistently been marginalized politically, economically, and socially. Thus, the historical injustice argument adds weight to the case for according minority rights to highland groups. Cambodia's ethnic Lao, like highland peoples, were involuntarily incorporated into Cambodia through the historical transfer of Stung Treng Province from

Siam to Cambodia. Even though their incorporation was less disruptive than that of highland peoples, arguments about historical injustice would add weight to rights claims made by the Lao, too.

This initial assessment suggests that the factors proposed by Kymlicka, to various degrees, contribute to shaping state-minority-relations in Cambodia. Specifically, the fact that minorities in Cambodia do not make assertive claims can be explained, in part, by the low level of rights-awareness, the unavailability of access points to the state for making such claims, and in particular the low degree of democratic consolidation rendering minority mobilization and claims-making unsafe. The state's resistance to minority rights and to the international community's encouragement, on the other hand, can be attributed in good part to the Khmer perception of insecurity vis-à-vis neighboring states and, to a lesser extent, to the fact that arguments about historical injustice do not apply with the same force in favor of minority claims as they do in the West. Demand for liberal multiculturalism is not very strong in Cambodia and supply is virtually non-existent. In order to better appreciate the particularities of Cambodia's contemporary multicultural challenges, the following sections discuss the development of state-minority-relations in post-independence Cambodia.

2.2. Independent Cambodia and the Emergence of the 'Khmer Citizen'

Cambodia achieved full independence from France in 1953. The Geneva Conference in 1954 recognized Cambodia's colonial boundaries as international borders, making the incorporation of highland groups into Cambodia permanent and in some cases, their division between the newly independent states Cambodia, Laos, and Vietnam. King Sihanouk abdicated in 1955 and became leader of the Sangkum Reastr Niyum (People's Socialist Community, SRN) that dominated the newly-independent state. A period of intense nation-building based on a homogenizing Khmer conception of national identity and citizenship began. An official communiqué described the SRN's socialism as "*essentially Khmer*" and another official document specified that

"our socialism is not Marxist ... [because] our civilization, our morality, our customs and our traditions, all that makes us particularly Khmer, disallows that a philosophical doctrine ... can present a character of universality" (quoted in: Slocomb, 2006: 379-380).

Sihanouk popularized a new typology of Cambodia's ethnic groups. He classified highland peoples as 'Khmer Loeu' (Highland Khmers), the Cham as 'Khmer Islam', and members of the Khmer minority in the Mekong Delta now belonging to Vietnam as 'Khmer Krom' (Lowland Khmer). These categories continue to be widely used today and to shape Cambodian thinking about nation and citizenship. The typology distinguishes between components of a Khmer nation but it also implies a distinction between groups that are included (highland peoples, Cham, Khmer Krom) and groups that are excluded (ethnic Vietnamese and Chinese). Interestingly, the groups included in Sihanouk's typology are those most plausibly considered homeland minorities in Kymlicka's classification (with the

partial exception of the Cham) while the excluded groups are reasonably considered immigrant groups. Arguably, the distinction is the same but the implications are dramatically different. In a liberal multiculturalist framework, both categories of groups are entitled to common citizenship rights while the distinction separates groups with legitimate additional claims to language and self-government rights from those without. In Sihanouk's typology, the same distinction separates citizens from foreigners.

Collins offers a thoughtful but implausibly civic interpretation of Sihanouk's typology. "Although it seems that an ethnic term is being used to refer to people who are of Khmer identity", he writes, "the formulation suggests that what is really meant is an inclusion of people in a national concept of "Cambodian" ... The rhetoric of ethnicity is being used to convey a claim about the ideal composition of the Cambodian nation" (1996: 48). Indeed Sihanouk's typology uses 'Khmer', an ethnic term, to convey a claim about the ideal composition of the nation. However, nothing suggests, as Collins believes, that what "is really meant" is a civic concept of "Cambodian". More plausibly, the typology really means what it says: it equates the ideal composition of the nation with 'Khmer'. Collins argues that Sihanouk's typology promises "a pluralist vision of the Cambodian nation" in which "the minorities of non-Khmer ethnicity" are a permanent feature (1996: 48). This is an attractive interpretation from a liberal multiculturalist perspective but it is unconvincing as an official or historical interpretation of Sihanouk's formula, which does not even acknowledge that there are any minorities of non-Khmer ethnicity. Rather than a "pluralist vision", the formula provides a blueprint for a national community that is imagined to be homogeneously Khmer and in which the only differentiation is topographic and, to a limited extent, religious. This vision denies the presence of distinct, non-Khmer identities and is incapable of accommodating homeland minorities as distinct cultures. It also does not provide space for immigrant multiculturalism. Collins rightly notes that the exclusion of the Vietnamese and Chinese relates to the "perception that these groups threaten the integrity of Cambodia" and more generally to an underlying "anxiety about borders, national integrity and national sovereignty" (1996: 48). Sihanouk's formula is compatible with a notion of Cambodian citizenship that includes Cambodia's highland peoples and Cham, but only through their misrecognition, by imposing on them the majority ethnic identity (Heder, 2007: 300). The typology can be read as a road map for a two-pronged strategy of nation-building that involves the cultural assimilation of highland peoples and Chams on one hand and the exclusion of the Vietnamese and Chinese on the other. Much of the suppression of minority identities under Sihanouk – as well as under successive regimes – is consistent with this strategy, which assumes Khmer uniformity where it does not exist and uses the coercive power of the state to impose homogeneity on Cambodia's diverse population. Attempts to consolidate a Khmer nation-state based on a thick national Khmer identity are features of all Cambodian regimes since independence.

A law passed in 1954 formally based citizenship on residence as well as on ethnic descent. The law conferred citizenship on children, at least one of whose parents was Cambodian,

as well as on anyone born in Cambodia after 1954 to parents also born in Cambodia. The law included the Cham and highland peoples but it effectively formalized the exclusion of many ethnic Vietnamese and Chinese (Edwards, 1996: 119). A naturalization law promulgated in 1954 required five years of residency and “*sufficient*” knowledge of the Khmer language but was restricted in 1959 to those with “*sufficient assimilation to the customs, morals and traditions of Cambodia*” (Heder & Ledgerwood, 1995: 22). Evident in these legal provisions is a strategy of Khmer nation-building which is based on a ‘thick’ conception of Khmer identity that requires not only linguistic and institutional integration but in addition the adoption of particular traditions and ways of life. The presence of Vietnamese residents was the most contested question, and has been since, in how to conceptualize nation and citizenship of the newly-independent Cambodian state. A National Congress held in 1963 unanimously recommended that “*naturalisation be refused in principle to all Vietnamese because they were unassimilable*” and that the citizenship of any naturalized aliens who did not “*respect our traditions*” be revoked (Willmott, 1967: 35). William Willmott has noted that, while this second recommendation applied to naturalized citizens “*of all origins*”, it was clear from the context of the discussion that it aimed primarily at the Vietnamese (1967: 35). These recommendations are consistent with contemporary policies and practices in that they require prospective citizens to assimilate and adhere to a particular set of traditions. Naturalization is refused to ethnic Vietnamese due to their supposed inability to assimilate into Khmer culture. The legal status and sense of belonging of those ethnic Vietnamese who are nominally citizens remains profoundly insecure because their Cambodian citizenship could be revoked at any time. A 1957 decision banned foreigners from engaging in eighteen specific occupations predominantly held by Vietnamese and Chinese (Edwards, 1996: 134). Restrictions were placed on the operations of Chinese schools (Edwards, 1996: 119). In 1967, Sihanouk dissolved several Chinese associations and suspended production of all Chinese and Vietnamese newspapers, claiming that they were controlled by Peking and Hanoi (Edwards, 1996: 138). This claim indicates that policy-making towards these groups was increasingly perceived as being a matter of national security.

2.2.1. Post-Independence Colonization of Highland Peoples

Meanwhile, the newly independent state intensified the involuntary integration of highland peoples and their homelands into the aspiring Khmer nation-state. An official document entitled “*Colonization of the under-populated provinces with fertile land*” described the territory that encompasses today’s four northeastern provinces as constituting “*zones of interest for colonization*” and ordered to “*implant*” there the “*unemployed of all categories*” (quoted in: Guérin et al., 2003: 102). Part of the motivation was the geo-political concern that the rather recently incorporated and sparsely populated northeastern territories might be disputed by Cambodia’s neighbors. As Prime Minister Sihanouk put it: “*If we keep the highlands unpopulated, others will come to occupy them*” (quoted in: Guérin et al., 2003: 287). The province of Ratanakiri was created in 1959. In 1962, the

province of Mondulkiri was established within the boundaries of the district of High-Chhlong. The provincial capital, Sen Monorom, was established from scratch in the heart of the Mnong highlands. SRN-policies aimed not only at penetrating, economically exploiting, and politically controlling the northeast but explicitly at nation-building, at eradicating highland groups' distinct identities and replacing their "*clan spirit*" with "*national consciousness*" (White, 1996: 344). State authorities encouraged and often sponsored the movement of lowland farmers to highland regions, such as by providing settlers with draft animals, wood, rice, and land. Members of highland groups, as well as the Lao, were encouraged, often coerced, to integrate into a thickly defined Khmer nation, to follow the 'superior' way of life demonstrated by Khmer settlers, and to abandon their 'uncivilized' and 'inferior' lifestyles. "*For Sihanouk*", note Guérin et al,

"the settlers were 'guides' to demonstrate to highland groups how to dress, to eat, to care for themselves. They were made living examples of 'Khmer superiority'" (Guérin et al., 2003: 101).

Education in Khmer as well as Khmer clothes were made available, while traditional dress and body decorations were prohibited, customary justice replaced with state law application, and local languages banned (Guérin et al., 2003: 55). Indigenous communities from the highlands were resettled in the lowlands, taught Khmer language, and persuaded to adopt lowland agricultural methods (Baird, 2008: 210). These policies also had the effect of disrupting the cultural hegemony of the Lao (Grabowsky, 2004: 217). Communities were discouraged from practicing rotational agriculture, which Sihanouk referred to as "*irrational and destructive*", in favor of sedentary wet rice farming (Guérin et al., 2003: 194-195). Attempts were made to convert highland people to Theravada-Buddhism, Cambodia's 'national' religion. Violence, land grabbing, theft, arrogance, and exactions of officials and Khmer settlers met with increasing resistance in the form of clashes, revolts, and armed confrontations (Goshal et al., 1995: 12; Guérin et al., 2003: 73).

Also during the 1960s, minority nationalism began to emerge in the highlands with the formation of groups such as Bajaraka (a consolidation of Bahnar, Jarai, Rade, and Kaho, four major highland groups), the Central Highlands Liberation Front, the Front for the Liberation of Champa, and the Liberation Front of Kampuchea Krom. These groups sought greater autonomy for the homeland minorities in Vietnam and Cambodia and merged into the United Front for the Liberation of Oppressed Races (FULRO) (HRW, 2002: 20-25). Initially a nationalist movement, FULRO played a significant role in the Vietnam War and engaged in insurgency against South Vietnam and later, the Socialist Republic of Vietnam (Hickey, 1982, 1993). FULRO's struggle was directed almost exclusively at Vietnamese governments and did not have much impact on the developments in Cambodia, though the movement was occasionally supported by Cambodian governments.

In the late 1960s, Cambodian and Vietnamese communist guerrillas started operating in Cambodia's highlands. Military settlers were sent by the state to counter infiltration, while Sihanouk let FULRO combatants use the country as a sanctuary (Guérin et al., 2003: 73).

Part of the leadership of the Khmer Rouge, Cambodia's communist revolutionaries, fled to Ratanakiri seeking to hide from Sihanouk's police (Mabbett & Chandler, 1995: 243). This group included Pol Pot, who later emerged as the movement's leader. Initially, the Khmer Rouge cadres perceived of highland peoples' ways of life as a form of 'primitive communism' that resonated with their utopian ideas. The Khmer Rouge built on highland villagers' resentments against Sihanouk's colonization and assimilation policies to win their support (Chandler, 1999: 76; Colm, 1997: 2). In 1968, a violent revolt at a newly established rubber plantation in Ratanakiri escalated and "*transformed Ratanakiri into a battle zone between government forces ... and the indigenous insurgents*" (Guérin et al., 2003: 102). The latter received logistical support from Khmer Rouge and Viet Minh communist guerillas (Baird, 2008: 212-214). The state responded to the revolt with massive troop reinforcement and intense violence, including massacres of entire villages. This response did not quell the revolt but further popularized the insurrection (Guérin et al., 2003: 105).

In 1968, Sihanouk blamed the Khmer Rouge for encouraging the 'Khmer Loeu' to think that Ratanakiri is "*not Khmer territory*" and suggested they

"see the bas-reliefs of Angkor and they will notice that the Khmer of the Angkor period, which is to say the ancestors of today's Khmer Kandal ['Central Khmer', Cambodia's Khmer majority] and Khmer Loeu, wore the same clothes that are today only worn by the Khmer Loeu. They have been Cambodians for a long time, not foreigners in Cambodia" (quoted in: Guérin et al., 2003: 56).

However, Ratanakiri was not historically Khmer territory. The statement claims not only Khmer ownership of the region but also that the population is made up of people who are genuine, indeed original Khmer. There are important historical similarities between highland peoples and the Khmer (Chandler, 2008: 14-15). However, the idea that highland peoples are the ancestors of today's mainstream Khmer, which remains popular, denies that highland peoples form distinct cultures and implies that they constitute undeveloped, uncivilized, ancient segments of Khmer culture. This view helps justify the imposition of a Khmer identity on highland peoples with the supposed need to bring civilization to backward populations. This is significant, not least because similar concepts of ethnic hierarchies, 'civilizing mission', paternalism, and cultural superiority were used by the Vietnamese and French states to justify their respective colonization of Cambodia (Mabbett & Chandler, 1995: 228). Vietnamese emperor Minh Mang, for example, instructed his general Truong Minh Giang to civilize Cambodians, specifically to

"teach them to use oxen, teach them to grow more rice ... As for language, they should be taught to speak Vietnamese. [Our habits of] dress and table manners must also be followed. If there is any out-dated or barbarous custom that can be simplified, or repressed, then do so" (quoted in: Mabbett & Chandler, 1995: 14)

The Cambodian state's historical and contemporary approach to highland peoples is very

similar to how Cambodia was treated during Vietnamese and French colonization, as will become clearer during the following chapters. That the Cambodian state and the Khmer rejected colonization when they were at the receiving end of civilizing missions did not prevent them from colonizing and ‘civilizing’ highland peoples, demonstrating considerable normative inconsistency (Guérin, 2003: 220).

2.2.2. Minorities under the Khmer Republic

Sihanouk was overthrown in 1970 by his cousin, Prince Sirik Matak, and his army chief, Lon Nol, who became president of the ‘Khmer Republic’. Lon Nol advocated the superiority of the Khmer race and a violently anti-Vietnamese nationalism. He introduced a new constitutional definition of Cambodians as those who possessed “*Khmer blood, Khmer traditions, Khmer culture, Khmer language and who were born on the territory that is the heritage of our Khmer ancestors*” (quoted in: Edwards, 2007: 252). Lon Nol’s May 1970 broadcast to the nation, which declared martial law, began:

“We are Khmer. Khmers are descendants of the warrior race, courageous in struggle and never bowing down before their enemies. They sacrifice their life for the service of the nation. Khmers, fervent Buddhists, know perfectly how to distinguish between good and evil. So each compatriot must bear himself honestly and accomplish dignified acts of the citizen who truly loves his country” (quoted in: Slocomb, 2006: 382)

Nevertheless, the Cham and various highland peoples were included as Cambodians, despite the fact that most were neither Khmer nor Buddhist, and only the Vietnamese and Chinese were again excluded (Edwards, 1996: 138; Heder, 2007: 301). General Les Kosem, a prominent Cambodian Cham who had been involved in the formation of the Front for the Liberation of Champa and of FULRO, rose to political prominence under Lon Nol and was enabled to form a Cham battalion in the Cambodian Security Forces (Collins, 1996: 51). Lon Nol and Les Kosem shared strong anti-Vietnamese feelings, and Les Kosem’s objective to ally irredentist movements among the Cham, highland peoples, and Khmer Krom resonated with Lon Nol’s ‘neo-Khmerism’, his vision of reuniting what he considered to be the ancient Mon-Khmer peoples of Indochina (Collins, 1996: 51).

In strong contrast to the Cham, ethnic Vietnamese residents were not just excluded from citizenship but physically removed from the territory, through pogroms and forceful repatriation. Thousands were massacred, and about 200,000 out of an estimated 450,000 ethnic Vietnamese civilians were forced into South Vietnam (Goshal et al., 1995: 20). An estimated 100,000 ethnic Vietnamese left in the course of the following five months. Lon Nol policies also suppressed Chinese identity and culture, but not with the same violent intensity. Lon Nol closed down Chinese schools and newspapers, claiming that they disseminated communist propaganda and corrupted the purity of the Khmer race (Edwards, 1996: 138).

In the meantime, the war in Vietnam pushed North Vietnamese forces deeper into Cambodian territories, where they took control of the northeastern provinces. Even though

highland people were included into Lon Nol's racial, essentially Khmer conception of the nation, his army destroyed entire highland villages and killed their inhabitants in their attempt to regain territory from the Khmer Rouge. By the time Lon Nol's forces had to evacuate, the Khmer Rouge had firmly established control over northeastern Cambodia (Baird, 2008: 213). The US military commenced intense aerial bombing campaigns of the region, in an attempt to target North Vietnamese and Khmer Rouge sanctuaries and supply lines (Shawcross, 1993: 280-299). Aerial warfare devastated highland communities, and many villagers fled to Vietnam and Laos (Colm, 1997: 3).

2.2.3. Minority Destruction during the Khmer Rouge

The Khmer Rouge took power in Phnom Penh in 1975. By this time, the entire northeast had been under their control for five years (Colm, 1996; Guérin et al., 2003: 74). The Khmer Rouge perceived of their revolution as a means to “*secure the goal of survival for the Khmer nation and the Khmer state*” (Frieson, 1988: 409). The Khmer Rouge's attempt to build a racially-defined Khmer nation by means of expulsion and killing of ethnic Vietnamese and Chinese, and by assimilating highland peoples and Chams, mirrored nation-building under previous regimes but took the scale of violence to new extremes. The Khmer Rouge's efforts to banish all minorities

“represented a vigorously enforced compulsory assimilation of former ethnic minorities into the Khmer majority brought about by a complete prohibition on minority languages, minority dress, customs and holidays, and the break up of ethnically separate neighborhoods and communities” (Goshal et al., 1995: 15).

From 1973, the Khmer Rouge forcefully resettled indigenous communities, established cooperatives and labor camps, and forced highland villagers to practice wet rice cultivation (Baird, 2008: 213; Guérin et al., 2003: 74, 195). A radical collectivization was undertaken. All aspects of indigenous lifestyles and traditions were forbidden, such as rituals and ceremonies, distinct dresses, and hair styles. Communities as well as families were routinely separated into work groups created according to labor needs. Elephants and buffaloes as well as ceremonial gongs and jars were confiscated (Colm, 1997: 3; Goshal et al., 1995: 13). Those who did not comply with the ban on religious practices and indigenous languages were commonly punished with death (Guérin et al., 2003: 75).

As merchants and traders, the Chinese were considered enemies of the revolution and intensely persecuted. As urban dwellers, they suffered over-proportionally from the Khmer Rouge's evacuation of cities. Kiernan estimates a death toll of 225,000 ethnic Chinese during the Khmer Rouge period (1986). Edwards considers that Cambodia's ethnic Chinese population was reduced from 400,000 in 1975 to 200,000 in 1979 (1996: 140). There is no doubt that the Cham, too, were violently persecuted under Khmer Rouge rule and suffered specifically from forced assimilation and a general ban on religion. Kiernan estimates that 87,000 Cham, or 36 per cent of the 1975 Cham population, perished under the Khmer Rouge (Kiernan, 1990: 36; 2003: 588). He concludes that the regime's massacres of Cham villagers, the dispersion of the survivors, and the ban on Cham

language, customs, and religion is evidence of a pattern of centrally organized genocide (1988). Similarly, Stanton argues that there is no reasonable doubt about the “*Khmer Rouge intent to destroy Cham Muslims, Christians, Buddhist monks, and the Vietnamese and Chinese minorities*” (1992). Clearly, the universal imposition of one uniform, Khmer identity during the Khmer Rouge period had a profound nation-building effect. Everyone was forced to speak Khmer and even to ‘act Khmer’. Deviation from the ban on minority languages was routinely punished with death. As Steve Heder notes, the regime’s “*spectacular acceleration of previous trends toward linguistic Khmerization was connected to a nationalist political project involving massive murder, including genocide and other crimes against humanity*” (2007: 302). Large-scale population movements and resettlements forced by the Khmer Rouge, too, had the effect of breaking up compact minority communities, often deliberately. Kiernan quotes one communist party directive concerning the Cham declaring that their sense of community should be undermined, specifically that “*it is necessary to break up this group to some extent; do not allow too many of them to concentrate in one area*” (1996: 260). One Khmer Rouge directive to the provinces declared that

“In Kampuchea there is one nation, and one language, the Khmer language. From now on the various nationalities [listed according to province] do not exist any longer in Kampuchea. Therefore [Cham] individuals must change their names by taking new ones similar to Khmer names. The Cham mentality [Cham nationality, language, costume, habits and religion] are abolished. Those who do not abide by this order will reap all consequences” (quoted in: Goshal et al., 1995: 11).

Becker has noted that this directive

“meant people of minority races either became Khmer in a sometimes brutal fashion or faced execution. Some Khmer Rouge cadre took the decree as a license to slaughter minorities” (1998: 245).

It should be noted that much of Cambodia’s relative cultural and linguistic homogeneity today is a consequence of the violent Khmer nation-building policies enacted during the Khmer Rouge period. As many as 150,000 ethnic Vietnamese were expelled to Vietnam during the first five months of Khmer Rouge rule and most of those who remained were killed (Goshal et al., 1995: 21; Kiernan, 2003: 586). All minority identities were violently suppressed in the Khmer Rouge’s attempt to build a Khmer nation that coincides with the jealously guarded borders of the state. The ethnic Vietnamese were singled out for systematic extinction, not least for the way in which they were assumed to be linked to Vietnam. Head of state Khieu Samphan declared in 1978 that “*the number one enemy is ... Vietnam, ready to swallow up Cambodia*” (quoted in: Pouvatchy, 1986: 447) and the Khmer Rouge attacked Vietnam, with the stated aim of regaining the Mekong Delta. In response, Vietnam invaded and occupied Cambodia in 1978, pushed the Khmer Rouge to the border areas, and installed a closely supervised government, the People’s Republic of Kampuchea (PRK).

2.2.4. Subsiding of Nationalist Violence under the PRK and SOC

During the following years, the Vietnam-supported PRK remained in armed conflict with the anti-Vietnam Coalition Government of Democratic Kampuchea (CGDK), consisting of the Khmer Rouge (now called the Party of Democratic Kampuchea, PDK), FUNCINPEC (a royalist party established by Sihanouk), and the republican Khmer People's National Liberation Front (KPNLF). The coalition was united mainly by their shared opposition to the Vietnamese occupation and the 'puppet' PRK government. Most Cambodians were grateful to the Vietnamese for their liberation from the horrors of the Khmer Rouge. However, the presence of 100,000 Vietnamese troops as well as Vietnamese technical and political advisers at all levels of the state dominating and 'Vietnamizing' many aspects of Cambodian life was increasingly resented. Due to poverty and repression in Vietnam, the number of ethnic Vietnamese in Cambodia, both former residents and new immigrants, grew to an estimated 300,000 during the 1980s (Chandler, 1993: 273), which angered many Cambodians. While the PRK leadership was acutely aware of the threat to its nationalist legitimacy posed by the growing number of ethnic Vietnamese residents, they lacked the means to limit immigration and found their Vietnamese masters unresponsive to their concerns (Gottesman, 2003: 124-129).

Formally, the Constitution of the PRK declared the equality of residents regardless of religion or race and provided for "*a policy of unity and equality among the people of all nationalities living in the national community of Kampuchea ... All nationalities must love and help each other*" (quoted in: Ovesen & Trankell, 2004: 249). Nevertheless, official linguistic Khmerization continued, not least through the establishment of a national school system with Khmer as the only language of instruction (Heder, 2007: 303). An official policy for ethnic Vietnamese was adopted in 1983, which allowed "*former Vietnamese residents in Kampuchea*" to "*quickly settle down to a normal life*" (quoted in: Goshal et al., 1995: 21). Those Vietnamese who had come after the Vietnamese invasion were allowed "*to stay in the country and work*", while future immigrants were required to undergo formal immigration procedures. However, the PRK, which changed its name to State of Cambodia (SOC) in 1989, never effectively controlled its borders, and most Vietnamese migrants did not bother with formal requirements, although many were able to obtain some form of Cambodian identity papers (Gottesman, 2003: 163). The PRK/SOC and their supporters considered all ethnic Vietnamese to be foreigners, even those who were formerly Cambodian citizens, estimated by Vietnamese authorities to number 300,000 (Amer, 1994: 217). By applying to a group of people defined by their ethnicity, PRK/SOC policy reinforced the notion of a separate Vietnamese identity and deprived former Cambodian citizens of Vietnamese ethnicity of their membership status, while entitling an unknown number of Vietnamese citizens to reside and work in Cambodia. PRK/SOC policy was consistent with SRN citizenship in that it normalized the existence of metics, of long-term residents who are excluded from citizenship. PRK/SOC distinctions between different categories of ethnic Vietnamese residents were only temporary, but the distinction between ethnic Vietnamese and other Cambodian residents remained and once again

implied the difference between citizens and foreigners.

With the ousting of the Khmer Rouge regime and Vietnam's occupation of Cambodia in 1979, fragile peace returned to the northeast. Highland villagers were allowed and assisted to return to their home villages (Guérin, 2003: 82). Cooperatives and camps were dissolved. Reconstruction in the lowlands and armed conflict, particularly in the north and west of the country, absorbed most of the administration's resources and attention. The government's Vietnamese supervisors, too, likely preferred maintaining a buffer zone between the shared international border and the Cambodian population (Guérin et al., 2003: 120). To counter FULRO operations in the highlands and to better control the Cambodian population, the Vietnamese occupation sought closer relationships with the highlander population and promoted indigenous representation in public offices. The governor positions in all four northeastern provinces were given to ethnic Brao (Baird, 2008: 215). In Mondulhiri, 20 per cent of provincial staff positions were attributed to Mning officials (Guérin et al., 2003: 122). Unlike in Vietnam, no colonization programs were initiated in the Cambodian highlands. Only a small number of military and civilian state officials were sent to establish a basic administrative presence in the northeast, which was again at the margins of Cambodian politics. Highland groups were largely left to rebuild their shattered societies. Most highland people who were forced during the Khmer Rouge to resettle in fixed villages and to practice paddy rice cultivation returned to their previous village sites and attempted to re-establish their previous ways of life. Only few remained where they had been resettled and continued wet rice cultivation (Guérin et al., 2003: 204).

The Cham were enabled by the ousting of the Khmer Rouge to re-establish their devastated communities, too, and to return to their previous lifestyles. Indeed, the Cham became a showcase for the PRK/SOC to distinguish its moderate brand of socialism from the radical policies of the Khmer Rouge (Goshal et al., 1995: 11). Islam was recognized alongside Buddhism as state religion and Cham were appointed to offices in state institutions. In contrast, expression of Chinese identity remained the subject of strong repression, mainly due to conflict between China and Vietnam. Cambodia's ethnic Chinese were not allowed to reestablish Chinese association or language schools or to use Chinese signs in public (Goshal et al., 1995: 16). The Chinese minority was regarded as a fifth-column, blamed for pursuing the interests of the People's Republic of China (Edwards, 1996: 146). Indeed, the suppression of the Chinese minority during the PRK lends support to Kymlicka's assertion that geo-politics are a major factor in the treatment of minorities. Teaching of Chinese languages was prohibited and speaking Chinese actively discouraged in many areas. Restrictions on the Chinese were eased and Chinese associations and schools reopened with the withdrawal of Vietnamese troops in 1989, the establishment of the SOC, and its attempts to improve the relationship with Beijing (Edwards, 1996: 151).

2.2.5. Contestations of Vietnamese' Legal Status within UN Peace Initiatives

During the Paris peace conference in 1989, attended by Cambodia's political factions and

twenty countries, the Khmer Rouge vehemently protested what they claimed were multiple millions of Vietnamese settlers brought in by the Vietnam-controlled PRK in order to take over Cambodia. CGDK parties insisted that all Vietnamese settlers must be expelled as part of any political settlement (Heder & Ledgerwood, 1995: 9). After the collapse of the Paris conference and Vietnam's unilateral withdrawal, CGDK parties continued to claim that Vietnamese troops remained in Cambodia, living among seemingly civilian ethnic Vietnamese communities.

Vietnamese troops left behind a highland region still heavily forested, difficult to access, and predominantly inhabited by indigenous groups (Guérin et al., 2003: 139). Most vehicles on their way to the provincial capitals of Ratanakiri and Mondulhiri still passed through Vietnam due to the absence of suitable roads in Cambodia. Until the arrival of UNTAC in 1992, renewed colonization programs were carried out, initially focused on the transfer and establishment of Khmer farmers to newly created model villages, with the stated rationale to facilitate development of under-exploited provinces (Guérin et al., 2003: 125, 139). However, the government lacked the means to furnish settlers with aid and for the time being, only a few hundred families moved to the northeast. These settlers reinforced the presence of ethnic Khmers and diversified the populations of Ratanakiri's and Mondulhiri's provincial capitals, formerly almost exclusively inhabited by state officials (Guérin et al., 2003: 123). Due to the improvement of the security situation and of roads connecting the highlands to the lowlands, spontaneous migration from the plains to the highlands set in (Guérin et al., 2003: 139).

Negotiations at the UN eventually led to the creation of the United Nations Transitional Authority in Cambodia (UNTAC) as part of a peace plan. The prospects of peace, the arrival of tens of thousands of UN personnel, and a subsequent construction boom triggered yet another wave of Vietnamese immigration to Cambodia. A framework document endorsed by the UN Security Council that had been begrudgingly signed by all Cambodian parties mandated UNTAC with conducting an election with the franchise based on residence. However, when UNTAC drafted the electoral law in 1992, all Cambodian factions, including the SOC, strongly protested at the deviation from Cambodia's traditionally ethnicity-based conception of citizenship, specifically the exclusion of ethnic Khmer in Vietnam and the inclusion of ethnic Vietnamese in Cambodia, estimated by UNTAC to number at least 200,000 in 1992. As Steve Heder and Judy Ledgerwood point out,

“it is this notion that someone could be a Cambodian voter ... without being culturally Khmer that all the Cambodian parties to the agreement found unacceptable even as a theoretical possibility” (1995: 24).

This is inaccurate, insofar as highland peoples and the Cham are not culturally Khmer yet the Cambodian parties did not object to members of these groups being able to vote. Rather, it was the notion of culturally Vietnamese voters that upset the Cambodian factions. Sihanouk in 1992 called for ethnic Khmers from Vietnam to vote in the coming

elections and asserted that the Vietnamese “*remain foreigners, even if their parents, grandparents and ancestors were born in Cambodia*” (Minorities At Risk Project, 2009). UNTAC eventually agreed to minor changes designed to reduce the number of eligible voters of Vietnamese ethnicity (Heder & Ledgerwood, 1995: 24). The following discussion demonstrates that the end of the occupation and the introduction of competitive politics mark the (re-)institutionalization of rhetoric promising to limit or reverse Vietnamese immigration, which has again become an important source of political legitimacy. Interestingly, this is in contrast to the evolving treatment of the ethnic Chinese community, which, following the withdrawal of Vietnamese forces, experienced a veritable revival. The “*massive regeneration of Chinese cultural identity*” involved the reestablishment of national, local, and dialect-based Chinese associations, schools, and temples, the dissemination of Chinese materials from China, Hong Kong, and Taiwan and the renewed flourishing of Chinese newspapers and Chinese-run businesses (Edwards, 1996: 150-162; Heder, 2007: 309).

2.3. Ethnic Minorities and Khmer Citizenship under the New Constitution

A useful starting point for characterizing contemporary, post-UNTAC state-minority-relations is the 1993 Constitution, which suggests that citizenship continues to be closely linked to Khmer ethnicity. Whereas the Constitution consistently refers to the country as ‘Cambodia’, the rights invoked in the Constitution are provided to ‘Khmer citizens’ only. The provision that best captures the ambivalence of ‘Khmer citizenship’ is in Article 31:

“Khmer citizens shall be equal before the law and shall enjoy the same rights, freedoms and duties, regardless of their race, colour, sex, language, beliefs, religion, political tendencies, birth origin, social status, resources or any other position”.

This provision is open to a range of interpretations, depending on which part is emphasized. Stressing ‘Khmer citizens’ suggests that citizenship is defined strictly in ethnic terms. Stressing the non-discrimination portion invokes an inclusive conception of membership in a thinly-defined nation and implies that there can be Cambodian citizens of different races, languages, and religions. Accordingly, interpretation of this article in literature and public discourse vary widely. One of the most inclusive interpretations is by Thomas Clayton, who claims that

“the constitution promises protection to minority cultures and articulates an official ideology of multiculturalism ... Cambodian legislators have taken seriously the idea that minority cultures deserve recognition, valorization, and status in contemporary society, particularly in their efforts to define citizenship” (2007: 97).

The author also claims that it is the “*intention of the constitution to make citizenship available, through the process of naturalization, to persons of Chinese, Vietnamese, and other ancestries*” (2002: 58). This interpretation is profoundly implausible, given that the Constitution does not define citizenship and that it mentions neither minority cultures nor

Vietnamese or Chinese, nor even the possibility of naturalization.

In a variation on the same theme, Ovesen and Trankell argue that “*in using the term ‘Khmer citizen’ the Constitution does not imply ethnicity*” and that the absence of ethnic minorities from the text of the Constitution indicates

“that the nation of Cambodia... no longer needs the kind of nationalism that is based on ethnic affiliation and that people who live and work in their county of birth or chosen residence should be entitled to participate in that country’s political affairs” (2004: 253).

But there are virtually no states that people can freely choose as their country of residence and expect to “*be entitled to participation in that country’s political affairs*”. Even the most liberal-democratic states distinguish between citizens and foreigners and generally let the former participate in political affairs and not the latter. There also is no such thing as nationalism that is free of ethnic affiliation. Any state cannot but operate societal institutions in one language or another, thereby privileging the native speakers of official languages and disadvantaging speakers of others. Ovesen and Trankell’s concern with ‘discrimination’ misses the prior question of citizenship raised by the Constitution and by doing so, misconceives the vulnerability of those who reside inside Cambodia but outside the conceptual Cambodian nation.

In contrast to the civic interpretation of ‘Khmer citizenship’, Edwards highlights that the Constitution, “*taken at its most literal reading, baldly denies basic human rights to anyone so unfortunate as to be labeled non-Khmer*” (1995: 68). Similar concerns were expressed by various UN institutions and international NGOs. Amnesty International expressed the concern that these “*articles of the constitution ... could be used by the organs of the state to exclude sectors of the population from full enjoyment of fundamental rights and freedoms*” (1995b: 5). The Special Representative of the Secretary General for Human Rights in Cambodia highlighted “*the risk that they could be used to justify discrimination against non-Khmer ethnic groups, such as Cambodians of Vietnamese or other non-Khmer origin*” (Kirby, 1994: 35). These concerns were validated by Cambodia’s National Assembly, whose members agreed during the discussion of the definition of ‘Khmer citizen’ that it includes highland people and Muslim Cham but not “*people of ethnic Vietnamese origin*” (Amnesty International, 1995b: 6). Like earlier post-independence conceptions of citizenship, this definition includes highland people and Cham through their misrecognition as Khmer but is incapable of accommodating distinct minority cultures. At the same time, ‘Khmer citizenship’ excludes people of ethnic Vietnamese origin as a group based on their ethnic identity (Ehrentraut, 2011b). Interestingly, Cambodia’s ethnic Chinese were not mentioned in the assembly’s discussion. Field research confirms that the problems ethnic Vietnamese face due to their lack of citizenship status are not faced by ethnic Chinese, neither vis-à-vis the state nor the general population. Representatives of Cambodia’s Chinese community routinely use the term ‘Khmer Chen’, or ‘Chinese Khmer’, deliberately invoking and expanding the metaphor used by Sihanouk to include

ethnic Chinese into the imagined community of a Cambodian nation defined in Khmer terms. While ethnic Vietnamese remain beyond the realm of ‘Khmer’ and outside the Cambodian nation, ethnic Chinese have made the transformation from foreigners into citizens, demonstrating the possibility of metics becoming full members of the Cambodian nation. The analysis in the following chapter suggests that this important difference is in large part attributable to Cambodian perceptions of geopolitical insecurity and historical injustice vis-à-vis Vietnam.

2.3.1. Khmer Insecurity

As was mentioned before, the Khmer today are usefully considered a ‘minoritized majority’:

“Many Cambodians think, as they have thought for centuries, of Cambodia as ‘srok Khmer’, the land of the Khmer: a people, culture and distinct way of life that once was the jewel of South East Asia, but now, in the minds of many Khmer, is threatened with extinction” (Goshal et al., 1995: 28).

Under all post-independence regimes, the *“ultimate purpose of change was to save Khmer civilization from extinction at the hands of the shadowy ‘enemy’, external or internal ... Each of the regimes believed that their own form of socialism was essentially Khmer”* (Slocomb, 2006: 388). The self-perception of the Khmer as a threatened people is also suggested by Cambodia’s 1993 Constitution:

“We, the people of Cambodia, accustomed to having been an outstanding civilization, a prosperous, large, flourishing and glorious nation, with high prestige radiating like a diamond, having declined grievously during the past two decades, having gone through suffering and destruction, and having been weakened terribly, having awakened and resolutely rallied and determined to unite for the consolidation of national unity, the preservation and defense of Cambodia’s territory and precious sovereignty and the fine Angkor civilization, and the restoration of Cambodia into “Island of Peace” based on multi-party liberal democratic responsibility for the nation’s future destiny of moving toward perpetual progress, development, prosperity, and glory ... “.

The Constitution’s preamble describes present-day Cambodia as stage of a continuous national project based on the Angkor civilization. Angkor in nationalist discourse is understood to be a prototypical Khmer achievement, with the temple of Angkor Wat representing a *“monument to Khmerness”* (Edwards, 2007: 137). Identifying *“the people of Cambodia”* with Angkor tends to essentialize Cambodia as a Khmer state. The reference to the Angkor civilization also highlights the past greatness and current smallness of Cambodia and implies the risk that Cambodia might disappear. As Edwards shows, Angkor today *“stands as political shorthand for two enduring nationalist tropes, symbolizing faith in Cambodia’s past glory and fears of that country’s future disappearance”* (2007: 5). The Constitution’s references to grievous decline and terrible weakening underline the self-perception of a weak, victimized, existentially threatened people. The declared determination *“to unite for the consolidation of national unity, the preservation and*

defense of Cambodia's territory and precious sovereignty and the fine Angkor civilization" highlights the nation-building character of the Cambodian state. Previous sections have demonstrated that minorities in Cambodia have suffered and declined grievously from state attempts to consolidate national unity based on a Khmer national identity. Public and official discourse not only privileges Khmer culture and civilization but also filters out the suffering and destruction of minorities at the hands of a Khmer nation-building state. Indeed the Khmer obsession with cultural survival makes more obvious the double standard of a Cambodian state that uses nation-building policies to promote and perpetuate the culture of the majority while undermining the cultural survival of minority cultures. Further indications of securitization and the minoritized majority phenomenon are the Constitution's preoccupation with territorial integrity and sovereignty and an aversion to the notion of regional autonomy. Article 2 states that the "*territorial integrity of the Kingdom of Cambodia shall absolutely not be violated*", Article 3 exclaims that the "*Kingdom of Cambodia is an indivisible State*". Article 6 of the Law on Political Parties (1997) states that political parties are not allowed to "*make up an autonomous zone which may harm to the national unity and territorial integrity*". Concerns over Cambodia's territorial integrity and the essential Khmerness of the nation are at the heart of contemporary political debate, with opposition parties routinely claiming that the ruling Cambodian People's Party facilitates Vietnamese taking of Cambodian land (Hughes, 2002). A fairly typical comment in the pro-SRP newspaper Moneaksekar Khmer claimed during the 2003 elections that

"Illegal 'yuon' [derogatory reference to Vietnamese] immigration gives the election to the CPP, so that yuon can continue to invade Khmer territory like a flood and destroy the Khmer nation at will" (Hughes & Kim, 2004: 61).

Sam Rainsy, leader of Cambodia's main opposition party, the Sam Rainsy Party (formerly Khmer Nation Party), in 2010 was sentenced to 10 years in jail for alleging territorial encroachment by Vietnam and for leading a political protest in which border markers were uprooted (HRW, 2010: 1). As a result, Sam Rainsy went into self-imposed exile until 2013. In 2012, the Sam Rainsy Party, together with the Human Rights Party, formed the National Salvation Party as an electoral alliance to contest the 2013 general election.

There are no regional security institutions that effectively contribute to the desecuritization of ethnic relations in Cambodia. Cambodia and her neighbors are members of the Association of Southeast Asian States (ASEAN), but this has not removed the perception of geopolitical insecurity that prevails in Cambodia. A recent indication was ASEAN's failure to effectively address the violent border conflict between fellow members Cambodia and Thailand, causing Cambodia to seek resolution from the UN Security Council and eventually from the International Court of Justice (Haywood, 2011). Another indication is the Cambodian government's use of its chairmanship of a July 2012 ASEAN meeting to torpedo a collective response to China's increasingly assertive claims to the whole of the South China Sea (Hunt, 2012). These claims put China at odds with ASEAN members Vietnam, the Philippines, Malaysia, and Brunei. Cambodia's willingness to prioritize its bilateral relationship with China over territorial and security interests of

fellow ASEAN members in turn suggests that Phnom Penh does not expect ASEAN to safeguard Cambodia's geopolitical interests. The following chapter demonstrates that the Khmer majority's strong sense of geopolitical insecurity vis-à-vis Vietnam helps explain why the exclusion of ethnic Vietnamese from citizenship is seen by many as justified by Cambodia's security needs, even though the ethnic Vietnamese are not a homeland minority and do not seek autonomy. The following chapters show that securitization is also a significant factor in the relationship between the Cambodian state and highland peoples. Highland groups have historically occupied frontier regions over which the Cambodian government has rarely held more than fragile sovereignty. Today, the homelands of highland groups tend to be near poorly demarcated, disputed, highly contentious borders with Vietnam, Thailand, and Laos. The homelands of several highland groups, such as the Jarai, Brao, Kavet, Kuy, and Samre are divided by these international borders (Colm, 1997: 2). The threat to the security of the state is perceived to originate much less in actual or potential autonomy claims of highland peoples than in the territorial ambitions of neighboring states, which might be encouraged if Cambodia exercised less than full control over these regions. Cambodia's northeast in particular has historically been a source of insecurity, instability, and vulnerability (Chandler, 2008: 10). It was crossed by invading Cham armies centuries ago. During the colonial period, the French attempted to exclude the Cambodian state from governing the northeast. Vietnamese communists used the northeast as sanctuary during the Vietnam War and the so-called Ho Chi Minh Trail ran through this region, triggering massive American bombings. The Khmer Rouge established an autonomous zone in the northeast before taking over the rest of the country. The northeast was traversed by the invading Vietnamese army that toppled the Khmer Rouge and occupied Cambodia for a decade. The Khmer Rouge after their deposal by the Vietnamese military continued to fight a guerilla war against the state from areas along the border with Thailand. The northeast and other remote border areas have often served as sanctuary for domestic rivals. The perception of insecurity linked specifically to the regions inhabited by highland peoples contributes to making even modest autonomy claims a security consideration in which the interest in sovereignty and integrity outweighs the interests highland peoples have in governing themselves.

2.3.2. Neo-Patrimonial Governance

Another aspect of contemporary governance in Cambodia that is essential to understanding current state-minority-relations is by its very nature not mentioned in the Constitution. Patronage and hierarchy have been described as pervasive features of Cambodian thinking, politics, and social relations (Chandler, 2008: 2). The autocratic system of governance that is operating behind Cambodia's constitutional façade of liberal democracy today has been usefully characterized as patrimonial, or neo-patrimonial, by a number of authors (CAS & World Bank, 2006; Horng & Craig, 2008; Hughes, 2003; Hughes & Conway, 2003; McCargo, 2009; Pak & Craig, 2008; Pak et al., 2007; Kheang Un, 2011). The following discussion shows that the concept also helps explain the international community's failure to promote respect for minority rights. A neo-patrimonial system is one that combines

elements of rational-bureaucratic and patrimonial rule, with the latter based on personal relationships between patrons and clients. Bratton and van de Walle have suggested characterizing

“as neopatrimonial those hybrid regimes in which the customs and patterns of patrimonialism co-exist with, and suffuse, rational-legal institutions” (1997: 62).

The authors of a paper on neo-patrimonialism in Cambodia argue that

“traditional power, especially the power of patrons and their networks of clients, has merged in recent years with the formal structure of government to form ... a neo-patrimonial form of government”, adding that *“the ‘informal’ accountability between a powerful patron ... and his kin, friendship or political network is more powerful than, and thus just as structurally important as, the formal system of bureaucratic rules and hierarchies”* (Pak et al., 2007: 3-4).

The authors write that in Cambodia’s neo-patrimonial system, power is

“amassed around central-level political figures and central ministries exercising control over resources ... the real power is concentrated in a small number of elites who hold concurrent positions within the government and the ruling political party” (Pak et al., 2007: 58).

One might add that power is concentrated in the political institutions and patrimonial elites of the Khmer. Cambodia is governed by highly centralized patronage networks with Prime Minister Hun Sen at the top. These neo-patrimonial arrangements *“even extend to ownership rights ... over different lucrative sectors, such as land and forestry”* (Pak et al., 2007: 60). The division of natural resources among Cambodia’s warring factions was essential to Cambodia’s post-conflict transition. Control over land and natural resources as well as other lucrative domains remains vital to the maintenance of power by Cambodia’s elites. Under Cambodia’s neo-patrimonial system, tycoons, politicians, and high-ranking military commanders are granted control over land and natural resources in return for political loyalty and financial support for the ruling Cambodian People’s Party (CPP) (McCargo, 2009: 5; Kheang Un, 2005). The neo-patrimonial system reaches from the very top to the very bottom of the state. The salaries of public servants are very low, forcing officials into corruption that has become the very foundation of Cambodia’s political system. Kheang Un has noted the *“weakness of policy as a factor in popular mobilization”* in this system, as the ruling party draws voters based on the use of patronage politics rather than policy platforms (2005: 220). Voters select political parties based on these parties’ perceived ability to provide material resources (Kheang Un, 2005: 222), which helps explain why constituents continue voting for the ruling party even where the party apparently fails to serve them well. Fear and lack of information are other factors.

The operation of this neo-patrimonial system contributes to explaining the enormous amounts of lands and natural resources that have been transferred to private interests in the

form of economic land concessions. These concessions do not benefit the state budget (Ironside, 2009: 96; Subedi, 2012a: 47). Instead, they benefit the coffers of the ruling party and enable high-ranking patrons to maintain the support and loyalty of clients at lower levels of the state. Thus, the granting of land concessions is vital to the CPP's hold on power. According to the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), more than 2.1 million hectares of land have been leased to corporations over the past 20 years (quoted in: Wallace, 2012). Another 1.9 million hectares have been leased to mining companies, most of it in the northeast and north of the country (Vrieze & Naren, 2012: 11). Other sources suggest that over 5.5 million hectares of forest, land, and fishing grounds are under private concession management (Um, 2008: 112). Corporations control 22 per cent of the country's surface area, and economic land concessions make up 53 per cent of Cambodia's total arable land (Strangio, 2012a). In 2011 alone, 251,000 hectares were granted as concessions to 227 plantation firms (Vrieze & Naren, 2012: 6). In 2012, 66 concessions with a total area of 381,121 were approved by the government (ADHOC, 2013: 9; Naren & Peter, 2013). LICADHO estimates that 400,000 people were involved in land disputes since 2003 in 12 provinces, whereas the Cambodian Human Rights and Development Association (ADHOC) recorded about 700,000 people who had been involved in disputes over land since 2000 (Vrieze & Naren, 2012: 7).

Clearly, a predatory, land-grabbing, human rights-abusing state that is based on a highly centralized, top-down patronage system is not a conducive framework for building state-minority-relations of liberal-democratic citizenship. However, it is important to note that different ethnic groups relate differently to the neo-patrimonial political system. To oversimplify, this system is the least disadvantageous for ethnic Chinese, who tend to be well represented among higher-level patrons, specifically among the tycoons who benefit most from it. For their livelihoods, ethnic Chinese rarely rely on the natural resources on which the system preys. Of course, the proportion of tycoons among Cambodia's ethnic Chinese is very small. However, the Chinese community does benefit from the power of tycoons in patronage networks through mechanisms such as Chinese associations. The neo-patrimonial system also moderates the exclusion of ethnic Vietnamese, many of which are considered foreigners and illegal immigrants yet able to get around many legal restrictions, such as by purchasing identity papers, as the following chapter shows.

Among Cambodia's ethnic groups, the neo-patrimonial system is the most disadvantageous for highland peoples. Much of their contemporary marginalization can be attributed to the colonization of the lands and natural resources on which their cultures are based by a patronage system to which they have even less access than they have to the formal institutions of the state. As the reach of the state expands once more to the homelands of indigenous groups, so does the influence of higher-level patronage interests who now consider the lands and natural resources of indigenous communities to be at their disposal. The potential for commercial exploitation of forests in and near the lowlands has been

depleted, and there is an increasing shortage of land. In contrast, the considerable potential of indigenous homelands for the exploitation of natural and mineral resources and for agriculture has only relatively recently become accessible again, due to relative remoteness and lack of infrastructure. The lands and resources of highland peoples are now over-proportionally targeted for neo-patrimonial dispossession, not primarily because these groups are singled out by their ethnicity but because their resources are particularly suitable from a patronage point of view (McCargo, 2009: 13; Pak & Craig, 2008: 69). These resources are very lucrative, and they can be obtained with relatively little effort from isolated, marginalized, disempowered communities whose members speak little Khmer, have no meaningful access to political decision-making or to the judicial system, and little ability to protest or to seek redress. As Ironside puts it, “*weak governance, widespread corruption and the ease with which indigenous peoples can be duped, coerced and intimidated has resulted in ... ‘open season’ on the traditional lands and forests*” of indigenous peoples (2009: 99). By some estimates, 20 economic land concessions measuring more than 220,000 hectares were granted in Ratanakiri in 2011 alone, while not one of the more than 100 land dispute cases between local communities and powerful individuals or companies in the province has yet been solved (Roeun & Doyle, 2012: 1). Cambodia’s highland peoples rely on their lands and natural resources not only for their livelihoods but also for their cultural survival. However, they find themselves at the bottom of persisting ethnic hierarchies, of the formal state hierarchy, and the patrimonial hierarchy. The formal as well as the patrimonial side of governance lack access points for highland peoples’ participation and are unresponsive to their interests. Highland peoples’ marginalization from the patrimonial system of governance reinforces their marginalization from the formal political system. The interest Cambodia’s highland peoples have in realizing the rights indigenous peoples have in international law, specifically to self-determination, land, and natural resources, directly contradicts the interest Cambodia’s neo-patrimonial elites have in controlling and exploiting indigenous lands and resources, which they now consider their domain and which have become essential to the maintenance of their power. The following map, prepared by human rights group LICADHO, provides an overview of concessions in Cambodia.

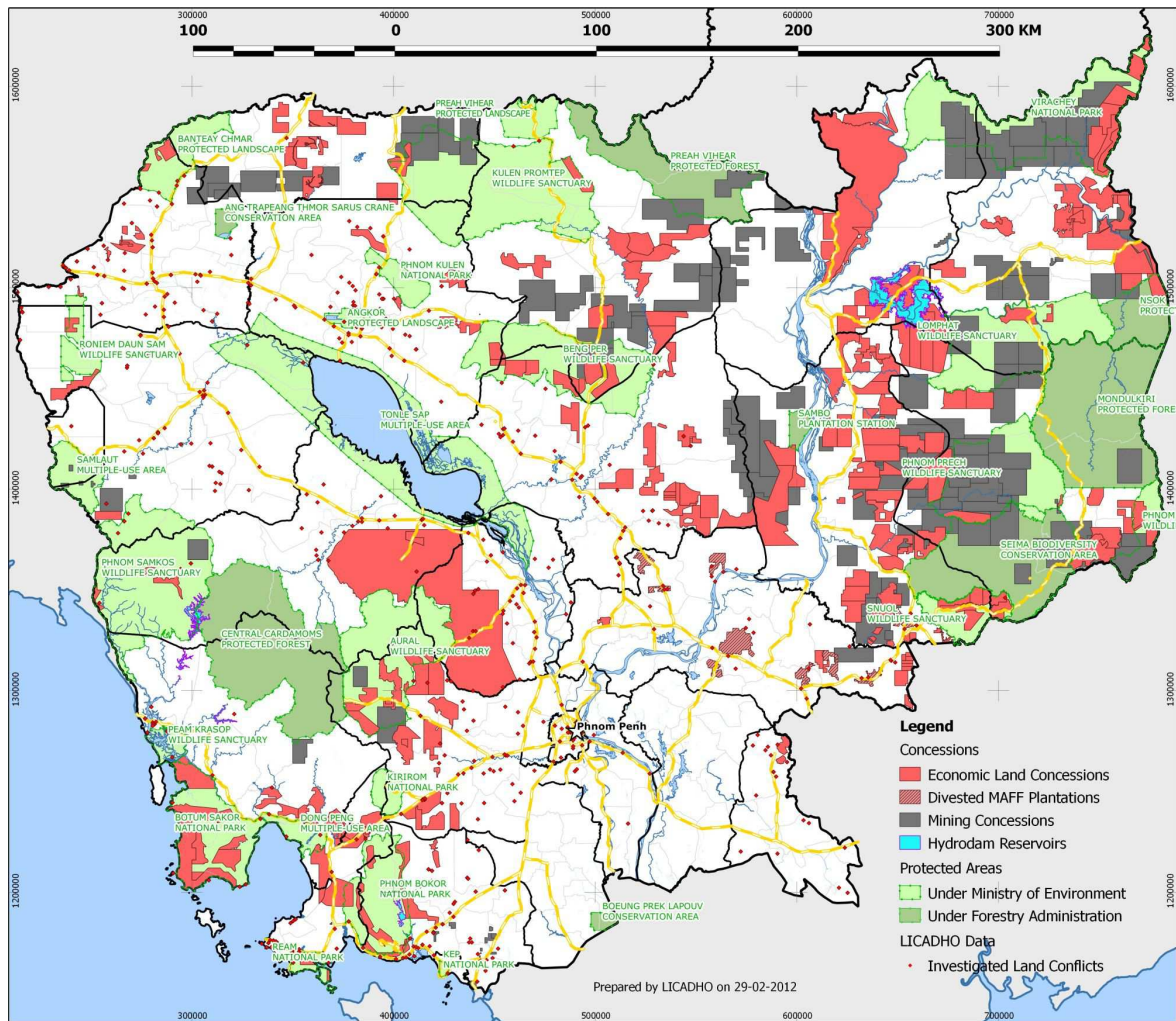


Illustration 5: Map of Concessions in 2012 (Source: LICADHO, 2012)

2.3.3. Immigration and Nationality Laws: From Foreigners to Citizens?

A law on immigration was among the first to be sent to the new National Assembly in 1994. The law was seen by many as targeting ethnic Vietnamese and constituting the first step toward their deportation (Berman, 1996: 822). The law defines aliens as persons without Khmer nationality, but it does not define Khmer nationality, making it impossible to determine reliably whether a particular Vietnamese person is a Cambodian national. All immigrants are required to bring their own passports and to get incoming visas before entering, conditions which most ethnic Vietnamese do not meet. The law requires the deportation and expulsion of aliens who fail to comply with its provisions or who are found to have entered Cambodia illegally. In one reading, the law mandates the mass expulsion of a great proportion of ethnic Vietnamese from Cambodia. As the UNHCR Mission Chief in Cambodia stated: *“the law could be the instrument for the mass deportation of non-Khmers ... This is the public expectation and there is no provision in the law to stop this”* (Minorities At Risk Project, 2009). Unsurprisingly, the law was met with intense protest from international human rights organizations, from Vietnam, the UNHCR, and even the UN Secretary General. In response, co-Prime Minister Norodom Ranariddh assured the international community that there would be no large-scale expulsion of ethnic

Vietnamese. However, the Cambodian and Vietnamese governments agreed that ethnic Vietnamese would continue to be treated as ‘foreign nationals’ (Amer, 2006: 394). The Ministry of Interior agreed to postpone the implementation of the Immigration Law until the adoption of the Law on Nationality (Kirby, 1996: 33).

The Law on Nationality, adopted in 1996, does contain a definition of ‘Khmer citizen’ but it is as ambiguous as earlier legal instruments: “*Any person who has Khmer nationality/citizenship is a Khmer citizen*” (Article 2). As the use of two terms in the English language translation indicates, the respective Khmer term ‘soncheat’ can refer to citizenship as well as ethnicity, roughly similar to the English term ‘nationality’. Thus the legal definition of ‘Khmer citizen’ in the Nationality Law, like the Constitution, is compatible with at least two interpretations. In one interpretation, the article states that every Khmer citizen is a Khmer citizen, which has no definitional substance. Alternatively, it means that everyone of Khmer ethnicity is a Khmer citizen, which would exclude all residents who are not ethnically Khmer. The law allows for “*Khmer nationality/citizenship*” to be obtained “*regardless of the place of birth*” by a child “*who is born from a parent who has Khmer nationality/citizenship*” (Article 4), which includes ethnic Khmer in Vietnam. However, given the preceding discussion, there is, clearly, another interpretation, which excludes ethnic Vietnamese children, even if they are born in Cambodia. In addition, ‘Khmer nationality/citizenship’ can be obtained by “*any child who is born from a foreign mother and father who were born and living legally in the Kingdom of Cambodia*” (Article 4). This provision would potentially cover a great proportion of ethnic Vietnamese residents in Cambodia, depending on whether their parents are considered legal residents. But the great majority of Cambodia’s ethnic Vietnamese entered Cambodia outside immigration frameworks and therefore, could potentially be considered illegal, even those who were granted Cambodian citizenship under previous regimes (Ehrentraut, 2011b: 791).

Naturalization is provided under the law as “*a favor of the Kingdom of Cambodia*” and may be “*rejected by a discretionary power*” (Article 7). The favor is linked to the applicant’s ability to assimilate into a thick conception of Khmer culture: applicants must speak and read Khmer language, know “*Khmer history*”, provide “*clear evidence that he/she can live in harmony in Khmer society*”, and “*get used to good Khmer custom and tradition*”. Furthermore, applicants must have lived “*continuously for seven years from the date of reception of a residence card that was issued under the framework of the Law on Immigration*” (Article 8). But no such residence cards had been issued by 2004 (Pyne & Bunly, 2004: 1), and field research suggests that none have been issued since.

Predictably, the draft law drew strong criticism from various UN institutions and international NGOs. Amnesty International, for example, expressed the concern that “*certain ethnic minorities ... may be excluded from nationality rights, and thus be regarded as illegal aliens*” (1995a: 63). The Special Representative of the UN Secretary General for Human Rights in Cambodia recommended the deletion of provisions that would restrict

citizenship to “*persons of Khmer nationality*”. He also proposed to clarify that “*members of other ethnic communities, including indigenous people and hill tribes, Chinese, Vietnamese, Cham and Lao having appropriate connection with Cambodia, are eligible, by right, to enjoy Cambodian citizenship*” (Kirby, 1996) and to recognize the number of years a person has lived in Cambodia prior to adoption of the law. The successor in his office in 1997 stated that the use of the term ‘Khmer’ instead of ‘Cambodian’ could lead to the exclusion of certain ethnic minorities. Furthermore, “*the harsh provisions relating to naturalization raise the possibility of statelessness for thousands of persons residing in Cambodia and possessing no other nationality*” (Hammarberg, 1997: 29). The UN Committee on the Elimination of Racial Discrimination expressed concern that the Nationality Law, by stating that Khmer nationals are those with a Khmer parent, “*makes it difficult for persons belonging to minority groups, in particular ethnic Vietnamese and indigenous people, to establish their citizenship*” and recommended appropriate revisions (CERD, 1998: 3-4). The UN Committee on the Rights of the Child expressed concerns that the law may lead to discrimination against children of non-Khmer origin and that it might leave as stateless a large number of children born in Cambodia (United Nations, 2000: 6). However, the only change to the draft law was the removal of a provision that allowed taking away citizenship from naturalized Cambodians for “*insulting and contemptuous behavior towards the Khmer people*”. Interestingly, ethnic Khmer from Vietnam are officially considered Khmer citizens when in Cambodia⁷, even though in practice they face considerable obstacles when trying to access the benefits of their Cambodian citizenship (CCHR, 2011). The formal inclusion of the Khmer Krom is consistent with the Nationality Law’s definition of Khmer citizenship only if the ethnic interpretation is utilized, which tends to exclude Cambodia’s ethnic Vietnamese. Plausibly, the concept of ‘Khmer citizen’ is meant to serve the double purpose of including ethnic Khmer outside Cambodia and excluding ethnic Vietnamese inside Cambodia.

The following chapters deepen the investigation of state-minority-relations in Cambodia, with a focus on ethnic Vietnamese and highland peoples. Among Cambodia’s ethnic minorities, these groups’ members arguably face the gravest and most urgent disadvantages in terms of economic opportunities, political power, and social prestige, but for very different reasons. Ethnic Vietnamese are an immigrant group that is involuntarily excluded from the nation’s mainstream institutions. Highland peoples are homeland minorities who are involuntarily included into the majority society. Ethnic Vietnamese and highland peoples are also the most vulnerable minority groups in Cambodia, but the nature of their vulnerability is very different. A Vietnamese identity is still linked to exclusion and fear whereas indigenous identities remain associated with shame and stigma. In contrast, the accommodation of ethnic Chinese and Cham in Cambodia is relatively successful. A

⁷For example, in a meeting with the US Assistant Secretary of State for Population, Refugees, and Migration, in February 2007, Cambodia’s Minister of Foreign Affairs Hor Namhong stated that “*Khmer Krom who are living in the Cambodian territory, are treated and can enjoy equal rights as the Cambodian citizen*” (Ministry of Foreign Affairs, 2007).

Chinese, Cham, or Lao identity can be a source of economic opportunities, political power, and social status in Cambodia. The following chapter presents the findings of field research related to Cambodia's ethnic Vietnamese, while the remaining chapters analyze state-minority-relations with a focus on highland peoples.

3. Perpetually Temporary: Citizenship and Ethnic Vietnamese

3.1. The Prospect for Citizenship

Field research pertaining to Cambodia's ethnic Vietnamese was undertaken in Kampong Cham, Kampong Chhnang, Kampot, Kratie, Pursat, and Kandal Provinces as well as in the capital. Findings suggest that a majority of ethnic Vietnamese in Cambodia are not Cambodian citizens, in their own description of their legal status as well as in statements of officials at various levels of the state. The regulation of ethnic Vietnamese residents operates largely outside the legal framework of the immigration and nationality laws. Lack of secure citizenship status is directly linked to a wide range of disadvantages ethnic Vietnamese residents experience in many spheres of social, political, and economic life. This insecurity of ethnic Vietnamese' legal status creates considerable obstacles to their participation in mainstream society and its institutions. They have no right to vote or to stand in elections and are unable to work legally. Because ethnic Vietnamese do not have the right to own land, many live in houses and communities that float on Cambodia's lakes and rivers. Ethnic Vietnamese metics face additional difficulties in accessing public services, in obtaining marriage, births and deaths certificates, building permits, business and driving licenses and even SIM cards, and in traveling inside and outside Cambodia. Because they cannot borrow from banks, they have to pay substantially higher interest rates for money from unregulated lenders. Limited access to the legal system reinforces vulnerability to abuse and discrimination by public institutions and the wider society. Because their uncertain legal status, ethnic Vietnamese metics are unable to develop a sense of securely belonging in Cambodia.

Generally, people who identify, and are identified by others, as ethnic Vietnamese are considered foreigners by the authorities and are, often acutely, aware of this official classification. Relatively rare exceptions from this rule are a few who were able to prove their pre-1975 Cambodian citizenship, ethnic Vietnamese women who have married Khmer men and their children. In these cases, citizenship documents are provided by authorities at the end of an elaborate administrative procedure. Ethnic Vietnamese who have gained citizenship in one of these ways are said to enjoy secure status and the same set of rights enjoyed by Cambodian citizens of Khmer ethnicity. Aside from these categories, most respondents were not aware of cases of ethnic Vietnamese legally becoming Khmer citizens. Significantly, the Nationality Law states that children of a Khmer mother or father are entitled to citizenship. However, citizenship does not appear to be conferred on children of Vietnamese men in actual practice, which was confirmed by local officials as well as ethnic Vietnamese respondents.

A wide range of different identification documents are in circulation among Cambodia's ethnic Vietnamese, issued by different authorities under different regimes. Most commonly

used are immigrant documents, which must be renewed every 1-2 years for substantial fees. None of these documents appear to be resident cards issued under the framework of the Immigration Law. Nevertheless, respondents across virtually all the communes visited reported that police authorities issue ID cards in return for bribes. Many Khmer respondents complained bitterly about this practice, though many statements appeared to exaggerate the scale and consequences of this practice. Many ethnic Vietnamese long-term residents, too, expressed frustration about recent immigrants obtaining at least the appearance of citizenship, while they themselves may legally qualify for citizenship but were unable to obtain even this semblance of membership. Those who have national ID cards irregularly issued to them commonly change their name and place of birth. However, this does not remove the insecurity of their legal status.

While a significant number of ethnic Vietnamese residents hold irregularly issued ID cards, these documents are widely considered to be of limited value, because they can be, and have been, taken away and invalidated by authorities. In Kratie Province, for example, many ethnic Vietnamese respondents reported being called for a meeting at the provincial police department in 2007. During the meeting, participants were informed that ID cards issued during the past few years were invalid. Their ID cards were taken in return for receipts and assurance that new cards would be issued. This, however, never happened. Many respondents said that following this meeting, those ethnic Vietnamese who still have such ID cards avoid showing them.

3.2. Low Level of Institutionalization

The Vietnamese association in Phnom Penh was recognized by the Ministry of Interior in 2003. It has since assisted with the formalization of provincial associations in 19 out of Cambodia's 23 provinces. Provincial associations maintain chapters in those districts in which significant communities of ethnic Vietnamese reside. Despite the appearance of a hierarchical organization covering almost the entire Kingdom, provincial associations are rather informal institutions. Cambodia's ethnic Vietnamese community is characterized by a low degree of institutionalization, particularly when compared to ethnic Cham and Chinese. Vietnamese associations are sometimes portrayed as institutions of a parallel Vietnamese society in Cambodia, even as an instrument of Vietnamese colonization, particularly by representatives of opposition parties. These claims are implausible in light of the low capacity of these associations and the very modest scale and nature of their activities. Provincial and district associations are loosely organized groups with voluntary membership and little resources, led by volunteer officials operating out of coffee shops or member's homes. These associations are not alternative centers of power. Association officials exercise little control over members. Associations own no significant property and their modest funds consist for the most part of what little is collected in membership fees, from buying and re-selling cemetery land to member families, contributions from the Vietnamese embassy, and some donations from charities abroad. The primary purpose of associations is to aid ethnic Vietnamese families when in need, such as in cases of sickness and death and with distributing rice and other supplies provided by charities abroad among

poor families. Within their modest means, associations also promote the teaching of Vietnamese language and script, support the (re-) establishment and maintenance of Vietnamese temples, and assist members in dealing with authorities. Association officials might informally mediate in conflicts involving one or more Vietnamese parties. Several association officials pointed out specifically that associations do not get involved with political issues and have no part in decision-making, which is the domain of the state and Cambodian law. In difficult cases, the Vietnamese association might seek assistance from the Vietnamese embassy.

Many ethnic Vietnamese families abstain from membership and participation in Vietnamese associations, to avoid membership fees but also to avoid the stigma and potential insecurity perceived to be involved in publicly identifying with the Vietnamese community. Most ethnic Vietnamese also keep their distance from the institutions of Cambodia's mainstream society. As one official of the Vietnamese association in Kampong remarked:

“Vietnamese don't dare participating in social activities established by the society. In the existing institutions of the society, we dare not participate”.

Similarly, an association official in Kampong Cham described the situation of ethnic Vietnamese and the role of the association as follows:

“Since the Vietnamese withdrawal from Cambodia in 1989, most Vietnamese are hibernating, just to survive. Even with the formation of the association in 2003, people dare not participate in it, because some are frightened to get involved with political issues. This is so not just here but everywhere”.

Clearly, Vietnamese associations cannot make up for the exclusion of ethnic Vietnamese metics from mainstream institutions and development projects. Nevertheless, a considerable number of ethnic Vietnamese respondents described associations as the best protector of their interests in Cambodia, not because they are so effective, but because ethnic Vietnamese do not have representatives in the institutions of the Cambodian state and because there are no other institutions willing and able to respond to their needs.

3.3. Contested (Co-) Habitation Histories: 'New' and 'Old' Vietnamese

A distinction among Cambodia's ethnic Vietnamese commonly made in the literature as well as in public discourse is between 'old' and 'new' Vietnamese, those whose families have lived in Cambodia before the Khmer Rouge period and those who came after it. Many 'old' Vietnamese families have returned and settled close to where their families lived in the past. Respondents from among the great majority of ethnic Vietnamese communities visited reported that most families belonging to their communities were 'old' Vietnamese. Many expressed feelings of regret and injustice for still being regarded as foreigner, as did one Vietnamese resident of a community in Kampong Chhnang:

“Most Vietnamese people around here were born here and their families have lived

for a long time in this area, in several places around here. We are considered newcomers, but we have been here for many years”.

In contrast to ethnic Vietnamese respondents, local officials routinely gave substantially lower estimates of the ‘old’ proportion of particular ethnic Vietnamese communities. While the accuracy of claims from either side could not be verified, what clearly emerged is that the habitation history and prior legal status of ethnic Vietnamese in Cambodia remains highly contested, not only in national politics but also at the local level.

Local officials often stated that ethnic Vietnamese came only after there was peace in the early 1980s and acknowledged the pre-1975 residency of many of those families only upon further inquiry. As one commune chief in Kampong Chhnang confirmed in response to follow-up questions:

“Most Vietnamese moved to Vietnam during Pol Pot and all others were killed. The old were born here four or five generations ago. After Pol Pot they returned to their birth places”.

Some local officials also played down the suffering of ethnic Vietnamese during the Pol Pot period. The following statement from one commune chief in Kampong Chhnang accurately highlights the feeling expressed by many local officials that ethnic Vietnamese do not belong to the Khmer nation or to Cambodia:

“The Vietnamese are not born here but came just after there was peace. They are residents, not Khmer citizens. Vietnamese were all cleared up during Pol Pot”.

Despite the profound difficulties many ethnic Vietnamese face in Cambodia, an overwhelming majority of respondents unequivocally considered Cambodia their home country and wished to become citizens. Local officials were commonly aware of but unresponsive to this desire, a situation that ethnic Vietnamese respondents described as unjust, as did one woman in Kampong Cham:

“The authorities tell us that we are temporary ... We have been here for many generations but we are never permanent”.

Similarly, one Vietnamese man in Kampong Chhnang complained:

“My family has lived here for three generations; my grandparents lived here and now the younger generation. I was born here, and I am still not a citizen”.

Many ethnic Vietnamese families who reside in Cambodia have not lived in, nor even visited, Vietnam in decades. For many children and teenagers, Cambodia is the only country they know, as one elderly resident in Kampot pointed out:

“Some Vietnamese who live here have not visited their homeland in ten years and their children don’t know the faces of their grandparents and the place where their ancestors grew up”.

Even though memories of past persecution remain vivid among older members of ethnic Vietnamese communities, respondents often described their feelings of attachment to

particular localities in Cambodia as stronger, as did one male respondent in Kampong Chhnang, in response to the question where his home is:

“Here. If there is another war, we flee to another place and return after it. We have a good feeling here”.

A significant number of Vietnamese residents pointed out that their families owned land prior to the Khmer Rouge period, such as an elderly resident of a small floating community in Kratie Province:

“We owned land near here but it was confiscated during Pol Pot, and we fled to Vietnam. Since we returned we have been in the current situation”.

Ethnic Vietnamese respondents often felt that discrimination and exclusion from mainstream society was reserved for members of their group, while other ethnic minorities have full citizenship rights. One man in Kampong Chhnang Province, for example, said:

“Cham and Khmer are tolerant of each other but not of Vietnamese. The same goes for Chinese, they have the same rights. Only Vietnamese don’t have rights”.

In many communes, ethnic Vietnamese residents had been told by the authorities in the past that they would receive full citizenship in the future. This has heightened the sense of frustration among ethnic Vietnamese about the continuation of their uncertain status. In interviews with local and provincial officials, the most commonly stated reason for this delay was that authorities needed to establish the pre-1975 legal status of ethnic Vietnamese families and whether or not family members were born in Cambodia. This is plausible in light of the immigration and nationality laws and the fact that virtually all public records of pre-1975 residency and citizenship were destroyed. Only a very small proportion of ethnic Vietnamese residents have sufficient proof of their family’s status in Cambodia more than 30 years ago. However, the enormity of the administrative effort that would be required on the part of local authorities to determine the pre-1975 status of large numbers of ethnic Vietnamese contrasts sharply with the impression that no significant efforts are being made by the competent authorities to actually obtain the required information.

Associations of ethnic Vietnamese families exist in many of the provinces and districts with significant ethnic Vietnamese communities. Representatives of these associations often expressed the view that local officials in many cases knew which families resided in their area before the Khmer Rouge. However, local authorities were unwilling to use their knowledge for regularizing the status of ethnic Vietnamese, even though Vietnamese association officials had offered their assistance in assessing the validity of claims of prior residency and citizenship. Some state officials acknowledged that there is a legal framework for citizenship and naturalization but claimed that it required a sub-decree to become operational. Many local officials expressed the view that providing ethnic Vietnamese with Cambodian citizenship was an undesirable course of action, occasionally hinting at political motivations behind the implementation gap, such as by mentioning that

“there are many opposition parties”. Some local authorities even claimed that ethnic Vietnamese remain foreigners because of their refusal to renounce their Vietnamese citizenship. However, most ethnic Vietnamese residents in Cambodia do not have Vietnamese citizenship (Nguyen & Sperfeldt, 2012: 42-51). A great majority of ethnic Vietnamese respondents said that they would happily give up any claims to Vietnamese citizenship they may have in exchange for Cambodian citizenship.

Other local officials claimed that ethnic Vietnamese were ineligible for citizenship because they frequently change locations and go back to Vietnam, as did one commune chief in Kratie:

“Vietnamese are foreigners because they often go back and forth. They stay on both sides of the border, depending on which side is better for them”.

Implied in such statements is often the notion that ethnic Vietnamese are opportunists who lack sufficiently strong attachments and loyalty to Cambodia to be considered citizens. Officials often complained that these families fail to inform authorities about their arrival and departure. Indeed ethnic Vietnamese respondents confirmed the existence of a significant population of ethnic Vietnamese seasonal migrants who move between communes in Cambodia as well as between Vietnam and Cambodia, according to where they find better living conditions. Officials’ estimates of the proportion of seasonal migrants were routinely considerably higher than those of ethnic Vietnamese respondents, of which some highlighted that many mobile families have ancestors in Cambodia, too. Moreover, the unstable residency of many ethnic Vietnamese, specifically those who live in floating villages, is in good part a consequence of exclusion from citizenship rights. Nevertheless, there is among those ethnic Vietnamese who recently moved to Cambodia, and who are born in Vietnam, a significant proportion who consider Vietnam their home and who may not be seeking citizenship status in Cambodia.

Many Khmer respondents felt that ethnic Vietnamese are justly excluded from citizenship and spatially separated from mainstream society. Often, these respondents claimed that ethnic Vietnamese fail to integrate and to respect the laws, that they *“don’t fit in well with Khmer”*, and *“disturb society”*. One Khmer village chief in Kampong Chhnang explained:

“Vietnamese are different, when they drink, they speak in loud voice and Khmer don’t prefer it. Khmer don’t prefer living close to Vietnamese. They live in their own group”.

Not only Khmer, but also Cham and Chinese respondents, commonly expressed feelings of dislike towards ethnic Vietnamese communities, as did one young ethnic Chinese woman in Kratie:

“With Khmer, we can get along well, and also have intermarriage. But we don’t like Vietnamese, and if they ask for marriage we don’t agree ... I don’t know why but we don’t like living among Vietnamese and I never see any Chinese getting married with Vietnamese”.

What many statements from non-Vietnamese respondents had in common was that

exclusion of ethnic Vietnamese was justified based on group membership rather than the validity, merit, or legality of individual and family claims to citizenship. Many Khmer respondents took for granted that ethnic Vietnamese are foreigners simply because they are ethnic Vietnamese.

In contrast to Khmer interviewees, most ethnic Vietnamese respondents felt that their exclusion from Cambodian citizenship was deeply unjust and the single biggest problem they faced in Cambodia. Expressions of regrets about this situation were a ubiquitous feature of interviews with ethnic Vietnamese in any province. One man in Kampong Chhnang complained:

“Other than us, only criminals in jail don’t have ID cards”.

Many ethnic Vietnamese residents acknowledged that it would be unrealistic to expect all ethnic Vietnamese residents to become citizens automatically, especially those moving in and out of Cambodia. However, many felt that if only a significant proportion would be given legal status on transparent grounds, it would be fair and give other people hope that they, too, could eventually become full members of society.

3.4. Detached from Land and Citizenship – Living on the Water

Ethnic Vietnamese metics cannot legally own land or houses. For this reason, agriculture is not a viable livelihood option for them. Many rent rather than own the houses they live in, which tends to increase the costs of living. While a significant proportion of ethnic Vietnamese families in Cambodia appear to have some sort of legal title to land or a house, these are often based on contestable citizenship documents obtained through bribes or registered in the name of relatives or friends with more robust legal status. In both cases, ownership remains vulnerable to legal challenge and confiscation.

One striking consequence of the ethnic Vietnamese’ ineligibility for land ownership is the existence and considerable size of ethnically Vietnamese communities that are literally floating on Cambodia’s major rivers and lakes. These settlements consist of houses, which are kept afloat by stacks of bamboo, containers, or other materials underneath them. These communities’ literal lack of attachment to the land quite fittingly symbolizes the situation of ethnic Vietnamese who are prevented from putting down roots in Cambodia. There are floating communities equivalent in population size to a town, containing floating shops, churches and temples, gas stations, stables for raising cattle, and facilities for raising fish. However, schools, health centers, clinics, and other public service facilities in most cases do not exist or are located far away, often on the land. One of the preconditions for accessing public services is the ability to take long and expensive boat rides.

Many floating communities are ethnically almost exclusively Vietnamese and Vietnamese language is most commonly used for interaction among residents. The existence of these self-contained, homogenous communities and their spatial separation minimizes interactions between members of ethnic Vietnamese communities and the larger society and represents one of the great obstacles ethnic Vietnamese face in their often sincere efforts to integrate into public institutions and to learn the official language. There is a

general scarcity of public institutions in which ethnic Vietnamese participate alongside members of mainstream society and of public spaces in which members of ethnic Vietnamese encounter members of other ethnic groups. This scarcity is particularly pronounced among floating communities. Residents have few opportunities to study or practice Khmer language, and few livelihood opportunities exist that would make the effort seem worthwhile. Inter marriages are rare. The separateness of floating villages also supports widespread claims that Vietnamese fail to integrate into Khmer society and these claims serve as justification for perpetuating their separation, closing a reinforcing cycle of exclusion. A majority of residents of floating communities said in interviews that they would prefer living on the land, though a significant minority preferred living on the water. That many ethnic Vietnamese residents are living on the water against their will is not always acknowledged by Khmer officials. As a Khmer village chief in Kampong Cham Province claimed: *“They don’t care to buy land. They prefer living on the water”*. Some Vietnamese respondents said they did not attempt to own land to avoid conflicts that might arise from the impression that they are competing with Khmer for scarce land.

3.5. Livelihoods Limited by Law

Many ethnic Vietnamese respondents felt that their lack of secure status considerably and unjustly limited the choice of occupations open to them. Agriculture, the most common livelihood among Cambodia’s population, is not an option for most ethnic Vietnamese because they cannot legally own land. They also cannot hold jobs or run businesses that require formal permissions or serve in public office. Fishing and fish raising as well as construction and craftsmanship are among the industries many ethnic Vietnamese engage in. Others collect recyclable materials and items to repair or resell, run small businesses such as selling coffee or desserts, or making keys along the streets. Others are servants or sex workers (Lainez, 2011). Livelihoods based on fishing were once lucrative because of the abundance of fish in Cambodia’s many lakes and rivers. However, respondents agreed that fish catches had declined dramatically during the past few decades and so has the prospect of livelihoods based on them, in absolute terms and relative to others. While Khmer and Cham families engaged in fishing gradually supplement this livelihood with other sources of income, ethnic Vietnamese have far fewer possibilities to diversify their livelihoods, especially outside the fishing season. As one commune chief in Kratie confirmed:

“If we compare, the Vietnamese are poorer, because they don’t have land for farming. Most depend on fishing for their livelihood”.

Similarly, the chief of a commune with a substantial floating ethnic Vietnamese community in Kampong Chhnang explained:

“Anyone with supplementary occupations is better off. Most people who don’t have supplementary occupations become poor”.

Many respondents said that ethnic Vietnamese were better off in the past due to their fishing skills, but that their livelihoods and standards of living had declined relative to

those of other ethnic groups. In some areas, respondents reported that ethnic Cham were previously poorer than ethnic Vietnamese but today are doing better, at least relatively, because they can supplement fishing with farming and other livelihoods. One Vietnamese man in Chhlong in Kratie Province, for example, stated:

“Compared to the Cham, in the 1980s they were poor but now they are better off than Vietnamese, because they have the right to buy land. Even if I had money, I could not buy land”.

Many respondents among fishing communities complained bitterly about police and other authorities singling out Vietnamese to collect bribes, even in cases where no laws were broken. One Vietnamese man in Kampong Chhnang spoke for many when stating

“During the fishing season, people fish and the police will arrest them if they don’t pay. They do not implement the same for Khmer. They discriminate. I do not know which law they use. If they use a law, it should be the same for Khmer but it is not”.

In Kratie, ethnic Vietnamese reported they were banned at times from selling fish in the markets of main towns. Ethnic Vietnamese respondents also said they were punished harder if they were caught fishing off-season, fishing with illegal fishing equipment, or inside protected areas.

3.6. Factors Constraining Khmer Language Acquisition and Use

Skills in writing and speaking Khmer language are limited among many members of Cambodia’s ethnic Vietnamese communities. Predictably, Khmer language skills are most common among ethnic Vietnamese whose families live dispersed among other ethnic groups. Living in predominantly ethnic Khmer communities means that Khmer language is used in local day-to-day interactions with other community members and often among family members as well. In Kampot Province, where ethnic Vietnamese tend to settle more dispersed and where floating communities are rare, many children of ethnic Vietnamese parents attend public schools and do not speak Vietnamese language.

In contrast, Khmer language is least spoken and understood among floating communities and ethnically homogenous communities on the land. In these communities, Vietnamese language tends to be used within the family and among community members, including children playing with each other, who often know little Khmer language. As an elderly resident of a floating community in Kampong Chhnang explained:

“For Vietnamese who live close to Khmer, the young play together so they speak Khmer, too. But those who live like this, they do not know Khmer language”.

One middle-aged woman living in a floating community in Kampong Cham said:

“My husband has been here for 20 years but he finds it hard to express himself in Khmer”.

Low levels of Khmer language skills are attributable in good part to the scarcity of opportunities to learn Khmer language and to livelihoods that limit interaction with Khmer

speakers and do not require knowledge of Khmer language or literacy. It is also due to the unavailability of opportunities that would make the considerable effort required to learn Khmer language seem worthwhile. Ethnic Vietnamese who cannot be sure if they will be able to remain in Cambodia and who are limited to livelihoods that do not require more than minimal Khmer language skills have less motivation to learn the language of the ethnic Khmer majority they perceive as rejecting and excluding them. Parents whose livelihoods require little literacy and who do not expect better opportunities for their children are less likely to attempt to overcome the considerable obstacles they face in seeking education for their children.

3.7. Factors Constraining Participation in Public Education

Many education officials at the provincial level underlined the principle of non-discrimination in the provision of public education and claimed that children of ethnic Vietnamese parents have full access to state schools. However, interviews among local officials and community members suggest that the proportion of school-age ethnic Vietnamese children attending state school is substantially lower than among their ethnic Khmer peers. In practice, education officials often appeared to consider ethnic Vietnamese to be outside their mandate. It was not rare for commune councilors to estimate that more than 90 per cent of ethnic Khmer children and less than 10 per cent of ethnic Vietnamese children in their commune attended state schools. Interviews with community members and local observation often indicated lower levels of Khmer participation and higher levels of Vietnamese participation in actual practice. Nevertheless, a large ethnic participation gap in public schooling existed in most communes visited. The size of this gap varied widely between provinces but also between districts and communes in the same province. The gap in school participation between Khmer and Vietnamese children was particularly pronounced among floating communities, where accessible public schools rarely exist. In Kampot and Kratie Provinces, a considerable number of respondents reported that ethnic Vietnamese students have full access to public schools, whereas complaints about obstacles were particularly common and participation levels appeared often lower in Kampong Chhnang and Kampong Cham Provinces.

Ethnic Vietnamese parents often highlighted the significant institutional and administrative obstacles to participation in public education that are in good part related to their legal status and ethnicity. As the teacher of a floating, informal Vietnamese school in Kampong Chhnang pointed out:

“Among villagers here, most don’t know that they have the right to send their children to state school. They do know that they face challenges if they try”.

Ethnic Vietnamese parents are often not made aware that their children have the right to education in public schools. As one ethnic Vietnamese woman in Kampong Cham remarked:

“If authorities would disseminate information that Vietnamese have the right to education, many parents would be happy, and more would send their children to

school”.

Education departments and local authorities commonly conduct public awareness campaigns prior to the school registration period in order to encourage parents to register their children. However, only in rare cases do these campaigns cover ethnic Vietnamese communities. One provincial education director expressed the view that informing Vietnamese parents was the responsibility of the Vietnamese association, while association officials said they did what they could but had insufficient capacity to cover much ground. Many ethnic Vietnamese respondents reported that birth certificates and residence books were required for school registration and that they were unable to obtain such documents from local authorities or had great difficulty obtaining them. Some said they had to pay more money than ethnic Khmer parents do for registering their children. In a small number of cases, Vietnamese students were unable to proceed to higher grades or were unable to attend university or to study abroad due to their lack of citizenship status. As one Vietnamese father in Kampong Chhnang complained:

“I have one child which completed grade 12. She cannot go to university because she is not considered citizen. Chinese and Cham children can go to university”.

Meaningful participation of ethnic Vietnamese children in public schools is constrained by the limited command of Khmer language ethnic Vietnamese students often have compared to their ethnic Khmer peers, particularly in primary school. Khmer is the exclusive language of instruction, and assistance for students whose first language is not Khmer does not exist. Some ethnic Vietnamese students experience being looked down on and cursed by other students.

Poverty is another major factor constraining ethnic Vietnamese participation in public schools. Many ethnic Vietnamese parents need their children to assist with livelihood activities or to look after the house or siblings while they are away making a living. Particularly among floating communities, schools tend to be kilometers away on the land and many parents are unable to afford expensive daily transportation by boat. Livelihoods based on fishing often take residents far away from homes and schools for several days. Furthermore, parents who do not expect better jobs for their children do not prioritize education, as one Vietnamese woman in a floating community in Kampong Cham pointed out:

“Vietnamese children just learn how to read and write. More Khmer children go to school, and they reach higher grades. Vietnamese face difficulties and are poor. They cannot send all children to school, and Vietnamese children complete fewer classes”.

Another obstacle to ethnic Vietnamese children’s participation in public schooling is that parents with little education and Khmer language skills are limited in their ability to assist or monitor their children’s progress in school. As one Vietnamese man in Kampong Cham explained:

“Some parents cannot read and write Khmer. From grade two, they cannot understand or help their children with education”.

Many ethnic Vietnamese parents and children are discouraged from pursuing education, because they experience exclusion from jobs that would make it worthwhile. As one ethnic Vietnamese man in Kampong Chhnang explained:

“Our children have less hope for good jobs, because their parents cannot find good work”.

The chief of a commune with a major floating Vietnamese community confirmed that

“Vietnamese don’t expect that they could get a good job even if they had higher education”.

In some Vietnamese communities, there are informal schools for Vietnamese children, with classes typically taking place at a villager’s house, conducted by teachers who receive modest salaries made up of contributions from students’ parents. Vietnamese schools are sometimes assisted by Vietnamese associations, such as with obtaining the required permission from authorities, but associations lack the funds for more substantial support. In some cases, there are private schools run as businesses and schools run by Christian charities. Some Vietnamese association officials mentioned vague plans to establish Vietnamese language schools, but these plans rarely materialize, mainly due to a lack of funding. Ethnic Vietnamese parents with Cambodian citizenship prefer their children attend state and private schools rather than Vietnamese schools. Parents who can afford it let their children attend both public and private schools where this is possible. Parents whose children attend only informal Vietnamese school tend to be the poor.

3.8. Exclusion from Local Governance

As part of Cambodia’s decentralization reform, 1,621 local commune councils were for the first time directly elected in 2002. Powers are being transferred to these local councils, with the stated objectives *“to strengthen and expand local democracy”*, *“to promote local development”*, and *“to reduce poverty”*, based on the principles of *“democratic representation”* and *“participation of the people”* (RGC, 2005: 5). Given these objectives and principles, decentralization reform can plausibly contribute to remedying the excluded situation of many ethnic Vietnamese residents. However, field research suggests that the benefits of decentralization reform largely bypass ethnic Vietnamese communities, in good part due to deliberate policies of exclusion.

The Law on Commune/Sangkat Administrative Management requires candidates and voters to be *“Khmer citizens”* and to have *“Khmer nationality at birth”* (Article 14). These requirements formally exclude almost all ethnic Vietnamese and even naturalized citizens from active and passive participation. Accordingly, none of the commune councils visited had any ethnic Vietnamese members, even where ethnic Vietnamese make up a substantial proportion of the local population. Expressions of regret about the absence of democratic representation and participation were common among ethnic Vietnamese respondents. One

elderly man near Phnom Penh stated:

“Vietnamese never stand for election and there are no Vietnamese councilors. Vietnamese have no voice in the council, no matter whether the council is controlled by the ruling party or the opposition. Vietnamese are only low level staff and have no opportunity to run for office because we don’t have IDs”.

According to the same law, commune councils select the chiefs of the villages in their constituency (Article 30). Ethnic Vietnamese are not considered as candidates for this position, even in villages where ethnic Vietnamese make up the majority of residents. All villages are further divided into ethnically rather homogenous groups of 100 households, which are sub-divided into groups of 50 households. Among ethnically Vietnamese groups, people who are already recognized as leaders among their communities are often appointed as group chiefs. Group leaders are not state officials and do not receive salaries. Typically, Khmer and Vietnamese families have different group leaders and so do Vietnamese families on the water and Vietnamese families on the land. These leaders of ethnically Vietnamese groups, rather than village chiefs or Vietnamese associations, constitute the main link between Vietnamese communities and state authorities at the local level and above. Group leaders may participate informally in village- and commune-level meetings. Vietnamese associations tend to have only informal, ad hoc relationships with councils and village chiefs and rarely participate in formal local meetings. Councilors seldom interact directly with members of ethnic Vietnamese communities, not least because these communities are not formally part of their constituencies. When asked about ethnic Vietnamese in their constituency, many councilors in interviews were quick to point out that their mandate covers citizens only and that foreigners were “*under the control*” of the immigration and border police. Routinely, ethnic Vietnamese are excluded from the council’s information dissemination activities. Many local officials in areas with ethnic Vietnamese communities did distinguish between ‘old’ and ‘new’ Vietnamese and reluctantly acknowledged that many ethnic Vietnamese families have lived in Cambodia for generations. Nevertheless, in actual government practice, these families are lumped together with recently arrived migrants, based on the assumption that all ethnic Vietnamese are foreigners by definition. Often, neither legal distinctions nor the popular distinction between ‘old’ and ‘new’ Vietnamese appears to have much practical significance in state practices.

Councilors in virtually all communes visited were able to present what appeared to be rather accurate and detailed statistics of ethnic groups in their constituencies. In many cases, the councils’ ethnic accounting included numbers of ethnic Vietnamese residents. In other communes, councilors did not have, or were unwilling to provide, numbers on ethnic Vietnamese residents and suggested to request numbers on ‘foreigners’ from the competent police authorities instead. In contrast to councilors and village chiefs, however, police officials were very reluctant to agree to interviews and avoided answering questions pertaining to ethnic Vietnamese residents. This is plausibly due to political sensitivity, the widespread practice of illegally selling identity papers, lack of knowledge of relevant laws

and uncertainty about their proper application, as well as considerable legal penalties for forging identity documents. According to the Immigration Law, anyone who falsifies resident cards shall be imprisoned from five to fifteen years (Article 32). The Nationality Law requires the same penalty for officials who provide identity cards of Khmer nationality to people who are not Khmer citizens (Article 21). Interestingly, ‘Chinese’ were not accounted for as a separate category in the statistics of most communes, even where separate numbers of Cham, various highland people, or Lao were recorded. Members of all these groups were unambiguously considered Khmer citizens by virtually all officials interviewed yet only ethnic Chinese tended to be considered as Khmers and not accounted for separately.

One aspect of exclusion ethnic Vietnamese experience in local governance is that they lack access to relevant information and opportunities for participation. As one Vietnamese association official in Kampong Chhnang explained:

“There is a lack of information dissemination from the state to Vietnamese people. Most Vietnamese have low education, and only a few can read and write. Members of the commune council never come to disseminate information among members of Vietnamese communities”.

When asked about his community’s attitudes towards the commune council, one Vietnamese man in Kandal Province responded:

“The commune council never visits, consults, or supports us. Vietnamese villagers have to help themselves”.

Respondents from all ethnicities, including Khmer, said they felt neglected by commune councils. However, there is a particularly pronounced sense of abandonment among many ethnic Vietnamese communities. Given the perception that local authorities are unresponsive to the needs of ethnic Vietnamese and often discriminate against them, many ethnic Vietnamese keep a low profile and avoid rather than seek interaction and engagement with local authorities. As one man in Kratie Province mentioned:

“The commune council will not improve our situation. The real situation is that Vietnamese don’t dare complaining, they stay quiet and don’t try to raise issues”.

Many councilors confirmed that ethnic Vietnamese are explicitly excluded from local meetings and from information dissemination. One commune chief in Kratie noted about participation in local meetings:

“As a commune council we never consider inviting foreigners... also for meetings at the village level, they could not participate, only Khmer, Cham, and indigenous people but not foreigners”.

Commune-level Planning and Budgeting Committees (PBC), which were established to help prioritize local development projects in a participatory manner, have no ethnic Vietnamese members. Respondents reported that ethnic Vietnamese are generally not invited to the committee’s meetings, as did one village chief in Kampong Chhnang:

“We do PBC meetings only for Khmer, not for Vietnamese. Information-dissemination and PBC-meetings are for Khmer only”.

Similar practices of exclusion were reported by local officials in most communes visited and regularly confirmed by ethnic Vietnamese respondents. A majority of local officials were supportive of the exclusion of ethnic Vietnamese from citizenship, local governance, and development projects. A minority of local officials expressed regret that they were unable to include ethnic Vietnamese residents.

Ethnic Vietnamese also experience systematic exclusion from the legal and judicial systems, not least because of their uncertain and contestable legal status. In cases of conflicts, particularly those that involve members of other ethnicities, ethnic Vietnamese face greater difficulties in seeking access to justice. Many ethnic Vietnamese respondents reported that they knew no institution they could turn to for conflict mediation or resolution. Complaints about unfair treatment by state institutions were common, with the police and courts being mentioned with particular frequency. The lack of legal status and of access to the judiciary increases the vulnerability of ethnic Vietnamese to abuse and discrimination. Many avoid taking conflicts to any authority as a result.

Language and education barriers add to the obstacles many ethnic Vietnamese face in participating in public institutions as a result of the inaccessibility of relevant information. The exclusion of ethnic Vietnamese from local governance reinforces the separation of their communities, their low level of integration, and the perception that they form a separate, parallel society rather than integrate into Khmer culture and its institutions. While Vietnamese are routinely blamed for their supposed failure to integrate, laws and policies directly and deliberately prevent and discourage their integration.

3.9. Few Benefits from Development and Poverty Reduction

Many local officials and some ethnic Vietnamese respondents stated that ethnicity is not considered in the selection of local development projects. However, a large proportion of projects supported with commune funds are road construction projects (World Bank, 2008a: 1). Great numbers of ethnic Vietnamese who live on the water and use boats rather than bicycles, motorbikes, or cars for transportation tend to benefit less from roads. Similarly, because most ethnic Vietnamese are legally ineligible to own land, they routinely do not benefit from agricultural development projects, such as irrigation projects, agricultural extension services, the creation of buffalo and rice banks, training in animal husbandry, vegetable growing, and rice intensification. In one commune in Kratie, which is an island in the Mekong River, the council had since the first local election in 2002 prioritized two projects: the construction of a road that runs along the riverbank around the island and the construction of a system to drain excess rainwater from the island's farmland. However, the land is exclusively owned by ethnic Khmer. During a visit in 2008, road construction had been completed, with the exception of the stretch of riverbank where the island's only Vietnamese community is located and for which no road construction plans existed. Ethnic Vietnamese did not directly benefit from either of the council's major

development projects, aside from being able to use the road that did not reach their community. Nor did they benefit significantly from any other projects implemented by the council with additional international funding, such as the creation of a cow bank, the provision of training, veterinarian and other technical support related to animal raising and farming.

While members of ethnic Vietnamese communities benefit much less from local development projects, they are regularly asked to contribute money, like other residents. Many Vietnamese as well as Khmer respondents said that ethnic Vietnamese tend to contribute more than Khmer, in good part to maintain good relations with Khmer communities and local authorities. As one commune chief in Kratie Province said:

“Vietnamese contribute easier than Khmer. Khmer say ‘today I don’t have’. If I ask the Vietnamese, they will give easily”.

An elderly resident of a Vietnamese community in Kratie explained:

“It is my concern that we don’t benefit and don’t use very often what they build but we don’t mention or consider it. Benefits are mostly for Khmer but Vietnamese are delighted to contribute”.

One elderly Vietnamese resident of a floating village in Kampong Chhnang reported:

“The commune council raised irrigation and a bridge as priority needs of the commune. I live in the river and don’t raise needs. We take it from the higher level and follow, and we also contribute money. It is an obligation, even if we don’t benefit from or use the projects”.

Compared to members of other ethnic groups, ethnic Vietnamese tend to contribute more to, and benefit less from, development projects undertaken by commune councils.

3.10. Obstacles to Ethnic Vietnamese’ Inclusion: the ‘Vietnamese Threat’

There are great similarities between metics in many Western countries and ethnic Vietnamese in Cambodia. In both cases, group members were not conceived of as future citizens when they arrived but have made a home in their host country and seek to become full members. As in the West, there is in Cambodia a clear trend towards making citizenship more accessible for metics, but so far it has been limited to ethnic Chinese. Cambodia’s ethnic Chinese are considered citizens today, have the same access to IDs and passports that ethnic Khmer have, are rarely discriminated against, and in many cases enjoy high status and prestige and privileged economic positions. Ethnic Vietnamese, in contrast, continue to be considered and treated by state and society as foreigners and outsiders. In line with Will Kymlicka’s consideration presented in the first chapter, this difference can in part be explained by the Khmer majority’s strong sense of geopolitical insecurity vis-à-vis the state of Vietnam. The exclusion of ethnic Vietnamese from citizenship is seen as justified by Cambodia’s security needs, and the inherent right to self-government of a Khmer majority that perceives of itself as threatened by the territorial and colonial ambitions of its more powerful neighbor. As one commune official from the

opposition Sam Rainsy Party in Kratie said:

“Vietnam took Champa and Kampuchea Krom. Then, they started invading west, with the intention to establish an Indochinese federation dominated by Vietnam. Our government leaders serve their Vietnamese bosses who are taking our territory”.

As Christine Leonard observes,

“the over-whelming nemesis as described by Khmers themselves is Vietnam... the belief that Vietnam plans to overtake and incorporate numerous provinces of Cambodia is strongly held by Khmers” (1996: 279).

As was pointed out before, the idea that Cambodia’s existence is threatened by Vietnam is a central myth of nationalist ideology that has been consistently reinforced and perpetuated by political leaders throughout the post-colonial period and across the ideological spectrum (Edwards, 1995: 56). This is in no small part a legacy of colonialism. By highlighting the past greatness and current smallness of Cambodia and portraying both as stages of a continuous national project, the French projected the Khmer as a people on a trajectory of millennial decline that justified the hegemonic role of the colonialists as Cambodia’s saviors from extinction (Barnett, 1990). This colonial definition of the Cambodian nation came to be accepted by Cambodian elites, and the threat of extinction, typically identified with Vietnameseness, was used by all post-independence regimes to boost their legitimacy as true saviors of the nation (Edwards, 2007: 242-256). As Heder observers, *“Cambodian nationalism formatively defined Vietnamese as a main Other and denied the possibility that a Vietnamese could also be a Kampuchean”* (2007: 295). The perceived risk to the Khmer nation and Cambodian state trumps considerations of justice and democracy that may, otherwise, favor citizenship status for ethnic Vietnamese (Ehrentraut, 2011b: 793).

Cambodian perceptions of insecurity have some basis in historical experience.

“Khmer-Vietnamese relations”, notes Joseph Pouvatthy, *“have always consisted of attempts to settle the problem of Cambodia’s territorial integrity, which, to a degree, means negotiating its survival. It has always gone back to the problems of ancient rivalries and border disputes ... and from time to time the question of minorities”* (1986: 440).

At different points in time, but with roughly similar civilizing missions, Vietnam as well as the French tried to turn Cambodia into a submissive Vietnamese province (Mabbett & Chandler, 1995: 230). From 1930 to 1970, the communist party in Hanoi advocated for the creation of an ‘Indochina Federation’, in which Cambodia and Laos would play in relation to Vietnam the same inferior role played by non-Russian nationalities vis-à-vis the Russians in the Soviet Union (Morris, 1999: 65). Poole writes that foreign reporters as well as Cambodian officials usually described the Vietnamese minority *“as a ‘fifth column’ poised for a signal from Hanoi to begin destroying the societies they had infiltrated”* (1974: 325), a view supported by the conduct of both Vietnamese governments:

“Hanoi and Saigon give every sign of viewing the settlement of Vietnamese in

Cambodia as laying the groundwork for eventual Vietnamese control of these areas” (Poole, 1974: 327).

Also Vietnam’s decade long military occupation during the 1980s was seen by many Cambodians in light of the notion of an ‘Indochina Federation’ and contributed to the widely shared sense of geo-political insecurity in the relationship to the Vietnamese state.

“As for the conflictual ties between Khmers and Vietnamese”, writes Jackson, “they were a constant throughout all regimes: such reflex responses of a defeated people directed at their subjugators is a legacy of three centuries of incessant struggle” (1989: 153).

The existential threat posed by the state of Vietnam in the perception of many Cambodians shapes the relationship between the state and ethnic Vietnamese in Cambodia and is among the greatest obstacles to ethnic Vietnamese becoming full and equal Cambodian citizens.

3.11. Why Ethnic Chinese are Citizens and Ethnic Vietnamese are not

The perceived threat from Vietnam helps explain why ethnic Chinese today enjoy full and equal citizenship and ethnic Vietnamese do not, even though members of both communities have historically been considered foreigners in Cambodia. There is no shared border with China and no geopolitical risk is perceived to be involved in the historical migration and contemporary residence of ethnic Chinese in Cambodia. As one Khmer man in Kampong Cham explained:

“We are not concerned about the Chinese because their country is far away but with Vietnam we share a border so we are concerned to enforce the law on the Vietnamese in Cambodia”.

Besides, many Cambodians feel that ethnic Vietnamese, by fleeing to Vietnam during the Khmer Rouge years, demonstrated insufficient loyalty to Cambodia or, rather, demonstrated a loyalty to the Vietnamese state inappropriate for Cambodian citizens. This explanation highlights once more the profound nation-building effect of the Khmer Rouge years, the shared experience of suffering, participation in collectives, and the violent social atomization and assimilation of everyone into a revolutionary Khmer identity monopolized by the Khmer Rouge, an identity that suppressed everyone’s culture, beliefs, and traditions. This experience was so universally shared that it made a ‘We’ that transcends the ethnicity of those who lived through it more possible. It made the Cambodian nation more imaginable as a multiethnic ‘We’ that fits into a ‘Khmer’ conception of citizenship (Ehrentraut, 2011b: 794). By having shared this experience, ethnic Chinese have come to be part of ‘We’ while the absence of ethnic Vietnamese reinforced the notion of their separate identity.

3.12. Compensation for Historical and Contemporary Injustice

A related difference between metics in the West and ethnic Vietnamese in Cambodia concerns the argument of historical injustice. In the West, long-term residents who have benefitted from more inclusive naturalization and citizenship policies have tended to be

disadvantaged groups at the margins of mainstream society. In contrast, ethnic Vietnamese in Cambodia are perceived to have historically, and unjustly, occupied privileged positions of authority vis-à-vis the Khmer majority, as collaborators of Vietnamese and French domination, to which their incorporation before 1975 and their re-incorporation after 1979 are closely linked. In the view of many, the continued exclusion of ethnic Vietnamese compensates for past injustices suffered by Khmers at the hands of the Vietnamese state and for the corroborating role that the ethnic Vietnamese in Cambodia played. Thus, the analysis suggests that the historical injustice argument that supports inclusion in the West supports exclusion of ethnic Vietnamese in Cambodia, in line with Kymlicka's considerations presented earlier.

Vietnamese control of Cambodia is also invoked as a contemporary argument. In the West, a common justification for the inclusion of metics is that people who are subject to political authority should have a right to participate in determining that authority. By contrast, ethnic Vietnamese in Cambodia continue to be portrayed not only as being outside Cambodian political authority but also as helping to subject Cambodians to Hanoi's control. In addition, in the eyes of many Cambodians, the historical and contemporary mistreatment of ethnic Khmers in Vietnam justifies reciprocal unfavorable treatment of ethnic Vietnamese in Cambodia. As one official of the main opposition party, the Sam Rainsy Party, stated in Kampong Cham:

"In Vietnam, the Khmer Krom face strong pressure from the state to assimilate. They are beaten and jailed, Khmer schools and Khmer language are forbidden. In contrast, Vietnamese in Cambodia are free and happy. They have their own associations in all provinces. Most Vietnamese take over Khmer jobs. Vietnamese have over-rights in Cambodia and don't care about the law. Some become rich. Khmer Krom in Vietnam live in hell, while Vietnamese in Cambodia live in heaven".

Similar attitudes were often expressed by Khmer respondents. Leonhard, too, describes this view widely held by Khmers:

"To sympathize with or to trust Vietnamese at all ... is to forget the injustice of taking of Kampuchea Krom lands" (1996: 280).

3.13. Integration into What? Conceptions of Khmer National Identity

A further obstacle to ethnic Vietnamese gaining Cambodian citizenship is that the national culture into which citizens are supposed to integrate is thick, in that it is defined, at least nominally, by a specifically Khmer way of life and, sometimes, even as membership of the Khmer race. For many Cambodians, being Cambodian means being Khmer, and being Khmer in public discourse is often defined in racial terms. *"The Khmer discuss themselves as a single line of descendants"*, note Heder and Ledgerwood, *"with a corresponding centrality assigned to notions of 'flesh and blood'"* (1995: 20). As the constitutional concept of 'Khmer citizen' and the legal provisions for naturalization suggest, aspirants for Cambodian citizenship are supposed not only to learn Khmer language, but also to become

Khmer. Ethnic Vietnamese are not admitted to the nation in part because they are considered incapable of assimilation. However, the fact that Cambodia's ethnic Cham enjoy full citizenship suggests that the low degree of integration is not what drives the exclusion of ethnic Vietnamese. Cambodia's Cham maintain a degree of separateness from Khmer mainstream culture that is similar to that of ethnic Vietnamese, although for different reasons. A significant number of Cham speak Khmer only as a second language. Most profess Islam and comply with the prohibition of intermarriage with non-Muslims. Cham distinctiveness is reinforced by various social and religious practices that contrast sharply with those of mainstream Khmer culture as well as by the physical separation of Cham villages. That the Cham are not excluded from citizenship suggests that the geo-political situation is the decisive factor in determining the possibility of citizenship. With the demise of Champa, the Cham ceased to pose a challenge to the Cambodian state and nation. Indeed the Cham and Khmer share a collective narrative of past greatness lost to the Vietnamese state, a commonality that contributes to a sense of 'We' between the two peoples in which the Vietnamese are essential as the 'other'.

3.14. The Dynamics of Party Politics

Other obstacles to the inclusion of ethnic Vietnamese result from the dynamics of party politics. Political parties other than the ruling Cambodian People's Party (CPP), the successor of the PRK/SOC, routinely appeal to strong sentiments against ethnic Vietnamese among the general population for political advantage. A survey undertaken in 2003 found that 30 per cent of the electorate believed that ethnic Vietnamese should not have Cambodian citizenship and should not be allowed to vote. The view that 'the Vietnamese are against Cambodia' was supported by 37 per cent (Asia Foundation, 2003: 74-79). One manifestation of this attitude is that Cambodians routinely and publicly use the derogatory term 'Yuong' to refer to ethnic Vietnamese. Anti-Vietnamese rhetoric feeds on and, thus, is a function of existing fears and prejudices towards ethnic Vietnamese, but the wide use of such rhetoric also reinforces and perpetuates those fears and prejudices. Essential to this rhetoric are claims that the CPP encourages and facilitates large-scale migration of ethnic Vietnamese to Cambodia, that it provides them with Khmer IDs and voting rights, and advances their interests at the expense of those of the Khmer. These claims reinforce public support for the exclusion of the ethnic Vietnamese. As one high-ranking official of the Sam Rainsy Party in Kampong Chhnang complained:

"Kampong Chhnang is full of Yuon. Some don't speak Khmer language but obtain Khmer IDs from the CPP authorities. The CPP wins elections only with the Yuon-vote. I estimate that 10 per cent of Kampong Chhnang residents are Vietnamese. Nearly all of them are voting age, and I estimate that 90 per cent of them have Khmer IDs signed by the governor".

Similarly, one Sam Rainsy Party representative in Kampong Cham claimed:

"In many communes, thousands of Vietnamese are illegally living. They get IDs by paying to the police and authority. Vietnam decides CPP policy".

In the West too, proposals to offer citizenship to metics are contentious but they mobilize citizens on both sides of the issue. In contrast, there are virtually no Cambodian citizens, civil society groups, or politicians advocating for the inclusion of ethnic Vietnamese residents.

Empirical research supports the claim that a substantial minority of ethnic Vietnamese vote in Cambodian elections, many with identity cards or family books issued for personal and electoral advantage by local and provincial authorities. These authorities are controlled by the CPP and play essential roles in maintaining election registers. CPP personnel and membership are not necessarily less anti-Vietnamese than the personnel and membership of other parties. However, in dealing with ethnic Vietnamese, the CPP is constrained by various agreements with Vietnam as well as demands from the international community. Openly advocating for ethnic Vietnamese or formally improving their legal status would make the CPP vulnerable to claims of insufficient nationalism (Ehrentraut, 2011b: 796). The ruling party has no strong interest in ethnic Vietnamese becoming citizens but it does have an interest in them being able to vote. Because all other parties engage in anti-Vietnamese rhetoric, ethnic Vietnamese overwhelmingly vote for the CPP, without the party actually having to respond to their needs. The incentives the ruling party has in this situation help explain why the nationality and immigration laws are not implemented and why identification documents are issued outside the legal framework. The implementation of these laws would necessitate a systematic effort to determine the past legal status of ethnic Vietnamese families. It would increase the CPP's vulnerability to charges of being pro-Vietnamese and reveal widespread corruption involved in the sale of Cambodian identification papers over the past decades. It is partly because the ruling party has little to gain from implementing applicable legislation that ethnic Vietnamese' residence and citizenship status remains uncertain and vulnerable to legal challenges. Greater democratization may well lead to the adoption of a more exclusive interpretation of Khmer citizenship and reinforce the marginalization of ethnic Vietnamese. The Constitution as well as immigration and nationality laws place few limits on the denial of citizenship rights or even the expulsion of large numbers of ethnic Vietnamese.

3.15. Conclusions

Many of the objections to the inclusion of ethnic Vietnamese are based on identifying ethnic Vietnamese with the state of Vietnam, to which most have few links other than their ethnicity. If the two are duly differentiated, inclusion rather than exclusion is the most appropriate response to concerns about the loyalty of Cambodia's ethnic Vietnamese. Citizenship fosters the sense of belonging that strengthens allegiance to Cambodia. In contrast, perpetuating exclusion is more likely to alienate ethnic Vietnamese from Cambodian institutions and to undermine their loyalty to state and society. Turning ethnic Vietnamese metics into Cambodian citizens not only in legal terms but in terms of language and participation is the most effective way to counter implausible claims that Vietnamese immigration marginalizes Khmers in Cambodia. If the concern is to keep Cambodia culturally Khmer, integration is the most viable and normatively adequate policy

option. It would also reduce the considerable potential for ethnic conflict, limit grounds for anti-Vietnamese politics, and shift the political focus to issues that are shared by residents of different ethnicity.

The adoption of a national identity that emphasizes a thin conception of Khmer culture would help advance the idea that ethnic Vietnamese can be loyal and integrated Cambodian citizens. Compared to the violently exclusive nation-building projects of the recent past, Cambodia has come a long way towards the liberalization of nationalism. In practice, the state is not seen as belonging exclusively to ethnic Khmer but it is, to some extent, shared with other ethnic groups, notably the ethnic Cham and Chinese. The adoption of a more open definition of the national community and the possibility of foreigners and even former adversaries becoming citizens is evident in the inclusion of ethnic Chinese and the acceptance of a separate Cham identity. However, Cambodia's ethnic Vietnamese have so far benefitted little from this liberalization.

Among the most important and most politically feasible measures to improve social inclusion would be to enhance access to public education for children of ethnic Vietnamese parents. This is unlikely to be met by strong objections, since demands for more exclusive policies are often justified precisely on the grounds that ethnic Vietnamese don't speak Khmer. Helping ethnic Vietnamese to learn the Khmer language would reduce objections to inclusion in the longer term. The experience of shared participation in public education is among the most powerful tools of integration and citizen-making. Claims that ethnic Vietnamese are incapable of integration into Khmer society are implausible in light of the successful integration of ethnic Vietnamese in many countries around the world. Importantly, residents with citizenship prospects have great incentives to make the considerable efforts involved in integration, while exclusion and the latent threat of deportation undermine such incentives.

Effective integration requires the implementation of legislation related to immigration and nationality. This should be done with a view to regularizing the legal status of ethnic Vietnamese. There is a need to distinguish between citizens and immigrants. Long-term ethnic Vietnamese residents who do not qualify for citizenship should be issued residence cards under the framework of the Immigration Law, which would put them on a path to citizenship. In many cases, the determination of legal status will depend on who is given the benefit of the doubt. To avoid statelessness and reduce the number of residents with insecure and irregular legal status, it should be given to law-abiding ethnic Vietnamese. It should be recognized that in many cases, the original terms of admission have become irrelevant. Determining the legal status of a child born to ethnic Vietnamese parents today based on whether or not its grandparents entered Cambodia within an immigration framework that may have existed on paper only is neither feasible nor justifiable. Ethnic Vietnamese who have lived for many years in Cambodia, and in many cases were born there, are *de facto* members of Cambodian society. They should be legally recognized as such.

Given that many Cambodian citizens oppose naturalizing ethnic Vietnamese, it would be prudent to regulate more thoroughly and possibly, to limit future immigration. This would reduce the perception that recent, temporary, or future immigrants benefit indiscriminately from the inclusion of those who qualify under relevant laws. It would also reduce the plausibility of anxieties about large numbers of future settlers flooding Cambodia and help create a transparent and predictable process that is trusted by citizens, encourages integration of immigrants, and contributes to an inclusive and just conception of Cambodian citizenship.

4. Facets of Failure: International Indigenous Rights Promotion

With the creation of the United Nations Transitional Authority (UNTAC) in 1992, the international community established a large presence in Cambodia and began inserting itself directly into many aspects of policy-making. Promoting compliance with international minority rights norms was one objective pursued by a considerable number of international organizations with significant resources during and since UNTAC. Like relevant international norms, these international initiatives in Cambodia covered a wide range of reform sectors, such as land and natural resource management, justice, governance, and education. Almost exclusively, these initiatives focused on promoting indigenous rights norms application for Cambodia's highland peoples.

As was pointed out during the preceding chapters, there is in Cambodia a long-standing convention of identifying highland peoples as a distinct category of groups. Before, during, and ever since the colonial period, highland groups were considered to belong to this category, which covers rather accurately the same groups as conventional interpretations of the international concept 'indigenous people'. Typically, however, these groups were identified by their supposed primitiveness and savagery. 'Phnong' is a derogatory term that was, and is, widely used to refer to these groups and connotes savagery, barbarism and slavery (Goudineau, 2003: XIX). The French, too, identified highland peoples as a distinct category of groups by their 'savagery'. After independence, the term 'Khmer Loeu' was introduced to refer to this category of groups, which were still considered as lacking civilization. During the Khmer Rouge, PRK, and SOC eras, the terms 'chun-cheat', which roughly translates into 'nationality' and 'chun-cheat pheak-tech', which can be translated into 'national minority', gained currency (Heder & Ledgerwood, 1995: 22). Neither term refers to highland peoples specifically but more recently, the term 'chun-cheat daoem pheak-tech' has been coined, which literally translates into 'original national minority'. This term has been officially adopted in 2009 (Channyda, 2009). It is routinely used to translate the English term 'indigenous people', including in law and public policy, and does not include the Khmer, Cham, Chinese, Laos, Vietnamese, and so on (IWGIA, 2012: 349-351). Depending on the context, 'chun-cheat' can stand as shorthand for 'chun-cheat daoem pheak-tech' as well as a generic reference to ethnicity or nationality.

4.1. International Support to the Inter-Ministerial Committee (IMC)

Security problems and poor infrastructure had kept the highland areas largely separate from lowland Cambodia during the 1980s. This changed quickly following UN-brokered peace accords in 1991, the declaration of a free market economy, and national elections in 1993 (Colm, 1997: 3; Ironside, 2009: 98). In-migration, local and international investment in timber and mineral extraction, industrial agriculture, and tourism increased sharply with improved security and upgraded road and air access (ADB, 2002a: 24; Berg & Palith,

2000). As a result, the pressure on land and natural resources grew considerably. Trends such as rapid land alienation, deforestation, in-migration, infrastructure development as well as the imposition of a predatory, nation-building state have become consistent pattern and form the backdrop for the international initiatives analyzed in the following sections. Among these initiatives is the UNDP's Highland Peoples Program (HPP), support for the revision and implementation of Cambodia's Land Law, UNDP's Access to Justice Program (A2J), and the World Bank's support to decentralization in Cambodia via the Rural Investment and Local Governance Project (RILGP). The primary focus is on intergovernmental, rather than bilateral or non-governmental organizations, because these organizations are mandated with establishing international norms and with acting in the name of member states. This selection of initiatives is by no means complete. However, it is sufficient to demonstrate that the international community attempted but failed to bring about a greater degree of compliance with international indigenous rights norms in practice. Indeed, the actual enjoyment of these rights by members of indigenous communities eroded considerably over the same period of time the international community promoted these norms. Remarkably, several of these initiatives ended up supporting distinctly illiberal minority policies that directly contradict international human and minority rights norms. The analysis considers several factors that contribute to explaining this failure, namely the dynamics of Cambodia's predatory, neo-patrimonial system of governance, Cambodian conceptions of indigenous peoples as uncivilized segments of Khmer society, as well as Cambodia's geo-political insecurity and the Khmer self-perception as an existentially threatened people.

4.1.1. The UNDP's Highland Peoples Program

The Highland Peoples Program (HPP) was a regional initiative of the United Nations Development Programme (UNDP) and focused on Cambodia as well as on Thailand, Vietnam, and Laos. Preparation of HPP's Cambodia-component was among the first activities of UNDP's Phnom Penh office when it started operation in 1990 (Vaddhanaphuti & Collins, 1996: 6). The HPP formed part of the UNDP's response to the UN International Decade of the World's Indigenous Peoples and was, thus, directly and explicitly linked to international indigenous rights norms and their promotion (HPP, 2001: 2). A project document was signed by UNDP and both of Cambodia's Prime Ministers in 1993. In the same year, a UN Centre for Human Rights was established in Phnom Penh, and a Special Representative of the Secretary General for Human Rights in Cambodia was appointed, with a mandate to monitor and report on the situation of human rights in Cambodia and to provide technical assistance and advisory services, in accordance with the Paris Peace Accords. The Centre and the Representative have consistently promoted application of indigenous rights norms for highland peoples in Cambodia.

An Inter-Ministerial Committee for Highland Peoples' Development (IMC) was created in 1994 as the Cambodian government's National Focal Point Institution and counterpart for

HPP. The IMC comprised ten government ministries⁸ and was mandated with coordinating, monitoring, and evaluating development activities among highland peoples in the northeast (Vaddhanaphuti & Collins, 1996: 10). Ambitiously, HPP aimed at nothing less than the

“comprehensive enhancement of national and local capacities to address ethnic and highland issues and needs in general and over the long term” (HPP, 1993: 4).

However, the UNDP’s modest US\$ 1.1 million contribution made up the majority of the program’s funds for three years and four countries (HPP, 2001: 2). That HPP hoped to accomplish so much with so little suggests that the international community’s expectations about the promotion of international indigenous rights norms were rather optimistic. This optimism was not universally shared, however, and wore off over the following years. In 1996, UNDP engaged a consultancy team to assist in building the capacity of the IMC and in *“making the Committee functional”* (Vaddhanaphuti & Collins, 1996: 2). The consultants’ report soberly notes that resources sufficient to enable the IMC to function were not made available and that the

“IMC has apparently never considered itself a body which might propose legislation to the NA [National Assembly] concerning highland peoples ... Nor has the IMC yet considered how it might actually enforce a policy which it might formulate” (Vaddhanaphuti & Collins, 1996: 14, 21).

Apparently, the UNDP had expected that assistance in establishing the IMC would be sufficient to make the Committee functional, and that IMC operations would be driven by government initiative and resources. The IMC and the government, in contrast, expected ongoing international funding and support for the operation of the IMC. In the absence of suitable support and resources, the IMC remained dysfunctional, while the obstacles to its mandate on the ground were mounting. The consultancy report invokes the *“urgent challenges facing the northeastern highlands”*, specifically

“intensive logging operations which seem aimed to enrich the few in the present ... agricultural entrepreneurs and international investors, often backed by the authority and force of the government ... plan to exploit massive forest concessions for their agro-industry operations” (Vaddhanaphuti & Collins, 1996: 4).

The invocation of government support behind those who are enriching themselves with the exploitation of forest concessions highlights the predatory, neo-patrimonial quality of governance as one driver of the challenges facing highland peoples. The authors note that these developments *“threaten the culture and livelihood of the indigenous peoples of the region”* (Vaddhanaphuti & Collins, 1996: 5). These concerns were supported by a growing number of international reports and research initiatives. The NGO Global Witness presented evidence that government mismanagement and corruption was responsible for

⁸Ministry of Agriculture, Forestry, and Fisheries; Ministry of Education, Youth, and Sport; Ministry of Health; Ministry of Public Works and Transport; Ministry of Social Affairs, Labors, Vocational Training and Youth Rehabilitation; Ministry of Women’s and Veterans Affairs; Ministry of Environment; and Cambodian Mines Action Center (ADB, 2002a: 9).

the “*destruction of Cambodia’s forests on a scale that dwarfs all activity in the years prior to 1995*” (1996: 1), specifically through the allocation of concessions to private companies. The report mentions one instance in which highland communities in Ratanakiri were evicted from their traditional land at gun-point and forced to clear their own land of trees for the company (Global Witness, 1996: 19). The Special Representative of the UN Secretary General for Human Rights in Cambodia highlighted the “*large potentially detrimental consequences for indigenous communities*” of concessions for logging and agribusiness and suggested that Cambodia “*learn from the mistakes of other countries which violated the rights of indigenous peoples in the name of progress and development*” (Kirby, 1996: 26, 91). These concerns were also supported by the findings of the ‘Interdisciplinary Research on Ethnic Groups in Cambodia’, an internationally supported initiative aimed at providing “*a basis for developing policies and laws*” and at identifying “*ways in which the rights of ethnic minority groups can be protected*” (D. Pen, 1996: 1, 4). This initiative was supported as early as 1994 by numerous international organizations, including the UNDP, the United Nations Population Fund (UNFPA), the UN refugee agency (UNHCR), the UN human rights agency (UNHCHR), the United Nations Children’s Fund (UNICEF), and the UN Educational, Scientific and Cultural Organization (UNESCO) (Kleinjans, 1996: vii). The research project’s findings were published as a collection of articles in 1996 and formed the background for a National Symposium on Ethnic Groups held under the patronage of the King and Queen. Unlike virtually all other international initiatives, the Interdisciplinary Research aimed at covering all of Cambodia’s major ethnic groups and at informing a comprehensive minority policy for different categories of ethnic groups. Research work focused on “*indigenous highlanders*”, the Cham, ethnic Chinese, Vietnamese, and the Lao, respectively. The Interdisciplinary Research shared with almost all subsequent international initiatives the assumption that only highland groups are ‘indigenous peoples’ in Cambodia.

The article on highland peoples, written by Joanna White, notes in its introduction that the terms “*highlanders*” and “*indigenous peoples*” are used synonymously “*for the sake of convenience*” (White, 1996: 333), highlighting the seeming ease with which highland peoples can and have been identified as indigenous peoples in Cambodia and distinguished from other ethnic groups. White shows that, among highland peoples, “*the village maintains a sense of community by its control over resources and its own autonomous system of self-management*”. She argues that “*unprecedented changes*” were underway, “*most pressing*” among them “*the commercial exploitation of the upland areas*” (1996: 366). She points out that indigenous villagers were often misled or coerced by government officials to sell their land at very low prices. Indigenous communities were in many instances unaware of their legal position or the market value of their land and therefore “*prone to exploitation*” by investors and brokers (1996: 367). White highlights that the consequence of concessions was that “*the whole environment on which highlander culture has been founded is under threat*” and argues that

“*official recognition of these groups as indigenous people could be a significant*

step in guaranteeing them some important rights. By definition, indigenous people are the original inhabitants of land on which they have lived for centuries” (1996: 371).

However, Cambodia’s ethnic Khmer, Lao and Cham have lived on particular lands for centuries, too, yet the Interdisciplinary Research project did not argue that they should be considered as indigenous peoples in Cambodia. A concept of indigenous peoples did not exist in Cambodia’s legal framework, and there is no internationally agreed upon definition of the term. White’s proposal to recognize highland groups as indigenous peoples, therefore, likely meant to suggest the adoption of international norms and the implementation of relevant, group-specific rights for highland peoples. The article concludes that *“a system needs to be developed whereby local villagers can represent themselves and their interests to government representatives, policy-makers and the outside world in general”* (1996: 372). These recommendations reflect international indigenous rights norms but were never meaningfully applied in practice, despite the fact that similar recommendations were rather consistently made by subsequent international initiatives. The work of the Interdisciplinary Research helped shed light on the situation and aspiration of various minority groups, but it failed to serve as a basis for laws and policies that effectively protect Cambodia’s ethnic minorities, notably highland peoples.

In the meantime, the Cambodia Area Rehabilitation and Regeneration Project (CARERE) established its office in Ratanakiri in May 1995, just three months after the inception of the UNDP’s Highland Peoples Project (Vaddhanaphuti & Collins, 1996: 9). Supported by several international donors including the UNDP and endowed with much greater funds than HPP, CARERE aimed at strengthening Seila, the government’s local development program. In order to avoid confusing northeastern provincial authorities with the existence of two apparently similar UNDP-supported programs, the UNDP’s Cambodia office encouraged HPP to work primarily with the IMC at the central level of the state (Vaddhanaphuti & Collins, 1996: 19). A mid-term review of HPP, however, argued that support to a national policy-making body would require a focused approach and greater resources than HPP had available (HPP, 1996: 6) and concluded that *“the first priority for the HPP is to continue to support community level activities”* (1996: 3). These repeated shifts in HPP’s approach left the IMC *“stranded motionless between differing notions of HPP’s focus”*, notes a 1996 consultancy report, adding that it also seemed to have *“made the IMC and the Royal Cambodian Government uncertain about what HPP’s real intentions are, and what kind of commitment HPP will actually make to strengthening the IMC”* (Vaddhanaphuti & Collins, 1996: 12).

HPP’s consultancy report does not explicitly raise international indigenous rights norms but its depiction of the IMC/HPP-approach tends to conform to these norms whereas, according to the report, the approach of Seila and CARERE tends to conflict with these norms. Specifically, the authors claim that the IMC/HPP-approach is characterized by the *“participation of ethnic highland groups and communities”* in a way that *“allows them to assume a true sense of responsibility for their own development”*, leading to *“an*

enhancement of highlander self-reliance” (Vaddhanaphuti & Collins, 1996: 17). In marked contrast, the authors describe Seila/CARERE as “*a context where largely Khmer staffed provincial departments are being trained to manage development*” (1996: 22). In light of this contrast, the report considers

“the unresolved question in the relationship of IMC and STF [Seila Task Force]” to be the “attitude that will be taken toward the unique challenges of a province populated largely by ethnic minority peoples whose cultures, traditions and lifeways are threatened by rapid changes to their environment brought largely by the majority culture” (1996: 21).

As it turned out, HPP never managed to make the IMC functional or to engage meaningfully at the local level. Seila and CARERE, in contrast, were expanded to the entire Kingdom and flourished in several reincarnations until today, with an approach that continues to promote subordination of highland peoples under Khmer-staffed state administrations and the transfer of power from customary institutions of highland peoples to state organizations dominated by Khmer elites. The following chapter will return to Seila and the programs into which it has since evolved.

4.1.2. Diversity-Friendly Rhetoric amid Growing Challenges

While the IMC never functioned as a meaningful policy-making and -implementing body, its secretariat, in collaboration with various international and non-governmental organizations, co-organized several seminars and workshops aimed at responding to the worsening situation in the northeast, such as rapidly increasing land alienation of indigenous communities, deforestation, and in-migration of lowlanders. One such event was a weeklong seminar in 1996 in Banlung, the provincial capital of Ratanakiri. The seminar on the theme of ‘Sustainable Development in Northeast Cambodia’ was co-organized by the International Development Research Centre (IDRC), CARERE, as well as the international NGOs Coopération Internationale pour le Développement et la Solidarité (CIDSE), Health Unlimited, and Oxfam. Among the seminar’s more than 200 participants were first Prime Minister Norodom Ranariddh, and, representing second Prime Minister Hun Sen, current deputy Prime Minister and Minister of the Council of Ministers, Sok An. Other participants included indigenous representatives from northeastern provinces and staff of numerous governmental, international, and non-governmental organizations. The seminar’s objectives were to “*create understanding for the richness of ethnic community culture and its value for national cultural diversity*” and “*to discuss concerns and visions for the future of the Northeast region from the perspective of indigenous communities*” (Colm & Ker, 1996: 1).

The seminar proceedings highlight that “*villagers are very worried about loss of land and what will happen to their children who need to inherit the land*” (Colm & Ker, 1996: 11). Several cases were discussed of indigenous lands being acquired by companies through land concessions or fraudulent deals, often with the involvement of local authorities. One ethnic Kreung man, for example, expressed concerns about companies encroaching on

indigenous land: “*Wherever they come, the trees go ... they are not minor like we are. They have guns, power, cars*” (1996: 8). Another participant complained that “*the indigenous people feel the government cuts the big trees for the companies while the government blames the people for destroying the trees*” (1996: 13). Many participants felt that the authority of traditional leaders in land and forest management was undermined “*because now village chiefs are appointed by government. Today the only thing respected is money*” (1996: 13).

Seminar proceedings suggest that the attending high-ranking officials acknowledged the challenges and convincingly promised to address them. The language of officials’ statements suggests a departure, at least rhetorically, from the aggressive commercial exploitation and previous norms of Khmer nation-building and some degree of convergence with emerging international norms. Norodom Ranariddh and Sok An “*reaffirmed the Royal Government’s pledge not to allow any investment projects to proceed if they threaten the livelihoods and cultures of the highland peoples*” (Colm & Ker, 1996: 1). In closing the event, Kep Chuktema, then-governor of Ratanakiri and today of the capitol Phnom Penh, said that

“the ethnic minorities are the original people of this land. They live with the environment and use the nature sustainably ... sustainable development must preserve the culture and the way of life of the minorities” (1996: 14).

The Banlung seminar resulted in a policy statement that was endorsed by participants and represents a rare affirmation of Cambodia’s cultural and specifically multinational, ‘indigenous’ diversity. Entitled “*Northeast Highlands Development Policy Statement and Action Plan*”, the document opens with saying that “*the Cambodian Nation is composed of a diversity of peoples and cultures. That is one of its strengths*” (Colm & Ker, 1996: 36). The invocation of “*peoples*” and “*cultures*” goes well beyond the Constitution’s conception of Khmer citizenship in recognizing the presence in Cambodia of more than one people and culture. The statement calls on the government to recognize and protect Cambodia’s diversity and proposes to use the “*ways of living and of managing resources*” of the “*people of many distinct cultures*” as “*the basis for modern and sustainable management systems*” (1996: 36). The statement calls for “*Khmer Loeu communities [to] have the opportunity to control their own destiny*” and for specific representation of highland communities at the national and provincial level of the state. Declaring that indigenous communities “*must have access to the mainstream decision-making institutions of Government*”, the statement expresses the “*intention of the Royal Government to add Khmer Loeu representation to decision-making bodies at the central level, and to encourage the Northeastern provincial authorities to do likewise*” (Colm & Ker, 1996: 36). These recommendations draw on international indigenous rights norms. Specifically the notion of indigenous communities’ “*control over their own destiny*” gestures at the right to self-determination indigenous peoples have according to the UN Declaration of the Rights of Indigenous Peoples that was still a draft at the time. A significant degree of autonomy is implied in this notion but moderated by the use of the rather integrationist term “*Khmer*

Loeu". Highland peoples historically did control their own destiny, and it was government policy during and since the colonial period to end, rather than perpetuate, this state of affairs, with few exceptions. A commitment to indigenous peoples' control over their own destiny, and to special representation at national and provincial levels, represents a major departure from longstanding policy and a considerable step towards the adoption of emerging international indigenous rights norms. The same is true of the statement's declaration that

"no development projects may proceed until the affected community groups have had notification and an opportunity to participate in the Environmental and Social Impact Assessment process" (Colm & Ker, 1996: 36).

The policy statement suggests a change in official discourse, specifically a more diversity-friendly, liberal-multicultural language, and a rhetorical normalization of indigenous rights norms. However, the following sections demonstrate that the statement's provisions and recommendations were never meaningfully applied in practice.

4.1.3. Attempting to Incorporate ILO Indigenous Rights Standards via the IMC

Numerous organizations over the years supported, even drove, the attempt by the Inter-Ministerial Committee to formulate a General Policy for Highland Peoples' Development. Among them were international organizations, such as the UNCHR, UNDP, UNESCO, CARERE, the Asian Development Bank (ADB), as well as bilateral organizations like the IDRC and NGOs like OXFAM and CIDSE (Seng & Moul, 2002: 1). The International Labour Organization (ILO), responsible for the only international binding instrument pertaining to indigenous peoples that was in force at the time, ILO Convention No. 169 on Indigenous and Tribal Peoples, joined this effort in 1997. According to a report prepared by the ILO and the IMC, UNDP HPP approached the ILO in 1997 in the context of IMC's work on the highland peoples' development policy, because

"HPP believed that the ILO was the most appropriate agency to provide assistance in this area, given its standards-centered approach" (Seng & Moul, 2000: 15).

Implied here is that both HPP and ILO staff believed that the standard on which the ILO's approach is centered, ILO Convention No. 169, was the most appropriate for application to Cambodia's highland peoples, despite the fact that Cambodia never ratified the convention. Following UNDP's invitation, staff of the ILO's Project for the Promotion of ILO Policy on Indigenous and Tribal Peoples (ITP Project) attended one of the IMC's workshops in 1997, during which *"the IMC requested direct assistance from the project"* (Seng & Moul, 2000: 15). This led to ILO and IMC jointly organizing a training program aimed at promoting

"the incorporation of the basic principles of ILO Convention No. 169 on Indigenous and Tribal Peoples into emerging policies on the development of the indigenous peoples of the highlands of Cambodia" (Seng & Moul, 2000: 15).

This statement implies that the IMC and the government shared the belief that Cambodia's

highland peoples are usefully considered indigenous peoples in the sense of the ILO convention, and that the convention's basic principles apply to them. IMC's work on the Policy for Highland Peoples' Development, facilitated by several international organizations, resulted in a draft policy document that was closely modeled on ILO Convention 169. The draft policy contains robust provisions for protecting and empowering highland peoples across a wide range of sectors, notably pertaining to the ownership and management of land and natural resources. The draft policy bans deforestation in areas inhabited or used by highland peoples, provides protection for lands traditionally used by highland peoples, as well as remedies against unlawful intrusion. It also declares highland peoples' right to "*determine the priorities for and to exercise control over their economic, social and cultural development*" (IMC, 1997) and provides for the incorporation of indigenous knowledge and languages into education curricula. The ILO/IMC-report confirms that

"the ILO ITP Project has been actively engaged in providing policy advice to the IMC on the approach of ILO Convention No 169" and that the "final draft policy on highland peoples, completed as a result of the IMC/ILO collaboration process, was submitted to the CoM [Council of Ministers] late in 1997 and is currently in the process of adoption. Convention 169 provides the basic principles of the policy document" (Seng & Moul, 2000: 57).

Apparently, ILO officials had come to believe that the domestic adoption of Convention 169-style principles and standards by the Cambodian government was imminent. Application of the draft policy would have meant a profound shift in the government's approach to highland peoples, from involuntary incorporation and Khmer nation-building to accommodation as distinct cultures with far-reaching rights to land, natural resources, bilingual education, and self-government. The apparent confidence of international organizations in their own ability to promote effective application of these norms appears overly optimistic today but was part of a larger picture in which hope for more democratic and liberal government in Cambodia was fairly widely shared (Picken, 2010). Factors that likely contributed to international organizations' considerable optimism regarding the adoption of indigenous rights norms included the government's creation of the IMC, the diversity-friendly rhetoric of high-ranking officials, and the government's seeming willingness to accept guidance from international organizations and to incorporate international norms into draft policy.

However, the Council of Ministers rejected the draft highlander policy submitted in 1997, ostensibly to allow for the prior passage of revised laws on land and forest. Yet even after the passage of the Land Law (2001) and the Forestry Law (2002), the highlander policy was not adopted, suggesting that not the timing of submission triggered the policy's rejection but its content and basic principles. The government's refusal to adopt the IMC's draft policy highlighted the political and institutional weakness of the IMC, which consisted of little more than a secretariat with a handful of staff at the relatively powerless Ministry of Rural Development (HPP, 2001: 14). The IMC was allocated nothing by the national budget and therefore relied for funding almost exclusively on international

support. Membership of the Inter-Ministerial Committee consisted essentially of government ministries controlled by FUNCINPEC, the increasingly marginalized coalition partner of the dominant Cambodian People's Party (CPP). The IMC never established a local presence in any of the highland provinces for which it was formally mandated with making policy. It became apparent that the IMC also lacked government backing and the ability to reach out to key ministries controlled by the CPP. As a 2002 ADB-report notes:

“the creation of IMC appears to have been instigated by the HPP, and its profile has been greatly diminished since the HPP effectively ceased its activities ... There appears to have been no sense of national ownership and the IMC has in recent times been operating on a shoestring budget ... A possible lesson to be learned from the HPP experience in the Mekong subregion is that it is very difficult to contribute effectively to policy and its implementation in indigenous and ethnic minority areas without a presence on the ground through concrete activities” (Plant, 2002: 49).

In retrospect, it is clear that UNDP HPP and other international organizations working with the IMC did not succeed in bringing about significant change in the relationship between highland peoples and the Cambodian state. Despite the apparent failure of UNDP HPP's first phase, a second phase commenced in 1999. However, a mid-term assessment of HPP in 2001 found that *“no activities have been implemented in Cambodia”* and that *“there is absolutely no concept of ownership of the programme in Cambodia”* (HPP, 2001: 1, 14). The IMC was dissolved and replaced with a Department for Ethnic Minority Development (DEMD) at the Ministry of Rural Development in 2001 (ILO, 2005: 19). Like the IMC before it, the DEMD was only episodically functional when it received outside support and remains marginal to relevant policy making. The next sections show that international organizations and NGOs over the following years increased significantly their local presence and the scope of concrete activities. This change, however, did not translate into more effective contributions to policy and its implementation on the ground, at least not in the sense of convergence with international norms.

4.2. The New Land Law and Nominally Improved Legal Protection

As the IMC failed to gain cabinet-approval for its draft Policy for Highland Peoples' Development, land-alienation, illegal logging, and in-migration continued to undermine the possibility of realizing indigenous rights for Cambodia's highland peoples. According to one estimate, half of Ratanakiri's land area had been set aside for protected areas and tourist sites by 1997, while virtually all of the remaining land area had been approved for a 30-year land concession granted to an Indonesian company (Colm, 1997: 6-7). By another estimate, 120 per cent of the province's land area was under concession or had been designated as protected area or sold by the mid-1990s (G. Brown, Ironside, Poffenberger, & Stephens, 2006: 3). Provincial authorities were proceeding with allocating dozens of smaller land concessions of their own. While *“Ratanakiri's eight indigenous groups lived fairly autonomously until recently because of the province's physical isolation from Phnom Penh”*, the province had now become *“the new frontier for proposed industrial plantations, hydroelectric projects, and logging concessions”*, with the consequence that *“dwindling*

access to land and natural resources is affecting the ability of indigenous populations to maintain secure livelihoods” (Colm, 1997: 1, 6). The Special Rapporteur for Human Rights in Cambodia invoked “*relevant international standards*” pertaining to “*indigenous peoples*” to note that the large number of logging concessions in Ratanakiri “*must be seen also as a human rights problem*”. He stated that powerful persons were engaged in “*rampant land speculation and abusive exploitation of natural resources to the detriment of the interests of the highland peoples*”, with the result that “*the rights of access by indigenous communities to land and the natural resources on which their livelihoods depend is under threat*” (Hammarberg, 1999: 132). The Rapporteur considered that “*extensive in-migration of non-highland peoples*” constituted “*a further threat to the culture and livelihood of the highland peoples*” and that, despite the government’s stated intent to crack down on illegal logging, there was “*a risk that it will continue as long as the perpetrators of illegal logging practices, including businessmen, members of the military and civil servants and politicians, are not brought to justice and punished*” (Hammarberg, 1999: 122-133).

Due not least to the failure of the highlander policy and the apparent urgency of land issues, the focus of international indigenous rights promotion shifted to the revision of legislation pertaining to indigenous lands (ADB, 2002a: 12). Two working groups of international and non-governmental organizations were established in 1998, in order to advocate for the inclusion of indigenous concerns into the draft Land Law (Andersen, 2007: 19). One of these groups was based in Ratanakiri and worked with indigenous communities to collect and analyze information related to land and forest use. Among this group’s members were CARERE, IDRC, Non-Timber Forest Products (NTFP), the human rights NGO ADHOC, CIDSE, and Health Unlimited (ADB, 2002a: 12). The second group was based in the capitol Phnom Penh and involved closely in the drafting of a land law section on highland peoples’ land. This group’s members were OXFAM, the Asia Foundation, the Office of the High Commissioner for Human Rights (OHCHR, the former UN Centre for Human Rights), and the NGO Legal Aid of Cambodia (ADB, 2002a: 12). Responding to intense advocacy and significant donor pressure, the Council of Ministers agreed in 1999 to include a chapter on indigenous lands into the draft Land Law. A team of legal consultants from the Asian Development Bank (ADB) completed the draft chapter on indigenous land. The draft was submitted to the Council of Ministers in February 2000, approved by the National Assembly, and signed by the King in 2001 (Andersen, 2007: 20).

Nominally, this was a watershed moment. On paper, the Land Law dramatically improves legal protection for highland peoples’ land, and moves Cambodia closer towards compliance with international indigenous rights norms. Accordingly, it was widely hailed by advocates as “*visionary*” (S. Brown, Seidel, & Sigaty, 2005: 1) and “*progressive*” (McAndrew & II, 2009: 5). Article 25 identifies indigenous communities’ lands as those “*where the said communities have established their residences and where they carry out traditional agriculture*”, including specifically “*reserves necessary for the shifting of cultivation*”. Article 28 categorically states that “*no authority outside the community may*

acquire any rights to immovable properties belonging to an indigenous community”, outlawing the transfer, possession, and sale of eligible land from the day the Land Law was enacted. Lands that have been sold or transferred since the Land Law’s adoption remain eligible for registration as collective title (S. Brown et al., 2005: 50). The Land Law provides for indigenous communities to register communal title within all categories of land and throughout the entire permanent forest estate, including forestry concessions and protection forest areas, as well as mining areas under exploration or exploitation licenses (S. Brown et al., 2005: 39). The Land Law also recognizes traditional authorities as legitimate representatives of indigenous communities and confirms customary decision-making mechanisms as valid procedures. Article 26 gives considerable power to traditional authorities, by making

“exercise of all ownership rights related to immovable properties of a community and the specific conditions of the land use ... subject to the responsibility of the traditional authorities and mechanisms for decision-making of the community, according to their customs”.

Provisional protection is implied in Article 23 of the Land Law, which states that *“the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs”*. However, despite the dramatic shift towards recognition of highland peoples’ land rights and decision-making, the Land Law did not significantly improve the situation of highland peoples on the ground. The government has studiously limited the scope of relevant provisions, failed to enforce and often violated them, and delayed their implementation. In 2011, 10 years after the Land Law was enacted, three pilot communities covering a mere 329 families received communal titles to their land (UNOHCHR, 2011). In March 2013, two more communal titles were issued for the benefit of an additional 70 families (Titthara & Boyle, 2013).

One of the major implementation obstacles is that a community’s legal recognition is the precondition for communal ownership. According to the Constitution’s Article 44, *“only Khmer legal entities and citizens of Khmer nationality shall have the right to own land”*. Because there were neither recognized indigenous communities nor a process for their recognition, there now was a Land Law according rights to entities that did not exist (S. Brown et al., 2005: 2). Before discussing implementation experience, however, it is important to point out the conservatism of the Land Law’s conception of indigenous communities, which contradicts Cambodia’s liberal Constitution as well as international indigenous rights norms.

4.2.1. Misrecognizing Highland Peoples as Backward Khmer Entities

The Land Laws defines as *“indigenous community”* (‘sahakom chun-cheat daoem pheak-tech’) a

“group of people who reside in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to

customary rules of collective use” (Article 23).

Other than Cambodian residence, each of these criteria, unity, traditional lifestyle, and customary rules of collective land use, is a matter of degree and difficult to measure. None of these criteria reliably differentiates between highland and lowland communities. Given that the Constitution calls on the government to “*ensure national unity, and preserve the good national traditions of the country*” (Article 52), and to manage state property, notably land (Article 58), the definition of indigenous community in fact overlaps considerably with constitutional notions of Khmer citizenship (Ehrentraut, 2008: 206). At any rate, highland peoples’ need for protection arises from the fact that they form distinct societies, and it is these distinct societies that international norms aim to protect. However, the Land Law’s definition does not acknowledge the presence of non-Khmer identities, languages, and institutions, and it avoids recognition of indigenous peoples as political actors. Rather than protecting culturally distinct, historically self-governing minorities, as international norms would suggest, the Land Law protects closely-knit, traditionalist, collectively cultivating communities of unspecified ethnicity. In so doing, the Land Law makes recognition of claims to land conditional on the maintenance of traditional lifestyles, collective land use, and customary cultivation, not only conceptually but also practically. It is common among government officials to argue that communities whose members engage in cash cropping do not qualify as indigenous under the Land Law, because they do not practice traditional agriculture. Officials from the Ministry of Interior, for example, expressed the view that Kuy communities visited during a trip to Preah Vihear did not qualify, because they were assimilated (Andersen, Thornberry, & Sophorn, 2007: 22). In order to benefit from recognition, indigenous peoples are required to abstain from modernizing their lifestyles. These provisions are hypocritical, because they let the government and the Khmer majority assimilate highland groups and then deny their rights as distinct cultures based on the result of this violation.

Emphasizing unity, traditional lifestyles, and collective land use, rather than cultural difference or historical self-government, implies that the main contrast between highland peoples and Khmer society is a civilizational one, between modern, developed, individualist Khmer citizens on one hand and pre-modern, undeveloped, and collectivist highland people on the other (Ehrentraut, 2008: 208). As was shown earlier, the notion that civilization is what distinguishes highland peoples from Khmer was widely shared before, during, and after the colonial period, and it remains popular today (Baird, 2011: 7; Hammer, 2009: 142; Kirby, 1996: 91). As one ILO-commissioned report states, the Khmer majority considers indigenous peoples “*as ‘underdeveloped’ and ‘less civilised’*”, which results “*in a patronizing mixture of pity and condescension towards the highlanders*” (Chhim, Hean, Hun, & Sokhan, 2005: 18). The implied rationale for providing highland groups with communal land titles is the protection of traditional, collectivist communities from modernity and individualism. This rationale contrasts sharply with international conceptions of indigenous peoples as groups entitled to self-determination as a matter of equality, of protecting vulnerable groups from distinctly modern nation-building states, and

of remedying and reversing unjust colonization.

The cultural conservatism manifest in the Land Law's definition of indigenous community is reinforced by the law's conception of what a member of an indigenous community is, a person who

“meets the ethnic, cultural and social criteria of an indigenous community, is recognized as a group member by the majority of such group, and who accepts the unity and subordination leading to acceptance into the community”.

As was pointed out before, liberalism supports group rights that reduce a minority's vulnerability to external pressures but not minority rights that aim at protecting group unity from internal dissent, because doing so would limit the ability of group members to freely question and revise group values and practices (Kymlicka, 1995: 43-48; UNDP, 2004: 16). International indigenous rights norms, too, do not offer grounds for discouraging people from adopting different lifestyles or for limiting their ability to adapt traditional values and practices. In contrast, the Land Law's emphasis on acceptance of unity and subordination, combined with seemingly unchecked power to be exercised by traditional authorities, suggests an illiberal conception of indigenous communities with considerable potential for oppression. Specifically, the Land Law risks rewarding conservative elites seeking to impose interpretations of traditions that help protect their power and that might compromise the liberty and human rights of community members.

Relevant literature as well as field research presented in Chapter 6 suggests that the threats posed by traditional authorities and customary practices to the human rights of highland people are mild, particularly when compared to the actual violation of these rights by outsiders (AIPP, 2006; G. Brown et al., 2006: 26-27; Ironside, 2009; NGO Forum, 2005). As one study puts it, *“elders act more as facilitators of dialogue, consensus builders, and advisors to the heads of households, rather than playing an autocratic role in village decision making”* (G. Brown et al., 2006: 10). Nevertheless, the legal empowerment of traditional authorities and the absence of mechanisms to ensure internal accountability raise the question of how to protect the human rights of community members. The Land Law's only solution to this problem is for members to exit their community:

“For the purposes of facilitating the cultural, economic and social evolution of members of indigenous communities and in order to allow such members to freely leave the group or to be relieved from its constraints, the right of individual ownership of an adequate share of land used by the community may be transferred to them” (Article 27).

This right to exit would allow group members to escape potentially oppressive traditions and practices. However, given the importance of having access to one's own culture for the individual, exit is too high a price to expect members to pay for freedom from oppression. The provision also makes the territorial basis of indigenous communities vulnerable to fragmentation. The Land Law is not concerned with group constraints or *“cultural, economic and social evolution”* of indigenous individuals in community, prior to exit. To

the contrary, the law's language suggests that exiting indigenous communities and individualizing land ownership facilitates members' "*evolution*" and implies that remaining in indigenous community does not. The law's emphasis on tradition and custom, and the implied absence of change are consistent with a conception of an indigenous community as a group of people in which "*evolution*" does not take place.

Nominally, the Land Law creates a group-differentiated conception of Cambodian citizenship that accords considerable rights to land, resources, and self-government to indigenous communities. However, this group-differentiation is in tension with the Constitution's undifferentiated notion of Khmer citizenship. Plausibly, the difficulty of reconciling Khmer citizenship with indigenous rights, along with political convenience, explains the vagueness, cultural emptiness, and ambiguity of the Land Law's definition of indigenous communities. Likely, the drafters of the Land Law sought to avoid the notion of highland peoples as non-Khmer groups, because it would imply exclusion in the context of citizenship that is legally defined in ethnic Khmer terms. The Land Law's conception of indigenous communities misrecognizes highland peoples, individually ('Khmer citizen') as well as communally ('Khmer legal entity'), which highlights once more the challenges of accommodating multinational diversity within ethnically defined Khmer citizenship. The Land Law's conservative, traditionalist notion of indigenous community does not correspond to the actual aspiration of these groups, as Chapter 6 shows, and risks compromising the liberty of group members.

4.2.2. Land Law Implementation Challenges

Even though the legal framework for the registration of indigenous collective title was widely considered almost complete (S. Brown et al., 2005: 1), an "*Interim Paper on Strategy of Land Policy Framework*" issued by the government in 2002 asserted that implementation of Land Law provisions related to indigenous communities "*will require careful research and pilot efforts*", as well as a sub-decree to enable indigenous land registration (quoted in: Andersen, 2007: 21). This statement might have appeared to indicate judicious policymaking but in retrospect was more plausibly an attempt to delay implementation. While the government requires careful research and piloting before steps are taken to safeguard the interests of indigenous groups, not even the most basic consultation requirements are met when large-scale concessions are granted to private corporations and powerful individuals (G. Brown et al., 2006: 3; Ghai, 2007; Leuprecht, 2004; Subedi, 2012a). Moreover, the actual research and piloting work was left by the government to international and non-governmental organizations (Andersen, 2007: 33; Andersen et al., 2007: 22). Despite considerable support from international agencies and intensive advocacy by a growing number of NGOs, it was not until 2004 that the Council for Land Policy (CLP) established the National Inter-Ministerial Task Force for the Study on the Registration of Indigenous Land Rights. Three pilot communities were identified in Ratanakiri and Mondulhiri and provincial task forces established (Andersen, 2007: 21). In the meantime, land alienation of indigenous communities and forest destruction continued unabated (Global Witness, 2002). A study undertaken in 2004 found that large scale sales

and seizures of indigenous peoples' land had taken place throughout Ratanakiri, directly contradicting the Land Law (NGO Forum, 2004). A follow-up study in 2006 found that *"land alienation has increased in severity in 30 percent of communes and has continued unabated in most of the remaining 70 percent"* (NGO Forum, 2006: 4). *"Despite enactment of the Land Law"*, notes another report in 2005, *"the alienation of land eligible for collective title has dramatically increased fuelled by land speculation, forest clearance and the issuance of concessions"* (S. Brown et al., 2005: 47). The authors add that an increasing number of cases of land transfers to individuals outside indigenous communities are

"not consistent with traditional management and are often conducted without consent of the community or written contract and are at times the result of duress, pressure and lack of understanding" (S. Brown et al., 2005: 49).

In 2005, the ILO established another project specifically to promote indigenous peoples' rights in Cambodia. Named *"Rights based approach to indigenous peoples development in Cambodia"*, the project, somewhat less ambitiously than its predecessor, aimed at *"the development of national legislation and policies that integrate the rights, needs and priorities of indigenous and tribal peoples in Cambodia, and the development of capacity to implement them"* (ILO, 2005: 3). The project's initial government counterpart was the Department of Ethnic Minority Development but its focus shifted quickly to supporting the Ministry of Interior's Department for Local Administration in the development of bylaws for the three indigenous pilot communities (Andersen, 2007: 24), in order to meet the preconditions for recognition as legal entities.

Leun Kraen Village in Ratanakiri was one of three pilot villages whose by-laws were endorsed by the Ministry of Interior in 2006. The by-laws describe *"Leun Kraen Village of Tompoun [Tampuan] Indigenous Community"* as a *"collective institution of citizens"* (Article 1) and an *"organization, where members assist each other, protect the national interest and social order, directly administered by O'chum commune council"* (Article 2). This description highlights the strong, hierarchical difference between the Khmer majority's privileged constitutional standing on one hand and on the other hand, the recognition of Tampuan as a village-level 'Khmer entity' to be directly administered by the respective commune council on the other hand. The protection of *"the national interest and social order"* was likely declared as one purposes in anticipation of potentially popular but implausible claims that a non-Khmer community might pursue non-Cambodian interests. Article 3 features a long list of characteristics making up the *"identification"* of the community. The list was apparently designed to respond to the Land Law's conservative conception of an indigenous community, specifically to demonstrate the presence of unity, traditional lifestyle, collective land use customs, and subordination to traditional authorities. Among the characteristics listed is the community's *"Khmer nationality"*, that conflicts are solved by traditional authorities and that members *"practice traditional livelihoods"*, of which several are mentioned. The article goes on explaining that the *"community has traditional dance, arts, musical instruments, lyrics, songs, musical rhythm, foods"* and that the *"community holds beliefs in animism"*. No less than twelve

kinds of spirits are listed, along with several “*sacrificial practices*” and taboos.

This identification reinforces the Land Law’s conservatism, because it implies that the listed characteristics are essential or authentic to this particular community. The list of characteristics supposedly identifying the indigenous community assumes an implausible degree of homogeneity among community members, from seemingly universally shared beliefs in animism and particular categories of spirits and taboos through traditional livelihoods to artistic and culinary preferences. Rather than recognizing a distinct societal culture and its ability to determine its own development, this description catalogs particular cultural manifestations in a particular community at a particular point in time. This identification implies that the community ceases to be indigenous the more it deviates from the listed characteristics. On this view, reforming customary practices and modernizing ways of life would inevitably mean a loss of indigenous identity and potentially, a loss of recognition and of rights linked to it. Highland people, like all Cambodians, have constitutional rights to change their livelihoods, religions, culinary or artistic preferences as they please. Making rights to land conditional on the maintenance of traditional lifestyles is incompatible with the human rights and equal opportunity provisions of Cambodia’s Constitution, as well as with international indigenous rights norms. Moreover, it is hypocritical for the state to require indigenous citizens to maintain a past state of affairs in order to have their rights respected, while the standard operations of the same state routinely force indigenous people to give up their traditional livelihoods and ways of life. Findings from empirical research presented in Chapter 6 show clearly that many highland people want to maintain distinct cultural identities without subscribing to each of their ancestors practice, tradition, and belief. While the rationale of liberal multiculturalism is to make options available to group members, the Land Law and related policy making dramatically limit the options available to group members and in doing so, contradict relevant national and international rights norms.

4.2.3. Conserving Collectivist Communities

As was mentioned earlier, liberal multiculturalism aims at advancing equality between groups and freedom within groups (Kymlicka, 1995: 152). Underlying the Land Law and related policy making, in contrast, is a conservative and distinctly illiberal conception of indigenous communities that risks reinforcing inequality between Cambodia’s majority and minority groups and diminishing freedom within indigenous groups. Among the characteristics attributed to indigenous communities in the legal framework is their “*collective*” land use. Land cultivation “*according to customary rules of collective use*” is among the Land Law’s defining characteristic of an indigenous community. Whether or not indigenous land use is more communal is debatable. Indigenous communities do not, for the most part, cultivate land collectively. Rather, individual plots of land are assigned to individual households for cultivation based on rules (Colm, 1997: 5-6; McAndrew & II, 2009: 5). In addition, there are categories of communally used land, such as spirit forests, burial forests, and forest for collection of non-timber forest products. Communal land use might be more apparent among highland communities, but land and natural resource

management has almost inevitably a communal dimension, as it concerns multiple community members. Ethnic Cham as well as Lao and Khmer often do settle in territorially compact ethnic communities where customary rules of land and resource use and collectively used land can easily be found. Pagodas, mosques, or cemeteries, for example, are not individually owned or used. Forest remaining in the lowlands is often used for the collection of forest products by ethnic Khmer villagers. Officially recognized ‘forest communities’ commonly exist in lowland areas and among ethnic Khmer populations (Sunderlin, 2006). The Vietnamese in Cambodia do not usually manage land collectively, simply because they have no land to manage. Most Chinese live territorially dispersed in urban areas and do not cultivate land, collectively or otherwise.

Clearly, the presence of collective land use only gradually distinguishes Cambodia’s highland peoples from other ethnic groups. Nevertheless, collective land use has become the criterion that is made to carry the most weight in the analysis of many actors, often in misleading ways. For example, collective land use is the only criterion invoked by an ADB-report in support of its foregone conclusion that only highland peoples are indigenous peoples in Cambodia (ADB, 2002a: 13). Similarly, one legal review argues that the Land Law’s definition of an indigenous community

“is sufficiently clear to protect the rights of genuine indigenous communities in Cambodia ... the criteria stated in Article 23 make it impossible to confuse these with other ethnic minority groups, such as Chinese, Vietnamese or Cham. The latter three groups do not follow customs of collective management of lands and natural resources. This is a unique characteristic of indigenous ethnic minority communities” (S. Brown et al., 2005: 20-21).

But not only are “*customs of collective management of lands and natural resources*” not “*unique*” to indigenous communities. There just is no such thing as “*genuine indigenous communities*”. Categories of ethnic groups do not fall from the sky. How genuinely a group fits into the category ‘indigenous community’ is a function of whether or not it matches the criteria used to define what an indigenous community is. Asserting that “*genuine*” indigenous peoples manage their lands collectively essentializes these groups. Importantly, it implies that groups that do not manage land collectively are not genuine indigenous communities and therefore do not qualify for legal protection. This assertion also raises the possibility that members who do not participate in collective land use do not genuinely belong.

The significance and nature of collective land use rules is obscured by the Land Law’s choice of the relevant collective. International indigenous rights norms, as well as liberal minority rights, operate at the level of peoples. ‘Indigenous peoples’ rather than ‘indigenous communities’ have rights in international law. A corresponding approach would recognize highland peoples at the level of the linguistic group rather than the village-level. In contrast to highland peoples, the Cambodian state does recognize the Khmer as a people. The Khmer collectively claim title to the territory of Cambodia,

including the homelands of highland peoples. The Khmer also clearly do (attempt to) manage land collectively. The Constitution charges the state with legally determining the management of state properties, notably land (Article 58). The presence of a Ministry of Land Management and a Forest Administration, of a Land Law, protected areas, national parks, forest communities, and urban planning all indicate some degree of ‘collective’ land use, without anyone thinking that this makes the Khmer collectivist. Clearly, collective land management is not unique to highland peoples.

Moreover, the assertion that highland peoples manage their land collectively is routinely taken to signify that indigenous communities are inherently, essentially collectivist (Ehrentraut, 2008: 210). Collectivism is a normative concept that prioritizes group interests over those of individuals. By doing so, collectivism directly contradicts liberal principles and human rights enshrined in Cambodia’s Constitution, as well as liberal multiculturalism and international indigenous rights norms. A false dichotomy has emerged in Cambodian public discourse, including official statements as well as advocacy reports, that contrasts supposedly collectivist indigenous communities with supposedly individualist Khmer. The assumption is often that if indigenous communities were not collectivist, they would not favor collective over individual titles to land. On this view, the Land Law’s rationale is to protect highland communities’ collectivism from the individualism of Khmer society. However, there is no serious comparative research to support the assumption that highlanders have more collectivist philosophical preferences. This assumption is not just a terminological problem or a descriptive inaccuracy. The priority of the group over its members is operationalized in the Land Law’s requirement for members’ “*subordination*” as a precondition of membership and access to communal land. With seeming approval, one donor-funded legal review invokes the assessment of the Minister for Land Management, Im Chhun Lim, who

“describes the principle in indigenous communities that collective rights are taking precedence over individual rights. This principle governs leadership and decision making in ICs [indigenous communities] related to the management of communal lands. Membership of ICs includes, by definition, the acceptance of internal decision making processes and leadership” (S. Brown et al., 2005: 35).

To the minister of an autocratic government that suppresses dissent, the expectation that people “*by definition*” accept choices made on their behalf and a principle that leadership decisions take precedent over individual rights may appear natural. However, such a principle is unconstitutional in Cambodia and in irreconcilable conflict with international human and minority rights norms. From a liberal perspective, it is inadequate to accept a government’s assertion that its citizens prefer subordinating their individual rights. It would be equally inadequate to accept similar claims from traditional indigenous authorities. The legal review also claims that the Land Law’s requirement for members’ subordination “*captures one of the main features of indigenous communities*” (S. Brown et al., 2005: 35), and that

“indigenous communities have a well-established balance between the rights of the group and the rights of an individual. This balance is safeguarded by traditional authorities and institutions” (S. Brown et al., 2005: 36).

But what does it mean that subordination is a “*main feature*” of a community or that individual and collective rights are well balanced? How does one know that this is the case? How does one distinguish a community that is characterized by subordination from one that is characterized by oppression? Do North Koreans, for example, value unity, group-rights, and subordination over individual rights and accept leadership decisions because of inherent collectivist inclinations or simply because they are oppressed and have no other choices? How about Cambodians during the Khmer Rouge regime? Again, the point here is not that Cambodia’s highland people are internally oppressed. The threats to the liberties of indigenous individuals from internal oppression are far smaller than those from state-driven or -facilitated outside impositions. The point here is that oppression is around the corner where acceptance of subordination and unity is a precondition of membership and where community members are deprived of the liberty to contest governance principles and internal leadership. The following chapter shows that there are no apparent indications that indigenous people are less freedom-seeking than other Cambodian citizens. Little suggests that many do not want to enjoy liberty and modernity within their own culture. There is no need to invoke collectivism to justify the value of culture. Highland societies need protection because of the profound interest their members have in secure access to their own cultures. If not for the benefit of individual citizens, liberal states have no reason to maintain any culture. International indigenous rights norms neither protect collectivist groups from individualism nor traditionalist groups from modernity. In Cambodia, it is particularly unhelpful to link the aspirations of indigenous peoples to notions of collectivism, because these notions are thoroughly discredited by the tragic failure of Khmer Rouge policies. The false dichotomy between collectivist highlanders and individualist Khmer masks the Cambodian state’s systematic privileging of Khmer identities over highland identities, the transfer of control over land and natural resources from indigenous institutions to those of the Khmer and their subsequent privatization, and the ongoing, state-driven perpetuation of Khmer domination and highlander subordination.

4.2.4. ADB-Support for ‘Indigenous Peoples/Ethnic Minority Issues’

The Asian Development Bank (ADB), a multilateral organization with its own safeguard policy on indigenous peoples and one of Cambodia’s major donors, was significantly involved in the development of pertinent Land Law provisions. The ADB also dedicated one chapter of its 2001 Participatory Poverty Assessment in Cambodia to ethnic minorities, which highlighted the “*critical*” importance of the diminishing access highland groups had to land and natural resources as a result of logging and commercial concessions (ADB, 2001b: 51-57). As the Land Law was adopted, the ADB initiated a regional technical assistance project focused on indigenous peoples in Cambodia, Indonesia, Philippines, and Vietnam, entitled “*Capacity Building for Indigenous Peoples/Ethnic Minority Issues and*

Poverty Reduction". Implemented in the course of 2001, the project represented the first major regional activity on this subject undertaken by the ADB since it adopted its Policy on Indigenous Peoples in 1998 (Plant, 2002: 1). The project undertook poverty assessments among target populations in the respective countries, with the declared aim of developing an agenda for action to ensure reduction of indigenous poverty (ADB, 2002a: 1). Four country-reports and one regional report were published, as well as the proceedings of several workshops with recommendations for action plans. According to the foreword of the country reports, ADB hoped that these publications would "*help guide national governments and other development partners in improving future interventions to recognize, promote, and protect the rights of these peoples*" (ADB, 2002a: v).

The project's odd title ('slash') indicates that the identification of groups as 'indigenous peoples' was not without political challenges, as the governments of Indonesia and Vietnam objected to the term (Plant, 2002: 6). The country report on Vietnam, for example, avoids entirely the identification of particular groups as indigenous peoples. Rather, the report invokes the official classification of the Vietnamese population into 54 ethnic groups and adds that "*throughout this report, the term ethnic minority, which has been recognized by the Vietnamese Government, is used instead of indigenous peoples*" (ADB, 2002b: 5)⁹. In contrast, little resistance to the term was recorded in Cambodia, where the ADB's country report simply notes that the terms "*indigenous peoples*" and "*highlanders*" are used synonymously "*for the sake of convenience*", in the sense of the ADB's working definition of indigenous peoples as

"those with a specific social or cultural identity distinct from the dominant or mainstream society, which makes them vulnerable to being disadvantaged in the process of development" (2002a: 3).

That 'indigenous peoples' could be conveniently equated with highland groups in Cambodia underlines the relative normative, conceptual, and political ease with which these groups can be identified as indigenous peoples in Cambodia and distinguished from other groups. The report concludes that "*the majority of the country's ethnic minority population is excluded by this definition*" (2002a: 3). As a categorical statement, this is inaccurate, however. The Cham, the Lao, and even Cambodia's ethnic Vietnamese may not match conventional conceptions of indigenous peoples but they do have non-Khmer identities that make them vulnerable to being disadvantaged in the development process. The Cham and the Lao, for example, may well be interested in some of the rights and benefits attached to recognition as indigenous peoples in international law and policy, may well be entitled to such rights, and may well identify as indigenous peoples and claim these

⁹The Vietnam report avoids the term 'indigenous peoples' in its exposed parts but it does clearly, though very carefully, suggest the position that international indigenous rights norms apply to certain groups in Vietnam: "*at the theoretical level, it can be useful to review such international instruments and guidelines as ADB's Policy on Indigenous Peoples, the World Bank's policy instruments on the subject, and the international instruments of the United Nations and its specialized agencies. It would be useful to examine, in collaboration with ethnic minority representatives, the extent to which principles of indigenous rights can be adapted to the context of ethnic minorities in Viet Nam*" (ADB, 2002b: 42-43).

rights in the future.

The ADB's Cambodia report describes the ongoing promotion of indigenous rights in relatively favorable terms. Even though the IMC had never fully functioned, and the Department of Ethnic Minority Development (DEMD) had not started operating, the report invokes the Cambodian government's "*keen interest in strengthening its policies relating to indigenous peoples and poverty reduction*" (ADB, 2002a: 1). While the report excludes groups other than highland minorities from protection as indigenous peoples, it does consider groups outside the four northeastern provinces as indigenous peoples, such as the Kuy in Preah Vihear and Kampong Thom in the north, the Por in Koh Kong and Pursat, the Suy in Kampong Speu, and the Saoch in Sihanoukville (ADB, 2002a: 4). By doing so, the report expands the geographical scope of the indigenous category in Cambodia compared to earlier initiatives.

The ADB report also accounts for some of the profound challenges to the realization of international indigenous rights norms. It estimates that 4.7 million ha of Cambodia's 10.5 million hectares of forest were in the concession list of 21 local and international logging companies. More than half of this concession area, about 2.4 million hectares, was located in the four northeastern provinces (ADB, 2002a: 28). The report points out that "*logging concessions, both legal and illegal, are a major threat to the land and traditional livelihood of indigenous peoples, who are strongly linked to the forest*" (2002a: 28) and notes that growing in-migration had not only increased population density but undermined the sustainability of rotational agriculture and limited indigenous peoples' access to natural resources. In response to the "*urgent need for a practical program of action*", an action plan was adopted by an ADB-organized national workshop. The plan called "*for measures to stop immediately the process of land encroachment by outsiders or newcomers*" (2002a: 41). Despite the existence of the IMC and the DEMD, the plan urged the creation of a mechanism "*through which the many concerns of ethnic minorities can be given due attention in the work of all government ministries*" (2002a: 42). Ambitiously, the plan recommended that Cambodia should

"establish local councils of ethnic minorities to advise on development and investment policies and programs ... Cambodia could establish consultative bodies, at either local or regional levels, over a 1-year period. This would be an important aspect of the country's commitment to participatory governance" (ADB, 2002a: 42).

No such commitment was made, however, during the 11 years that have passed since the ADB-facilitated adoption of the action plan. No significant measures were taken to end "*land encroachment by outsiders or newcomers*". No ministerial or otherwise governmental coordinating mechanism for indigenous peoples' consultation and participation was established. To the contrary, the IMC was terminated shortly after. The highlander policy was unsuccessfully resubmitted and rejected by the Council of Ministers in 2007 (Andersen, 2007: 19), while the standard operations of the government continued

to undermine the rights of indigenous peoples. Like international initiatives before and after it, the ADB project failed to entice greater compliance or convergence with international indigenous rights norms in Cambodia.

In the meantime, implementation of relevant Land Law-provisions remained stalled. A draft 'Policy on Registration and Use Rights to Land of Indigenous Communities' adopted by the Council for Land Policy in 2007 limited, among other things, the land that may be recognized as spiritual forest land and burial forest land to a mere seven hectares each, substantially less than the corresponding land areas used by indigenous communities (Ironsides, 2010: 16). The policy also purported that four supporting legal instruments had to be adopted before registration could take place, namely a sub-decree on shifting cultivation, a legal instrument on the registration of indigenous lands, a by-law on the legal recognition of indigenous communities, as well as the highland peoples' policy that the government refused to adopt in 1997 and again in 2007. A later version of the CLP's draft policy did not require prior adoption of the four legal instruments but rendered the land titling process more cumbersome. Despite substantial international support and financial incentives, it took until 2009 for a 'Sub-Decree on Procedures of Registration of Land of Indigenous Communities' to be adopted (Andersen, 2007: 21). This instrument, according to Article 3, applies only to communities that have already been recognized as legal entity, which limited the scope to the three pilot communities that existed at the time. The sub-decree's Article 6 maintains the seven-hectare limit on spirit forest and burial land. In 12 years since the passage of the Land Law, only five indigenous communities, together about 400 families, received communal land titles (Titthara & Boyle, 2013; UNOHCHR, 2011). In Ratanakiri Province alone, there are more than 204 villages, most inhabited by highland peoples (Andersen, 2007: 17). In 2012, there were 13 NGOs supporting 161 villages in six provinces in the recognition process (Ironsides, 2012: 114). However, no additional titles were issued and only 20 indigenous communities have been recognized as legal entities (IWGIA, 2012: 306). It is widely believed that government officials and politicians are stalling implementation in order to enable exploitation of indigenous lands (Baird, 2011: 12; Ghai, 2007: 16; McAndrew & II, 2009: 5). Clearly, international support to the revision and implementation of the Land Law failed to contribute to realizing international indigenous rights norms for Cambodia's highland peoples, not only because of a lack of implementation but also because the Land Law does not reflect indigenous aspirations and international norms in important respects.

4.3. UNDP Access to Justice and Conservative Multicollectivism

The UNDP's Access to Justice Program (A2J) was another initiative aimed at promoting international indigenous rights norms application for highland peoples in Cambodia. The program focused specifically on the justice sector and was implemented jointly by the UNDP and the Cambodian Ministry of Justice. Like earlier international initiatives, the program started from the assumption that highland peoples but no other ethnic groups are indigenous peoples in Cambodia. Like earlier initiatives, A2J failed to move Cambodia closer to respecting indigenous rights.

A study commissioned by A2J resulted in a voluminous report entitled “*Pathways to Justice: Access to Justice with a focus on Poor, Women, and Indigenous Peoples*” (Fajardo, Kong, & Phan, 2006, 'Pathways-Report') that was published in 2006 and formed the basis of A2J activities in Cambodia. The authors highlight that indigenous peoples are disadvantaged and marginalized in the state system of justice due to a wide range of reasons including cultural and linguistic differences as well as physical distance, poverty, corruption, and abuse of power. While the state justice system is failing indigenous people, according to the report, indigenous justice systems are still remarkably effective and operate in a participatory, responsive, and accountable manner. Accordingly, indigenous persons rarely seek justice in the courts and instead bring their conflicts before traditional, customary justice institutions (Fajardo et al., 2006: 93).

The report identified illegal but accelerating land alienation as “*the most serious problem that indigenous peoples face*”, with the consequence that “*indigenous communities have been deprived of their common lands, threatening their very existence as peoples*” (Fajardo et al., 2006: 93). The report links land alienation to government-granted concessions and to land speculation, in which government officials are often implicated. “*Speculators, wealthy people, military, and high rank governmental functionaries buy lands through local brokers*”, notes the report, adding that “*in some cases, the brokers are council members, village chiefs, or other local authorities*” who “*threaten*” villagers to give up their land (2006: 94-95, 134). As a result, indigenous peoples face the loss of their lands and of access to forest resources. These findings are consistent with the analysis underlying earlier international initiatives as well as with a growing body of literature at the time (AIPP, 2006; G. Brown et al., 2006; Chhim et al., 2005; Fox, McMahon, Poffenberger, & Vogler, 2008; Lasimbang & Luithui, 2005; McAndrew, 2003; NGO Forum, 2004, 2006).

While accurate in their general direction, some of the Pathways-Report’s claims about the aspirations of highland groups are overly general and implausibly strong, such as

“*the Phnong [Bunong] still retain their values, norms, and conflict resolution mechanisms. They want to resolve all matters at the local level, to prevent external intervention*” (Fajardo et al., 2006: 136).

The following chapters show that such claims are contested within highland groups, and that there is greater variation within and across communities than this and other statements in the report suggest. Most of the report’s recommendations are plausible and desirable in light of international norms. However, they also are rather vague and generic, such as the recommendation that “*indigenous law should be recognized in indigenous areas, contemplating adjudicatory functions according to their norms, authorities and proceedings*” (Fajardo et al., 2006: 5) or the one to “*coordinate the indigenous conflict resolution system with the national services of justice, after a process of consultation*” (2006: 198). These statements imply the presence of one integrated indigenous justice system. Yet there is no one “*indigenous law*” or “*indigenous conflict resolution system*”. The use of the singular form conceals the actual scale of challenges involved in

incorporating hundreds of informal, village-based justice systems in dozens of languages. These recommendations also exaggerate the actual capacity indigenous institutions presently have to fulfill adjudicatory functions, as the following chapters will demonstrate in detail. The Pathways-Report interprets the Land Law's recognition of traditional authorities as a mandate for the handling of conflicts over indigenous lands, going so far as to claim that "*the law tries to prevent the imposition of external authorities, which are not legitimate for indigenous communities*" (2006: 97, 134). Normatively as well as empirically, one might well emphasize the limits of the legitimacy of the Cambodian state's exercise of authority over indigenous communities. However, the Land Law *is* a manifestation of imposed external authority, and few Cambodian lawmakers or citizens would support the report's notion that the Cambodian state's exercise of authority over indigenous communities is illegitimate.

Corresponding to international indigenous rights norms and discourse much more than to Cambodia's neo-patrimonial politics, the report's far-reaching recommendations are desirable but unrealistic. For example, concerning the draft General Policy for Highland Peoples' Development, pending since its initial submission almost 10 years earlier, the report simply recommends developing

"a draft policy on indigenous issues to meet indigenous demands and international standards and adopt the draft policy after thorough consultation with indigenous peoples" (Fajardo et al., 2006: 198).

The authors propose no less than "*full recognition of indigenous customary law and conflict resolution mechanisms*" (2006: 197). Well beyond the institutions of the justice sector, the Pathways-Report recommends to "*consider indigenous structures in all decentralization processes, in the field of governance, justice, and the delivery of public services*" and to provide health and education services in indigenous languages (2006: 97, 197). The report recommends ratification of ILO Convention 169 and the adoption of additional "*judicial protection against illegal alienation*" (2006: 197), without discussing why current judicial protection against illegal land alienation is apparently not working and how the proposed additional protection would avoid this problem. The report tends to attribute the lack of respect for indigenous people's legal rights to a lack of government capacity or to officials' unawareness of rights. It only gestures at structural reasons for land alienation and marginalization of highland peoples, such as with recommendations to "*combat corruption in general*", to "*empower the poor, women and indigenous peoples*" and to "*implement the Land Law*" (Fajardo et al., 2006: xii, 195,197). The report also does not explicitly address the potential human rights implication of the customary law regimes it proposes to enact, specifically the possibility that the empowerment of traditional authorities and customary practices might negatively affect group members' enjoyment of human rights. The following sections demonstrate that virtually none of the Pathways-Report's recommendations was adopted or implemented by the government.

4.3.1. 'Impunity, Corruption, Power of Position ... De Facto Law of the Country'

Shortly after the Pathways-Report's publication, UNDP A2J commissioned a team of international experts to carry out a case study of indigenous traditional legal systems in Ratanakiri and Mondulkiri. Field research undertaken in March and April 2006 was of considerable scale and methodological sophistication and involved broad participation of indigenous people. The survey was implemented jointly with two province-based organizations of highland peoples, the Highlander Association, and the Indigenous Youth Development Project (IYDP), which were also involved in selecting 14 indigenous elders and 14 indigenous youths as research assistants (Backstrom, Ironside, Paterson, Padwe, & Baird, 2007: 19). Eight research teams combining elders with youths were formed to match languages spoken among various target communities. A total of 18 villages were selected with a view at representing a range of ethnic groups in different districts, including stable communities as well as communities facing serious social disruption (Backstrom et al., 2007: 9). Of these 18 villages, 15 are located in Ratanakiri and three in Mondulkiri.

Like the Pathways Report, the Case Study underlines the disadvantaged and marginalized position of indigenous peoples within the state system of justice, specifically the *"almost total absence of formal legal services and institutions where indigenous people might be able to have their cases fairly adjudicated"* (Backstrom & Ironside, 2007: 4). Indigenous people are *"intimidated and marginalized in court"*, often unfamiliar with Khmer language and laws, unable to pay *"legal fees and bribes"*, *"fearful of high ranking officials and police"*, and *"do not have support from friends and family"* (2007: 5). Most importantly, state institutions routinely dispense injustice to indigenous people, even by the standards of formal laws, as the *"court system is often used by powerful interests to expropriate and further disenfranchise them"*. Moreover, court decisions *"do not conform to any moral code they use, implement and know"*. For these and other reasons, *"indigenous peoples are unable to get 'justice' from this avenue"* (2007: 5). The authors note that social protest is in many instances the last resort and that protesters are often jailed for long periods. Like other studies, they highlight that improved infrastructure and increasing in-migration contribute to large scale alienation of indigenous community land and increasing numbers of land and natural resources conflicts (Adler, Ironside, & Ratanak, 2009; 2007: 4; Hammer, 2009: 169; NGO Forum, 2004, 2005, 2006). Indigenous people's *"lack of access to justice"* creates *"a very dangerous situation"*, warns the report, *"with increasing numbers of conflicts and an increasing threat of violence each year"* (2007: 5). The study highlights the rapidly increasing numbers of 'new' disputes between highland communities and powerful outsiders over control of indigenous communities' land and forests.

In contrast to state institutions of justice, customary institutions enjoy considerable support and legitimacy among indigenous communities:

"indigenous communities overwhelmingly trust, use and support their customary laws and conflict resolution processes ... The vast majority of the indigenous people ... see the traditional system as more fair, more pro-poor and easier for

local people to access than the formal justice system” (Backstrom et al., 2007: 42).

Out of 257 cases of conflict analyzed in the context of the Case Study, traditional authorities had resolved 170. Only 87 cases had been taken to the village chief, 30 to the commune council, 19 to the commune police, and nine to district-level authorities. Only six cases had been dealt with by provincial courts (Backstrom et al., 2007: 39) suggesting that indigenous justice mechanisms are still working remarkably well. The findings of the Case Study contrast with those of a kingdom-wide survey (with a different methodology) undertaken in 2005. This survey asked respondents which local actors were actually resolving conflicts and found that village chiefs were perceived to be the most important (34 per cent), followed by commune councils (31 per cent), the police (17 per cent), elders (7 per cent), district level (5 per cent), and provincial level (3 per cent) (Ninh & Henke, 2005: 44). Together, these studies suggested that conflict mediation and resolution is primarily a local affair in highland as well as lowland communities. However, customary institutions address the major share of local conflicts only among indigenous communities.

Similar to the Pathways-Report, the Case Study’s recommendations are far-reaching and draw heavily on international indigenous rights norms. The authors declare that the

“right to self-determination ... forms the basis by which indigenous peoples may share power within the state, and gives them the right to choose how they will be governed” (Backstrom et al., 2007: 63).

To this end, the Case Study recommends delegating to customary institutions *“the formal authority to deal with illicit land sales and conflicts, and to mediate boundary disputes, including ancestral land claims”*, in such a way that *“the traditional system can function as a separate but integrated system in Cambodia”* (Backstrom & Ironside, 2007: 14). The authors caution that rules and institutions need to be supported by an

“environment where laws are implemented and people are punished for their crimes. If not, impunity, corruption, power of position and money will continue to be the de facto law of the country and eventually will infect and poison the lower level traditional systems also” (Backstrom et al., 2007: 73).

Here, the authors imply, largely accurately, that impunity, corruption, and power of position are currently de facto laws in Cambodia. However, they do not elaborate further on the implications of this finding. What explains this finding is that Cambodia’s neo-patrimonial elites have a vital interest in the exploitation of indigenous peoples’ lands and resources, and that they use their control over the courts to reinforce their claims. Clearly, these elites have no interest in delegating authority over such disputes to the institutions of highland groups. While the Case Study’s recommendations are normatively adequate and attractive from the point of view of liberal multiculturalism and international norms, they are unrealistic in the context of Cambodia’s neo-patrimonial politics.

Interestingly, neo-patrimonialism also helps explain the considerable degree to which

indigenous institutions in many communities continue to manage specific internal functions. In contrast to lucrative functions of the state, “*functions that have little potential for rents are neglected*” in neo-patrimonial systems (Pak et al., 2007: 47). This dovetails with the findings of the Case Study that the traditional system “*focuses on such areas as inheritance, theft, marriage, and other local concerns*” which “*the Cambodian state has traditionally had little interest in regulating*” (Backstrom & Ironside, 2007: 9). These areas of local conflict are unattractive as neo-patrimonial hunting grounds. Therefore, the institutions and officials of the neo-patrimonial state have little interest in regulating them. There is a very limited degree to which neo-patrimonialism contributes to accommodating the interest indigenous communities have in control over their own affairs, not because of deliberate policy, but because of the system’s neglect of unprofitable state functions.

4.3.2. Fabricating Traditions and Proposing Legends for Legislation

Like the proposals from earlier international initiatives, the Case Study’s recommendations were never substantially implemented. The sole exception was A2J’s own follow-up on the idea that there “*should be a codification of their law by indigenous communities themselves*” (Backstrom & Ironside, 2007: 8). This idea had in fact been floated as early as 1996 by the UN Special Representative for Human Rights (Kirby, 1996: 87). Co-financed by UNDP and the Spanish Agency of International Development Cooperation, and in partnership with the Cambodian Ministries of Justice and Interior, A2J in 2007 embarked on an effort to compile the customary rules of six indigenous ethnicities. Significantly, this effort aimed merely at the documentation, not the codification, of customary rules and, therefore, represented a crucially reduced ambition, a plausible first step towards legal recognition but of little practical value without it. Of course, even legal recognition could not ensure respect for indigenous authorities in an environment where “*impunity, corruption, power of position and money*” are “*the de facto law of the country*” (Backstrom et al., 2007: 73). Documentation work was undertaken in only six villages, two predominantly Bunong in Mondulkiri, the other four in Ratanakiri and ethnically predominantly Kreung, Tampuan, Brao, and Jarai, respectively. In each village, approximately 15 respondents were interviewed, mostly village elders and local officials. While the Case Study highlighted that the codification process “*should remain in the hands of indigenous people and their representatives*” (Backstrom et al., 2007: 75), members of “*indigenous communities themselves*” were relegated to the role of informants in A2J’s documentation of their rules. Not a single indigenous person was on the project staff (McGrew & Doung, 2010: 34). The interview questionnaire was based largely on Cambodia’s criminal and civil codes. Information was derived in one of two ways:

“In some instances, participants described past cases and settlements they had been involved in or had been recounted to them. In others, they could identify fixed rules that had been dictated by their ancestors” (UNDP, 2010a: vi).

The assumption that there are given sets of fixed rules dictated by ancestors and the depiction of indigenous persons as characterized by unquestioning acceptance of these

rules indicates the same conservative and collectivist conception of indigenous communities that is manifest in the Land Law's emphasis on "*subordination*". Indeed, documentation of traditions as an approach to law making has conservatism built into it. A2J's methodology assumes that indigenous ethnicities have an unchanging, uncontested essence or code that can be compiled simply by talking to a few individuals in one village. Moreover, most interviewees were men who claim to command either legal or traditional authority. These respondents can be assumed to have an interest in the public recognition of particular interpretations of tradition that support their exercise of power. Accepting these interpretations of tradition as fixed rules risks empowering conservative elites and legitimizing the internal oppression and marginalization of reform-minded community members. In communities where fixed rules are dictated by ancestors and obeyed by unquestioning members, the possibility of cultural and judicial change and of individual agency does not appear to exist. The depiction of customary rules as timeless, unchanging, and essential to particular ethnic communities fails to account for the internal contestation of rules and traditions as well as for the dramatic changes that occurred because of indigenous people's agency as well as violent assimilation programs. Moreover, this depiction contributes to persistent stereotypes of indigenous cultures as backward, irrational, and incompatible with modernity.

The A2J team's rather narrow consultation resulted in a set of six reports, published in 2010, entitled "*Kreung Ethnicity*", "*Tumpoun Ethnicity*", and so on, and sub-titled "*Documentation of Customary Rules*". While these titles suggest an initiative that takes seriously the notion of indigenous peoples, rather than communities, A2J's approach merely assumed rules documented in one village to apply in other communities inhabited predominantly by members of the same ethnic group. A compilation pairing offenses with descriptions of corresponding customary punishments and compensation packages takes up most of each report. Most of the rest are descriptions of conflict resolution processes and inventories of traditional institutions, practices, beliefs, and ceremonies. The reports invoke an oddly static, vaguely pre-colonization, pre-incorporation past in which traditional institutions manage community affairs with unchallenged authority. In this timeless state of affairs, problems such as illegal land alienation and forest destruction, and the nation-building state itself are almost entirely absent. If this were the situation today, there would be little need for the documentation or codification of customary rules. Indigenous groups, claims the report on Jarai Ethnicity, "*maintain their own ancient identity, traditions, culture and belief systems*" (UNDP, 2010b: 3). Rarely is the possibility of change acknowledged, and there is not a gesture at how the documented rules might relate to contemporary challenges. Concerning the vital issue of land use, for example, the report on Jarai ethnicity as well as one on Bunong ethnicity note that "*land disputes have not occurred in this village*" (UNDP, 2010b: 30; 2010d: 29).

For an appreciation of the nature of A2J-documentation, it is useful to take a closer look at the documented rules supposedly governing specific offenses, such as murder and rape. "*Killing people is prohibited by Tumpoun Reung Thom village's customary rules*", reads

the documentation of Brao ethnicity. It adds that “*ancestors have warned that the punishment for a murderer is to be buried alive*” (UNDP, 2010a: 12). That last sentence appears in identical wording in the Kreung report (UNDP, 2010c: 14). That burying someone alive generally kills that person is only one of the many inconsistencies in A2J’s documentation of customary rules. Almost all of the documentation reports state that no murder had happened in the respective villages. However, these reports describe in remarkable detail the customary rules and compensation packages that supposedly would have governed the traditional response if a murder had occurred. One of the reports on Bunong ethnicity, for example, says that “*there have not been any cases of murder*” (UNDP, 2010d: 11), yet claims to know that the customary compensation “*if such a case were to happen*” would include “*property equaling the value of one elephant or ten buffaloes, one pig, a dog, a duck, a chicken and a jar of wine*” (UNDP, 2010d: 11). The Bunong, according to A2J, customarily use capital punishment and forced labor. If the perpetrator “*cannot pay ... s/he must work for the victim’s family for their whole life or be executed, as has occurred in the past*” (UNDP, 2010d: 11). There is no elaboration on the last sentence’s apparent claim that murderers were executed or enslaved in the past and nothing to support the insinuation that the same might occur in the present. Moreover, the claim that murderers were executed in the past is inconsistent with the earlier claim that there has not been any case of murder. The report on ‘Brao Ethnicity’ is the only one that claims outright that murder actually did happen:

“villagers maintain that ... there have been few cases of murder since the establishment of the village... the villagers affirmed that if it were to happen, capital punishment would be imposed by either being instantly killed or buried alive” (UNDP, 2010a: 12).

However, the avoidance of making explicit the claim that an instant killing or live burial actually took place, the use of the conditional form, and the total absence of supporting evidence do not give the impression of credible documentation. The Jarai-Report, too, says that there have not been any murders “*since the establishment of the village*” yet claims that

“if such a case were to happen ... the perpetrator would be punished in accordance to traditional rules ... in the past ... the victim’s family and the Traditional Authority would condemn him/her to death by burying the individual alive” (UNDP, 2010b: 11).

The report adds that “*such a practice would not occur today*”, which is one of very few places where the documentation distinguishes between past and present and acknowledges the possibility of change in traditional rules that are otherwise presented as “*fixed*” and “*ancient*”. If it was true that accused murderers were buried alive in the past and that “*such a practice would not occur today*”, then the claim that a murderer in the present “*would be punished in accordance to traditional rules*” raises the question what a traditional rule really is. Moreover, where no murder ever occurred, it does not make much sense to

document “*traditional rules*” governing murder cases. This is not to say that murder does not occur among indigenous communities. The point is that talking to 15 people in a village in which no murder ever occurred is an inadequate methodology for documenting customary practices governing murder among entire ethnicities.

Given the apparent impossibility of documenting traditional rules that govern things which never happen, the certainty and detail with which rules governing murder are presented by A2J is implausible. Moreover, what these rules have in common is the notion that serious human rights violations are part of indigenous justice. The claim that Cambodia’s indigenous groups practice life burials is unheard of in the literature. Even A2J’s own documentation does not contain a single documented case. The claim also directly contradicts key findings of the more credible and participatory Case Study, which mentions that, in Ratanakiri,

“the fine for murder has always been 12 buffaloes for one person. In Mondulkiri a serious fine for murder if the guilty person denied the crime would be one elephant and 15 buffaloes” (Backstrom et al., 2007: 52-53).

The Case Study’s section on “*Brao Justice Systems in Ratanakiri Province*” considers that Kreung, Kavet, and Lun are “*sub-groups of the Brao in Ratanakiri province*” (Backstrom et al., 2007: 104), thus covering Brao and Kreung ethnicities, which A2J claims customarily execute murderers. The Case Study’s account of Brao justice, however, does not mention capital punishment or life burials. To the contrary, it highlights that the

“Brao system of justice mainly involves paying fines, and those fines are generally stated in terms of buffaloes. So, for example, a murdered individual was historically valued at 12 buffaloes according to Brao law” (Backstrom et al., 2007: 107).

On a question as significant as whether or not executions are part of customary punishment, UNDP A2J-commissioned and -published research gives contradicting answers. Not only does the Case Study not support the claim that life burials of offenders are part of Brao customary responses to murder. The Case Study emphasizes that the Brao system of justice is “*fundamentally based on resolving conflicts and compensating victims, not on retribution and incarceration*” and that it is not least for this reason that “*Brao villagers often prefer to solve even the most serious crimes, such as murder, using their own legal system rather than going to the official courts*” (Backstrom et al., 2007: 108). By the Case Study’s accounting, the Brao system is more responsive to Brao villagers’ needs, interests, and notions of justice and enjoys more legitimacy than the formal system of justice, including in rare cases of murder. The study found only one murder case that was resolved by the traditional system. This case occurred in Ratanakiri in 1993 and

“involved a man who killed his wife out of jealousy. Two kanongs [traditional authorities] were involved, and the fine consisted of 2 buffalos, 2 cows, 2 bronze urns, 2 pigs and 2 jars. The murderer was not sent to jail or to the formal system” (Backstrom et al., 2007: 101).

There is no mentioning of death penalties or life burials. This case is in fact the only murder-case mentioned in the Case Study which formal institutions of the state were not involved in handling. Even A2J's documentation of various ethnicities does not mention a single instance in which the documented rules were applied in an actual case of murder.

Similar to the offense of murder, four of the six ethnic reports claim that no cases of rape occurred in the villages where consultations took place. However, each report 'describes' in detail what customarily happens in rape cases. For example, "*if a rape did occur*" in the Jarai village,

"the perpetrator would be fined ... a set of gongs, one copper pot, a pig of the size of five chap and a jar of wine ... in the past, raping someone else's wife could be punishable by instant death at the hands of the victim's husband" (UNDP, 2010b: 14).

Again, speculation about things that did not happen is presented as "*documentation*" of "*customary rules*", not only in implausible detail but also with a distinct tendency to describe major human rights violations as part of indigenous cultures. A rare mentioning of an actual rape is in the report on one of two Bunong villages (Pu-Char). In this case, a minor was raped, the rapist confessed, and the girl's parents accepted 1,500 Riel in compensation. The report does not specify how long ago this case occurred but awkwardly notes that "*in that period, 1,500 Riel was worth five Chee of gold*", and that there are "*approximately 260 Chee in 1 kilogram*" (UNDP, 2010d: 15). At current gold prices (December 2013), one kilogram costs well upward of 200 million Riel (US\$ 55,000), which is almost 3,000 times the price at the time of the rape in question. There probably never was a time when "*1,500 Riel was worth five Chee of gold*" and if there was, it is unlikely that Riel-denominated cash was readily available in a remote Bunong-village. At any rate, the actual handling of this case does not match the customary rules documented by A2J and specifically, the punishment did not apparently involve practices that violate basic human rights.

Another case of rape is detailed in a "*case study*" of nine lines of text in the report on Kreung ethnicity (UNDP, 2010c: 16-17). However, this case did not actually happen in the village researchers were visiting but "*in a neighboring village*". The only other report that claims that cases of rape did occur in the past is the one on 'Brao Ethnicity': "*villagers reported that there have been few cases of rape in this village, but there have been cases of sex outside marriage*" (UNDP, 2010a: 15). This statement's odd contrasting ("*but*") of rape cases with actual cases and the fact that, aside from the claim of "*few cases of rape*" itself, not a single case of actual rape is mentioned anywhere else in the report, does not inspire confidence in the credibility of the documented rules. As far as the information presented in the six reports is concerned, A2J-documented 'customary rules' concerning rape are based on two cases, one that occurred "*in a neighboring village*" and another one that dates from the period when "*1,500 Riel was worth five Chee of gold*". The 'traditional rules' governing murder and rape among various indigenous ethnicities according to A2J

documentation do not, as far as the facts presented in the reports go, have a basis in actual cases. However, they have a distinct tendency to describe cruel punishment and human rights abuses as integral to indigenous conceptions of justice, and this tendency contributes to misrepresent highland peoples as incapable of civilized justice.

4.3.3. Documenting Ancient Past and Fixed Rules as Approach to Law-Making

Describing the activities and rationale of A2J's documentation effort, the identical foreword of various ethnic reports states that

“the project has assisted six indigenous communities to compile their customary rules to assist in recommending to the government to acknowledge Indigenous Peoples’ traditional dispute resolution mechanisms and customary rules. ... It is hoped that this will provide indigenous organisations and networks with a strong basis with which to advocate for the recognition of traditional rules and practices ... At the same time, indigenous people will be strongly encouraged to abandon those rules that seriously contradict fundamental human rights norms or which affect public order or national security” (UNDP, 2010b: iv).

While A2J's survey inquired about past, potentially ancient cases and practices, the resulting compilation of rules is treated as representing contemporary practices and aspirations. Nothing suggests that the few indigenous respondents were even asked by A2J-researchers which of their supposed traditions they might want to keep, modify, or abandon. Yet these traditions are recommended by A2J as a “*strong basis*” for legal recognition. Moreover, A2J's attempt to “*assist in recommending to the government to acknowledge*” indigenous justice fails to even acknowledge the problems which codification of customary rules was actually meant to address. UNDP-commissioned studies recommended codification as a response to ‘external problems’, to major rights violation emerging largely from outside indigenous communities, by empowering internal mechanisms to deal with these challenges (Backstrom & Ironside, 2007: 13). The documentation reports, however, turn this rationale on its head. They ignore external problems and instead claim that serious human rights violations originate in customary rules and imply that they should be addressed through outside intervention. The identical foreword of the ethnic documentation reports mentions “*increased migration*” from the lowlands, “*illegal logging, land concessions and land encroachment*”, as well as lacking “*access to key public services such as education, health and communication infrastructure*” (UNDP, 2010b: iii). However, these developments are described as factors that “*contribute to the lack of knowledge and limited capacity of indigenous people to deal with the multitude of challenges facing them today*” (2010b: iii). This is the only instance where the reports acknowledge the presence of ‘external problems’ such as illegal logging, land concessions, land encroachment, and in-migration. Nevertheless, these external problems are attributed to indigenous people's supposed inability to deal with the modern world. This misrepresentation adds insult to injury, by suggesting that indigenous peoples are not victims of rights abuse but of their own inadequacy. It is clear from the literature as

well as from the A2J's Pathways-Report and the Case Study that not primarily knowledge or capacity are lacking but enforcement of the law and recognition of the authority of indigenous institutions and rules, specifically to address 'external problems' (Adler et al., 2009; G. Brown et al., 2006: 41-62; Chhim et al., 2005: 7, 32; McAndrew & II, 2009; NGO Forum, 2004, 2006; Schweithelm & Chanthy, 2004: 17-22).

While the foreword of the ethnic reports still invokes the recognition of traditional justice systems as ultimate goal, the identical preface of the reports, co-signed by the Ministers of Justice and Interior and the UNDP's country director, expresses a significantly different vision. The content of the reports "*does not constitute compulsory laws*", highlights the foreword, and was composed merely "*to provide more knowledge for stakeholders ... on the customary traditions of indigenous people*", since "*obviously a judge will base their judgment on the law*" (UNDP, 2010c: i). However, part of the profound problems indigenous peoples face in the justice institutions of the Cambodian state is precisely that judges do not base their judgment on the law where the legal rights of indigenous communities inconvenience powerful officials and rich business people. A good share of responsibility for the state's failure to apply laws and protect legal rights rests with A2J's government counterparts, the Cambodian Ministries of Interior and Justice. High-ranking officials signing over land concessions in secrecy, army generals protecting illegal logging operations, local officials intimidating villagers, and judges disregarding legal rights are routinely abusing a wide range of Cambodian laws. Booklets on customary rules that do not bind anyone are not going to change their ways.

On the occasion of the distribution of the first set of documentation reports in March 2010, an article about UNDP's documentation of indigenous justice was published in the daily Phnom Penh Post. In it, the documentation reports are described as "*handbooks outlining conflict-resolution mechanisms commonly employed by indigenous groups*" and their distribution by "*officials from the Interior and Justice ministries*" as "*part of an effort to assess how these mechanisms can fit in with the formal judicial system*" (Channyda, 2012: 3). Again, what is being presented as government effort to formalize "*mechanisms commonly employed by indigenous groups*" is based on the views of a few individuals who were asked about ancient rules and past cases, not about commonly employed mechanisms or actual aspirations.

The article quotes "*a regional legal specialist for the UN Development Programme who was involved in researching and drafting the handbooks*" saying that one purpose of the project was to identify instances in which traditional mechanisms should be abandoned in favor of the courts, "*such as cases of rape and murder*" (Channyda, 2012: 3). No other purpose of the project is mentioned, and no reason is given for why mechanisms supposedly common among indigenous communities should be abandoned in cases of rape and murder. Read in conjunction with the respective sections of the 'handbooks', these statements imply that life burials of accused offenders are a mechanisms commonly employed by indigenous groups in murder and rape cases. If offenders were indeed buried

alive, discouragement of this particular practice on human rights grounds would seem adequate. However, there is no instance of such a case documented anywhere in the literature. Indeed, the unsupported insertion of life burials and other practices that contradict human rights into documentation reports appears almost designed to justify the imposition of state justice and to legitimize a Khmer civilizing mission, rather than providing protection from it.

Moreover, there is general agreement in the literature that it is very rare for traditional institutions to deal with murder or rape, and that this has been the case for decades in most villages. The Case Study identifies only one case of murder that had been handled entirely by traditional institutions since the Khmer Rouge, the earlier mentioned case of the jealous man who killed his wife and was fined two buffalo, two cows, two bronze urns, two pigs, and two jars by indigenous institutions (Backstrom et al., 2007: 101). It is hypocritical for A2J to involve itself in the fabrication of human rights violating customary rules under the guise of documenting traditions and then to turn around and discourage customary rules for not corresponding to human rights norms, all while being silent on the rights abuse routinely committed by state institutions and officials on a much greater scale. The UNDP specialist is quoted adding that “*any customs that are contrary to the existing laws of the government should not be practiced by the indigenous groups ... any that is acceptable, you can keep*” (Channyda, 2012: 3). Recognition of customary rules, as initially proposed by A2J, would have meant the identification of instances in which the courts should be abandoned in favor of traditional mechanisms, rather than the other way around, or of instances in which laws should be changed to accommodate traditional mechanisms. Far from advocating for recognition of customary rules, this statement flatly denies that there is a need for recognition or legal pluralism in the first place.

Discouraging traditional institutions would be more plausible if the court system were better at delivering justice among highland peoples. However, the fact that it is not was the rationale for A2J’s codification initiative and presumably, for the selection of indigenous peoples as one of A2J’s target groups. Other than the case of the jealous man, the Case Study provides some detail only on one murder case. This case, in which the perpetrators were able to avoid prosecution, occurred in Ratanakiri in 2004 and was handled entirely by the formal justice system. It features some of the mechanisms actually at work when indigenous communities seek justice from the state. A Tampuan villager in Ratanakiri

“was arrested, beaten and tortured by the police to extract a confession (which was unsuccessful) and put in jail for the murder of his nephew. This murder was linked to attempts by this village to claim some of their former lands back from another village, which was using them, because their former lands in turn had been lost to an expanding Ban Lung town. Police investigation into the case was inadequate. In September 2004 the Provincial Judge ordered the villager’s release due to lack of evidence. The Public Prosecutor however appealed the decision and the villager was not released until after the Appeal Court found in favour of the Provincial

Judge more than a year after he was arrested. The villager believes that the people who killed his nephew paid the court to arrest him. His wife and family of six children sold all their land and possessions to pay bribes to people who said they would help him get out of jail, and were even persuaded to sell their cashew orchard to a court official for only US\$ 400 (when the family wanted US\$ 1500), because he said he would help get their husband/father out of jail” (Backstrom et al., 2007: 14).

This is one of many cases reported in the literature and the media where the state system of justice seriously violates the human rights of indigenous villagers (AIPP, 2006; NGO Forum, 2004, 2005, 2006). In contrast, there is little evidence of serious human rights violations resulting from application of customary rules in the present¹⁰. Indeed the Case Study suggests that the operation of the court system undermines the traditional system of justice and contributes to raising incidents of serious crime, in line with the wider literature (Chhim et al., 2005: 11; Fox et al., 2008; John & Irwin, 2005: 12; Thann, Hak, Oeur, & McAndrew, 2009). Indigenous participants in one Case Study workshop said

“now that it is possible to go to the state system ... people can pay the courts and authorities to avoid fines and imprisonment, and the traditional system is sidelined ... Because of corruption, people know that if they have money to pay the formal system will be much more lenient on them than the traditional system. People said that even murderers get out of jail after three months ... This is because the formal system is corrupt and non-functional ... Because of this murder and theft are much more common now than in the past” (Backstrom et al., 2007: 52-53).

It is in favor of this “*corrupt and non-functional*” court system that A2J encourages indigenous peoples to abandon their own institutions and rules of justice in cases “*such as*” murder and rape, based on fabricated traditions and unspecified standards of acceptability. Highland people are being asked to accept uncritically the authority of a state that colonized them and of a legal system that serves as a vehicle for their ongoing subordination and dispossession. Under these circumstances, abandoning customary institutions in many instances means abandoning the ambition to seek justice altogether.

As has been demonstrated, A2J’s approach to documenting customary rules is inadequate. However, the more fundamental problem is that documentation of the past is not an adequate approach to law making. This approach assumes that highland groups have fixed sets of timeless, uncontested customary rules that can be reduced to sets of offenses and

¹⁰As one of very few authors who invoke this concern, Padwe points at the practice of determining guilt through so-called ‘trials by ordeal’. In one version of this practice, molten lead is poured over the hand of the accused. If the hand is burnt, the accused is convicted. In another version, the accused submerge themselves under water, and the one who comes up first is found guilty. However, Padwe concedes that the first version has not been practiced for generations (Padwe, 2010: 345). Trial by submersion indeed continues to be occasionally practiced but only with the consent of people participating in it (Backstrom et al., 2007: 25). Quite plausibly, this practice deprives individuals of due process, but it constitutes a relatively mild human rights concern compared to the many ‘external problems’. Trial by ordeal was customarily practiced by the Khmer, too, until the nineteenth century at least (Chandler, 2008: 83).

compensation packages, documented, compiled, and recognized. Explicitly, the reports claim that information “*has not been changed or interpreted in any way*” (UNDP, 2010b: v), implying that the documented rules are not just one interpretation of tradition but an ‘authentic’, ‘pure’ manifestation of it. This conservative, essentialist approach deviates notably from the approach advocated by the authors of the Case Study, who pointed out that “*flexibility is one of the advantages of the traditional system and utmost care must be taken not to sacrifice this*” (Backstrom & Ironside, 2007: 13). There is nothing flexible about A2J’s approach, in which reform means deviation from authentic identities and a loss of culture. Setting such rules in stone renders necessary reform impossible and locks individuals into supposedly “*ancient*” or “*traditional*” identities. In a liberal framework, group-rights are justified because they make options available to members. A2J’s documentation, like the Land Law, tends to do exactly the opposite: it limits the options available to group members. In A2J’s conception of recognition, indigenous persons might be allowed to follow ancient traditions (if deemed ‘acceptable’), but not to contest, revise, and develop their legal rules and institutions. They may follow ‘their’ law but not to give themselves laws. In a liberal-democratic context of the kind UNDP is mandated to promote, laws are not dictated by ancestors or self-declared guardians of tradition. They are made based on deliberations of citizens and their representatives. The most promising mechanism to provide for flexibility is the participation of indigenous citizens in public deliberation about rules by which they want to govern themselves. Advocating for indigenous people’s submission under supposedly ancient rules and practices, as the A2J documentation project does, betrays the actual aspirations and human rights of group members as well as their rights to determine their own future as a group.

A2J set out with ambitious objectives aimed at realizing international indigenous rights norms in Cambodia’s justice sector. However, not only did A2J fail to move Cambodia closer to compliance with these norms, the program ended up misrepresenting indigenous peoples as human rights abusing cultures. Instead of promoting liberty within highland groups and equality between these groups and the majority culture, A2J’s documentation initiative eventually provided international legitimacy to the Cambodian state’s civilizing mission, Khmer nation-building, and the dispossession and subordination of highland peoples, all of which profoundly contradict national and international rights norms.

4.4. Why the International Attempt to Promote Indigenous Rights Failed

This chapter has demonstrated that the international community since UNTAC undertook numerous initiatives across a wide range of sectors, aimed specifically at promoting application of international indigenous rights norms for Cambodia’s highland people. The analysis shows that these initiatives have rather consistently failed. They did not bring about compliance, or even some degree of convergence, between international norms and actual practices. Indeed, some of these initiatives ended up undermining the realization of international norms and compromising their liberal character. Several factors help explain this outcome.

The most significant of these factors is the nature of the neo-patrimonial state that operates behind the constitutional façade of liberal democratic institutions in Cambodia. Neo-patrimonialism perpetuates land alienation and limits land policy reform (K. Un & So, 2011). Cambodia's neo-patrimonial elites have a vital interest in access to the lands and resources of highland peoples. The dispossession and exploitation of these resources by high-ranking patrons is essential not only to the enrichment of these elites but also to ensuring the loyalty of their clients and, thus, the maintenance of their power. The financial support the CPP receives from high-ranking political, business, and military leaders in return for concessions to lands and natural resources enables the ruling party to mobilize the support of voters through the provision of material benefits. Highland peoples' lands and natural resources are particularly suitable for neo-patrimonial exploitation, because they are very lucrative and because highland peoples have fewer means to resist dispossession. Indigenous resources feed not only the neo-patrimonial elites but also the system that maintains their power. Thus, the interest Cambodia's highland peoples have in realizing international rights norms directly contradicts the interest Cambodia's neo-patrimonial elites have in exploiting the lands and resources of highland peoples. Moreover, any government that would try to exclude the majority Khmer from the economic opportunities in highland areas would risk losing popularity, particularly given the increasing population pressure in lowland areas. These conflicting interests help explain why international initiatives aimed at protecting highland peoples' lands and natural resources have failed. It also explains why recommendations to respect rights, to apply laws, or to fight corruption are constantly re-given by international organizations, seemingly without ever being implemented. Neo-patrimonial governance is among the major reasons for the government's unwillingness to recognize the authority of customary institutions and rules in conflict resolution, too. Empowering customary institutions would limit the control neo-patrimonial elites exercise over land and natural resources. Treating indigenous communities as collectivist, traditionalist, village-based communities stuck in the past, rather than recognizing them as political actors, is politically convenient, because it does not threaten elite interests. There is a strong contrast between the government's rhetorical concern for the consistency of laws on one hand and the general disregard of laws in practice on the other. The government's elaboration of a complex but vague legal framework has kept international organizations and donors busy with legal analysis and the provision of legal and technical support, while indigenous lands and resources have remained available for neo-patrimonial exploitation. The IMC, the DEMD, the Land Law and related instruments, and A2J's documentation are all examples of institutions and policies the international community created or reformed without effectively addressing the underlying neo-patrimonial power relations. These institutions and policies have not penetrated the institutionalized neo-patrimony of contemporary governance. Instead, they have provided international legitimacy to the government and created opportunities for rent seeking. They have failed or have been sidelined and remain marginal to actual state-minority-relations.

Another factor concerns the profound differences between international and Cambodian conceptions of indigenous peoples. There is in Cambodia a longstanding practice of considering highland peoples as a distinct category of groups. This is suggested, for example, by the report the government submitted to the UN in 1997 as part of Cambodia's obligations under the International Convention on the Elimination of all Forms of Racial Discrimination. This report clearly does not offer an accurate account of Cambodia's state-minority-relations. However, it offers insights into what the government considers an ideal, normatively adequate conception of state-minority-relations and of what the government thinks the international community considers a desirable state of affairs:

“Throughout Cambodia’s history there has never been any discrimination in society. However, a number of ethnic minorities never accepted French colonial rule (1863-1953), particularly those living on the high plateau of Ratanakiri and Mondolkiri, where they continue to live in their traditional manner, practicing slash-and-burn agriculture, without clinics or schools and in complete isolation. Following independence in 1953, the Royal Government brought all the ethnic minorities into the fold of the national community by teaching them to cultivate rice on the plains, to dress, to send their children to school, etc. At the time, the King of Cambodia, His Majesty King Norodom Sihanouk, took the chiefs of the ethnic minorities with him in his plane to visit Angkor, in order to show them that they were fully-fledged citizens of Cambodia, whose valuable ancient monuments epitomize their common civilization and motherland.

Since then, all the national minorities have been living in harmony within the national community. The State recognizes them as citizens of Cambodia, on an equal footing with the Khmer who make up the majority of the population and who are subdivided into the Loeu Khmer (i.e. Khmer of the high Plateaux of Ratanakiri, Mondolkiri, Stung Treng, Preah Vihear and Pursat), the Krom Khmer (i.e. Khmer living on their territory which was ceded by the French colonialists to Viet Nam ...) and the Islamic Khmer (i.e. Khmer of the Islamic faith)” (CERD, 1997: 5-6).

This account acknowledges that highland groups resisted colonial rule, which it describes as essentially French. The government's post-independence intervention, even though it followed a very similar pattern of colonization, civilization mission, and Khmer nation-building, is entirely benign and was not resisted by highland groups, a category that includes not only groups in the northeast but also in the mountainous north (Preah Vihear) and southwest (Pursat). Highland groups are at the same time distinct from the Khmer and part of the Khmer, with one difference being their need for education, for being taught how to cultivate, dress, study etc. It is by contemplating the temples of Angkor that highland people realize their shared civilization with the Khmer. Indeed, the Angkor temples were likely built with the labor of slaves captured among highland communities (Mabbett & Chandler, 1995: 174). However, Angkor has been reinvented as a quintessentially Khmer accomplishment, and highland groups in public discourse are defined in part by the

absence of the civilization that made this accomplishment possible. In a generous gesture, highland groups are granted access to the greatness of Khmer civilization. Highland groups (and the Cham) are invited to integrate and to become free and equal Khmer citizens. Rather than accommodating highland groups as distinct cultures with self-government rights, this invitation requires highland peoples to integrate into the language and institutions of the majority society. This conception of state-minority-relations also conveys an ideal composition of the Khmer nation that includes highland peoples, the Cham, and the Khmer of the Mekong Delta, but that explicitly excludes the Vietnamese, the Chinese, and even the Lao as foreigners (CERD, 1997: 20).

International organizations and the government generally identify the same actual populations as belonging to the 'indigenous' category. There is also some agreement that these groups have distinct vulnerabilities and require particular attention. However, international and Western norms suppose that indigenous peoples are not simply vulnerable groups but colonized, involuntarily incorporated peoples whose self-government was wrongfully taken from them. It is because these groups were colonized, and their inherent right to self-government wrongfully taken, that decolonization and restoration of self-government are considered the most adequate remedy. International norms are meant to restore indigenous peoples' inherent entitlement to self-government, and to right the historical wrong of forceful incorporation. In European settler states, the historical injustice of colonizing indigenous peoples is now widely and publicly acknowledged, and there has been a shift towards models of internal decolonization that combine land claims with self-government and recognition of customary law (Kymlicka, 2007: 147). In Cambodia, too, highland peoples were colonized, involuntarily incorporated, and subjected to violent assimilation. However, there has been no shift towards internal decolonization. Normatively, the situation of highland peoples is comparable to that of indigenous groups in European settler states. Yet the notion that highland peoples were involuntarily incorporated and that this constitutes an historical injustice is largely absent from public discourse in Cambodia. Members of highland groups are seen as disadvantaged, poor, and marginalized, not because of their forceful incorporation and ongoing colonization and assimilation, but because of their supposed inability to deal with modernity, their primitiveness, and lack of development. On this view, enabling indigenous groups to maintain their distinctness alongside mainstream society would perpetuate, rather than elevate, their disadvantaged condition. The historical incorporation of highland peoples into Cambodia, and their contemporary integration into mainstream society, is seen not as a matter of injustice, but as a noble project, because it allows members of highland groups to benefit from modernity, civilization, and development.

This view of highland peoples as undeveloped and backwards is based on a hierarchical ordering of groups according to their level of civilization. In this imagined hierarchy, the Khmer occupy the top and indigenous groups the bottom. Similar conceptions of ethnic or racial hierarchies were used by the Vietnamese and the French to justify their colonization

of Cambodia and their historical missions to ‘civilize’ the Khmer (Guérin, 2003: 220; Mabbett & Chandler, 1995: 14). These conceptions are internationally discredited and have been replaced with the idea of equality between peoples, which contributed to making Cambodia’s independence possible. Most Khmer take entitlement to self-government for granted, as a matter of equality with other peoples. They would dismiss the idea that more highly civilized peoples have a right to rule over them. Domestically, however, Khmer superiority and Khmer rule over highland groups are, at least implicitly, still considered adequate by many. This apparent double standard is politically convenient, because it provides justification for the imposition of Khmer control over highland peoples and their lands and natural resources.

Highland groups are seen not so much as culturally distinct peoples, but as representing an earlier stage of Khmer civilization. As Willmott puts it, highland groups “*are considered by the Khmer to be uncivilized but nevertheless closely related to them*” (1967: 32). Cambodian notions consider highland groups as ‘original’, in the sense that they have not developed and retain an ancient state of affairs that is nevertheless genuinely Khmer. A discourse that considers highland groups as representing the ancestors of modern Khmers offers a conceptual basis for the superiority of the Khmer and the inferiority of highland groups:

“if Khmers represent the future for highland peoples, then Khmer ways must be privileged over those of highlanders, and the role of the Khmer ethnic majority in educating their ‘brothers and sisters’ is assured” (Backstrom et al., 2007: 14).

Indeed, the relative cultural proximity between highland peoples and the Khmer does distinguish the relationship between the two from that between European settlers and the more radically different cultures of colonized peoples in the New World. In the context of relative cultural proximity, many feel that the integration of highland peoples into the Khmer mainstream is normatively more defensible. This argument is rarely made explicit, but is widely held by Khmers. It is also implicit in the operation of international and non-governmental organizations, who often consider highland peoples outside the northeastern provinces not ‘different enough’ from Khmer communities to justify differential treatment. However, this argument tends to underestimate the often profound differences between the ways of life of Khmer and highland peoples, and to conceal the large degree to which contemporary cultural proximity is the result of violent Khmer nation-building. Moreover, accepting this argument creates perverse incentives, because it rewards states that violate the rights of indigenous peoples with the ability to continue violating these rights. Furthermore, by many measures, the Khmer are also culturally close to the Thai and the Vietnamese. Yet no-one in Cambodia advocates for the incorporation and integration of Khmer into Vietnam or Thailand.

The policy prescriptions suggested by Cambodian conceptions of indigenous peoples contradict contemporary international indigenous rights norms. Whereas these norms

suggest permanent accommodation and protection to enable highland groups to maintain their distinct cultures, Khmer notions suggest temporary, provisional protection to enable integration. In a sense, these notions mirror ILO Convention 107, which was replaced by Convention 169 because of its obsolete paternalistic and assimilationist approach. Indirectly, however, the international community contributes to reinforcing these Khmer notions, by emphasizing the poverty and vulnerability of highland peoples, rather than the historical injustice of their incorporation or the colonial character of the relationship that prevails between the state and highland peoples. Measures designed to overcome poverty and vulnerability would plausibly be only temporary in nature. If highland groups were just poor and vulnerable segments of the population, then transitional measures to facilitate their integration into mainstream society would indeed be a more plausible remedy than self-government and the perpetuation of their distinct cultures. Self-determination is plausible as a remedy to a colonial situation but makes little sense as a means to help under-developed segments of the population catch up with the rest of society.

Geopolitical insecurity, and specifically the self-perception of the Khmer as an existentially threatened people, is yet another factor in the Cambodian state's resistance to international indigenous rights norms. In the absence of effective regional security institutions, Cambodia feels threatened by its neighbors. Most highland peoples inhabit border provinces. Granting even limited autonomy to these groups would be perceived as limiting the state's control over these areas and as making Cambodia vulnerable to being destabilized and even invaded and colonized by neighboring states. These three factors, the dynamics of neo-patrimonial governance, Cambodian conceptions of indigenous peoples as uncivilized, Khmer minorities, and Cambodia's geo-political insecurity explain why Cambodia resists international indigenous rights norms. Cambodia's elites do not see application of international indigenous rights norms as being in their own interest. Application of these norms is also widely regarded as not being in the interest of the Khmer majority, because it would limit access of majority members to opportunities in highland areas. Finally, and less apparently, application of international norms is widely seen as not being in the interest of highland peoples, too, because it would deprive them of access to modernity, development, and civilization. These factors also help explain why meaningful protection of highland peoples was not integrated into Cambodia's decentralization reform, discussed in the following chapter.

5. Decentralization and Indigenous Peoples' Empowerment

To recall some of the key ideas from the first chapter, indigenous peoples' rights norms are increasingly codified in international law and policy, and international organizations are attempting to disseminate these norms globally¹¹. This development is manifest in international legal instruments such as the UN Declaration of the Rights of Indigenous Peoples, which contains very strong rights, including to “*self-determination*” and to “*autonomy or self-government in matters relating to their internal and local affairs*”. The internationalization of minority rights is also evident in the adoption of specific safeguard policies by development organizations, such as the World Bank's Operational Directive 4.20 (OD 4.20) and its successor policy, OP/BP 4.10. The internationalization of these norms marks a profound change in the ideals of statehood and citizenship promoted by the international community, a shift from linguistically and institutionally homogenous citizenship in centralized states to group-differentiated citizenship in decentralized, multi-level, and multi-lingual states that use local and regional autonomy for the accommodation of minority cultures. As Kymlicka observes, the international community is now presenting autonomy arrangements of this kind as a more “*modern*” approach of governance “*in which a more fragmented, diffuse and multi-level conception of statehood and sovereignty has become the norm*” (2007: 178). Essential to realizing this norm is the devolution of some degree of autonomy in relevant decision-making to sub-central state units substantially controlled by indigenous communities (Kymlicka, 2001a: 143; World Bank, 1996: 254).

The transfer of powers to indigenous peoples is crucial for their accommodation, protection, and participation in modern states. Without direct participation, development strategies risk reinforcing indigenous people's poverty and marginalization, such as by depriving them of access to their lands and natural resources, by undermining indigenous governance institutions, and by contributing to the loss of indigenous languages (A. Gray, 1998; Hall & Patrinos, 2006; Sieder, 2002). This raises the question what the most suitable administrative and territorial unit is for ensuring accommodation, protection, and participation for highland peoples in Cambodia. Where do international norms fit into the organization of the state and the mainstream system of governance?

International initiatives to empower highland peoples and to realize international norms in Cambodia have so far, explicitly or implicitly, assumed the village to be the relevant territorial unit to accommodate these groups' distinct interests and rights, even where entire communes, districts, or provinces form their traditional homelands and are numerically dominated by their members. The Land Law nominally empowers communities, rather than peoples, and transfers considerable authority over the

¹¹ Earlier versions of the ideas presented in this chapter appeared in (Ehrentraut, 2011a).

management of land and natural resources to village-level traditional institutions. The UNDP-supported Access to Justice Programme, too, focused on village-level justice institutions and customary rules. The focus on the village as the relevant institutional and territorial entity corresponds to the fact that societal institutions of highland peoples operate almost exclusively at that level (Andersen et al., 2007: 7; Bourdier, 2008: 4; Chhim et al., 2005: 21; Ironside, 2009: 92; John & Irwin, 2005: 11). However, in the framework of Cambodia's territorial organization, the village does not enjoy any autonomy and is linked to higher levels of the state only through the top-down appointment of village chiefs by commune councils. The recognition of indigenous communities as legal entities and the granting of communal titles do potentially empower village-level institutions to manage land and resources. But so far, only 20 communities have been recognized as legal entities and only five communities have been granted communal title (IWGIA, 2012: 306; Titthara & Boyle, 2013). At the current pace of implementation, not more than a small fraction of highland people is ever going to benefit from the Land Law's protection and its limited empowerment of village-level institutions. Moreover, legally recognized indigenous communities as such do not offer any access points to relevant decision-making in the institutions of the larger state. This is suggested, for example, by the by-law constituting the pilot community of La Eun Kren, which states that the community is "*directly administered by O'chum commune council*" (Article 2). Even recognized indigenous communities enjoy only very limited autonomy and are subordinate to commune councils. The indigenous community, incorporated at the bottom of the state hierarchy, at best protects indigenous villages from outside pressure on their land and enables members to practice traditional lifestyles and customary land use. Village-level recognition in its current design might well reinforce, rather than contribute to overcoming, the political isolation, marginalization, and fragmentation of highland peoples, by dividing these groups into numerous subunits and inhibiting their ability to consolidate and modernize their distinct societies. Moreover, there are inherent limitations to the sort of self-government that can be effectively exercised at the village-level. Villages may be suitable units for communal land management but the capability of village-level institutions to manage local development, to provide education or health services, and so on, will be inherently limited. Village-level institutions will play a major role in any attempt to meaningfully accommodate highland peoples, but the exclusive focus on the village is insufficient to achieve this without suitable links to higher levels of the state.

The potential of recently reformed and empowered commune councils to serve as a vehicle for the realization of indigenous rights norms is under-explored and under-utilized. A good case can be made that the commune council is the more plausible unit for accommodating highland groups within the general territorial organization of the state, at least an essential complement to strategies focusing on the village-level. As part of Cambodia's decentralization reform, 1,621 commune councils across the kingdom were directly elected for the first time in 2002 and were endowed with a general mandate to promote the well-

being of their constituencies (Blunt & Turner, 2005; Kim & Öjendal, 2007). Communes consist of 8-15 villages, and councils have 5-11 members, depending on the size of the constituency (Ninh & Henke, 2005: 12). Commune councils are the main recipient of powers that are being transferred to lower levels of the state in the context of decentralization reform. Thus, a more multi-level conception of statehood has indeed become a norm that is manifest in the reform of the Cambodian state. Since Cambodia is a unitary state, devolution of powers to the commune-level is the only way to transfer powers to indigenous peoples within the given territorial organization of the state and its general reform.

As a vehicle for the empowerment of highland peoples, the commune council has a number of advantages over recognized indigenous communities. The most apparent advantage is that commune councils already exist as legal and administrative entities. While only a minuscule proportion of highland people live in legally recognized indigenous communities, which remain isolated at the bottom of the state hierarchy, every highland village is situated in a commune with an elected council. At least nominally, commune councils enjoy a significant degree of autonomy. By some measures, the empowerment of commune councils has contributed to increase democratic space and to improve local administration and accountability (Manor, 2007; Niazi, 2011; Ninh & Henke, 2005; Öjendal & Kim, 2011: 85-119). Potentially, commune councils offer indigenous communities access points to decision-making at higher levels of the state. Commune councils select village chiefs and they elect recently created district- and provincial-level councils as well as Cambodia's Senate. Commune councils also benefit from an elaborate support system in which international organizations play essential roles. Commune councils routinely cooperate with district-level offices, provincial departments, and civil society organizations, and they receive considerable capacity building and financial assistance (Ayres, 2004; Kim & Öjendal, 2009; Mansfield & MacLeod, 2004; Rusten, Kim, Eng, & Pak, 2004). Strategies that utilize the commune council's general mandate to empower highland peoples have the added advantage of operating within the mainstream system of governance and do not require deviation from its general reform, in contrast to the creation of incorporated indigenous communities.

Decentralization and empowered commune councils, however, do not solve the problems Cambodia's highland peoples face as a consequence of neo-patrimonial governance. Indeed, commune councilors are by most accounts involved in land and resource alienation (not only) among indigenous peoples, by facilitating, encouraging, brokering, witnessing, or coercing land transactions (AIPP, 2006; G. Brown et al., 2006: 5, 21; Chhim et al., 2005: 30; Diokno, 2008: 35; Fox et al., 2008: 37-61; Ironside, 2009: 99, 114; 2010: 8-9; NGO Forum, 2004, 2006; Thann et al., 2009: 197, 206). There is virtually no piece of literature on indigenous land and resource issues that does not mention commune council complicity, and there is virtually no case reported in the literature of councils successfully pursuing the interests of indigenous constituents in land conflicts with outsiders.

What contributes to explaining this situation is that neo-patrimonialism in Cambodia works in tandem with decentralization, in that “*rogue interests ... are able to colonise local spaces opened up by the decentralisation process*” and to “*turn them into (neo) patrimonial domains*” (Pak et al., 2007: 23). This characterization is particularly fitting in the case of indigenous communities, because decentralization facilitates the capture of their lands and resources by Cambodia’s neo-patrimonial elites. These “*rogue interests*” are closely related to the ruling party, which uses local authorities to maintain its dominance over Cambodia’s state and the population. The CPP has monopolized control over local authorities, through surveillance, intimidation, and violence, through control over mass media, police, and the military but increasingly through the use of state resources and patronage politics (Kheang Un, 2005: 213). In the first commune election in 2002 as well as in the 2007 and 2012 elections, the CPP secured the commune chief position in at least 97 per cent of Cambodia’s communes and party representation in all communes (COMFREL, 2007: 56; 2012: 54; Um, 2008: 108). The overwhelming majority of village chiefs and commune clerks are closely aligned to the CPP. Because of the key roles commune councils play in managing voter registers and in determining political party representation at other levels of the state, control over commune councils provides “*the CPP with the base for a national chain of patron-client networks that ensured the accumulation and extension of power throughout the country*” (Kheang Un, 2005: 213). Elected local authorities are more accountable to their political parties and higher-level officials than they are to their own constituencies, because the election system is party-based and does not allow for independent candidates and because communes depend upon district, provincial, and central authorities for funding, expertise, and training (Ninh & Henke, 2005: 34; Pak et al., 2007: 59; Rusten et al., 2004: 125).

Decentralization reform is reshaping the institutional landscape of local governance across Cambodia, with profound consequences for future possibilities to realize indigenous rights norms. Therefore, it is important to understand how emerging indigenous rights norms are integrated into Cambodia’s decentralization reform. This chapter tracks the application of the World Bank’s safeguard policy, Operational Directive 4.20 (OD 4.20), within Cambodia’s decentralization reform. The analysis demonstrates that decentralization reform has not so far meant the adoption of a more diversity-friendly conception of statehood and citizenship. Nominal application of the Bank’s safeguard policy has not contributed to accommodating the interests of highland peoples. To the contrary, it has led to outcomes diametrically opposed to the policy’s objectives. The chapter concludes by discussing how more effective application of safeguard policy might be achieved and how strategies for the empowerment of highland peoples can more effectively draw on the decentralization framework.

5.1. Cambodia’s Decentralization Reform

Decentralization reform builds on the government’s Seila program that was mentioned in the previous chapter. The Seila program was a government mechanisms through which

international donors supported local development until 2006, when Seila's mandate was absorbed by the National Committee for the Management of Decentralization and Deconcentration Reform. It was the Seila program in Ratanakiri, supported by the UNDP's CARERE Project, that was described by consultants of the UNDP-supported Highland Peoples Program as "*a context where largely Khmer staffed provincial departments are being trained to manage development*", giving rise to "*an ethnic divide between the Khmer authorities who govern and the ethnic highlander villagers who are governed*" (Vaddhanaphuti & Collins, 1996: 22-23). The Seila program was since expanded to cover all 23 of Cambodia's provinces, and the ethnic divide between Khmer who govern and indigenous people who are governed has widened considerably.

Reference has been made to indigenous peoples in the overall decentralization framework. The government's 'Strategic Framework for Decentralization & Deconcentration Reform' (2005), the only document providing a long-term vision of what the government intends to achieve with decentralization reform, states that

"the reform will introduce systems and procedures to ensure that ... indigenous minorities can participate in decision-making at provincial/municipal, district/khan and commune/sangkat levels¹²" and that it "*will strengthen local capacity in using resources to support poverty reduction activities, especially [for]... indigenous minorities*" (RGC, 2005: 5-6).

However, no systems and procedures to address the specific participation and poverty challenges of indigenous peoples have since been adopted. Decentralization reform is based on laws that make no mention of distinct indigenous institutions, customary laws, or representative organizations. No decentralization-related law provides for a language other than Khmer to be used in local governance. To the contrary, candidates for local representative offices are required to read and write Khmer script. Notions of "*fragmented*", "*diffuse*", or "*multicultural*" conceptions of statehood and sovereignty have little appeal in Cambodia, as they describe deviation from precisely the kind of Khmer nation-state the government is building. In its current design, decentralization reform facilitates Khmer nation-building and the ongoing imposition of the mainstream system of governance upon indigenous peoples. By doing so, decentralization reform undermines and further marginalizes highland peoples' cultures and institutions.

5.2. International Support to Decentralization: RILGP

More than twenty international donors support Cambodia's decentralization reform. Many of these donors have specific policies to protect indigenous peoples from negative development impacts, such as the UNDP, the ADB, the Danish development agency DANIDA, the European Commission, and the World Bank. During preparation of the World Bank-supported Rural Investment and Local Governance Project (RILGP), which commenced in 2002, a Screening Study was undertaken to anticipate and mitigate negative

¹²A khan is the urban equivalent of a district while a sangkat is the urban equivalent of a commune.

project impacts on highland peoples. Based on that study, a specific ‘Highland Peoples Development Plan’ aimed at safeguarding indigenous peoples’ interests within RILGP project implementation was adopted, in line with the requirements of the Bank’s safeguard policy. Nominally, the plan was later expanded to cover the full range of local development projects funded from regular budgets of commune councils. Among decentralization donors, only the World Bank has undertaken substantial analytical work on indigenous peoples and decentralization reform in Cambodia. Therefore, and because the Bank’s operational policies with regard to indigenous peoples strongly influence those of other development banks and donors, it is significant to analyze the process of indigenous rights norms application in Cambodia through the lens of the Bank’s own safeguard policy (Kingsbury, 1999: 337)¹³. It should be kept in mind that the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169 provide considerably stronger protection than the Bank’s safeguard policy.

RILGP’s objectives are to contribute to rural development and poverty reduction through supporting the provision of public goods at the commune level and to promote good local governance (World Bank, 2007b). Like many donor-projects supporting decentralization, RILGP is increasingly integrated with state-institutions, which it is explicitly designed to consolidate and strengthen:

“While RILGP ... funds specific investments at the commune level, the institutional arrangements, procedures and funds flows are integrated as much as possible into the government’s own structures and systems” (World Bank, 2008b).

This integration with a poorly governed, nation-building state suggests that safeguards should apply not only to the specific investments at the commune level, but also to the state structures, systems, and institutions into which RILGP-support is integrated. This is also suggested by OD 4.20’s objective, which is *“to ensure that the development process fosters full respect for [indigenous people’s] dignity, human rights, and cultural uniqueness”* (World Bank, 1991: 6).

As is required by OD 4.20, a Screening Study on highland peoples in Cambodia (Helmets & Wallgren, 2002, ‘Screening Study’) was commissioned in 2002, in preparation of RILGP implementation. The purpose of such a study, according to OD 4.20, is to *“make all efforts to anticipate adverse trends likely to be induced by the project and develop the means to avoid or mitigate harm”* (World Bank, 1991: 14). In a narrow interpretation of this provision, the Screening Study covered only the three provinces of Ratanakiri, Kratie, and Preah Vihear and considered potential impacts only from specific local investment projects. The study did not consider the impacts of superimposing a new system of governance upon indigenous cultures or possibilities to utilize and strengthen existing indigenous institutions.

¹³Operational Directive 4.20 was in force at the time of RILGP preparation and for this reason, is the primary reference for the following analysis. The policy has since been revised and replaced by OD 4.10.

The Screening Study determined that OD 4.20 applies to Cambodia's highland peoples (Helmets & Wallgren, 2002: 1). In line with OD 4.20 requirements, a Highland Peoples Development Plan (World Bank, 2003, 'HP Plan') was designed, which remained unchanged in 2013. This plan, too, interprets narrowly the scope of OD 4.20, both in terms of activities and in terms of minority groups to which it applies. Despite the HP Plan's acknowledgement that available estimates of the numbers of indigenous people "*are scarce and contradictory*" (World Bank, 2003: 3) the plan states only one estimate, 120,000 people, which is close to the bottom of those available, even though the numbers and estimates presented in the Screening Study indicated a significantly higher total. Interestingly, the Screening Study asserts that Cambodia's Muslim Cham "*are also considered indigenous to Cambodia*" (Helmets & Wallgren, 2002: 4). However, the HP Plan directly contradicts this assertion, by stating that "*Muslim Chams ... are not considered to be 'indigenous peoples' in the Cambodian context*" (World Bank, 2003: 3), without any explanation to support the exclusion of the Cham from the protection and benefits of OD 4.20.

5.3. Indigenous Development Priorities and Negative Impacts

Like the Screening Study, the HP Plan limits consideration of negative impacts to local development projects funded from commune council budgets:

"The plan focuses on one objective: ensuring appropriate opportunities for local participation at both the village and commune levels. With appropriate participation, project activities responding to needs identified by villagers themselves can be considered to be 'culturally appropriate' by definition. Similarly, with appropriate participation there is no basis for considering a village to be 'adversely affected'" (World Bank, 2003: 3).

The HP Plan's focus on participation raises the question: participation in what? Prior to their involuntary incorporation, highland peoples participated in their own affairs without outside assistance. Now, highland peoples are invited to participate in the institutions of a state that has conquered, colonized, and attempted to assimilate them, that remains incapable of accommodating their distinct identities and cultures, and that continues to take their lands and resources. The HP Plan, however, is concerned only with indigenous people's participation in prioritizing local development projects within the state system of governance. It does not consider impacts from the imposition and operation of these state institutions or the possibility of highland people's participation in their own societal institutions.

The Screening Study includes an assessment of the types of projects most urgently needed by indigenous peoples. A total of 42 indigenous discussion groups were asked to list their top five priority needs, resulting in the following list (numbers in brackets indicate the number of discussion groups who ranked the particular need among the top five priorities):

1. Health-related projects (40 out of 42)
2. Education-related projects (30 of 42)
3. Road infrastructure (16 of 42)
4. Wells (“very common request”)
5. Water storage and irrigation (“common”)
6. Agricultural extension projects (“common”)
7. Livestock projects (“very common”) (Helmerts & Wallgren, 2002: 136).

These indigenous priorities, specifically the focus on education and health care, are in line with the assessments of other scholars and institutions. Many studies highlight also access to land and forest as increasingly urgent priorities and often do not list roads, or do not rank them very highly (ADB, 2001a: 26; AIPP, 2006: 18; Chhim et al., 2005: 45-47, 82; Colm & Ker, 1996: 35; Hiatt, 2003: 57; Ironside, 2009: 102; A. E. Thomas, 2003: 11). The Screening Study identified potential negative impacts only for road infrastructure, a need prioritized by only a minority of discussion groups, as follows:

“That some bad and clever outsiders may come after the road is built and exploit the assets of the village”.

“That outsiders may come and take their land”.

“That the road may lead to their forests being destroyed or degraded by (sometimes armed) outsiders and it will then be difficult to find forest food and forest products to sell” (Helmerts & Wallgren, 2002: 136).

The Screening Study points out that such “*major potential negative socioeconomic impacts*” have indeed “*occurred following road construction in forest dependent communities*”, and that “*improved roads can accelerate that process and open new areas for exploitation by a larger number of logging interests*”. The report highlights that relevant laws are not enforced, particularly where encroachers are “*operating with armed police or military units*” (Helmerts & Wallgren, 2002: 136, 144). Indeed, when talking about negative impacts of roads, it is useful to remember that the construction of roads was essential to the conquest of indigenous homelands during the colonial period, as Chapter 2 demonstrates. In line with the Screening Study, one report of the Asian Development Bank notes the dilemma for indigenous communities that roads “*also bring logging trucks, which will just plunder the forests, and when they are finished the roads will be destroyed*”. It adds that indigenous communities would like to have more road access but “*they would also like to have some control over the traffic on them, or rather, some control over their native domain*” (2001b: 56). The strong link between road construction on one hand and forest destruction as well as land alienation on the other has been highlighted by numerous studies since (Adler et al., 2009: 3; Bourdier, 2008: 9; Chhim et al., 2005: 29; Fox et al., 2008: 31,41; Hammer, 2009: 159-161).

Another important way in which road construction negatively affects highland peoples is that it facilitates in-migration of lowland Khmers into their homelands. In-migration is especially pronounced in the northeastern provinces of Ratanakiri and Monduliri. Between 1992 and 1998, the population of Ratanakiri grew about 41 per cent (ADB, 2001a). Between 1998 and 2008, Monduliri and Ratanakiri registered the second and third highest growth rates among all Cambodian provinces, followed by Preah Vihear and Stung Treng, which are among the provinces with the most substantial minorities of indigenous peoples (NIS, 2008). Road construction funded through commune councils makes it easier and less costly and risky for settlers to move to areas which were regarded ‘wilderness’ before. In-migration is linked to a range of negative impacts including land conflict and land alienation (ADB, 2001a: 28; Chhim et al., 2005: 29; Schweithelm & Chanthy, 2004: 17; Thann et al., 2009: 28), not least because a growing population renders the rotational system of cultivation traditionally practiced by highland groups unsustainable (G. Brown et al., 2006; Fox et al., 2008; Ironside, 2009: 104). In-migration also dilutes territorial concentrations of highland people and thereby undermines the possibility of these groups enjoying meaningful local autonomy in the future. The proportion of indigenous inhabitants in Ratanakiri, for example, decreased from 68 per cent in 1998 to 57 per cent in 2005 (Thann et al., 2009: 194). Already by 2013, highland people likely form a minority in Ratanakiri Province (Fox et al., 2008: 35).

Aside from road construction, the Screening Study also discusses potential negative impacts from the provision of support for wet rice farming (priority 5). The livelihoods of Cambodia’s indigenous people focus traditionally on subsistence farming and the collection of non-timber forest products. The Screening Study cautions that assistance for wet rice farming may be inadequate, as do other authors such as Sara Colm:

“aside from the fact that many highlanders traditionally have a strong resistance to farming paddy, the conversion of highland groups to wet rice agriculture is not technically feasible” (Colm, 1997: 8).

The Screening Study points out that lowland rice farming has increasingly been adopted by some indigenous households but that this strategy is *“all too often beset with production problems and risks”*. It concludes that

“much more remains to be done to increase the awareness of upland minority peoples in terms of the range of agricultural assistance projects that could be made available and demanded” (Helmert & Wallgren, 2002: 138).

However, despite OD 4.20 requirements that *“development activities should support production systems that are well adapted to the needs and environment of indigenous peoples”* (World Bank, 1991: 14), little has been done within RILGP to support adequate agricultural assistance projects, and it appears that this is accurate of the wider donor-support to decentralization.

Yet another way in which decentralization reform in its current design impacts negatively on highland peoples relates to commune boundaries. In many areas, commune boundaries divide territorial concentrations of indigenous peoples into different communes. Large-scale in-migration decreases the number of communes in which indigenous people form majorities and further diminishes their proportion in constituencies where they form commune-level minorities. As a result, indigenous people are outnumbered and outvoted in an increasing number of communes in what used to be their homelands. In those constituencies, the empowerment of commune councils and majority decision-making reinforce the political marginalization of indigenous peoples, as the following chapter demonstrates in more detail.

These negative impacts have the potential to compromise the potential achievement of the objectives of RILGP and OD 4.20 among indigenous peoples. The Screening Study recommends a number of measures to address land appropriation and deforestation, such as the provision of legal protection of indigenous land and forest rights, strict enforcement of the ban on illegal logging, and making funding for road infrastructure contingent upon prior recognition of land and forest rights (Helmets & Wallgren, 2002: 136). However, none of these measures was incorporated into the HP Plan that was subsequently adopted.

The HP Plan states that

“because RILGP would empower local communities to determine their own development priorities ... prior assessment of the appropriateness and impacts of particular projects is impossible” (World Bank, 2003: 2).

However, in direct contradiction of this statement and the findings of the Screening Study, namely that road construction will potentially intensify and accelerate the process of sometimes armed outsiders taking indigenous lands and destroying their forests, the plan states only a few paragraphs later that

“the small-scale activities chosen by villagers and funded through RILGP will not affect land tenure or otherwise cause any direct adverse impacts” (World Bank, 2003: 4).

If prior assessment is indeed impossible, then there is no way of knowing whether RILGP-supported projects will cause adverse impacts. Both claims cannot be true at the same time. Whether or not a project negatively affects indigenous peoples is the key question of any Screening Study required by OD 4.20. That RILGP's HP Plan gives contradictory answers to this question likely reflects the realization that the project lacks the means to avoid or mitigate its considerable negative impacts. Plausibly, it was in light of this realization that a decision was taken not to authorize the Screening Study for distribution, contrary to OD 4.20 requirements.

According to RILGP's modalities, the government is reimbursed for *eligible* projects that have been implemented by commune councils. As the Screening Study notes, *“projects most likely to be eligible are ... building or repairing roads, schools, irrigation*

infrastructure, bridges, wells etc.” (Helmets & Wallgren, 2002: 130). Commune councils are supposed to prioritize local development projects. In practice, however, their choice is often limited to infrastructure projects by centrally prescribed implementation guidelines, in part due to RILGP modalities giving the government strong incentives to avoid ineligible projects such as education and health services, the top indigenous priorities. RILGP tends to systematically favor those projects with the greatest negative impacts on indigenous peoples, by design. Another factor preventing local councils from responding to genuine local development priorities is that many donors use the Seila-system to transfer earmarked funds to the commune-level (Pak & Craig, 2008: 18). With the given modalities, it is quite inaccurate to suggest in the HP Plan that prior impact assessment is “*impossible*”, of all things because “*RILGP would empower local communities to determine their own development priorities*”. According to one Bank-statement, 75 per cent of commune funds are used for rural road construction and 15 per cent for irrigation and canals (World Bank, 2008a: 1). Essentially, no RILGP funds for local projects are spent on the top two indigenous priorities. Three quarters support the kind of projects with the greatest negative impacts and most of the rest is used on irrigation and canals that support lowland Khmer systems of agricultural production but have little relevance to most indigenous livelihoods. This allocation of funds is in tension with OD 4.20, which mentions “*agriculture*” and “*road construction*” on top of a list of sectors that require particularly careful screening of potential negative impacts (World Bank, 1991: 10). Field research presented in the next chapter suggests that an even greater proportion of regular commune funds are spent on roads in remote and inaccessible indigenous areas. It confirms that the bias in favor of road construction corresponds poorly to the expressed needs of indigenous communities, and suggests that negative impacts out-weight the benefits for most indigenous groups in the longer term.

5.4. Commune Councils and Land Conflict

OD 4.20 states that an HP Plan should assess indigenous peoples’ ability to defend their rights in the legal system, with particular attention to their rights “*to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources vital to their subsistence and reproduction*” (World Bank, 1991: 15). In light of the Screening Study’s analysis, RILGP itself threatens these rights of highland peoples. The Screening Study notes that the climate in which commune councils operate is characterized by “*legal rights not being respected, laws not being enforced*” (Helmets & Wallgren, 2002: 140). A draft HP Plan that was available when the Screening Study was undertaken charged commune councils with assessing “*if land rights and mapping is sufficiently clear to protect highland peoples from in-migration or loss of resources*” (World Bank, 2003: 8). However, commune councils lack the political power as well as the mandate for land or forest to be held accountable for this kind of protection (Kim & Öjendal, 2007: 42; Pak et al., 2007: 62). Indeed, the Law on the Administration of Communes mandates the council with protecting “*the environment and natural resources*”

(Article 43), but it explicitly mentions forest as one area over which the council has no authority (Ayres, 2001: 60). Unsurprisingly, one major survey found that the management and protection of natural resources was the one area where citizens as well as councilors felt that councils were performing the least satisfactorily (Ninh & Henke, 2005: 10, 20, 64). In direct response to the draft HP Plan's provision, the Screening Study notes that

“The commune does not exist in isolation from other, more powerful interests and as long as land and forest ownership and user rights remain unclear and existing laws are not enforced, it might be unrealistic to expect council members to be responsible for this” (Helmets & Wallgren, 2002: 142).

But even though Bank-commissioned experts considered the safeguard strategy “*unrealistic*”, the only revision was to shift this responsibility from the commune council to the commune planning and budgeting committee (World Bank, 2003: 8), which makes the strategy less, not more, realistic. Members of this committee are all appointed by the council or its chief but do not have any of the council's legal powers. These provisions profoundly misrepresent the problems faced by indigenous communities in Cambodia, by suggesting that land alienation, in-migration, or the loss of access to resources are matters of mapping and rights not being sufficiently clear, in ways that could be addressed at the local level.

Indeed, in an environment characterized by the abuse of laws and legal rights by “*more powerful interests*”, members of the commune council have little incentive to respond to their constituents' interests. The authority and powers of their state offices along with their insider knowledge makes councilors, and the village chiefs they appoint, valuable partners for these “*more powerful interests*”. In a lawless context of this kind, it is economically highly rational for commune councilors, regardless of their ethnicity, to facilitate powerful outsiders in taking the lands and natural resources of indigenous peoples. This course of action offers monetary rewards incomparably greater than re-election or even a lifetime of councilor salaries. In the given framework of local governance, it is unrealistic in many cases to expect council members not to join the race to the bottom of indigenous impoverishment. RILGP's promise of empowerment, participation, and culturally appropriate benefits for indigenous peoples hinges on the assumption that commune councils empower indigenous communities and effectively respond to their needs. This is not going to be the case, as long as there are “*more powerful interests*” taking indigenous peoples' land and resources with impunity. Field research presented in the next chapter shows that commune councils routinely fail to respond to the expressed wishes of indigenous constituencies and are widely perceived as being actively involved with the interests that drive indigenous land alienation.

5.5. The Significance of Draft Rights in a Predatory State

On the matter of rights, the HP Plan quotes the following three provisions from the IMC's draft General Policy for Highland Peoples Development:

1. The government “*shall ... ensure that Highland Peoples can practice their own cultures*”
2. “*Highland Peoples shall have the right to be fully informed about, determine the priorities for and to exercise control over their economic, social and cultural development*”
3. “*Highland Peoples’ communities shall be given the opportunity to participate and take responsibility in all decisions regarding infrastructure projects that affect them. The affected community and persons must have agreed, after being fully informed in a language that they clearly understand, of the project and all its consequences for them and their natural environment, before any development project may proceed*” (World Bank, 2003: 5).

The HP Plan adds that

“for the purposes of RILGP, the Kingdom of Cambodia has agreed to employ measures consistent with the above policy provisions to guide project design and implementation arrangements” (World Bank, 2003: 5).

These provisions incorporate into RILGP’s HP Plan key elements from the draft highlander policy that failed to receive the government’s approval in 1997. This incorporated standard of protection is in any interpretation much stronger than the provisions of OP 4.20 or the actual measures described in the HP Plan. A minimal definition of taking measures “*consistent with*” the incorporated provisions of the draft policy would be not to take measures that are inconsistent with them. Clearly, the government has taken a great number of measures that fundamentally contradict highland peoples’ rights to practice their own culture and exercise control over their economic, social, and cultural development. RILGP itself is not the least among them. However, the incorporation of these provisions appears to have been purely nominal and without any consequences for the implementation of RILGP or the wider decentralization reform. When a revised version of the “*General Policy*” was eventually adopted in 2009, above provisions had been removed, along with most other provisions of operational significance. Regarding infrastructure, for example, the right to free, prior, and informed consent was replaced in the “*National Policy on Minority Development*”, as the policy is now called, with a meaningless “*chance to participate in opinion and comment expression*” (RGC, 2009: 7).

5.6. Engineering Consent and Institutionalizing Misrepresentation

The HP Plan claims that consultations of indigenous peoples “*on their preferences regarding project design and implementation arrangements*” have been carried out and “*indicated broad popular support for participating in the project, and broad agreement that proposed implementation arrangements were satisfactory*” (World Bank, 2003: 4). However, a Screening Study is not an appropriate tool to establish “*broad*” support and consent. More importantly, the Screening Study did not actually ask indigenous people if they wanted to participate or if they thought the proposed arrangements were satisfactory.

There is only one set of questions asked in the course of the study that is vaguely related to consent with RILGP:

- *“For you to participate in development planning in meetings with the commune council, how important is it that these discussions occur in your own upland minority language?”*
- *How important is it that you are given information about possible negative effects of each project that you want in the village?*
- *If there are possible negative effects of a project that you want, how important is it that you or your representatives participate in planning how to avoid or reduce these problems with the project?*
- *How important is it that pre-project assessments of benefits and possible negative effects are completed, and the results are shared with village representatives and villagers before the project commences?”* (Helmets & Wallgren, 2002: 110).

The interviewers explained to indigenous participants that

“these ideas were those of the government and the World Bank” who *“wanted to ask them for their opinions about how important each of these ideas were to helping them participate in local governance”* (Helmets & Wallgren, 2002: 109).

Instead of genuinely seeking input from indigenous peoples on the design of decentralization and participation arrangement, a small number of indigenous respondents were introduced to the result to which their informed participation was meant to lead. Villagers in Cambodia do not usually dare reject ideas of the government. Adding *“each project that you want”* to almost all questions implies that there won't be unwanted projects but many projects of the kind people want with benefits, based on free, prior, and informed consent, full participation in their own language, and minimal negative impacts. RILGP-modalities were not mentioned, namely that the choice for *“each project that you want”* would in most cases be limited to choosing the road. Unsurprisingly, the study found that *“the six measures from the draft development plan were well received and were regarded as very important”* (Helmets & Wallgren, 2002: 109). Apparently, it is from the warm reception of this fairy tale of good governance among a very limited number of indigenous respondents that RILGP-management concluded *“broad popular support”* and *“broad agreement”*.

The measures actually described in the HP Plan are substantially weaker than the ones presented to indigenous respondents, and field research suggests that those measures are generally not applied in practice. Highland communities are regularly not given information about possible negative impacts. There is little planning taking place to avoid or reduce these problems. More importantly, no amount of planning at the local level would avoid or reduce the problem that rich and powerful outsiders illegally take highland peoples' lands and natural resources with impunity. Indigenous peoples' agreement with

implementation arrangements can be considered valid only to the extent that the terms of the agreement, which include the safeguard measures presented to them, are met, which is routinely not the case.

The finding of the Screening Study that most profoundly contradicts the HP Plan's claim of broad agreement concerns a new legal provision allowing the commune chief to appoint village leaders. The quantitative component of the Screening Study found in Ratanakiri Province that

“villagers expressly wished to have it pointed out that they disagree with this and that they want to vote for their village leader” even though “they were not originally asked if they agreed with this aspect of the law” (Helmets & Wallgren, 2002: 106).

Similar sentiments were expressed by respondents in the other two provinces visited and confirmed by the qualitative component of the study, which found that *“virtually everyone ... had clear opinions about this: the villagers themselves should select the representatives”* (Helmets & Wallgren, 2002: 106, 123). The selection of village leaders is of utmost importance for indigenous governance systems, because the social organization of indigenous communities is village-based. However, despite indigenous villagers expressing strong disagreement, no changes were made to project design and implementation arrangements.

5.7. Mainstreaming Indigenous Peoples Instead of Indigenous Rights

The objective of OD 4.20 is to ensure full respect for indigenous peoples' dignity and cultural uniqueness, and it partly identifies those groups as well as their vulnerability by the use of a distinct language. So does the HP Plan. However, Khmer is Cambodia's sole official language in which all public institutions are supposed to operate. Decentralization-related laws do not provide for the use of indigenous languages but require prospective local representatives to be literate in Khmer language. In this regard, the HP Plan notes:

“Members of Highland Peoples groups are not explicitly ineligible for Commune Council service, but a requirement that council members must be able to read and write in Khmer may discourage direct participation. To ensure adequate representation from each village within the commune, a Planning and Budgeting Committee will be established to advise the Commune Council” (World Bank, 2003: 6).

Khmer is the native language of Cambodia's ethnic majority but not of any of Cambodia's highland peoples. A great proportion of indigenous people, primarily in the northeast, retain the capacity to speak their languages, and many do not understand Khmer language nearly well enough to participate meaningfully in local governance. An assessment by Cambodia's Ministry of Education found that only 5.3 per cent of indigenous men and 0.0 per cent of indigenous women were literate in Khmer language (MoEYS, 2000). An assessment of Khmer language skills and literacy in Mondulakiri found that only one per

cent of Bunong women and two per cent of Bunong men were literate and that 73 per cent of Bunong women and 57 per cent of Bunong men either did not speak Khmer language at all or only spoke Khmer poorly (Hiatt, 2003: 4, 19).

The UNDP's Human Development Report accurately states that: *"In multilingual societies a multiple language policy is the only way to ensure full democratic participation"* (UNDP, 2004: 63). Requiring literacy in a language foreign or unfamiliar to most indigenous persons indeed discourages not only *"direct"* participation but any indigenous participation in local governance, as the next chapter will demonstrate in detail. This is a significant problem, not least because participation in *"local decision-making"* is among the objectives of RILGP (World Bank, 2003: 1). Furthermore, the *"one objective"* of the HP Plan is to ensure indigenous peoples' *"appropriate participation"*, and this concept serves as its definition of cultural appropriateness and the absence of adverse effects. However, on the key question of participation in the commune council, the threshold for *"appropriate"* participation is further lowered to mean *"adequate representation from each village"*, not even in the commune council itself but *"within the commune"*. A situation in which indigenous people are limited to participating on Khmer terms in local governance and in which most are legally ineligible to stand in local elections or to represent and serve their communities on the grounds that they do not speak another peoples' language, and in which they have their choice for leaders limited to members capable of functioning in the institutions of another culture, such a situation does not meet the standard of *"appropriate participation"*, leave alone the objectives of OD 4.20.

While the new system of local governance superimposed upon village-based indigenous systems is linguistically incompatible with highland people's full participation, the HP Plan limits its elaboration to the much smaller problem that indigenous villages may end up being numerically underrepresented on local councils. To this much smaller problem, the HP Plan responds with precisely the kind of measure that indigenous respondents had most explicitly opposed during the Screening Study: the installation of commune council appointees as their communities' representatives, not on the commune council but on a secondary advisory committee:

"In general, available information indicates that most rural villages in northern and northeastern Cambodia are either more or less ethnically homogeneous, or consist predominantly of members of Highland Peoples groups. For heterogeneous villages that include a significant proportion (e.g. more than a third) of Highland Peoples, the Commune Council will ensure they are represented on the advisory committee" (World Bank, 2003: 7).

Thus, commune councils that may not be representative of indigenous peoples, and whose members may not speak the native language of the majority of their constituents, are put in charge of ensuring indigenous representation on an advisory committee, all members of which are formally appointed by the commune council and its chief. This measure does not enhance meaningful indigenous representation in local governance. Besides, it is secondary

whether an indigenous person whose language excludes her from participation in local governance lives in a heterogeneous or homogenous village, or whether she happens to belong to a “*significant proportion*” of indigenous people in the community or to what the HP Plan appears to consider an insignificant proportion of it (e.g. less than a third). This fundamental problem does not go away if she moves from a heterogeneous to a homogenous village or from a village in which her ethnicity is considered insignificant to one in which it supposedly is not. Furthermore, with the given high levels of in-migration, the number of communes in which indigenous people still form a “*significant proportion*” is bound to decrease, almost inevitably leading to diminishing representation on both the commune council and the advisory committee.

5.8. The Unequal Benefits of Standardized Participation

OD 4.20 states that “*mechanisms should be devised and maintained for participation by indigenous peoples in decision making throughout project planning, implementation, and evaluation*” (World Bank, 1991: 15). In contrast, the HP Plan implies that RILGP is a mechanism for participation and, therefore, that there is no need to ensure participation of indigenous peoples specifically:

“participation arrangements are standardized throughout the Seila program and thereby benefit the Khmer majority and other minority groups as well” (World Bank, 2003: 4).

However, the standardization of participation arrangements really means their Khmerization, which does not ensure benefits for highland peoples but excludes their languages and institutions and reinforces their marginalization. Such Khmer participation standards are not consistent with the principle of full respect for the dignity and cultural uniqueness of indigenous peoples expressed in OD 4.20.

OD 4.20 requires that the “*full range of positive actions by the borrower must ensure that indigenous people benefit from development investment*” (World Bank, 1991: 9). In contrast, the HP Plan states:

“Because RILGP promotes integrated commune development planning, it is inappropriate to establish ethnically-based preferences or strictly proportionate criteria for investment” (World Bank, 2003: 6).

The statement conceals that RILGP, as well as the wider decentralization effort, is an ethnically-based preference for the Khmer majority. In its current design, decentralization reform is a nation-building project that contributes to consolidating a state that operates at all levels and in all places in Khmer language only. Instead of any one substantial positive, targeted measure to ensure benefits for indigenous peoples, of whom OD 4.20 requires the full range, the HP Plan explains in effect that it would be inappropriate to take measures that directly benefit highland peoples. By doing so, the HP Plan mirrors accurately the nationalizing nature of modern states that makes minorities vulnerable and policies like OD 4.20 necessary in the first place.

5.9. Expanding the Scope of Unmade Agreements and Broken Promises

RILGP's project area was successively expanded from seven of Cambodia's 23 provinces in the first year to 15 provinces from the third year onwards. In 2007, an additional grant of US\$ 36.25 million was approved to expand the project to eight more provinces (World Bank, 2007b). In the course of this project expansion, no changes were made to the safeguard framework, and no analytical work pertaining to highland peoples was carried out after the initial Screening Study in only three provinces. However, RILGP safeguard documents in April 2007 claim that "*potential impacts will be manageable through site selection criteria and simple construction management techniques*", and a summary of "*potential indirect and/or long term impacts*" simply states "*none*" (World Bank, 2007a: 3). These statements directly contradict key findings of the Screening Study the Bank commissioned in 2002, the known fact that the great majority of local projects supported under RILGP focuses on road infrastructure, and that these kinds of projects have potentially the greatest negative impacts on indigenous peoples. Interviews with RILGP-staff in 2008 confirmed that no analytical work on highland peoples and no additional consultations among them had been carried out since the initial Screening Study. The safeguard document also claims that "*mechanisms for consultation ... have been in place since preparation of the original RILGP*" (World Bank, 2007a: 4). But there have not been any mechanisms for consultation of indigenous peoples put in place during preparation or any other stage of RILGP, even though the establishment of such a mechanism is a staple recommendation of international initiatives and studies (ADB, 2001a: 45; Backstrom et al., 2007; Chhim et al., 2005: 64; Fajardo et al., 2006; White, 1996: 372). Besides the standardized participation procedure, there is no such thing today.

5.10. Capacity Building and Discontinued Institutions

OD 4.20 highlights that "*the institutions responsible for government interaction with indigenous peoples should possess the social, technical, and legal skills needed for carrying out the proposed development activities*" (World Bank, 1991: 14). However, the Inter-Ministerial Committee for Highland Peoples Development (IMC) had already been dissolved when RILGP commenced, and the Department of Ethnic Minority Development has not been functional then and most of the time since. There were no significant "*government institutions assigned responsibility for indigenous peoples*", and RILGP did not make any effort to change this. The HP Plan merely

"requires that district-level facilitation teams disseminate information to villages, explain Seila procedures and ensure that all villagers are aware that they have the opportunity to participate in village planning exercises" (World Bank, 2003: 6).

The HP Plan claims that information dissemination and facilitation among indigenous peoples "*will be conducted in the language most accessible to villagers*" (World Bank, 2003: 6). However, field research presented in the next chapter indicates that Khmer is the default language for information dissemination and facilitation among indigenous villagers, even where it is clearly not the most accessible language. Facilitators are

formally selected from among government officials, among which indigenous peoples are highly underrepresented. As of the mid-1990s, 98 per cent of Ratanakiri's government staff was estimated to be ethnic Khmer (Gonsalves & Mendoza, 2006: 280). Facilitator positions require high levels of Khmer-literacy, while knowledge of indigenous languages is not among the selection criteria. Selection procedures are indifferent to whether or not facilitators have a language in common with those whose participation they are supposed to facilitate. Most facilitators are not in a position to disseminate information or ensure awareness among indigenous peoples and routinely supervise rather than assist indigenous councilors and constituencies. This is significant, because the key principle of OD 4.20 is "*informed participation*". Without information, participation cannot be informed.

"Additionally, facilitators working with Highland Peoples will ensure that they are provided an opportunity to consider induced changes that may accompany various development activities" (World Bank, 2003: 6).

Note that this is the HP Plan's interpretation of the measures indigenous peoples were consulted on by the Screening Study team and on which their supposed consent with RILGP is based. Provision of information about possible negative effects and participation in planning to avoid them has been reduced to an opportunity to consider induced changes. None of the facilitators interviewed in indigenous areas was aware that providing such opportunities was among their responsibilities. Frequently, the same outcomes facilitators describe as 'development' are perceived as negative impacts by indigenous respondents, such as the in-migration of lowlanders, the increase of land prices, and the establishment of economic land concessions. Even if an opportunity to consider induced changes was provided at the local level, it would not effectively address the shortcomings of the safeguard strategy.

5.11. Monitoring the Other Way

OD 4.20 highlights that "*independent monitoring capacities*" are needed where responsible government institutions are weak, and points out the need for "*experienced social science professionals*" and for monitoring reports to be public (World Bank, 1991: 15). In contrast, the HP Plan assigns monitoring responsibility to district facilitators and specifies that monitoring "*includes recording of attendance and minutes of proceedings*" (World Bank, 2003: 9). No social science professionals and no monitoring reports are involved. In practice, monitoring is mostly limited to district facilitators recording attendance of indigenous persons who have been herded into planning meetings. Indeed the wording of the HP Plan suggests that indigenous people are required to participate:

"In communes with Highland Peoples villages, Seila procedures require that representatives of minority groups participate in the process of formulating commune development objectives and strategies" (World Bank, 2003: 7).

This is very convenient, because as long as indigenous people meet the participation requirement, the outcome is "*culturally appropriate*" and free of adverse impacts by the HP Plan's definition. Significant coercion is involved in indigenous involvement in Seila

procedures, while facilitation and monitoring are clearly focused on attendance rather than meaningful participation¹⁴.

References to indigenous peoples are absent from RILGP's outcome indicators. There is only one indicator that invokes the generic term "*ethnic minorities*". However, it is not about whether projects match indigenous peoples' interests, but about planning guidelines:

"Planning guidelines reflects inclusive and participatory process by end of 2008, which includes ... effective community participation including women and ethnic minorities in planning process" (World Bank, 2007b: 21).

This monitoring system has failed clearly and predictably to detect the considerable negative impacts of decentralization reform in general and of RILGP-supported local projects in particular on highland peoples.

5.12. Conflict-Resolution or Conflict-Creation?

OP 4.20 requires that "*traditional leaders*" are "*brought into the planning process*" (World Bank, 1991: 15). However, RILGP's HP Plan does not give traditional leaders any role in local planning or local governance, except for the resolution of conflicts:

"Highland Peoples resort to traditional leadership and institutional arrangements to resolve conflicts arising from within the village. RILGP views these arrangements as the most appropriate venue for initial airing of project-related conflicts" (World Bank, 2003: 9).

"*Traditional leadership and institutional arrangements*" are in many apparent ways essential to OD 4.20 and RILGP objectives. As the preceding chapter shows, these arrangements enjoy high levels of legitimacy and participation among many of Cambodia's indigenous communities. Members resort to them not only for conflict resolution but also for a wide range of other societal functions. These functions and local authority more generally are increasingly absorbed and monopolized by the new system of local governance superimposed upon indigenous institutions, directly undermining their authority, effectiveness, and sustainability. Viewing traditional institutions as the most appropriate venue for "*initial airing of project-related conflicts*" means little more than saying to an indigenous person negatively affected by local projects: 'If you don't like our road, you can complain to your elders'.

Furthermore, conflicts with outsiders taking indigenous peoples' land and natural resources are not "*conflicts arising from within the village*". The kinds of conflicts arising from RILGP implementation are between poor villagers and rich and powerful outsiders. Outsiders who do not submit to the authority of the law are not going to submit to the authority of indigenous elders. Formally putting elders in charge does little to solve these conflicts but further undermines elders' authority.

¹⁴This does not only concern highland communities. In a 2011 survey of the general population, 71 per cent of respondents said they were participating in such meetings because it was "required" of them. This represented a 50 per cent increase over responses in 2005 (Öjendal & Kim, 2011: 6).

“In the event that conflicts cannot be resolved at this level, district facilitation teams may provide additional mediation” (World Bank, 2003: 9).

Most district facilitators are unable to provide meaningful mediation, because they lack knowledge of indigenous languages and institutions. More importantly, lawless land grabbing and forest destruction are matters of law enforcement not of mediation. District facilitators are in no position to confront armed criminals connected to powerful officials and businessmen, even if they wanted to. According to the HP Plan, commune councils are the highest instance of conflict resolution under RILGP (World Bank, 2003: 9), making the institution that chose the road indigenous peoples’ last resort for solving conflicts arising from it. However, as the Screening Study points out:

“The problem is that reports from these communities to higher responsible authorities do not always result in law enforcement, particularly where loggers may be operating with armed police or military units” (Helmets & Wallgren, 2002: 136).

If conflicts arise due to commune councils being unresponsive to villagers’ needs, which they often are because of the perverse incentives they have in a neo-patrimonial environment of lawlessness and impunity, highland people have no avenues to seek meaningful resolution and accountability.

5.13. A Strategy of Avoiding Safeguard Obligations

The stated rationale for seeking additional funding for RILGP in 2007 was to help finance the costs of scaled-up project activities and to support project expansion from 15 to 23 provinces (World Bank, 2007b: 2). At the same time, Ratanakiri Province was excluded from RILGP-support, according to the project document, supposedly because of *“the significant amount of other donor funding targeting Ratanakiri Province”* (World Bank, 2007b: 6). By this logic, the Bank would not be in Cambodia. There are significant amounts of other donor funding in any one of the country’s provinces. Moreover, expanding the project to all other provinces while discontinuing support to Ratanakiri, one of the longest-standing RILGP provinces, directly contradicts the rationale of the entire proposal.

What helps explain RILGP’s exit from Ratanakiri is that it greatly reduces safeguard obligations. Ratanakiri is home to the greatest number of indigenous people in any one province. Removing Ratanakiri from the project area reduces the number of indigenous people RILGP is obliged to protect considerably. Ratanakiri is also the province with the greatest number of land and natural resource conflicts involving indigenous peoples (NGO Forum, 2004, 2006). After years of informed participation in a project that operates on an *“unrealistic”* safeguard strategy in the key areas of forest and land, and that contributes to building the institutional and physical infrastructure to perpetuate *“major potential negative socioeconomic impacts”*, the Bank walks away from the province in which protection of the kind described by OD 4.20 is most urgently and most visibly needed by most people.

Discussions with Bank-staff in Cambodia suggest that this decision is part of a larger strategy of avoiding engagement with indigenous peoples in light of the perceived burdens created by the need to comply with the safeguard policy. Indeed the Bank does not support any measure in Cambodia that specifically and positively benefits indigenous peoples (Andersen, 2007: 30). Bank-projects that affect indigenous peoples have to make substantial additional efforts to meet safeguard obligations. Applicability of safeguards creates considerable uncertainty about what measures are suitable to meet the requirements. Furthermore, implementing projects that impact on indigenous peoples involves the risk of non-compliance claims and complaints to the Bank's inspection panel, which can ultimately lead to the cancelation of projects. Ensuring that safeguard requirements are met is perceived to be unfeasible for individual projects, in the absence of a legal framework recognizing indigenous rights and of political will or incentives to apply it. Funding of any one Bank-project is a fraction of what the neo-patrimonial state and elites connected to it gain from exploiting indigenous peoples' lands and natural resources, leaving projects without the leverage necessary to ensure compliance. Thus, a strategy of avoiding geographical and policy areas that are likely to trigger safeguards is a rational response of project management to the circumstances prevailing in Cambodia. However, this course of action either leaves highland peoples without support or supported by actors with less demanding or no safeguard policies. Such an outcome directly contradicts the purpose of the safeguard policy, which is meant to protect indigenous peoples not from development, but from its negative impacts.

5.14. Conclusions

In the absence of effective protection of indigenous peoples' interests, decentralization reform in Cambodia does not contribute to empower indigenous peoples, to enhance their participation, or more generally to realize relevant international norms. Rather than accommodating diversity, decentralization-reform in its current design contributes to Khmer nation-building and to the destruction of highland cultures. Decentralization reform enhances the political power, economic opportunity, and social status associated with Khmer identity and contributes to marginalizing indigenous identities, not least by helping to consolidate the institutions and permanent local presence in all the Kingdom's localities of a Khmer nation-state, built on the societal institutions of the Khmer majority culture and operating in its language only.

In the experience of most indigenous communities, what is referred to as decentralization reform actually represents a profound centralization, an upward transfer of power from institutions controlled by their communities to institutions beyond their control. Even though commune councils and village chiefs have nominally existed in indigenous areas for a long time, it is often only within the lifetime and context of decentralization reform that a hierarchical state with a permanent local presence has been established (Ironsides, 2009: 99; Öjendal & Kim, 2011: 14; Pak et al., 2007: 51). Previously relatively autonomous communities now find themselves at the bottom of a hierarchical, top-down state organization and of centralized patronage networks. Through the imposition of state

institutions, many of the powers that are essential to the ways of life of highland peoples and their ability to maintain distinct societies are effectively transferred to provincial and central levels of the state. This concerns in particular control over land and the management of natural resources. The state's claims to forest and land effectively mean that these assets are transferred from indigenous institutions to the state and often, subsequently privatized through the granting of concessions to high-level patrons. That commune councils in practice are responsive to higher echelons of the state and the ruling party rather than their constituencies reinforces this effect. Decentralization reform in its current design contributes to undermining the institutional, cultural, and natural resources upon which highland peoples' empowerment, participation, and the reduction of their poverty depends.

RILGP's failure to respond to the needs and interests of indigenous peoples is in large part a failure to apply the safeguard policy, even though Bank-support is supposed to be conditional on compliance. This failure demonstrates the importance of creating mechanisms that ensure meaningful safeguards application, of establishing project-level systems to monitor disaggregated impacts on indigenous peoples with specific indicators that capture indigenous perceptions, and of specifying clear accountabilities to this end. Currently, the commune council is often a tool of nation-building and majority domination. Nevertheless, the commune council is among the most promising vehicles available to accommodate the distinct interests and needs of highland peoples. Realizing this potential requires important modifications to make the council responsive and accountable to indigenous people and their village-level institutions. For decentralization to benefit indigenous peoples, powers relevant to the challenges these groups face, such as related to land, natural resources, infrastructure, conflict-resolution, language, and in-migration, must be devolved to institutions controlled by their communities, with jurisdictions that correspond to their territorial concentrations. It is imperative to engage indigenous peoples and their representative institutions, not only during project preparation, but as an ongoing and evolving initiative through all phases of projects. Indigenous people's participation should be built, at least in part, upon their own institutions. Capacity building for state institutions should be paralleled by efforts to build the capacity of indigenous institutions, with a focus on the ability of both to engage in meaningful dialogue with each other.

These findings highlight the challenges faced by the World Bank and other international organizations in supporting indigenous peoples in countries whose governments have neither legal frameworks nor political will to recognize their rights, and in which the political elites have vested interests in exploiting indigenous resources. Adequate legal frameworks are essential, and it cannot be left to individual projects to work with the government to establish such frameworks. Rather, the political, institutional, and legal aspects of protecting indigenous peoples should be addressed in the Bank's country-level assistance strategy, such as with a country-wide Indigenous Peoples Plan. This would make it easier for individual Bank projects to address the specific challenges they face in applying safeguard policy in various reform sectors. Protection of indigenous peoples

should be made a concerted effort of all relevant donors. To enhance leverage, the Bank should work towards harmonizing approaches and developing a consistent strategy, in partnership with the government and aligned with the national poverty reduction strategy, with a long-term perspective that transcends project life cycles. In light of considerable regional differences, it would be useful to formulate regional and sequenced implementation strategies that correspond to the situation of states and indigenous peoples in different parts of the world and at different stages of democratic development.

6. Khmer Citizenship and Highland Peoples – Voices from the Field

This chapter presents findings from extensive field research undertaken in 2008 and 2009 among ethnic Jarai, Bunong, Kreung, Brao, Tampuan, Chong, Por, Kuy, Kavet, and Stieng communities. Most participants in interviews and group discussions were community members, local leaders, government officials, civil society representatives, and development professionals in the provinces of Ratanakiri, Mondulakiri, Stung Treng, Kratie, Kampong Cham, and Pursat. Field research covered a wide range of topics, such as identification, language, education, the relationship between customary and state institutions, local development, inter-ethnic relations, and conflict resolution. One major theme was the situation of highland peoples within the emerging framework of decentralized local governance, given the potential relevance of empowered commune councils for the realization of international indigenous rights norms. This focus was also reflected in the selection of many commune councilors and village chiefs as respondents.

6.1. Self-Identification and Identification by Others

Members of highland groups in discussions and interviews routinely identified not only as members of particular ethnic groups but as belonging to a particular category of groups that explicitly does not include Khmer, Chinese, Vietnamese, Lao, and Cham. Many respondents invoked the concept of ‘Khmer Loeu’ or ‘Khmer Daoem’ (original Khmer) to highlight their belonging to Cambodia as well as to a group of people that is distinct from Cambodia’s majority culture. It is not rare for Khmer as well as indigenous respondents to claim that Khmer and indigenous groups have the same historical origin, that their ancestors were the same people, which appears to be historically rather accurate (Chandler, 2008: 14-15, 85). Respondents from all ethnic groups differentiated between highland peoples and other minorities.

When asked what distinguishes highland peoples from other ethnic groups in Cambodia, respondents invoked a range of aspects including language, religion, communal life styles, and rotational agriculture. Others emphasized that highland peoples are minorities who have lived in Cambodia for a long time (as opposed to ethnic Vietnamese, Chinese, and Cham), groups who live in the mountainous, forested areas, who do not have a country (unlike ethnic Lao, Chinese, and Vietnamese) and a script. One Bunong man in Kratie answered:

“Bunong are animists, they sacrifice, have rice wine and respect ancestors spirits. But the main difference is language”.

Khmer as well as indigenous respondents pointed out that Vietnamese, Chinese, and Cham are not indigenous peoples because they migrated to Cambodia, and because they came from countries in which their culture is, or was, in the majority. Similarly, Vietnamese,

Chinese, and Cham respondents did not consider themselves indigenous people in Cambodia. Neither did ethnic Khmer respondents. Also Lao respondents in the northeast, which form majorities in some communes in Stung Treng and Ratanakiri, distinguished themselves from highland peoples, mainly with reference to the nearby state of Laos, which is dominated by ethnic Lao.

When asked if they were Khmer, highland people were generally ambiguous, in ways which reflect that there is no commonly used term for ‘Cambodian’ other than ‘Khmer’. Indigenous respondents generally and unambiguously considered themselves Cambodian, even original Cambodians, but also felt it important to differentiate the groups to which they belong from ethnic Khmer. The following statement from a Por man in Pursat reflects the feelings of many respondents:

“In the larger context of Cambodia, I consider myself Khmer, or original Khmer (‘Khmer Doeum’) but in the narrower sense of ethnicity, I consider myself Por”.

A considerable number of indigenous respondents described their groups as distinct peoples, rather than segments of Khmer society. As one former commune councilor in Ratanakiri remarked:

“There are different peoples, one is Khmer, others are indigenous, but all are sonchiet Khmer [Khmer citizens]. This area is indigenous”.

There is a growing awareness among members of different highland groups in different parts of the country that there are other highland groups in other provinces. A pan-indigenous identity, a sense of commonality among highland groups across the kingdom, is slowly emerging. As one man in Pursat reported:

“I heard about the situation in the northeast of Cambodia. The needs of chun-cheat here and there are similar. If the government helps people there it should also do the same here”.

The emergence of this awareness and occasional claims-making based on indigeneity has been greatly facilitated by the international community, such as by various NGOs and international organizations bringing together indigenous people from different parts of the country for training in human and indigenous rights norms and to exchange experiences (Baird, 2011). Indigenous respondents were strongly in favor of strengthening links with other highland groups in Cambodia, though in many cases were cautious to point out that this should happen within the framework of the Cambodian state. This caution and the perceived need to highlight loyalty to the Cambodian state suggest a degree of securitization of ethnic relations. Respondents appeared to anticipate the – implausible – notion that highland people are disloyal and challenge the authority and integrity of the state. One indigenous activist in Pursat explained:

“There are many different indigenous peoples in Cambodia, and they can have solidarity if they strengthen themselves. Their leaders or representatives can then link up and extend solidarity to other groups. This should happen under the roof of

the government, not separate from it or autonomous”.

Nevertheless, the level of indigenous self-organization, both within and across language groups, remains very low and reliant on international organizations and NGOs. Indeed, the virtual absence of political organization above the village-level and the low degree of institutionalization among highland peoples are striking, as well as the absence of unified leadership, even at the village level. Because no one is credibly speaking on behalf of highland groups, it is difficult to know what the aspirations of highland minorities actually are. Among the more significant attempts at institutionalization beyond the village-level is a modest NGO named Highlander Association operating primarily in Ratanakiri, the Organization to Promote Kuy Culture (OPKC), an informal network of indigenous community leaders called the Indigenous Rights Active Members (IRAM) with representatives in several provinces, and the Cambodian Indigenous Youth Association (CIYA) set up by indigenous university students from different provinces in 2006 and formally recognized by the Ministry of Interior in 2008 (Moul & Seng, 2010; R. Pen, 2010: 18). Together, these four organizations established the Indigenous Peoples’ Organizations Alliance (IPOA) in 2011 (IWGIA, 2012: 309-310).

Overall, a strong contrast was often found between the more intact, separate, territorially concentrated indigenous communities in Ratanakiri and Mondulakiri on one hand and on the other, communities in Pursat, Kratie, Stung Treng, and Kampong Cham, which tended to be more integrated with Khmer society. For example, customary institutions are still strong and indigenous languages widely spoken in Ratanakiri and Mondulakiri but not among indigenous communities in Pursat and Kampong Cham. Indigenous communities in Stung Treng and Kratie tended to fall in between. This contrast can be explained in part by the fact that indigenous communities in the remote northeast have remained rather inaccessible from the center for longer than indigenous communities in other parts of the country. In Pursat, in contrast, there remains only one commune with an indigenous majority (ethnic Chong in Ou Saoum Commune) whereas members of the other indigenous group, Por, settle widely dispersed as small pockets of a few families in many different communes and villages.

6.2. Separateness vs. Integration

As has been demonstrated in the preceding chapters, highland people have historically resisted colonization as well as Khmer nation-building and in many cases successfully struggled to maintain their distinct cultures despite considerable pressure to assimilate. Highland peoples’ historical determination to remain separate is demonstrated by their resistance as well as their often relatively successful attempts to re-establish distinct societies and reproduce territorial concentrations of their own, after several phases of profound disruption induced from the outside (Backstrom et al., 2007: 16; Hammer, 2009: 152; Ironside, 2010: 7; White, 1996).

If measured by the intensity of their groups’ historical resistance to colonization and Khmer nation-building, members of highland groups today might appear to the casual

observer resigned to ever-increasing integration with Khmer culture. However, field research suggests that Cambodia's highland peoples in many cases continue to resist considerable pressure to integrate into mainstream Khmer societal culture and language. One indication of this is a widely held preference of group members to settle among their own, at a distance from Khmer communities. Highland groups have historically responded to in-migration of lowlanders by moving their settlements deeper into less accessible, mountainous, and forested areas, with the result that areas formerly controlled by them were successively taken over by Khmers (Ironside, 2009: 116; Schweithelm & Chanthy, 2004: 19). This process has substantially increased the size of territory dominated by ethnic Khmer and dramatically reduced the amount of land which is controlled by indigenous peoples (Bourdier, 2008: 177; Mabbett & Chandler, 1995: 30). However, under today's conditions of rapidly increasing scarcity of land, a strategy of moving away from emerging concentrations of Khmer settlers is in most cases not a viable option anymore. A strong majority of indigenous respondents in all provinces visited highlighted their preference for living among members of their own group. This preference among indigenous communities was confirmed by most Khmer respondents. As one Khmer NGO worker in Kratie observed:

“Indigenous communities often move their village towards the forest if Khmer come to live close by. Today, there are many people moving from lowland provinces to the areas inhabited by indigenous communities. Indigenous people prefer to live in their group and don't prefer Khmer to lead them”.

One elder in a remote Ratanakiri community explained:

“We prefer to live separately, especially to live in our home village and not elsewhere, were people will discriminate. During Pol Pot, people were mixed and relocated and villages were moved to other places. Because of this, there are conflicts. Villagers don't prefer to mix. It is not good to mix rice and powder”.

Similarly, a Kavet man in northern Ratanakiri stated:

“People here prefer not to mix but to live among their own ethnicity. Firstly because it is hard to listen to different languages and secondly because Khmer and Lao are aggressive, they speak strong, threatening words. If different ethnicities live together there is more conflict”.

While a preference for physical separation from Khmer communities was expressed by a great majority of indigenous respondents, some expressed favorable views of living in community with Khmers. Unsurprisingly, such views were often held by members of groups who have been subjected to more intense assimilation for longer, such as some Kuy communities in Kratie and Stieng communities in Kampong Cham. As a Khmer NGO-worker pointed out:

“Bunong and Khonh prefer to live in their own group. Khmer and Kuy mix a lot and have similar practice and much intermarriage”.

One of the relatively few respondents with favorable views of ethnic blending in Ratanakiri was an elderly Kavet man who compared culture with cuisine:

“Previously people did not intermarry, because highland peoples lived far from other ethnic groups. At the time, we used only natural food and there was no oil and seasoning, but we used to see it among Khmer and Lao. They use different soup and foods and cook with salt, oil and seasoning, and it smells differently. Intermarriage is similar, to mix like a cook. Now indigenous people use seasoning to make the food better. Now it smells more delicious if we drive along the road”.

Somewhat surprising was the relatively low level of assertiveness about maintaining distance and distinctiveness from Khmer newcomers among some Bunong communities in Mondulkiri. The Bunong are one of the largest highland groups in Cambodia, the only one that forms a provincial majority. The Bunong also have a record of fierce resistance to colonial rule. As one Bunong man who lives close to the provincial capital stated:

“Previously we lived among our relatives but later we mixed with others, especially Khmer. I don’t mind either way, living among Bunong or mix with Khmers”.

The predominant preference of indigenous villagers to maintain some distance and separation from Khmer is not usually based on a dislike of Khmer people per se. Rather, it is a response to involuntary incorporation, and to the inferior position they regularly find themselves in vis-à-vis Khmer newcomers and the encroaching Cambodian state. One Tampuan commune clerk in northern Ratanakiri observed:

“Most residents prefer living among their co-ethnics. It is easy, they have their own representatives in the village. People prefer the Menganrien [traditional authority] to control their affairs separately in the village. It is easy when different ethnicities live separately”.

Many indigenous respondents explained that different indigenous groups could live together much easier than any of them could live with Khmer, as did one Jarai man in a remote Ratanakiri village:

„Jarai and Katschoh can live together, Lao are acceptable, too, but we don’t get along with Khmer. Only Khmer are different. They often look down on indigenous people. If any institution could scare the Khmer away, we would be happy“.

Even in Pursat Province, many of the remaining Por families again live next to each other, in the form of small clusters of a few families in villages and communes that are now dominated by Khmer. One Khmer resident in Pursat confirmed the preference of Por to live among their own, somewhat mystified:

“Indigenous people prefer to live among themselves, I am not sure why. I asked them and they said they prefer living side by side. It is easier for them to live together but language is not the reason, they all speak Khmer, and their children study in Khmer school. I suspect their children don’t speak Por language anymore”.

Residents of Ou Saoum, the only commune in Pursat Province with an indigenous majority (ethnic Chong), appeared particularly determined to avoid mixing with Khmer, somewhat surprising, too, as ethnic Chong are a small group of only a few villages who have lost their distinct language and share many characteristics with rural Khmer communities. As one Chong man explained:

“Previously, when we lived together, it was better than the current situation. There was less conflict, and people loved each other. Now that Khmer newcomers are arriving, there are many problems. Even domestic violence is influenced by newcomers, who curse their children and wife when they are angry. I prefer different ethnic groups settle separately. But we need to live in society and follow higher levels”.

6.3. In-Migration Undermining Realization of International Norms

One of the trends that work against the desire of many indigenous communities to maintain distinct societies is substantial migration of lowlanders into their homelands. This trend has re-emerged and is accelerating following the re-establishment of the Cambodian state in the early 1990s, facilitated by the improved security situation and the reinforced local presence of government institutions. Infrastructure improvements, including those funded through newly empowered local councils, make it easier and less costly for in-migrants to move to highland areas and to take advantage of significant economic opportunities, often at the expense of indigenous communities. Decentralization reform contributes to in-migration, not least by establishing and consolidating state institutions in indigenous homelands that operate in Khmer language, are tailored towards the majority society, and allow settlers to easily participate and advance their interests. In-migration diminishes territorial concentrations of highland peoples and the number of constituencies in which highland people still form majorities. As a result, highland people are outnumbered and outvoted in an increasing number of communes. In those constituencies, the empowerment of commune councils and majority decision-making reinforce the political marginalization of indigenous peoples.

In-migration of lowlanders into areas formerly inhabited exclusively or predominantly by highland peoples was a source of numerous grievances for many indigenous respondents in most communes visited. Most widely lamented were the impacts of in-migration on the use of land and natural resources on which indigenous cultures and livelihoods depend. Newcomers to highland areas tend to have better access to state institutions, especially to the police, and are in a better position to use markets to their advantage. As one Chong man in Ou Saoum said:

“It is easier for newcomers to buy and control land. They have money, power, and machines. They commit acts against the law and our traditional practice, but villagers don’t dare confronting them”.

Newcomers have often in a short period of time taken over disproportionate amounts of land at the expense of indigenous residents, who tend to have less experience in the market

place and are widely perceived as being vulnerable to exploitation, as one Khmer NGO worker in Mondulkiri pointed out:

“Newcomers come to take land and indigenous people let them take it, they don’t know what to do, they don’t protest because they don’t know how”.

This statement, like many others, underlines highland peoples’ distinct lack of access to relevant government decision-making. There is a widespread perception among Khmer, shared by a significant proportion of indigenous respondents, that indigenous people do not know how to use money. As one Khmer man in Ratanakiri explained:

“In Banlung, indigenous people sell their land and spend all the money. Then they come back to sell their labor in their own land. In the future, all indigenous people will be laborers. Indigenous people are different from Khmer. If Khmer have 1,000 Riels, they will increase it to 10,000 Riels but indigenous people will spend it all”.

In contrast to most highland people, recent in-migrants tend to have at least some capital and to settle in urban areas where living conditions, access to education, social services, and business opportunities are better. As one long-standing and well-respected Khmer resident in Ou Saoum explained:

“The problem are newcomers who come and want a share of the land, they cheat locals into selling their land and re-sell it at huge profits. If there is a law, indigenous people will obey it but it is the newcomers who don’t”.

There is a widely held perception that relatively wealthy in-migrants can get away with clearing land illegally. Moreover, newcomers are often perceived to be disrespectful of long-standing residents and their distinct norms and cultures. Underlying many statements of indigenous respondents was the expectation that newcomers adjust to the customs of host communities, which is rarely the case. As one elderly man in Ou Saoum explained:

“If I am an indigenous person and I go to live in a Khmer community, I will follow their rules. Those who come here should respect our rules, but they don’t. Instead, they try to persuade minority people to follow their ways”.

In many cases, the conduct of newcomers is characterized not only by disrespect for local customs and practices but also for the state law. One indigenous female councilor in Ratanakiri explained:

“Newcomers often look down on indigenous people as being ignorant. They reside here without permission and don’t integrate. Newcomers have different ideas, and this creates conflicts. They are hard to prevent from illegal activities. Many are engaged in illegal activities. It is hard to control illegal fishing and forest exploitation. Now there is no free land to live here anymore. I am concerned about the destruction of natural resources and that we may run out of land”.

While many indigenous respondents complained about Khmer migrants and their behavior, there were also a few Khmer newcomers who had become well-respected among indigenous communities, not least because their conduct was in line with local practices

and expectations. These migrants were often appreciated for bringing new ideas and higher levels of formal education to the community. One female councilor in a remote Ratanakiri commune, for example, said:

“People here welcome newcomers. Before coming they need consent from the elders. Newcomers have to respect local custom and tradition. If they create arguments and curse others, they are not welcome”.

Similarly, one Khmer newcomer to an indigenous community in Ratanakiri reported:

“If we treat indigenous people well they will be very kind to us. Many Khmer abuse indigenous people. We don’t want to cause problems and as members of this village, we respect their way of life”.

Many indigenous respondents felt that their communities should have greater control over in-migration and over the conduct of newcomers. Interestingly, in areas in which indigenous communities dominate the commune council, respondents suggested that the council should be given more power over in-migration.

6.4. Modernization vs. Integration: Becoming Khmer?

Most members of highland groups were found to cherish their unique identities and continue to maintain and modernize their distinct cultures. A great majority of indigenous respondents, when asked whether or not they were proud of their ethnicity, answered affirmatively. However, there is a tendency among a significant proportion of highland people, particularly among the young, to hide their ethnic identity or to identify to outsiders as Khmer (Bourdier, 2008: 179; Chhim et al., 2005: 47). This tendency was pronounced among some of the communities in which integration with Khmer mainstream culture was most advanced, such as among some Kuy communities in Kratie and many Por communities in Pursat. The desire of some to be accepted as Khmer is plausibly a response to the persistence of ethnic hierarchies in public conceptions of cultural diversity, specifically the stigmatizing portrayal of indigenous cultures as primitive and inferior to Khmer culture. As one indigenous student from Mondulkiri who lives in Phnom Penh explained:

“There is a lot of discrimination, and indigenous people feel ashamed. We have to adapt to the majority but we are afraid for our identity”.

Similarly, a Por man in Pursat explained:

“Many Por do not want to reveal their Por identity to authorities or outsiders, fearing discrimination if they do. Many have had bad experiences in the past, to be insulted and to face other difficulties. They are frightened it could happen again”.

Another man described the situation in these terms

“I prefer not to broadcast my Por background. It is similar to a person who is carrying a basket of water. Those who don’t carry it don’t feel the weight”.

In a few communities, assimilation had so far progressed that the difference with Khmer

could be literally forgotten. Many children of Kuy parents in some communities in Kratie said they were Khmer, without hesitation. One Kuy village chief in an accessible commune in Kratie explained:

“Especially Kuy children forget their ethnicity, they just know ‘Khmer’ and they would write ‘Khmer’ in their biography at school. Sometimes it is only later that they learn they are Kuy. The previous generation would mostly identify as ‘Kuy’ but Kuy is nearly lost”.

Generally, however, indigenous identities retain great social relevance, even where assimilation has progressed relatively far. Some younger Por respondents in Pursat, even though few still spoke Por language well, insisted that they were still Por, and expressed a preference for getting married to Por. One young man explained:

“We cannot forget that we are Por, even if we speak Khmer. It is our origin, our blood, that we are born chun-cheat. It is the same with Khmers, they can never be Chinese. We have to accept that we are Por”.

A great majority of indigenous respondents desire to develop their ways of life, by incorporating aspects of modernity into their own cultures, often quite enthusiastically. Older community members often share the fascination of the young with modernity. As an elderly man in Mondulkiri pointed out:

“I and the people prefer to have a tractor and other machines, we want electricity, this is our need, too. Everyone wants to develop”.

Similarly, one man in Ratanakiri said:

“We want to keep our gongs but we also want motos and TVs but keep raising buffaloes and pigs”.

In the view of most indigenous respondents, the desire for modernization does not contradict the ambition to maintain cultural, institutional, and linguistic distinctiveness, although there are tensions between these aspirations. As one Kavet man in a remote Ratanakiri community explained:

“Even if we use cell phones and have modern houses, we are still indigenous people, even when we live in Phnom Penh. We are still chun-cheat, but we are sonchiet Khmer [Cambodian citizens]. People don’t cut their teeth anymore or wear tusk in their ears, in this way we became Khmer. Now, indigenous people follow the majority on most issues but we are still Kavet. We worry about the loss of traditional practices, beliefs, and Kavet language, but we also want education, modern cloths, and sanitation”.

While most indigenous respondents were in favor of maintaining and modernizing their distinct cultures, there are also significant internal contestations about what aspects of change are desirable, often playing out between different generations. There are widespread concerns over the loss of culture and considerable ambiguity concerning rapid

change, expressed by one elder and former commune councilor in Ratanakiri in these words:

“Our knowledge is lost from one generation to the next. A few things the young can learn from the elders, such as conducting some ceremonies. We continue to this day, but some beliefs are not strong, and the young cannot understand ... Now we live in a modern situation. Previously we had gongs and elephant tusk as earrings. Previously we used the skin of the tree as cloth but not anymore. Previously we used gongs for dancing, traditional music, and for having parties. We sacrificed for worship and played gongs, flute, and drama. Today this is all gone. Today we use loudspeakers instead. In the past, we had tattoos in the face and on the body. Women had long hair. Men used to cut their teeth but not anymore. But we like to live in a modern situation, to advance, use machines, have boats to cross the river quickly ... The previous situation is also good, we had things to identify with, to know who we are. We want this situation again but it is impossible. It is difficult, all this is gone, gongs, flutes, drama. It is a problem. It is not easy. Before, the gong was like a father and the wine like a mother. We had all these things and it was easy to solve problems, to have a party and find consensus and agreement. Now that we don't have all those things, it may not be good for us”.

Young respondents, too, often underlined the importance of avoiding the loss of their distinct cultures but had different ideas about what this meant. No instances were found where traditional authorities appeared to be imposing potentially oppressive traditions on the young. Regrets over the loss of traditional culture and a lack of respect for time-honored values among the young are common among many Khmer, too. However, cultural change is more profound and disruptive among indigenous communities, where great pressure to assimilate and to adapt to a rapidly changing environment on which old ways of life were based adds to the general turbulence of modernization. As one man in Ratanakiri described it:

“Previously, the elder educated the young and the young would follow the elders but today, the old follow the young”.

Many respondents felt that a sense of community and togetherness characterized indigenous cultures in the past and expressed regret that it was increasingly lost. As one man in Pursat noted:

“In the past, there was good communication and sharing even among rich and poor, and it is not the same among Khmer”.

Similarly, one man in Ratanakiri remarked:

“I value previous times of sharing. Indigenous people did not use to focus on selling and business, but they would share with poor people”.

Highland people's interest in benefiting from modernity is widely misinterpreted by Khmers and government officials as evidence that they want to integrate into the Khmer

mainstream. At the same time, their desire to remain distinct and separate is often misinterpreted as a preference for perpetuating an unchanging, pre-modern past. In policy and public discourse, there is little space for the notion that highland people aspire to enjoy modernity within their own cultures. It is common for Khmers to point at indigenous persons using cell phones, wanting motorbikes or university degrees as proof that they desire to become culturally Khmer. It was taken for granted by many Khmer respondents that highland people will integrate and become indistinguishable from Khmer within very few generations. Implicitly and explicitly, many Khmer respondents felt that essential to being indigenous is being backward, underdeveloped, and primitive. One young Khmer man with relatively high formal education in Kampong Cham expressed this view in stronger words than many other respondents:

“Indigenous people live like animals in the forest. Their livelihoods are based on natural resources”.

One longstanding Khmer resident in Mondulhiri’s provincial capital stated:

“In the future, Bunong will change their way of life. Their children learn Khmer at Khmer school and don’t want their ethnic identity, they want to be Khmer. In the future maybe there are no Bunong, just only Khmer in terms of culture and language. People need development, modernity. We cannot forbid them to use cell phones and other modern things”.

This statement is typical in that it considers highland cultures as essentially undeveloped, and in that it assumes that highland people can benefit from modernity only by integrating into Khmer society. On this widely held view, integrating highland people into the Khmer mainstream is not unjust but a noble project, a civilization mission that the Khmer majority and the Cambodian government are obliged to pursue as a matter of looking after smaller, undeveloped, and uneducated indigenous brothers and sisters. As was pointed out before, a similar conception of indigenous communities underlies the Land Law’s conception of indigenous communities and is popular among policy makers. Even the director of the Department of Ethnic Minority Development, which is formally mandated with policy-making and implementation related to highland peoples, in an interview expressed the view that integration is a precondition of modernization:

“Indigenous people try to integrate. They want to have computers and take part in the development of society. The development does not want to impact on their practices. We cannot leave them alone. Their integration is necessary for their development”.

Indeed indigenous peoples do desire to benefit from development, but their ideas of what this entails are often quite different from the views of Khmer officials.

6.5. Shifting Pattern of Language Use and Comprehension

Patterns of language use and language comprehension among members of indigenous communities are complex and changing. There still are communities where indigenous

languages are used virtually exclusively and where few members understand Khmer, most of them in the northeast (Hiett, 2003; MoEYS, 2000). There also are communities where Khmer is spoken and used widely in the village, especially among the young, who may not speak indigenous languages anymore. This is the case in some Kuy and Stieng communities in Kratie and among Chong and Por communities in Pursat. These latter communities are physically closer to the Khmer heartland, connected to it through road links for longer and therefore, have been more exposed to colonization and Khmer nation-building. Much of the considerable loss of indigenous languages in Cambodia can be attributed to coercive policies, especially to violent post-independence Khmer nation-building projects. Nevertheless, a great proportion of Cambodia's indigenous people uses their own languages in daily life and speaks Khmer, if at all, only as a second language.

The loss of language was particularly pronounced among Por communities in Pursat Province, where Khmer Rouge assimilation appears to have been more violently enforced than in some areas of the northeast. Subsequently, large numbers of former soldiers were settled as part of the Khmer Rouge re-integration, making it virtually impossible for Por to re-create commune or even village-level territorial concentrations. Unsurprisingly, Por language is used and understood less and less, as one elderly Por man pointed out:

“At the time of my grandparents, during the 1930s, very few Por could speak Khmer. Women would run away if they saw Khmer people, they would feel shy because they could not speak Khmer. Starting under Sihanouk, some villagers began to learn a little Khmer. Today, most people speak Khmer and not Por, because they were forced to speak Khmer by Pol Pot. Since then, no one forces Por to speak Khmer, it happens automatically, because Por are not in community anymore but integrated with Khmer, scattered in small groups. In this situation, even the old Por people want the young to learn Khmer to find a job. The young find it hard to speak Por language, and they do not prefer to learn and speak it. Since Pol Pot we have experience in speaking Khmer, and today only the old are experienced in speaking Por. The young speak Por poorly and therefore feel shy to use it. Last year I offered Por language classes but few of the young joined, so I stopped. Before we lived together and spoke Por, but now our language is almost lost”.

In strong contrast, Khmer language is spoken only by few and has little significance in day-to-day life among many indigenous communities in the northeast. There, children tend to be far more comfortable with their local language, and often speak effectively no Khmer. Khmer is widely spoken only at provincial and district centers which tend to be dominated by ethnic Khmer, many of them recent in-migrants. Even in the vicinity of these urbanizing areas, members of indigenous communities may speak little or no Khmer language. A young man who lives only about two kilometers from the center of Ratanakiri's provincial capital Banlung reported:

“My mother does not speak Khmer. We speak our indigenous language at home.

She feels so shy and never goes to the market. If she needs something from the market, I will get it for her”.

Most indigenous respondents found it important that their children learn their ancestors’ language. As one Bunong mother in a Bunong-majority commune explained:

“I speak chun-cheat with my two children. Other families in the community would feel that we look down on our culture if we did not teach our children our language. Besides, I want them to know our language and culture. My sister in Sen Monorum teaches her children in Khmer, they only know Khmer, and when they visit here, the children cannot speak with their own relatives. It is good for our children to know Bunong language and to learn Khmer language at school. It is necessary that chun-cheat don’t forget their original language, the language of their fathers and grandfathers, we cannot let them forget. I want my children to know more languages but to learn chun-cheat at home”.

The increasing influx of Khmer migrants contributes to changing local language use pattern. Whereas in-migrants in the past had often little choice but to learn local languages in order to avoid social isolation, there are by now sizable Khmer communities in all provinces and in most districts. Because markets and public institutions operate in Khmer, learning a local language has become much less of a necessity than it was in the past. One very old ethnic Khmer respondent in northern Ratanakiri had been sent there as a teacher during the 1950s. He had learned several indigenous languages since and reflected on the considerable efforts his linguistic integration into highland society required at the time:

“I came here as teacher in 1958, sent by the department of education, to Lumphat. I did not know what it would be like, how hard it would be to teach, to learn from the people, how they speak, how they eat, their traditional practices. In order for teachers to be effective, they had to learn from students, it was good also because it strengthened solidarity and trust among the people”.

6.6. Centralizing Transfer of Authority from Minority to State Institutions

One aspect of highland peoples’ involuntary incorporation was and is the centralizing transfer of power and authority from indigenous minority institutions at the village level to state institutions at higher levels of government. In many highland communities visited, elderly respondents still remembered a time when indigenous institutions governed virtually all aspects of village life with nearly unchallenged authority. There is great variation across regions and groups in terms of how far this transfer has advanced and in how legitimate, effective, and participatory state institutions are perceived to be today compared to traditional institutions. In the perception of many respondents in some of the remoter areas of Ratanakiri and Mondulkiri, the authority of traditional institutions today is not second to that of local state institutions, at least as far as internal community affairs are concerned. In communities where Khmerization has progressed furthest, in contrast, traditional institutions play only ceremonial roles, if at all. Describing the time before the

Khmer Rouge, one ethnic Por man in Pursat said:

“During previous times, elders were responsible for managing village affairs, and there were no Khmer people in the community. Khmer had authority only at the district level but they did not try to govern Por”.

Similarly, an indigenous commune councilor in Ratanakiri reported that before the Khmer Rouge:

“Elders controlled everything in the community. They could decide anything, and the state had no authority in the village. Everyone had to follow”.

The attempt to impose state power upon highland peoples reaches back far into the colonial period, as the analysis in previous chapters shows. However, it is the Khmer Rouge period that was described by indigenous respondents as the most profound disruption of indigenous societies. Many invoked the rapid disintegration of communities as a result of an almost universal ban on the expressions of indigenous cultures, the monopolization of power, and the forced relocation and assimilation of indigenous people. In interviews with indigenous respondents, the Khmer Rouge period came up almost invariably, dividing the plots of stories into before and after. Khmer Rouge policies were prominent among the factors to which indigenous respondents attributed the current weakness and marginal status of their institutions and cultures.

Several Por respondents in Pursat, for example, felt that their communities suffered more than other ethnic groups from Khmer Rouge killings. Many said that Por communities were specifically targeted, and highlighted the over-proportional impacts of killings and cultural destruction on an ethnic group that only has a few hundred families, and the decisive impact on their capacity to maintain themselves as a distinct society. As one elderly Por man in Pursat recounted:

“Before the Khmer Rouge, Por lived together in an integrated community. During the war we fled, we moved and separated into small groups. Traditional authority was forbidden. Por endured more killing than Khmer during Pol Pot. In 1978, many Por were killed, they killed entire families, who they accused of being ‘Siam Chong’. They were accused because they spoke a different language that the Khmer Rouge did not understand. Seven or eight villages were killed completely. They banned the use of Por language, which was difficult for the old. If the Khmer Rouge heard people talking Por language they would accuse them, and relatives would be killed, too. Por are a small group, many were killed, it affects us a lot”.

Another elderly Por man in Pursat explained:

“Before, indigenous peoples were in control of themselves. But in 1978 the community of Por was separated and forced to become Khmer, not to be a minority anymore. Traditional authority was abolished and lost. Traditional beliefs and the role of traditional authorities were lost, not due to the traditional authority itself.

Since 1979, Khmer dominate the state and indigenous people are only local villagers”.

Similar stories about the destruction of indigenous cultures were told by respondents in other provinces, though it appears that the specific targeting of indigenous people was less common in the northeast. But even there, the Khmer Rouge period is remembered by many as marking the disintegration of indigenous cultures and institutions. One Ratanakiri elder who was formerly a member of the commune council explained:

“Previously, the Megantrien [traditional authority] managed most village affairs. Now, elders and the local authority go together and have similar influence. Elders are more influential but local state authority has more power. Elders lost authority since Pol Pot, because the Khmer Rouge forbade our practices”.

Despite attempts of indigenous communities to re-establish their distinct societies, virtually nowhere appear indigenous institutions to have resumed their pre-Khmer Rouge significance. To the contrary, several studies confirm that the imposition of a new, foreign system of local governance is one of the driving forces behind the ongoing marginalization of customary indigenous institutions (Backstrom et al., 2007: 25-36; Bourdier, 2008: 5; Chhim et al., 2005: 8, 10, 25, 31; Ironside, 2009: 118; McAndrew, 2003: 4-5; Thann et al., 2009: 206). An indigenous activist in Pursat was among the few respondents who linked the decline of indigenous institutions not only to past but to current state policies, as well as to political demands:

“Up to the 1960s there was a traditional authority, and it had the power necessary for traditional practice and leadership. Now the traditional authorities have lost power, are less and less important, and are good only for ceremonies. This is because the government does not recognize traditional authorities. We want traditional authority recognized by the state. I suggest giving traditional authorities a bigger role, not separate from but within Cambodian law”.

While many respondents were in favor of indigenous institutions playing a greater role in local governance, most felt that this could only be achieved with the willingness and support of higher levels of the state.

6.7. Changing Attitudes and Inter-Ethnic Relations

Many indigenous respondents felt that treatment of members of their groups had improved over recent years. However, the implicit bottom line of such comparisons was often the Khmer Rouge period. Improvements were attributed by many to a combination of government policy and foreign-based organization promoting human rights. One long-time Khmer resident in Ratanakiri recounted that during the 1960s:

“The value of indigenous people was low. They were considered ‘Phnong’, like slaves who work to fetch water for other people”.

One woman in Mondulkiri felt that

“Khmer people know and understand that indigenous people have a different way of life. Some people still insult and look down on us but they are fewer than before”.

An elderly man in Pursat explained:

“No authority discriminates against us today because of our distinct language. Sometimes people are teasing us. People started knowing about human rights and don’t insult us anymore, they know human rights”.

In contrast, another man in Pursat felt that Por people continued to be discriminated and stigmatized based on their recognizable accent:

“It is hard for some Por because they don’t speak Khmer in correct accent. There is discrimination if they speak Por and they feel ashamed”.

Many respondents said that state officials discriminated against highland people. This was often attributed to their perceived ignorance and powerlessness. For example, one Khmer woman in Ratanakiri observed that:

“When the police stops motorbikes without number plates or tax stickers, if the owner is Khmer he can negotiate but indigenous people are charged more as they dare not negotiate and are ignorant about the law”.

One elderly man in Pursat described changing attitudes of mainstream society towards indigenous people there:

“Previously, such as during the 1960s, we felt shy and were insulted by other people when we went to the market. We were insulted as uneducated, as lower level, under the control of Khmer, and discriminated against because we did not speak Khmer or spoke Khmer in a different accent. Recently the government tried to improve the rights of ethnic minorities, to speak freely their languages, now people dare not insult us”.

However, Khmer government officials tended to describe indigenous customs as violating human rights and to use such claims as arguments against the maintenance of traditional practices and institutions. This trend is reminiscent of the A2J project’s portrayal of certain customary rules as conflicting with human rights norms. The descriptions of indigenous practices given by Khmer officials were often dismissed by indigenous respondents, either as misrepresentations or as practices that had long been given up. For example, the Khmer chief of a Ratanakiri commune with a large indigenous majority in the constituency claimed:

“There is a contrast between traditional practices and state law. According to customary practice, only females are punished, it is not equal and in contrast to the Constitution. If the man only drinks but does not help in the chamgkar and household but hits his wife and she seeks divorce, she will be punished, because customary law requires women seeking divorce to compensate their husbands, in contrast to the Constitution. Customary practices put more pressure on women”.

However, this account was dismissed as inaccurate by indigenous women in the constituency, who pointed out that possessions would generally be shared according to contributions made to the household, which is in fact confirmed by the A2J's 'documentation' of customary rules (e.g. UNDP, 2010b: 33). No female indigenous respondent answered affirmatively when asked whether customary law was bad for women.

In another instance, one Khmer district official in Mondulkiri claimed:

“If an indigenous woman aborts her baby and does not conduct a ceremony and subsequently people have accidents or die, they will blame the woman, she may be killed or fined one elephant for each victim. Everyone who experienced harm since the abortion would be entitled to compensation from the woman’s family”.

This account, too, was dismissed by indigenous respondents as misrepresentation of their practices. They said that there would indeed be community expectations that the woman's family conduct a ceremony and make a modest sacrifice of livestock to the spirits. The same official claimed that, a few years ago, an entire family was killed by villagers who accused members of the family of sorcery, and that local authorities were unwilling to intervene, because officials were indigenous persons and under intense pressure from the community to comply with traditional practices. However, no other respondent was able to corroborate this account. Several Khmer officials in Mondulkiri and Ratanakiri claimed that it was common among highland groups to bury a newborn baby alongside her mother if she died during delivery and that indigenous village chiefs and commune councilors did not consider this practice illegal. A few indigenous respondents confirmed that this might have happened in such cases in the distant past but only where the community would have been unable to ensure the survival of the child.

6.8. Increasing Poverty and Threats to Traditional Livelihoods

Field research confirmed what all available data suggests: that highland people form one of the poorest segments of Cambodia's population by virtually all measures. Interviews and group discussions highlighted a strong correlation between indigenous identities and poverty. When participants were asked to rank ethnic communities in the commune according to their poverty, indigenous communities were consistently ranked the poorest, regardless of region, cultural composition of the commune, or the ethnic identity of respondents. Many respondents pointed out that indigenous families are well over-represented among those who do not have sufficient food for the whole year. Numerous indigenous respondents complained that previously, too, they were poor and did not have enough rice for the whole year, but they were able to complement their diets and livelihoods with food and other non-timber products found in the forest. Due to the increasing scarcity of land and diminishing access to forests, such supplements are increasingly unavailable. One man in Ou Saoum explained:

“Before we were also poor but in different ways. Before there was not enough food but it was easy to find wild potatoes in the forest. Now we are poor and it is

difficult, we have to go far to find wild food, we have to buy it but we don't have money".

Many respondents attributed indigenous poverty to communities' loss of land and natural resources, as did one Tampuan councilor in Ratanakiri, who added that "*indigenous people have small farms, barely enough to survive, not big farms or investments like Khmers have*". Increasing land scarcity and decreasing access to forests is putting traditional indigenous livelihoods under growing pressure. In contrast, livelihoods of Khmer newcomers are often based on business and larger scale agriculture and considerably more prosperous. Comparing livelihoods and living conditions of different ethnic group in Veunsai district, one Khmer district facilitator in Ratanakiri said:

"Most Lao farm rice. Chinese mostly run businesses. Kreung and Kavet have chamgkars [forest gardens]. Only about four per cent of them have rice fields. Indigenous people have low living conditions. They don't know how to improve the productivity of their old farming methods".

Cultivation of cash crops such as cashew nuts and cassava has become increasingly popular among members of many highland communities. Nevertheless, indigenous families tend to participate much less and much less profitably in markets. As one Ratanakiri councilor observed:

"Indigenous people have poor livelihoods because they have little understanding of doing business and few contacts with outsiders. Even if they wanted to do business, such as selling cloths, they lack connections to suppliers from elsewhere".

One man in another Ratanakiri community reported that:

"Khmer are better off, because they have capital and a better understanding of business. Jarai and Katchok are poor and have low education. All they have is land but it is bad for them because they lose the land gradually".

Several Khmer officials at the provincial level and below claimed that indigenous livelihoods had improved over the last years. However, they tended to highlight the increase of big houses and cars, which are examples of greater inequality rather than reduced poverty.

Indigenous people tend to benefit much less from overall economic development, which often takes place at their expenses. This is particularly true of large-scale projects associated with land concessions for agro-industrial development, which are well over-proportionally located in areas inhabited by indigenous people. The same is true of concessions for mineral exploitation (CCC ADI, 2010) and of several hydropower projects under construction or under consideration. Many communities have lost land through concessions granted by the government to private companies for large-scale development projects. Many other communities lived in fear of losing their lands and livelihoods this way. In virtually all cases, concessions were granted without any meaningful consultation or even information of the affected villagers. Indigenous respondents often expressed their

willingness to contribute to ‘national’ development projects but complained about not being consulted and also about their land and natural resources being sacrificed for a ‘greater’ good that does not benefit them and from which only a small number of powerful outsiders appears to profit. One Khmer NGO-worker in Kratie compared the prospects of indigenous people working as laborers with the prospect of maintaining livelihoods based on natural resources in these words:

“Most indigenous people have only low education and could make only very little from working for companies. There is no need for them to get such jobs, and the government does a great mistake to give concessions to companies. It would be better if indigenous peoples could sustain their land and forest. In one village, students only need to spend their break time to collect enough resin from the nearby forest to support their education themselves. If the problem is with a school or a road, it could be fixed, but when they lose land and forest, there is nothing left they can do”.

Many Khmer respondents expressed the view that indigenous culture itself makes highland people poor. On this view, indigenous people need to lose their culture in order to develop and escape poverty. This view was often linked to animist animal sacrifices practiced among many highland communities. As one Khmer resident in Mondulkiri explained:

“It is because of their frequent sacrifices of livestock that Bunong have not enough food and face food shortages. Their beliefs are negative and make them poorer. They may harvest a barn full of rice but they sacrifice a cow that is more valuable than the harvested rice. They drink together and spent much of their time this way. They don’t consider their food security but only day-to-day subsistence. If they have enough for today they don’t think about the future”.

Similar views were expressed by many Khmer respondents. Interestingly, these views mirror how Khmers were viewed by their colonial masters, such as Vietnamese emperor Minh Mang, who wrote in 1834 that Cambodia was a “barbarian” country because the people “grow enough rice for two meals a day, but they don’t store any surplus ... all these shortcomings stem from the laziness of the Cambodians” (quoted in: Chandler, 2008: 121). The view that indigenous impoverishment results from animist sacrifices is often based on wildly exaggerated accounts of the number of animals sacrificed. As one Khmer woman in Ratanakiri explained:

“It is the habit of indigenous peoples to conduct long ceremonies and kill all the cows and buffaloes when their parents die. This practice destroys a lot of property and makes those who are alive poor”.

To which an indigenous woman responded:

“We only kill cows or buffaloes owned by the dead person but not those that are shared to their children. If we don’t sacrifice, the dead person will come to demand it”.

Often, villages sacrifice animals in order to appease spirits following destructive actions of outsiders, because they fear being held accountable for the ‘failure’ to protect the integrity of their lands and forest (G. Brown et al., 2006: 8). The narrative that indigenous peoples are poor due to their own culture is politically convenient, because it exonerates state and majority society from their involvements in the impoverishment of indigenous peoples. The view that reduction of indigenous poverty requires integration into Khmer culture conveniently justifies Khmer nation-building and the historical and contemporary destruction of highland cultures. This narrative justifies the imposition of Khmer language and institutions on indigenous peoples and the expropriation of their lands and livelihoods for the benefit of outsiders who supposedly make more productive use of it.

6.9. Commune Boundaries and Territorial Concentration of Indigenous Communities

Decentralization reform is an opportunity for the empowerment and institutionalization of indigenous peoples above the village level. For such benefits to materialize, commune boundaries need to match territorial concentrations of indigenous peoples. Moreover, highland communities and their village-based institutions must be able to hold commune councils accountable. A multinational conception of decentralization, rather than just a general devolution of powers, is needed to accomplish a meaningful interpretation of highland peoples’ rights in international law. Whether or not decentralization contributes to empowering indigenous peoples depends, among other things, on whether their members make up majorities within the administrative boundaries of empowered territorial units. This is, however, generally not the case. To understand the challenges involved, it is important to understand how commune boundaries relate to the traditional and actual territorial concentrations of indigenous peoples and the historical and contemporary relationships between indigenous institutions and formal state institutions.

Data on the cultural composition of commune constituencies is not available. Therefore, an assessment of how well current council jurisdictions overlap with actual or historical concentrations of particular ethnic groups is not possible. Field research suggests a wide variety of constellations. Overall, there are relatively few communes in which one indigenous group forms a strong majority. Most of these communes are located in the northeastern provinces of Ratanakiri and Mondulakiri, where there are the numerically largest indigenous groups, where the greatest numbers of Cambodia’s indigenous people reside, and where the level of these groups’ territorial concentration tends to be greater than in other provinces. In many communes in the northeast, members of different indigenous groups together form commune-level majorities. Outside the northeast, most indigenous citizens are constituents of culturally diverse communes in which their respective group forms a minority, even though in most cases they have historically formed territorially concentrated, self-governing communities in the respective areas. This change is in large part due to in-migration of lowlanders as well as the geographical dispersion of indigenous communities during decades of conflict. As a result, the cultural compositions of commune constituencies are in most cases not conducive to the empowerment of indigenous groups.

In terms of territorial organization, the preconditions for the empowerment of indigenous groups through the transfer of powers to commune councils are often not in place.

6.10. Minority and State Institutions: Marginalization and Hybridization

Legally, village chiefs are selected by the commune council, and deputy village chiefs are selected by village chiefs. Selection procedures vary in practice but the degree of community participation in the process is generally low. In many communities, village chiefs are imposed by commune chiefs without any participation of the constituency or other councilors. Village chiefs selected in this way are often disliked and mistrusted by villagers. Typically, village chiefs are associated with the political party that dominates the commune council, which in almost all cases is the ruling Cambodian People's Party.

The relationship and division of labor between village chiefs and indigenous elders varies greatly among indigenous communities in different communes and provinces. Outside the northeast, minority institutions were often found to play only marginal roles in local governance. Among many communities in the northeast, on the other hand, elders enjoy more authority and often more legitimacy than village chiefs or commune councilors. In some of the latter communities, respondents described the role of village chiefs as assisting elders and reporting to them or serving as witnesses for decisions taken by traditional institutions. In most communities, respondents explained that village chiefs, along with commune councils, are involved with higher levels of the state and outside organizations, while traditional authorities are in charge of internal community affairs. Where the village population is made up of indigenous as well as Khmer residents, village chiefs tend to be ethnic Khmer, not least because they are expected to interact with higher authorities and outside organizations and therefore, need to speak and understand Khmer language. Thus, it is not uncommon for Khmers to serve as village chiefs in predominantly indigenous villages. Virtually all village chiefs speak and understand at least basic Khmer language. In some instances, village chiefs who were perceived to be relatively responsive to indigenous communities had been replaced through higher levels of the state and ruling party.

Even though traditional institutions have been weakened during past decades and are not given any formal role in the new framework of decentralized local governance, these institutions continue to play significant roles in local affairs in many places, particularly in the northeast of Cambodia. In many instances, customary institutions are still functional and often surprisingly effective, commanding greater levels of participation and legitimacy than newly empowered commune councils. A remarkable proportion of local affairs are handled by village-based traditional institutions according to customary practices without involvement of formal state institutions. Importantly, minority institutions are effective almost exclusively where internal community affairs are concerned. Where high-powered outsiders are involved, local state institutions almost always support their interests and minority institutions are bypassed. Many respondents highlighted that local state

authorities have more power than customary institutions, mainly because the former are backed by higher levels of the state, as did one indigenous councilor in Mondulkiri:

“The commune council looks for balance between traditional practice and formal law and uses both for mediation. But the law is bigger, it has more power”.

The degree of formal institutionalization among indigenous communities is low. There are a few elders in each village, chosen by villagers based on their wisdom and knowledge of tradition. Customary practices and the roles played by traditional institutions differ from group to group and even between different villages whose residents belong to the same ethnic group. Villagers become elders typically by virtue of their standing in the community, by being considered wise and trustworthy, those ‘who know right and wrong’, though in some cases the role is inherited. If people lose trust in elders, others will take over their roles. As one ethnic Kavet man in Ratanakiri explained:

“Elders are selected because they know the tradition and custom from the old generations. Traditional authorities are not elected. Elders are chosen because they have great wisdom and are respected, without any thumbprints or stamps to certify their authority”.

The relationship between minority institutions and state institutions of local governance is not usually strong, but often cooperative. Particularly in the northeast, there is a considerable degree of hybridization of local governance, in which formal and informal institutions, rules, and norms are combined. This is suggested, for example, by the following account of one female councilor in a remote Ratanakiri commune:

“The Megantrien has more rights at the local level and is the first to get involved when conflicts arise or decisions are made. The commune council uses the traditional way to determine a fine to compensate the victim in case of domestic violence. Elders and the commune council solve cases together and rely mostly on custom rather than state law. After that, formal authorities will issue a letter based on state law recognizing the customary solution. This way, the force of the law is added to the authority of customary solution, to make sure the offense is not repeated. Customary law is not strong enough anymore to ensure this, and the letter is formal recognition that the state law is behind it. If cases were taken directly to the commune council, it would be like looking down on elders and villagers. For example, if the commune council makes a plan to build a road, it will not happen unless it is agreed upon by elders first”.

One village chief in a remote indigenous community in Ratanakiri described the process in terms similar to many other respondents in the northeast:

“Elders will solve anything in the village, big and small cases are solved by them. If they cannot be solved here, cases go to the commune council and further up if necessary. At the village level, elders are more important, and the village chief

serves as a witness. Elders use traditional practice but they also consider the state law”.

One Khmer district official in a Monduliri district numerically dominated by ethnic Bunong disapprovingly claimed that even district-level decision-making was dominated by customary law, at least in his perception:

“Higher level officials are chun-cheat themselves and control the area, such as the district governor and his deputy. If they would try to enforce the state law against customary practice, villagers would curse them and complain that they forgot their traditional practices”.

Even in Kratie Province, where indigenous communities are generally more assimilated than in Ratanakiri or Monduliri, one ethnic Khmer NGO-worker remarked:

“Indigenous communities in remoter areas still have their traditional authorities, and if anyone does not respect and follow them, he will be chased away from the village”.

This and other statements might appear to support the Land Law’s notion of indigenous communities being characterized by the subordination of their members. However, while there were many instances of community members acting against community interests and the expressed wishes of traditional authorities, evidence of individuals having been excluded from communities or sincerely punished as a result was not found. Indigenous villagers generally expect customary institutions to respect individual human rights, and no recent cases of violations by traditional authorities were found.

Particularly in the northeast, customary law forms the normative framework in which indigenous residents expect their local authorities to operate. Many respondents, including a considerable number of local officials, felt that small conflicts should be solved by traditional authorities, and that local state authorities need to balance state law with customary practices. Often, indigenous respondents invoked an ideal of local governance in which minority institutions and customary law play essential roles. As was pointed out earlier, this preference is not acknowledged in the decentralization framework. A few officials at district and provincial levels expressed some degree of willingness to accommodate, encourage, and even strengthen the use of indigenous institutions, but the majority of officials were in favor of discouraging their use and insisting on the exclusive use of state law and formal institutions. Most Khmer officials assumed that indigenous communities would become indistinguishable from Khmer communities, at least for matters of local governance, within a generation or two. Many felt that this transformation should be encouraged and facilitated by the state. In contrast, many indigenous respondents expected their ethnic identities to endure and their traditional authorities to continue playing major roles in future local governance.

A view common among Khmer officials at district and provincial levels is that customary

practices are to be ‘tolerated’ only to the extent that they operate within the confines of the ‘law’. This view, which also appears to have characterized the UNDP’s A2J Project in its later stages, was expressed by one Khmer district official in Mondulkiri, who stated:

“Traditional authorities correspond to indigenous people’s beliefs, and villagers prefer customary law. In my activity, if traditional authorities and customary law are in line with the state laws, I will not forbid it. But if any habit or belief is against the state law we don’t allow it, we force them to stop, the state can use violence”.

However, most officials have themselves rather limited knowledge of the law and tend to invoke it to add greater weight to their demands and interests when they conflict with the expectations of indigenous communities. In most cases of larger conflicts, the problem is less that customary practice operates outside the parameters of the law but that state institutions and officials do. Many respondents pointed out that traditional institutions do not anymore handle larger criminal cases, such as murder and rape, which are dealt with by state institutions. Field research confirms that customary institutions as well as state institutions routinely fail to solve large-scale conflicts over land and natural resources that occur between locals and powerful outsiders. Commune councils tend to fail because they respond to higher levels of the state and the ruling party and therefore, side with the powerful conflict party regardless of the circumstances. Traditional institutions fail to address these conflicts because powerful outsiders do not submit to their authority.

6.11. Decline of Meaningful Local Representation

In practice, the legal requirement for commune councilors to be literate in Khmer language is not strictly enforced, and there is significant indigenous representation on commune councils despite of it. However, this representation does not result from policies to ensure adequate indigenous voice. Rather, it is because few Khmers want to live among the remoter indigenous communities whose language and culture they do not understand. The ongoing Khmerization of local government, however, slowly changes this situation. As one Bunong councilor in Mondulkiri explained:

“Khmer prefer urban areas but Bunong prefer remote areas. Before, there were different communities, and Bunong used the traditional authority to solve problems. It is hard for Khmer to live in remote areas. Now there is the local state authority, and it is becoming easier for Khmer”.

The Khmer-literacy requirement corresponds to the views of most Khmer officials, who consider any linguistic diversity in local governance a temporary and transitional deviation from a norm that is the universal and exclusive use of Khmer language. In practice, candidates for commune councilor do have to be able to speak and understand Khmer language, and there are virtually no councilors who are not. This situation limits the choice of indigenous communities for local leaders to the few community members who are capable of functioning in the language and institutions of Khmer culture. It tends to favor

candidates who have succeeded in Khmer society and its patronage networks, who tend to be less inclined to promote traditional institutions and customary law, and who may be less responsive to the needs of the constituency than candidates who would otherwise be chosen. The implementation of decentralization reform facilitates the replacement of elders who are capable of leading participatory and legitimately with Khmer-literates who are capable of building and implementing mainstream development and governance schemes in Khmer language.

Overall, there is a strong tendency for indigenous people to be underrepresented on commune councils. This representation gap tends to be bigger the smaller the proportion of highlanders in the constituency is. Where the constituency consists almost entirely of indigenous people, the council is likely to be entirely composed of indigenous people, too. In contrast, where members of indigenous groups form a minority in the commune, they are frequently not represented on the council at all. Existing trends indicate that this representation gap is growing. The proportion of Khmer councilors tends to grow faster than the proportion of ethnic Khmer in the constituencies. This trend is particularly pronounced in communes that include urban centers or that are located along major roads, areas for which most in-migration from the lowlands is destined. For example, in one commune close to the provincial capital of Ratanakiri, the majority of residents belonged to one of several indigenous groups while all members of the commune council were ethnic Khmer. In Sen Monorum district, in which the provincial capital of Monduliri province is located, only one of four commune chiefs was an indigenous person, and the majority of councilors were Khmer.

Representation gaps are much more pronounced at the district, provincial, and central levels of the state. Only in Ratanakiri and Monduliri are there substantial numbers of indigenous officials at the district and provincial levels, but their proportion is much smaller than the share of indigenous peoples among the respective populations. This is partly due to indigenous persons not meeting formal education requirements. Moreover, the higher the levels of the state, the more commonly are positions filled through top-down, neo-patrimonial appointments (AIPP, 2006: 12; CAS & World Bank, 2006: 80; A. E. Thomas, 2003: 3). Because Khmer are over-represented at the top, appointees tend to be ethnic Khmers, too. A small number of indigenous persons are members of the National Assembly, not because of efforts to ensure indigenous representation, but due to the role these officials played in the historical events that led to the formation of the current state and ruling party during the Vietnamese occupation. Since the end of the occupation, the state ceased to promote indigenous persons to higher-ranking positions, which has reduced indigenous access to government decision-making (Baird, 2008: 215; A. E. Thomas, 2003: 3). Accordingly, these members are not only elderly but they also do not have a specific mandate to represent indigenous peoples' interests and therefore, are not particularly responsive to their needs, even though members of indigenous communities are generally aware and sometimes take pride in a few of their own being in high positions.

Those indigenous persons who work as government officials were widely seen, by indigenous as well as Khmer respondents, as docile agents of the state and the ruling party, rather than representatives of their respective ethnic group. One Khmer NGO-worker in Mondulkiri remarked:

“Indigenous people don’t want power. They follow the state and work for the government. If the higher level has a plan they follow but they don’t seek empowerment”.

Similarly, one Bunong district official in Mondulkiri said:

“We are represented at the village, commune, and district level but not at the national level. Indigenous officials just work on behalf of the government. They follow and do the assigned work. They don’t work on behalf of indigenous peoples”.

One Kavet councilor in Ratanakiri put it like this:

“There are a few indigenous people working in provincial departments, but they pretend to be Khmer and don’t consider indigenous peoples’ benefit”.

One Tampuan commune clerk in Ratanakiri explained:

“There are indigenous representatives at the local level and also a few at higher levels, but they only have the appearance of indigenous people. They don’t have a voice. No matter what other people say, they always say yes. Indigenous people lack experts to work at the higher level”.

Many indigenous respondents were strongly in favor of enhancing indigenous representation in state offices, to have a voice in the design of national policies that affect them, to improve the situation of indigenous communities, and to create awareness of indigenous cultures in the larger society. As one Kavet councilor in Ratanakiri pointed out:

“I want more indigenous representatives at the district and provincial levels and also at the court. No matter which indigenous group they are from, they would consider indigenous communities more strongly whereas if there are no indigenous people there, we are not considered, and services are not provided equally”.

Most of the time, the desire for better representation was expressed not as a political demand but as an appeal to the generosity of top leaders, as special pleading to permit and provide for indigenous representation.

A majority of indigenous respondents expressed a preference for commune councilors to be of their own ethnicity and felt that the council should reflect the cultural composition of the constituency. Indigenous councilors were often perceived to be more understanding of, and responsive to, the distinct needs and ways of indigenous communities than Khmer councilors. As one indigenous councilor in Ratanakiri pointed out:

“Even if the commune council does not discriminate, indigenous people may feel shy or discouraged to raise problems to Khmer councilors, because they are not sure if the Khmer councilor minds them or not. If councilors belong to the same

ethnic groups, villagers dare more approaching them”.

Similarly, one ethnic Bunong woman in Mondulkiri explained:

“With Khmer councilors it is harder because Bunong find it hard to ask Khmers for help. I would find it hard to ask Khmer councilors for help. Villagers don’t prefer Khmer to be councilor”.

Indigenous councilors tend to be perceived as more responsive to the needs of indigenous constituencies than Khmer councilors but not necessarily much. Some respondents felt that indigenous councilors are constrained by their membership in local communities, by traditional beliefs and fears, as well as their relative lack of connections to business people, higher levels of the state and the ruling party.

While principled reasons against having ethnic Khmer as councilors were not often expressed, many indigenous respondents highlighted challenges related to language, particularly in communities where few residents speak Khmer. One man in Mondulkiri spoke for many when stating:

“I don’t mind Khmer councilors but it is better to maintain a Bunong majority on the council, because this is the original land of the chun-cheat.”

One of the stronger opinions on representation was expressed by one man in Pursat who stated:

“Under-representation of Por on the commune council and at higher levels contributes to the decline of Por culture and also the fact that Por live together with Khmer. Por should be recognized and properly represented in local administration”.

Opposition to having Khmer councilors appeared to be strongest in some of the remoter communes in Ratanakiri and, somewhat surprisingly, in Pursat Province’s Ou Saoum commune, where support for maintaining Chong control over the commune council was almost universal. As one man said:

“We prefer local authority to be Chong, not newcomers. Ninety per cent of the people here are indigenous and don’t like newcomers to be local officials”.

And another one

“If the commune council is Chong, it is easy. If it is mixed with lowlanders, it is harder because they are different. Chong councilors know our tradition and way of life, and they are good for unity”.

Commune councils with indigenous majorities are often perceived to be more responsive and accountable to indigenous constituencies and more willing to accommodate their specific needs. They also tend to practice a greater level of cooperation with traditional authorities and pragmatically incorporate customary law. All this is rare in communes with few or no indigenous council members. However, a significant number of respondents were of the opinion that it is not the ethnicity of councilors that matters but their

responsiveness to the constituency's interest and capacity to advocate on their behalf. Some respondents were in favor of having at least some Khmer councilors, in most cases highlighting the value of sharing ideas and experiences with Khmer who are perceived to have more capacity for management and interaction with higher levels of the state and with development organizations.

One intriguing aspect of Khmer nation-building and decentralization is the architectural style of the countless new commune offices that have been built across the Kingdom in recent years, including, at great cost, in highland areas. The design of these buildings is not only distinctly Khmer but uniform and standardized. In the midst of highland communities, these commune offices contrasts sharply with the traditional architecture of highland communities and appear like monuments of Khmerness, like concrete Khmer claims to the land and the people. These buildings fittingly symbolize the Khmer nation-building nature of decentralization reform, which helps consolidate a state that operates at all levels and in all places in Khmer language only, and that is tailored towards the institutions of the majority society.

6.12. Linguistic Exclusion from Local Governance

Local governance institutions operating in Khmer language exclude a large proportion of indigenous people from meaningful participation. This is particularly the case among highland communities in the northeast, where many community members do not speak or understand Khmer language. Field research suggests that in Ratanakiri and Mondulkiri, indigenous languages are often used for meetings of community members at the village level and occasionally for commune-level meetings as well. In contrast, Khmer language is used in most commune-level meetings as well as in meetings at district and provincial levels. Councils whose members all belong to indigenous groups generally use local language for their deliberation and for public meetings. However, if only one councilor or the commune clerk – an official assigned to commune councils and appointed by the Ministry of Interior – does not speak the local language, the entire council switches to Khmer language use, for the benefit of officials who are meant to assist the council and to serve constituents. In many places, the ability of only one Khmer speaker to participate appears to out-weight any number of indigenous constituents. One district official in Mondulkiri explained patterns of language use in local meetings:

“If only Bunong attend a meeting it will be conducted in Bunong language. If there is one Khmer, the meeting will be in Khmer language”.

This is significant, not least because the number of councils with at least one Khmer member is increasing. The use of Khmer language prevents many community members from meaningfully participating. As one commune chief in a commune with a strong Bunong majority reported: *“Khmer language is used more in meetings”*, even though *“it is hard to understand in Khmer for villagers”*. One Tampuan man in Ratanakiri pointed out that *“indigenous people don't know much Khmer and therefore feel shy to express their opinions”*. The exclusive use of Khmer language in local governance clearly disadvantages

indigenous people and privileges Khmer in terms of participation opportunities. Khmer language is also almost exclusively used for information dissemination from commune councils. As one woman in a Mondulkiri commune reported:

“Ten years ago, the commune council would conduct meetings in Bunong language, but recently they prefer Khmer in all meetings. NGOs, too, when they come to disseminate information, such as on Malaria, they do it in Khmer. Villagers find it hard to understand. They lose interest quickly and don’t listen”.

Pointing out the benefits of using Bunong language, she explained:

“Even the commune chief is Bunong, and there is only one Khmer councilor. Bunong language can help the council’s work and information dissemination a lot. Because most residents don’t understand Khmer, the council should use Bunong language more to explain. In Bunong language, it is easy to understand difficult concepts. I prefer both languages to be used for meetings and information dissemination, because Bunong is easier to understand for most. Even the village chief and commune councilors find it hard to understand many Khmer words. They just understand roughly, it is a bumpy discussion”.

An ethnic Tampuan commune clerk, one of very few indigenous persons to occupy this position, explained the difficulties the wider use of indigenous languages in commune affairs would create:

“If indigenous languages are used, it is difficult to write reports. It would be difficult to send reports up to higher levels, because they cannot read them. Even NGOs cannot read reports in indigenous languages”.

It is obvious that meaningful democratic deliberation under the given circumstances of linguistic diversity requires more extensive translation than is currently provided. Presently, indigenous people are routinely expected to carry the burdens of this situation alone. In public meetings, ad hoc interpretation is sometimes made available from among community members. However, it is often of insufficient quality to enable full participation. Many officials at higher levels of the state greatly underestimate, and often misrepresent, the participation challenges faced by indigenous constituents because of exclusive Khmer language use. As one high-ranking provincial official in charge of decentralization in Ratanakiri claimed:

“Language is not a problem for decentralization reform, as opposed to the 1980s, when indigenous people spoke less Khmer. Now, most indigenous people speak Khmer and even write it”.

The proportion of indigenous villagers who speak and understand some Khmer has indeed increased significantly during the past few years. However, in the northeast, basic understanding of Khmer language remains limited to a minority of indigenous villagers (Hiett, 2003; MoEYS, 2000). Nevertheless, policy in Cambodia is made for a population assumed to be homogeneously Khmer, at least in terms of language.

One argument frequently invoked in support of exclusive Khmer language use is that “*many modern words are missing in Bunong language and technical situations are easier explained in Khmer*”, as one councilor in Mondulkiri pointed out. However, explaining technical situations in a foreign language will not help villagers understand them. Moreover, Khmer language, too, would have lacked many ‘modern’ words not so long ago. It is not least because all public institutions, as well as much of the development industry, operate in Khmer that Khmer language has been modernized. There is no obvious reason why only speakers of the majority language should be afforded such a linguistic subsidy. Yet another often-cited justification for the privileged role of Khmer language is that all laws, policies, and implementation manuals are available in Khmer and English only. However, making these documents available in indigenous languages would be more adequate than expecting indigenous people to learn a foreign language in order to participate in their own government.

The impression of many Khmer officials that indigenous people participate with little difficulty in Khmer language often results from the fact that the indigenous people these officials are interacting with have been selected precisely because they speak Khmer language. As one Khmer provincial official in Ratanakiri claimed:

“It looks very difficult with so many different languages, Kreung, Tampuan, Brao, and others, but it is easy for them to understand from each other. Many councilors belong to indigenous groups and can switch between both languages and translate for villagers. District level meetings are not so difficult and only Khmer language is used. There is no problem because council members speak Khmer”.

Most indigenous councilors do speak Khmer because candidates who do not speak Khmer are de jure and de facto ineligible for councilor positions. That only Khmer speakers have the opportunity to work in government offices and that this situation deprives a majority of indigenous citizens of participation, representation, and job opportunities is rarely given consideration.

As was mentioned in the previous chapter, the Highland Peoples Plan developed in the context of the World Bank’s Rural Investment and Local Governance Project and subsequently expanded to the entire decentralization reform nominally gives district facilitators the primary responsibility for implementing safeguards related to indigenous peoples. However, none of the seven facilitators interviewed in highland areas was aware that this was among their responsibilities. The plan requires that facilitation at local levels be conducted in the language most accessible to villagers. Field research suggests that Khmer is the default language for information dissemination and facilitation among indigenous villagers, even where it is clearly not the most accessible language. Moreover, most facilitators are not in a position to disseminate information or ensure awareness among indigenous peoples, simply because they do not speak indigenous languages. Facilitators are formally selected from among government officials, among which indigenous people are highly underrepresented. The proportion of indigenous government

staff has increased in northeastern provinces but remains at a very low, strongly under-proportional level. Like all public service positions, candidates for facilitator positions are required to be literate in Khmer language. Knowledge of local indigenous languages and familiarity with indigenous institutions, in contrast, are not among the selection criteria. Moreover, many respondents pointed out that indigenous people dare not even enter the government offices in which recruitment notes are supposed to be posted, and people who know about job openings tend to be government officials who seek to fill these more attractive positions with their relatives. All seven district facilitators interviewed in Mondulkiri and Ratanakiri were ethnic Khmer who did not speak any indigenous languages, and four were closely related to higher-level officials. Among the four district facilitators in Ratanakiri's Veunsai district, none belonged to one of the indigenous groups that together make up the majority of the population. Selection procedures for district-level facilitators are indifferent to whether or not facilitators have a language in common with those whose participation in local governance they are supposed to facilitate. Officials holding these positions tend to live far from the communities they are meant to serve. In indigenous areas, facilitators, as well as commune clerks, are in many instances Khmer migrants from the lowlands, often recent graduates. They tend to have substantially higher formal education and technical training than the commune councilors they are meant to assist. However, in indigenous areas, they regularly lack knowledge of local culture, institutions, languages, and customary practices. Nevertheless, facilitators tend to openly act like superiors of commune councilors. Several facilitators described their role as serving the needs of higher levels of the state or assisting high-ranking officials. Selection and reporting procedures as well as statements in interviews clearly indicate upward accountability. While highland peoples are to be protected from in-migration according to the HP Plan (World Bank, 2003: 8), all interviewed facilitators held favorable views of in-migration and tended to see their role in enabling it. One district facilitator in Mondulkiri, for example, stated in the presence of other facilitators and several Bunong commune- and village-officials:

"I always explain to the Bunong that there is no discrimination. There is one country, the Kingdom of Cambodia, with one motto, Nation – Religion – King, and no discrimination. Mondulkiri is not considered the area of the Bunong, and other ethnic groups can come, too, whereas Bunong could come to live everywhere else, too. I often tell them, there is no discrimination anymore".

On this notion of non-discrimination, Khmer would have no grounds to resist Cambodia's incorporation into Vietnam, as long as everyone would be allowed to live everywhere. This notion masks the double standard that the Khmer do consider Cambodia their area but deprive highland groups of their own homelands, which are now considered as part of the Khmer domain.

Another Khmer district facilitator, who served in a diverse area where Khmer form a small minority, acknowledged that it is easier for residents if meetings and information dissemination are conducted in their own language. However, he pointed out that local

languages are not understood at higher levels and that, therefore, Khmer language must be used at the local level. Moreover, he felt that local languages should not be used nor interpretation be made available, because “*it is the Khmer nation and people speak Khmer language*”. Clearly, this is not accurate as a descriptive statement, but it mirrors a norm of monolingual Khmer state institutions that many officials take for granted. Many feel that all Cambodian citizens should speak Khmer language, and that it is reasonable to expect indigenous people who want to participate in the institutions of the Cambodian state to learn Khmer language.

6.13. Misprioritization of Roads Facilitates Imposition, Dispossession

Decentralization reform imposes a foreign system of governance upon indigenous peoples. This new system of local governance is linguistically and institutionally incompatible with indigenous people’s full participation and contributes to undermining these groups’ own languages and societal institutions. But how well do local development projects that are prioritized, planned, and carried out within this new framework of local governance, with substantial financial and technical support from the international community, match indigenous peoples’ needs and respond to the often distinct challenges they face? Field research confirmed that many indigenous communities consider education and health related projects to be most urgently needed. The most important development priority in most communes has become the protection of land and natural resources. However, an overwhelming proportion of commune budgets in indigenous areas are spent on the construction of road infrastructure, likely an even greater proportion than elsewhere because of the remoteness and inaccessibility of many indigenous communities. Commune councils in these areas almost universally spent most or all of their regular budgets on building roads and related infrastructure. No case was found where a commune council had utilized its budget to support a teacher or a nurse, for example, while even in remote communes without any functioning schools or health posts, roads were prioritized despite their disproportionately high costs. The need for roads was not nearly as universally expressed as roads are prioritized by commune councils. More importantly, villagers who support the prioritization of road projects are often unaware of the substantial negative impacts and might prioritize other needs if given complete information.

The bias in favor of road construction is supported by a widely held view of development as a top-down process. Many Khmer officials take for granted that road access is the precondition for any development. On this view, development cannot take place in the absence of roads, because the government, NGOs, and companies cannot reach a community to ‘develop’ it. Of course, road access is important for economic and social development. But the negative impacts road construction has in the absence of protection for indigenous peoples’ land and natural resources often outweighs the benefits and is not given full, if any, consideration in the prioritization of local development projects. Almost no councilor interviewed during field research was aware that the council is free to utilize its budget for education- and health-related services. In contrast, most councilors were able

to describe in considerable details the planning and implementation process for road construction. During interviews, district and provincial level facilitators consistently expressed a strong preference for road construction and demonstrated considerable imagination in describing road construction as the most effective way to address whatever the expressed priority needs of local constituencies were. These officials are often involved in private sector initiatives and have personal interests in the approval of infrastructure projects (CAS & World Bank, 2006: 34).

The process to prioritize local development projects is meant to start from the village level. However, potential projects are often preselected by councils and district-level facilitators. The options presented to villagers are virtually always infrastructure projects. Other studies have suggested that un-reviewed projects are included in priority lists at the instigation of higher-ranking officials, too (Pak et al., 2007: 62). As one Khmer NGO-worker in Kratie noted:

“Different needs would be raised if there was no facilitation [in the prioritization process]. Villagers focus on their livelihoods such as on how to improve agricultural production, education, and health care, but authorities prefer only infrastructure. In some villages, residents raised their needs but the village chief did not take them to the commune council. Some indigenous communities expressed a need for communal land registration, but the village chief explained to them that there is no such law”.

A good number of respondents, particularly in remote communes, reported that no meetings to prioritize development projects had taken place in years and in some cases, a commune councilor or the village chief had only come to inform villagers about the result of the prioritization of ‘their’ needs. In many cases, nothing had happened since, even though villagers in many communes were asked each year to contribute money to projects. The result was that many had lost interest. As one ethnic Jarai man in a remote province in Ratanakiri reported: *“We always raise the need for a well and a health post but the commune council never responds”*. The same man stated that *“the most pressing issues are the destruction of the forest and wildlife and the loss of land. Land is the most serious issue”*.

A young Bunong man in Mondulkiri whose community had experienced negative consequences from road construction described the responsiveness of commune councils and the attitudes of local communities like this:

“The commune council never fulfills the need of our communities. They decide top down and built roads that indigenous communities don’t need. Roads have bad impacts, and outsiders come along them. The state system does not address indigenous peoples’ needs, and indigenous people don’t participate fully. They go and see and accept the plan, not from the heart, but because there are no other choices”.

Even if road construction is accurately identified as a local priority need, this does not answer the question of where a new road is supposed to be built. Many highland people rely on non-timber forest products, while many Khmer newcomers engage in business or agriculture, with the consequence that the former, trying hard to maintain access to the rapidly declining forests, live in remoter, preferably forested areas, while Khmer tend to live in urban centers and close to major roads. It appears that at least in some cases, residents of different villages had indeed prioritized a road, assuming that it would be built near their village. However, the commune council ‘integrated’ these preferences into a plan to build a road from the commune center to the next district center. Road construction regularly starts at the commune center, where recent Khmer in-migrants tend to settle concentrated. In contrast, indigenous people tend to live dispersed in remoter areas, occasionally still trying to move away from emerging Khmer settlements. Therefore, and because Khmer in urban areas are more likely to own cars and motorbikes, road construction disproportionately benefits outsiders and recent Khmer in-migrants. Interviews and observations in indigenous areas suggest that the kind of roads built by commune councils in the highlands are not required to address many of the priority needs of indigenous peoples but facilitate land appropriation and deforestation. Commune councils build roads that are wide enough to accommodate logging trucks. Thus, indigenous people tend to lose much more than they gain from the construction of roads, in the absence of effective protection for their lands and natural resources.

6.14. Local Governance Institutions Unresponsive, Often Predatory

There is among the constituencies of many communes, particularly in indigenous communities, a widespread perception that commune councilors work for their own benefit and those of higher levels of the state, the ruling party, and well-connected companies. This concerns in particular conflicts over land and natural resources. A considerable number of indigenous as well as Khmer respondents, especially in the northeast, held the view that capable individuals would not aspire to becoming councilor if it were not for the chance to exploit the position for their personal benefit. One particularly widespread practice is for village chiefs and commune councilors to persuade, sometimes coerce, constituents into selling their land well below its market price, by claiming that the land belongs to the state and will be taken without compensation if they do not sell. This practice is well-documented in the literature (e.g. Ironside, 2010: 8; McAndrew & II, 2009: 13) and was reported in almost all communes visited. One Khmer woman in Ratanakiri stated:

“In one area, rich and powerful people bought all the land from indigenous people. They were tricked into believing that it is state land and that if they don’t sell, the land will be confiscated without any compensation”.

Similarly, a young man in Mondulkiri said:

“The commune chief and village chief are pressuring villagers to sell their land. Many companies are coming now, many rich and powerful people. Bunong also like

money, and I am concerned that there may be no land left in the near future”.

Indigenous people were said to be particularly vulnerable to this practice, because they tend to be less aware of their rights and are more easily scared into selling their land at a fraction of its value. As one Bunong man in Mondulkiri said:

“Indigenous people are ignorant and easy to threaten by the powerful and rich. The powerful show documents and ask to thumbprint agreements to take land, and indigenous people don’t dare to disagree, they are easily afraid”.

Similarly, one indigenous district official in Mondulkiri explained:

“Khmer know about the value of the land but it is difficult to educate chun-cheat not to sell their land, so that the young will still have land to live on. Now many villagers sell land in order to build new houses. Land deals are encouraged and authorized by village chiefs and commune councils. Now even brothers and sisters have conflicts over land. Because there are many in-migrants who buy land, the value has increased rapidly, especially along the road, and there is a marked increase in conflicts even within families. One brother sells to one buyer and the other brother to another buyer”.

Indeed, it is a relatively recent phenomenon among most indigenous communities that land is treated as a commodity to be bought and sold (Fox et al., 2008: 55; Hammer, 2009: 160; Thann et al., 2009: 194). One elderly man in Pursat explained how the concept of land possession was changing, due in good part to increased scarcity:

“Before, there was no fencing, and conflicts over land were reconciled by traditional authorities. But when newcomers started arriving and buying up land, minority people started fencing and separating land, too”.

Land conflicts routinely pit indigenous people against rich and powerful outsiders. One human rights worker in Mondulkiri highlighted that, in most cases of rights abuse, Khmers violate the rights of members of highland groups:

“Those who violate rights tend to be rich and powerful who tend to be Khmer. The majority of cases are related to land, resulting from the increased land price. In addition, the government provides concessions to the rich, which impacts on indigenous people’s communal land”.

Large scale economic land concessions affect a great number of indigenous communities and are regularly granted without consulting those who use the land or live within their confines. Indeed, district and provincial authorities are often not consulted, too. However, they are expected to implement these decisions taken at the top level of the state, and they routinely comply. As one Khmer NGO worker in Kratie described the challenges to indigenous livelihoods stemming from a large concession:

“Economic land concessions destroy indigenous people’s ways of life and

livelihoods. Indigenous peoples used to go to the forest to collect non-timber forest products. But now they cannot do it anymore, because the company is cutting the resin trees. Villagers are never consulted in the granting of land concessions, and impacts on them are not considered”.

These concessions affect indigenous people over-proportionally, because much of Cambodia’s remaining forests and untapped natural resources are located in their homelands. Commune councils and officials at higher levels in interviews routinely expressed favorable views of commercial concessions and of companies acquiring land. Often, these officials promised that concessionaires would provide jobs, schools, wells, and roads and not negatively affect people’s livelihoods. These officials routinely toe the line of higher-level state authorities, but they are also often perceived to profit personally from their cooperation with companies. Benefits for the community materialize much more rarely than negative impacts. In many cases, officials lack the capacity and experience to assess the costs and benefits of particular projects for the community realistically. In cases of conflicts over concessions of this kind, commune councils appear to virtually always, sooner or later, assert the claims of the state against their constituencies, such as by claiming that the land belongs to the state, and that villagers have no right to protest. Commune councilors routinely obey higher levels of the state and the ruling party. As one expert advising a provincial government on decentralization pointed out:

“If commune councils receive orders from higher levels, they will follow 100 per cent without thinking or considering negative impacts”.

Clearly, much of what is referred to as decentralization reform in practice centralizes rather than decentralizes political power. This concerns in particular political powers that are essential to highland communities, such as the use of land and natural resources, which was previously controlled by indigenous institutions and is now claimed by the state. One elderly Jarai man in a remote Ratanakiri commune complained:

“They claim that the land and forest belongs to the state. But we have lived here for hundreds of years. The tree over there grew for a long time and was planted by my ancestors. How can it belong to the state?”

Among the many respondents who highlighted the unresponsiveness of local authorities was one indigenous district official in Mondulakiri’s Bousra District, who described the problem in relatively mild terms:

“Villagers want to prevent the sale of land and maintain the land, but the village chief and commune councilors have different ideas, they attract companies and the rich to come and buy the land”.

One young indigenous man from Mondulakiri put it more bluntly:

“Indigenous people don’t trust village chiefs and commune chiefs. They do a lot of bad things, sell land and create many other problems. Commune chiefs are involved in coerced land sales, claiming that the land belongs to the state ... many councilors have big cars and houses. They make relationships with powerful

people. These people take what they want, and commune chiefs listen to them”.

No case was found where a commune council had successfully struggled for the interests of constituents in land conflicts involving powerful outsiders. In a small number of communes visited, councilors asserting their constituents’ interest in land and resource conflicts were replaced by the ruling party or were told that they could keep their positions only if they did not protest. Many respondents felt that they do not have any means to sanction unresponsive commune councils, like one young Bunong man from Mondulkiri:

“The government gives power to commune councils, but there are no mechanisms to protect against abuse. The commune chief will say ‘I am the chief. It is my decision, not yours. The land and forest belongs to the state’”.

Many respondents said that they wanted their commune council to respect and enforce the law but felt that raising their concerns with the council did not help, and that only the higher level could force local authorities to not break the law. Because village chiefs and commune councils are assumed by many to be involved in practices that cause negative impacts on communities, villagers tend to abstain from complaining to them. Few were confident that their complaints would be effectively addressed, and many were concerned that complaints might invite further problems, like one man in Ratanakiri:

“Even though villagers become aware of illegal activities, they never raise such topics with the commune council because of security concerns. We don’t dare to complain. Even if councilors see loggers transporting illegally cut timber, they don’t intervene”.

An elderly indigenous man in Ratanakiri who had resigned from the commune council explained about villagers’ inclination to complain:

“Villagers never go to the commune office. Our villagers feel frightened, and no-one here knows how to complain”.

Like many other statements from respondents, these complaints highlight the unavailability of access points to state decision making and of arenas for safe minority mobilization. One elderly man in a remote Ratanakiri reported:

“We raised our complains with the village chief who took them to the commune council. But the commune council never responds or solves the problem. Instead, the commune chief said: ‘Don’t consider it; the forest and land belong to the state’”.

Indigenous villagers in particular tend to lack the confidence, language skills, and knowledge to approach officials at the district and provincial level, leaving them without an instance to complain to. Commune councils are unresponsive in part because constituents vote for political parties, rather than candidates. One young Bunong man, who was among the few who had studied at university, elaborated on the responsiveness of

newly empowered local councils to indigenous communities' interests, more eloquently and better informed than most respondents:

“It does not matter if councilors are Khmer or indigenous. Councilors decide based on pressure from the top. Communities express their concerns about bad impacts but not in public and not to the top. It is dictator-development. In some cases, the community resists but the commune council does not take it up. They follow decisions that are not based on participation but that come from the top. To improve the situation, there should be elders among council officials. Community persons should have more voice. Indigenous elders, activists, women, and youths should have a voice in state institutions, so that they respond better to indigenous peoples' needs. We cannot change the situation because of the election system, the party system. It influences who the candidates are and who they respond to. In order to win, candidates must respond to the ruling party. The election system should be changed, and indigenous leaders should stand as candidates. There should be a community committee with the power to dismiss candidates on behalf of the community. But if we propose this, the government will say: ‘You go against us’”.

No case was encountered of the state using sanctions against councilors in cases of illegal conduct. In many instances of illegal conduct, councilors were widely believed to act on orders from higher levels.

6.15. Perceptions of Conflict Resolution: ‘Many Institutions, No Justice’

Field research largely confirms the finding from the Case Study and other research that customary institutions in many highland communities continue to play major roles in mediating and solving local conflicts (Backstrom et al., 2007). This role tends to be much more significant among indigenous communities in the northeast, specifically in Ratanakiri and Mondulakiri, the two provinces from which the Case Study sample was drawn. Most indigenous respondents stated that they would seek conflict mediation and resolution from indigenous elders at the village-level first, and approach village chiefs and commune councilors only when mediation by customary institutions failed. As one commune councilor in Ratanakiri explained:

“In case of a conflict in the village, the village chief will call a meeting but he is only participant. Elders are responsible for the solution”.

Similarly, one NGO-worker in Kratie Province explained:

“Cases of conflict among indigenous people rarely reach the commune council, only those involving killings or serious injuries. Most issues are solved by traditional authorities, some bigger cases with the involvement of the village chief”.

Even when village chiefs and commune councils handle cases of conflict, they often use customary practice and involve traditional authorities. One indigenous man, who was formerly a commune chief in Pursat, described this hybridization of local governance in the following words:

“Before, the commune council was far away. Now, the village chief and the commune council are here so if elders solve conflicts, the village chief and commune councilors will lose face. Cases are sent to the council, and the council will involve elders, too”.

Many respondents felt that serious crimes happened less frequently previously when indigenous institutions were in charge, as did one former commune chief in Pursat:

“Before Pol Pot, there was little conflict, and elders could solve all issues without involving higher levels. Today, there is more fighting, and many cases are taken to the village chief or commune chief”.

Most indigenous officials and a few Khmer officials at lower levels of the state were found willing to accommodate customary conflict resolution practices, at least to some degree. As one village chief in Ratanakiri noted:

“For big cases, the district and provincial level told me to enforce the state law, but to be tolerant, because formal conflict resolution is expensive for conflicting parties. District and provincial officials suggest tolerance of customary practices, because they are indigenous people, too”.

As the invocation of ‘tolerance’ suggests, real existing legal pluralism is considered by most Khmer officials as a deviation from the ideal of an undifferentiated legal system. Many officials feel that any acceptance of legal pluralism, much like linguistic pluralism, should only be transitional and temporary. However, there were also officials who were in favor of giving customary institutions a stronger role, most of them members of highland groups, such as one indigenous commune clerk in Ratanakiri:

“For smaller issues it is not necessary to involve the commune council, the district level, or the court. When cases reach these institutions, officials will ask to be paid. Villagers should solve these issues by working together with elders and the village chief, unless it is a criminal case. We combine state law with customary practice. In cases of small conflicts, villagers prefer customary law to be used, because it is relatively quick and simple. In some other cases, customary practice is ineffective, because one of the parties does not listen. In these cases, state law is more effective, due to the involvement of higher levels and written documents. Customary law should be recognized and combined with state law. It would be good if there were clear rules about which set of rules to use for which kind of conflict and if authority was clearly assigned. It would be good because it would empower mediators at the village-level, especially elders, and problems could be solved more quickly”.

Field research confirms the finding of other studies that the handling of local conflicts by traditional authorities corresponds to the preferences of the majority of respondents in the respective areas (Backstrom et al., 2007: 42, 108; Fajardo et al., 2006: 136). This is also suggested by the fact that each party to a conflict is free to seek solution from formal state institutions instead. As one indigenous councilor in Ratanakiri explained:

“Most cases are solved by traditional authorities, depending on the seriousness of the case. Traditional authorities have existed for a long time, and indigenous people prefer them”.

Elders have no means to force the result of their mediation efforts on the parties to the conflict. In an increasing numbers of cases, one conflict party takes the case to formal authorities, in particular where one party does not belong to the indigenous community. While most indigenous respondents preferred conflicts to be handled by customary institutions, a significant minority disagreed. One argument mentioned occasionally in favor of state institutions was that in some areas, traditional authorities required too heavy sacrifices or compensation for the victim. Some other respondents considered it to be advantageous to have local state authority, police, and the law creating pressure to suppresses violence, in contrast to previous times when such constrains did not exist. However, many respondents also felt that violence was more common today than it was in the past. Some considered that criminals in the past would have been constrained by religious beliefs and the expectation of a community whose members relied on each other for their survival. Today, religious believes are weaker, and a few residents have the means to bribe state institutions. One indigenous man in an accessible Ratanakiri commune expressed his frustration with the justice provided by state institutions in these words:

“In today’s society, people cannot seek justice. Robbers and killers get out of jail. Previously, there was no jail, but there also was no robbery, because people were frightened”.

Practices and preferences regarding conflict resolution differ even among different indigenous groups in the same commune, as villagers in one Kratie commune pointed out:

“Kuy have preferred taking conflicts to the authority for a long time. Bunong don’t, they use the Meganrien [traditional authority] for conflict resolution ... For many generations, since before the French, Kuy don’t use custom, only the authority. Elders may serve as witnesses or support parties”.

Among the most frequently mentioned arguments in favor of customary conflict mediation and resolution was that formal institutions charge money, and that the outcome in many cases depends on which party is willing or able to pay more. Consequently, the outcomes of formal conflict resolution are widely perceived to be unjust. A great number of indigenous respondents, as well as members of other ethnic groups, lamented the perceived injustices in the state system of justice, such as one man in Ratanakiri:

“People who have relatives working in high ranking positions prefer having the other party arrested and put in prison. Bribes win cases and those who commit wrong pay their way out of punishment”.

Many respondents expressed considerable distrust of state institutions, including of village chiefs and commune councils, but even more of the courts and the police. There also was a sense of resignation among many respondents who had given up hope to receive justice

from the formal system. Unsurprisingly, the poor had a particularly strong preference for traditional institutions to be used for conflict resolution, due to their inability to pay bribes. A commune chief in Ratanakiri was among many respondents who praised the fairness of traditional conflict resolution:

“Previously, it was better. When cases were solved by traditional practices, rich or poor was not considered, only the case”.

One village chief in a remote Ratanakiri community complained about the conflict resolution practices of his commune chief, who was also an indigenous person:

“Villagers don’t prefer it when conflicts are solved by the commune council, because they have to pay or offer gifts to the commune chief. Those who are wrong take their case to the commune chief, so they can bribe him and get a better solution. In this corrupted society, right is wrong and wrong is right”.

Even when commune councilors handle conflicts, in many cases they utilize elements of customary justice, as one indigenous deputy commune chief in Ratanakiri reported:

“In solving problems, the commune council relies on traditional practices. If state laws were used, villagers would be against us. The commune council considers that using state law is not so good, because villagers are poor and they would have to pay a lot of money. The villagers would not love us, because they would have to go to the court, and the court does not care. If a buffalo were stolen, the owner would be fined by the court on top of his loss. That is why we don’t prefer state law. If the victims go to court, they get nothing, there is no fairness. The court is corrupt. The victim will be found guilty and the thief will get a profit, because he bribes the court. The court considers state law only and there will be no compensation. Even if the thief is found guilty, he has to compensate the court but not the victim. People are dissatisfied with this, but because they are ignorant, they cannot but accept the court’s decision”.

Much dissatisfaction with state justice results from the perceived failure of state institutions to apply the law evenly. An additional problem is that the law does not reflect indigenous conceptions of justice. For example, one important reason for many respondents to favor customary justice is that it utilizes mediation, aims at removing anger, and at facilitating reconciliation between the parties involved. One deputy chief in a remote Ratanakiri commune praised the virtues of customary law with these words:

“Traditional law is very good, because after we agree, we are not angry anymore, just sacrifice a few chickens or a pig, drink, and party and re-establish our friendships, and it is also our common way. If we use the state law, villagers would be against us”.

One elderly man in Ratanakiri expressed his dissatisfaction with the increase of crime and the inability of state institutions to deliver justice:

“Previously, people did not dare stealing a cow, because they would have to

compensate the owner with ten cows if found guilty. Nowadays, if we are right, they say we are wrong, such as when a car crashes into a motorbike, the victim's bike is kept at the police station but the driver of the car is allowed to leave. If someone steals a lot of money, he will prefer the case being handled by the court because he can pay the court with the stolen money. Our traditional institutions are weak, because they were forbidden under the Khmer Rouge. We tried to recreate our old ways, but the new way is strong, because of money. Villagers prefer customary law, but those who have money prefer the police and the commune council. The others cannot find justice. According to custom, someone may be fined to compensate three cows for stealing one. The state authority may say that the thief did not steal the cow for only a 100,000 Riel [approximately US\$ 25] bribe”.

Similarly, an elderly man in a remote commune in Ratanakiri stated:

“People prefer the way it was previously, it was easier to find justice. Now there are many institutions but there is no justice. The commune council, the district level, the courts, they all charge money, and half of the compensation goes to those who decide the case. The traditional way is better, and it is more reliable, it will show who is wrong”.

Many respondents felt that indigenous people are at a disadvantage in formal institutions, because their knowledge of Khmers language is limited, and because the process is based on Khmer concepts and cultural norms. Moreover, formal conflict resolution is very time consuming and might require multiple visits to state offices that are hard and expensive to reach from the remote locations where indigenous communities tend to reside.

One way in which the neo-patrimonial nature of governance disadvantages highland peoples more than other communities in cases of conflict is related to the fact that indigenous people are virtually never among higher-level patrons, and that an indigenous person is virtually never the patron of a Khmer person. A few indigenous people, specifically younger Khmer-literates with exposure to Khmer institutions, enter patronage networks but typically, remain low-level clients. Patronage networks are based on kinship, friendship, business, or political ties and benefit a few privileged insiders. Patrimonial relations are personal relations that require trust, familiarity, and some measure of shared meanings, understandings, and attitudes. Relations of this kind rarely exist between indigenous subsistence farmers and members of the powerful elite, who have no language in common and who have profoundly different cultural backgrounds and expectations about power relationships.

The absence of indigenous persons from higher levels of patronage networks is significant, because the availability of higher-level patrons offers some access points to Khmer communities and helps making the system somewhat more responsive to their needs, especially in cases of conflicts over state land that are particularly devastating for highland communities. An exploratory study of collective grievances over land that looked at seven cases in lowland provinces found that, in all cases, villagers pursued a single strategy,

namely

“to get a powerful administrative decision maker to intervene on their behalf ... this is a highly pragmatic strategy and one that makes perfect sense in the context of a hierarchical society in which the administration, with its ties to the party structure of the CPP, continues to represent the most coherent national power structure” (CAS & World Bank, 2006: 22).

The report concludes that the success of poor villagers in collectively achieving outcomes that are more equitable and improving the responsiveness of the state to their interests *“hinged on villagers’ ability to persuade sufficiently influential administrative decision makers of the merit of their cases”*. When cases involved high-ranking officials or influential outsiders, *“a commensurately high ranking or influential interlocutor needed to be found to resolve the dispute ...”* (CAS & World Bank, 2006: 37-38). In each of the cases studied, the law played *“only a peripheral role in the dispute resolution process”*. Instead,

“well-appointed individuals within the administration, rather than explicit rules or institutions, dominated the dispute resolution process. Although the individuals exercising power were public functionaries, the extent to which the scope of their authority was defined by their formal institutional role was limited” (CAS & World Bank, 2006: 29-30).

The authors note that the near-universal attempt to involve high-ranking officials reflects a framework of decision-making in which *“a more powerful figure within the administration can override a decision of a subordinate”* (CAS & World Bank, 2006: 37). However, there are virtually no indigenous persons in a sufficiently high position to override the kind of decisions by which their homelands are claimed by outside entities. Of course, indigenous villagers might try to persuade Khmer decision-makers of the merits of their case. However, field research suggests that they are much less likely to try and more likely to fail than Khmer villagers, not least due to fear, unavailability of relevant information, and to linguistic and cultural barriers making it very difficult to navigate the institutions of the neo-patrimonial state.

6.16. Indigenous Peoples’ Disadvantages in Education

International indigenous rights norms aim at enabling indigenous peoples to maintain their distinct societies. Vital to this ability is education, through which distinct languages, cultures, and practices are passed on from one generation to the next. Education is also routinely used as a nation-building tool by states, to disseminate one ‘national’ language and identity among diverse populations. Providing education in the majority language privileges the majority culture and its members, by ensuring that their culture and language is promoted and transmitted to the next generation. At the same time, it disadvantages minority members and undermines their cultures and identities. If the state subsidizes the perpetuation of the majority culture through the public education system, then it should provide the same support to minority cultures, as a matter of treating language groups and citizens of different cultures equally. Consistent with these considerations, international

norms emphasize indigenous peoples' rights to full access to public education as well as to education in their own culture and language. The UN Declaration of the Rights of Indigenous Peoples, for example, accords indigenous people the right to fully participate in the public education provided by the state without discrimination, as well as "*the right to establish and control their educational systems and institutions providing education in their own language*" (Article 14).

Since the colonial period, education policy was used in Cambodia as a means of Khmer nation-building (Guérin, 2003: 197-201). As was mentioned in the second chapter, Cambodia's Constitution requires the state to establish a "*standardized education system throughout the country*" (Article 66) and with taking the necessary steps for education "*to reach all citizens*" (Article 65). Education is provided uniformly in Khmer language, based on a standardized curriculum that emphasizes Khmer history and culture and is silent on the histories and cultures of Cambodia's highland peoples (Chhim et al., 2005: 35; Hiett, 2003: 21; Kosonen, 2005: 133; Sokhom, 2004: 146). Through the provision of education in Khmer language, the state provides crucial support to the perpetuation of the Khmer culture. By not providing similar support to indigenous languages and cultures, the state contributes to the marginalization and eventual disappearance of highland peoples (Kosonen, 2005: 122). Since children learn better if taught in a language they understand, not providing education in indigenous languages drastically diminishes the opportunities of indigenous learners (Klaus, 2006: 6-10; W. P. Thomas & Collier, 2002; UNICEF, 1999: 41; Walter, 2003, 2011).

Public education is far from reaching all citizens in Cambodia. Highland peoples routinely have the least access to any kind of formal schooling. A 2010 UNESCO-report identified Ratanakiri and Monduliri as one of only 20 regions worldwide that face "*acute education deprivation*" (UNESCO, 2010: 152)¹⁵. Field research confirmed that highland people are systematically marginalized in education. When asked to rank ethnic communities in the commune according to their level of, and access to, education, virtually all respondents, indigenous and Khmer alike, ranked indigenous groups at the bottom in virtually all communes visited. One of the most apparent factors in explaining this high degree of disadvantage in education among highland people is the absence of functioning schools in or near their often remotely located communities. In other instances, there are school buildings but no teachers, or the assigned teachers do not conduct classes or do so only irregularly (Kosonen, 2005: 129). Another reason for highland peoples' lack of access to education is the greater poverty of their families, who might not be able to afford informal fees or the opportunity cost of children being unavailable to support their families' livelihoods. Moreover, indigenous livelihoods based on remote forest gardens (*chamgkar*) and the collection of non-timber forest products take families far away from their villages for prolonged periods of time, increasingly so the more access to forests and natural

¹⁵This designation is based on three indicators: the proportion of people with fewer than two years of education (absolute deprivation), proportion of people in the bottom 20 per cent with the fewest years of education (disadvantage relative to the rest of society), and the quality of education in terms of learning achievement (UNESCO, 2010: 138-163).

resources diminishes (Watt, 2003: 19).

The Education Law enacted in 2007 does not provide for minority languages to be used in public education. Thus, even in highland communities where there is a school and where classes are conducted, teachers and indigenous students often do not have a language in common. Public education is linguistically incompatible with the participation of a great proportion of indigenous children. Much of the content is of little relevance to their ways of life and educational needs (Watt, 2003: 19). By relying on the language of the Khmer majority and a culturally exclusive knowledge base, formal education also conveys a sense of cultural inferiority to indigenous children and undermines their self-respect (Klaus, 2006: 8-9). One consequence of monolingual public education is that indigenous children generally start attending classes only by the time they have picked up enough Khmer language to be able to follow, if at all. Thus, it is not uncommon for 16 or 18 year olds to attend classes at primary school. Some indigenous students feel too ashamed of their high age to ever attend school (Sokhom, 2004: 143). The delayed school entry affects girls' education in particular, because they have less opportunity to learn Khmer language in daily life. By the time indigenous girls might be able to follow Khmer language classes, they tend to get married and drop out. Many never attend classes for substantial periods of time.

Most teachers assigned to highland areas are ethnic Khmer from lowland provinces who do not speak indigenous languages (Kosonen, 2005: 133). It is very rare for teachers to be members of local indigenous communities, not least because indigenous students rarely reach the level of formal education required to be accepted for training as a teacher in public school (Ironsides, 2009: 107; Kosonen, 2005: 129). Predictably, teachers who speak the native language of their students are more effective, as the principal of a school at the center of a district primarily inhabited by various indigenous groups in Ratanakiri explained:

“There are ten teachers at this school, two Lao and eight Khmer. One Lao teacher speaks indigenous languages in addition to Khmer and Lao and therefore conducts classes better, because he can accommodate the needs of his students. Only about ten per cent of students are Khmer”.

Whether or not indigenous children attend classes and benefit from doing so depends, in the eyes of many respondents, on whether or not the teacher can explain in their own language. One Bunong mother in Mondulakiri said:

“At the primary level, teachers are tired with chun-cheat children because communication is difficult. The children don't know Khmer. They don't understand the teacher and the teacher does not understand them”.

Similarly, the director of a district-level education office in Mondulakiri explained:

“At the primary level, especially at grade one, it is difficult for indigenous children because they don't understand Khmer language. It is also hard for teachers if they don't speak or understand Bunong. It is good if teachers speak both languages at

grade one, whereas in grade two and three it is less of a problem”.

Indigenous children are more likely to drop out of the public school system early, as one councilor in a rather accessible Mondulkiri commune pointed out:

“One problem is that indigenous children drop out earlier and have no more opportunities to continue their education. Mostly Khmer have this opportunity. Indigenous parents have no money and higher schools are far away, it is expensive to travel”.

This was confirmed by a commune councilor in Pursat:

“Particularly after primary education, a majority of Por children stop or do not even finish primary school due to livelihood issues, living conditions, and health issues”.

Indeed, many indigenous children attend school only a few weeks or months after registration, by which time they and their parents are disappointed by classes not being conducted and teachers not speaking their languages and give up. This was highlighted by one Bunong woman in Mondulkiri who served as a focal point for women and children issues to the commune council:

“There are about 400 children between the ages of seven and eleven in this commune who do not go to school. More used to go to school but just for one month, then they lost interest and gave up in order to help their families. Female students in particular have to look after smaller sibling, collect fruits and vegetables, or catch fish, increasingly far away. At the beginning of the school year, there were more than 500 students but now there are little more than 100. Some students are old enough to marry and drop out”.

Even in areas where most indigenous people and all indigenous children are fluent in Khmer language, many respondents, especially the elderly, expressed a desire for indigenous languages to be incorporated into public education, as did one elderly man in Pursat:

“There are enough Por students here to fill one school, but they settle scattered across the areas of different schools. I would prefer if separate classes were conducted, it would be of great benefit to sustain Por language and culture, otherwise it will disappear soon along with traditional practices. It would be great if children would study Por curriculum with Por teachers in Por language. After children graduate from Por school they could join Khmer school because Por teachers don't have high enough education. Education should not be completely in Por language. I would prefer Por in grade one and two. I prefer separate classes but to use both Por and Khmer languages”.

Discussions with respondents frequently revolved around the dilemma that indigenous parents want their children to understand their own languages and cultures yet they are well aware that their children's opportunities increasingly depend on Khmer language skills.

6.17. The Politics of Minority Education: Integration, not Accommodation

The Cambodian state only reluctantly accommodates a very limited degree of linguistic pluralism in public institutions in general and in public education in particular. This mirrors the government's unwillingness to recognize legal pluralism. The government does allow international and non-governmental organizations, such as UNESCO, UNICEF, and CARE, to implement bilingual education programs in selected northeastern communities. Until very few years ago, bilingual classes were conducted exclusively in NGO-run community schools, based on a curriculum that incorporates aspects of indigenous cultures and traditions and that responds specifically to indigenous ways of life and living situations (Kosonen, 2005; A. Thomas, In, & Chey, 2003; A. E. Thomas, 2003; Watt, 2003). In 2009, this NGO-developed model of bilingual education was replicated in a handful of government schools in Ratanakiri, with significant international support. As of February 2013, elements of bilingual education have been introduced in 20 community pre-schools and 34 primary schools (Lemaistre & Flowers, 2013).

Where bilingual education was available, most indigenous respondents expressed appreciation. Bilingual classes were well attended and widely considered to provide education of higher quality than state-run public schools. As one Bunong woman in Mondulkiri pointed out:

“Bilingual education has increased school participation among children. If it is in Khmer script and they cannot understand some words, they lose interest to participate”.

Similarly, one ethnic Bunong district education office director said:

“Bilingual education is effective and beneficial. Students can study for everyday life, and it is good for information dissemination such as on malaria. In Bunong language, it is easy to understand”.

Initiatives aimed at utilizing indigenous languages in the provision of education are driven by international and non-governmental organizations and should not be mistaken for government-support for minority languages. The state's main concern appears to be to limit the scale and scope of these initiatives to activities suitable to promote Khmer nation-building, the integration of highland communities into Khmer language and institutions. The small but growing extent to which the government allows bilingual education to be provided reflects the realization, well established in the literature, that learning one's own language first facilitates learning of other languages later. In part, the government's reluctant approval of bilingual education can also be attributed to the desire to achieve internationally agreed objectives, such as Education for All and education-related Millennium Development Goals (Baker, 2011: 311-337; Klaus, 2006: 4; W. P. Thomas & Collier, 2002; UNICEF, 1999: 45).

One indication of the government's reservation about indigenous languages in public education is that bilingual classes until a few years ago were not supported in government schools but only in community schools run by NGOs. Another indication is that the approved bilingual education model phases out native languages over the course of only

three years. 20 per cent Khmer language are used in the first year, 40 per cent in the second year, and 70 per cent in the third year (A. E. Thomas, 2003: 4; Watt, 2003: 22). By the fourth year, indigenous students are expected to join the Khmer-only education system. This model is suitable to facilitate integration but not to facilitate the maintenance of distinct cultures. There is wide consensus in the literature that native language should be used over a considerably longer period of time in order for bilingual education to serve this purpose (Baker, 2011: 253-282; Klaus, 2006: 7; W. P. Thomas & Collier, 2002). It is, of course, a good thing that the government assists highland children in learning Khmer language and that it enables the utilization of indigenous languages to this end. But application of this model, so far only in a small number of schools and only in the northeast, is not designed and intended to promote the accommodation and perpetuation of minority cultures, as international indigenous rights norms suggest. To the contrary, this model is intended to promote Khmer nation-building, as a temporary and transitional program to enable the integration of indigenous children who understand little or no Khmer language into institutions that operate in Khmer language only. That indigenous children learn the language of their ancestors is not seen by the government as having much intrinsic value. Rather, the government considers bilingual education as a 'bridge' to a public education system and a wider institutional environment that operates exclusively in Khmer language (AIPP, 2006: 17; Kosonen, 2005: 138; A. E. Thomas, 2003: 12). Provincial education officials highlighted that they want this bridge to be as short as possible. More than one pointed out that "*one year would be even better*", even though most conceded that the quality of education and the results tend to be much better in bilingual classes. Khmer officials often expected linguistic Khmerization of highland groups to occur naturally within a few years, embraced this notion, and expressed the view that any promotion or recognition of indigenous languages would only hinder or delay achievement of this objective.

Indeed, there would be obvious benefits if all members of highland groups knew Khmer language, such as better access to employment, education, markets, and political participation. However, the main rationale for the state's exclusion of minority languages from public institutions appears to be related to the desire to unify the nation and create a national identity based on undifferentiated, monolingual membership in the Cambodian nation. This objective contrasts sharply with the multicultural, multilingual, group-differentiated ideal of citizenship underlying relevant international norms. On the view expressed by many government officials and politicians, any notion of official linguistic or legal pluralism is almost by definition a contradiction and embarrassment of Cambodian statehood and sovereignty. The government is not concerned about customary practices being locally combined with state law or with citizens speaking different languages privately. However, the government is deeply suspicious, sometimes openly hostile, to any public recognition or formal use of any law other than state law and any language other than Khmer language. The use of indigenous languages in public schools as well as in local governance is merely tolerated as a temporarily deviation from a norm of linguistic homogeneity and only to the extent that it contributes to realizing this norm.

One instance underlining the sensitivity of minority language use in public institutions, and the government's insistence on Khmerization, was when, during a conference on bilingual education, the secretary of state for education discovered minor modifications of Khmer script that had been made to accommodate some sounds peculiar to the Kreung language and that had previously been approved by lower-level officials. He immediately forbade further use of the modified script until a high-level committee had examined it. Eventually, it was agreed to utilize letters from ancient Khmer script to accommodate these linguistic peculiarities (Watt, 2003: 21). NGOs involved with bilingual education also had to avoid the term 'Khmer as a second language', because the notion of Khmer as 'second' is considered unacceptable by the government.

The government's apprehension of official indigenous language use appears to be in part motivated by the perception that it would compromise the security of the state (Watt, 2003: 20). The statements of many officials suggest the assumption that promoting indigenous languages would undermine loyalty to Cambodia. This view was particularly widely shared among officials in Ratanakiri and Mondulakiri, the provinces that have the largest indigenous populations and long, porous, historically contested borders with Vietnam. As one Khmer NGO-official in Mondulakiri described this attitude:

"The government's concern is that if indigenous peoples have their own language and culture, they may become their own nationality".

Similarly, one Khmer official in Mondulakiri said that

"The government does not like bilingual education due to fears that this may create too strong a voice for indigenous peoples and that this could threaten national unity".

In good part, the perception that cultural diversity is linked to insecurity derives from the history of minority nationalism and autonomy movements among highland peoples in Vietnam. Following occasions of violent protests and repression over land and religion among Christian minorities in Vietnam's central highlands, hundreds of indigenous persons have fled across the border into northeastern Cambodia (HRW, 2002, 2006, 2011). Among officials in Cambodia, these incidents have reinforced the perception that minority rights claims are matters of security. It is not rare for provincial officials to justify their reservations about linguistic and legal pluralism with the need to "*protect peace*", sometimes with reference to violent state-minority conflicts in Vietnam as well as in other countries. Underlying these concerns was often the assumption of a 'slippery slope' leading from the recognizing of non-Khmer identities to claims for greater autonomy and eventually, to challenges to the authority of the state. It is not uncommon for high-ranking officials to base their denial of minority rights claims on the need to avoid the creation of a 'state within the state' (ADB, 2001a: 23; Colm & Ker, 1996: 33).

One instance of these security concerns is the government's apprehension of Latin script being used among highland peoples. Latin is the official script in Vietnam, where substantial numbers of highland people from Cambodia fled during the civil wars, often to

live among communities of their own ethnic groups across the border. A significant proportion of this population has become literate in their own language in Latin script. Many have converted to Christianity and grown accustomed to using the Christian songbook in Latin script. Several Bunong respondents, for example, pointed out that they prefer Latin script over Khmer script, claiming that it better accommodates distinct Bunong sounds, and that using it would make it easier to learn English and French. However, the government is opposed to the use of Latin script, so much so that the education department in Monduliri approached NGOs with a request to transcribe the Christian songbook in Bunong language and Khmer script. Several government and NGO officials explained that the government was concerned that increasing cross-border solidarity would be facilitated by the use of Latin script, which would potentially promote disloyalty to the Cambodian state.

The following claims of one provincial department head in Monduliri are another indication of securitization of state-minority-relations:

“Now there are some clever NGOs using indigenous peoples as their business. They talk about the protection of their rights. In places like Vietnam, Burma, or Kenya, there are problems, in Vietnam, indigenous peoples demand autonomy, and it could affect indigenous peoples in Cambodia. Sometimes NGOs incite indigenous peoples to protest against the government, to claim an autonomous area. I often advise them, don’t let NGOs influence or incite you. Sooner or later they will go away, and the difficulties will fall on you”.

This statement supports Kymlicka’s concern that the dissemination of international indigenous rights norms may create political turbulence, by stimulating demand for minority rights that states are unwilling or unable to accord. An autonomous area is in fact a plausible interpretation of the rights to “*self-determination*” and to “*autonomy or self-government in matters relating to their internal and local affairs*” that highland peoples have according to the UN Declaration of the Rights of Indigenous Peoples. NGOs and international organizations do raise awareness of international rights norms among highland peoples. Therefore, the claim that these organizations influence or incite indigenous villagers to demand an autonomous area is not entirely baseless. However, international and non-governmental organizations as well as indigenous advocates, aware of the government’s sensitivities, are in fact very cautious to avoid explicit claims to autonomy. Moreover, there are no documented, contemporary instances of highland people demanding an autonomous area in Cambodia. Instances on which indigenous people have demonstrated publicly are usually related to outsiders or companies taking their lands. Like many others, above statement suggests that the government would have little tolerance for highland people actually making demands to some of the stronger rights indigenous peoples have in international law. Securitization is a significant factor in explaining the state’s hostility to minority rights claims, and it is not least in anticipation of potentially coercive state responses that highland people avoid making such claims.

Claims that official accommodation of linguistic or legal pluralism endangers the state are not very plausible but to some degree, state officials appear genuinely concerned about security and public order when considering actual and potential minority rights claims. More often, however, the invocation of state security is used to justify the outright denial of any minority rights where there is no conceivable threat to the state. Forcibly evicted communities are often threatened with harassment, arrest, and violence for peacefully standing up for their rights. This is often done in the name of protecting security and public order, but in fact serves to protect the interest of Cambodia's neo-patrimonial elite. Even at the local level, officials were invoking state security in response to very modest minority claims. For example, one Khmer district official, who lives in a village dominated by ethnic Bunong in Mondulkiri, reported how villagers had wanted him to sacrifice an animal when he had completed building his house, as is the custom in this community. His response, in his own words, was:

“I said to them: ‘If this is your country, who is your King?’ They said: ‘Sihanouk and Hun Sen’ and I did not offer the sacrifice. I accused villagers of separating from the country. They felt frightened and never came to curse me again. There are two houses that resisted their wishes for sacrifices, mine and the house of the Khmer deputy commune chief”.

Obviously, in a liberal state, no one should be required to follow other peoples' religious beliefs. However, this is not a matter of state security. Often, the invocation of state security is part of a strategy to silence indigenous groups and to delegitimize their demands where they inconvenience officials or threaten the interest of neo-patrimonial elites. Indigenous villagers are well aware that the state would respond harshly to anyone challenging its authority. This awareness contributes to the avoidance of even modest claims for minority rights. Education and language policy crucially shape the economic opportunities, political powers, and social status of various linguistic groups. The state dominated by the Khmer majority uses these and many other policies as well as the invocation of security to retain the privileged position the Khmer enjoy in the Cambodian state.

7. Conclusions

7.1. Cambodia's Minorities and the Internationalization of Minority Rights

Based on extensive field research among a wide range of ethnic groups, this study has explored state-minority-relations and their internationalization in Cambodia. The analysis draws on Western conceptions of multicultural citizenship as well as on minority rights conceptions in international law and considers specifically Will Kymlicka's account of the transferability of liberal multiculturalism to non-Western countries. Kymlicka argues that Western multiculturalism is not just a response to the value of cultural membership, but also a response to state nation-building. Modern states deliberately disseminate a national identity among diverse populations, such as by making the dominant group's language the exclusive 'national' language, privileging the dominant group's language and history in public education, centralizing power in the institutions of the dominant group, and encouraging migration into minority homelands (Kymlicka, 2007: 62-63). These and other nation-building policies privilege members of the dominant group economically, politically, and socially. Liberal multiculturalism, in response, aims to transform the economic opportunities, political powers, and social status available to minority members, as a matter of promoting equality and fairness between groups and their members (Kymlicka, 2007: 81).

Kymlicka shows that multiculturalism in the West depends on a distinction between immigrant groups and homeland minorities. The presence of immigrant groups results from the voluntary migration of individuals and families. Immigrants typically do not resist nation-building and seek full membership in the institutions of the larger society (Kymlicka, 1995: 10-26). Homeland minorities, in contrast, result from the involuntary incorporation of previously self-governing, territorially concentrated societies. Typically, these groups seek self-government and language rights to maintain their existence as distinct societies alongside the majority culture (Kymlicka, 1995: 10-12). Within the category of homeland minorities, Western democracies distinguish between national minorities and indigenous peoples. National minorities were active contenders in the process of state formation whereas indigenous peoples were isolated from it. 'Metics' constitute a third category of minorities whose members are excluded from citizenship (Kymlicka, 2002: 357-359). Along the lines of these categories, Kymlicka shows clear trends across Western democracies towards making mainstream institutions more accommodating of immigrant groups, enabling homeland minorities to maintain their distinct societies, and providing metics with access to citizenship.

The relative success of multiculturalism in the West contributed to inspiring the emergence of minority rights in international law. Like Western multiculturalism, international

minority rights norms are distinctly liberal, in that they operate within the confines of universal human rights. However, despite the adoption of minority rights norms at the United Nations, most states in Asia, Africa, and the Middle East resist application of these norms and remain committed to consolidating centralized, homogenizing, monolingual nation-states based on undifferentiated citizenship (Kymlicka, 2007: 251). The failure of the international community to achieve greater application of international minority rights norms outside liberal democratic states can be explained by the absence of the particular conditions that enabled the emergence of liberal multiculturalism in the West, according to Kymlicka. Specifically, an increasing rights-consciousness among members of subordinated groups, access to multiple arenas of safe political mobilization, and growing demographic strength have enabled increasingly assertive minority claims-making, while robust legal protections for human rights and the desecuritization of ethnic relations have made dominant groups more willing to accept minority rights claims (Kymlicka, 2007: 111). The factors that encourage minority claims-making tend to become more common around the world but not the factors that enable dominant groups to accept such claims, according to Kymlicka, which leads to political turbulences, as increasing demand for minority rights is not met by increasing supply (Kymlicka, 2007: 133).

Kymlicka argues that these turbulences are exacerbated by the particular choice of minority categories underlying the internationalization of minority rights. Specifically, international law operates on a sharp distinction between indigenous peoples and other minorities. Indigenous peoples are accorded extraordinarily strong, group-specific rights, including the right to self-determination. All other minorities are lumped together in one generic category and accorded only minimal group-specific rights, which do not correspond to the claims based on history and territory that indigenous peoples have in common with national minorities. The internationalization of minority rights based on this distinction is morally inconsistent, conceptually unstable, and politically unsustainable, says Kymlicka (2007: 278). Any principled argument that supports the rights indigenous peoples have in international law also works in favor of according similar rights to national minorities. Moreover, there is not outside European settler states such a thing as a discreet category of indigenous peoples. Any attempt to define groups in this category relies on criteria that are matters of degree. The sharp distinction between the rights of indigenous and other minorities has triggered a trend of homeland minorities re-identifying as indigenous peoples. This trend threatens the international system of indigenous rights, according to Kymlicka, because states that are unwilling to accord substantial group-differentiated rights to national minorities will not accept that these groups use international indigenous rights norms and institutions to seek greater self-government (2007: 287).

Applying above consideration to state-minority-relations in Cambodia shows that Cambodia is not a culturally neutral state. Rather, the historical and contemporary Cambodian state actively diffuses a thickly defined Khmer national culture and identity

throughout the territory of the kingdom, through a wide range of policies. Khmer is constitutionally Cambodia's sole official language in which all public institutions operate. The official system of education privileges Khmer language and history. Cambodia's legal and judicial systems, too, operate exclusively in Khmer language and privilege the legal traditions and norms of the majority. The state enables and encourages the migration of lowlanders to the traditional homelands of highland peoples, dilutes their territorial concentrations, and undermines the perpetuation of their distinct, homeland-based societal cultures. Relevant political powers are centralized and concentrated in the political institutions and elites of the Khmer. The dispossession of highland peoples of their lands and natural resources contributes to undermining their distinct cultures. These and many other nation-building policies systematically privilege members of the Khmer majority and marginalize minority members, by privileging a Khmer identity as a source of economic opportunity, political power, and social status. Therefore, the aspiration of liberal multiculturalism to transform the economic opportunities, political powers, and social statuses available to minority members is a normatively adequate response to the situation in Cambodia, suitable to promote equality and fairness between different ethnic groups and their members.

7.2. International Minority Categories and Cambodia's Diversity

Western and international minority categories are relevant in Cambodia, which is usefully understood as a polyethnic, multination state that contains immigrant groups as well as homeland minorities. The difference between immigrant groups and homeland minorities characterizes two markedly different patterns of cultural diversity and accurately reflects the aspirations of most minorities. Cambodia's ethnic Chinese and Vietnamese are clearly on the immigrant side of the distinction and aspire to full membership in mainstream institutions, rather than to creating parallel societal cultures. However, while Cambodia's ethnic Chinese have been admitted to the nation and enjoy full citizenship rights, a considerable proportion of ethnic Vietnamese are metics, long-term residents without secure access to Cambodian citizenship.

In contrast to immigrant groups, various highland peoples as well as the ethnic Lao are usefully considered homeland minorities in Cambodia. More specifically, the Lao can be regarded as a national minority and highland groups as indigenous peoples. Highland peoples have for centuries formed self-governing societies in their traditional homelands and were involuntarily incorporated into Cambodia. They have resisted Khmer nation-building and attempted to reestablish their distinct societies following periods of intense colonization, assimilation, and destruction. Today, many highland peoples continue to form not just sub-groups of Cambodia's mainstream Khmer culture, but distinct societies, with societal institutions that often continue to operate in distinct minority languages and make meaningful options available to members. Many highland people aspire to maintaining their distinct societies alongside the Khmer majority. Highland peoples have not historically had, or aspired to creating, a centralized state. If there are such things as

indigenous peoples in Asia, Cambodia's highland peoples can be fairly counted into that category. Cambodia's ethnic Lao, too, form an involuntarily incorporated homeland minority. However, the Lao do not match the conventional profile of an indigenous people, because their ethnic kin dominate the neighboring state of Laos, attesting to Lao participation in the process of state formation. Cambodia's Muslim Cham, in contrast, were voluntarily incorporated into Cambodia and do not form a homeland minority. Nevertheless, the Cham constitute a stateless people, or nation, in Cambodia. Western and international distinctions are insufficient to account for the Cham's distinct situation, and more research is needed to ascertain and accommodate their aspirations.

Given the structure of the population's cultural diversity, one might well argue that international minority rights conceptions are more morally consistent, conceptually stable, and politically sustainable in Cambodia than they are in most countries outside Western democracies. Cambodia's highland peoples can be rather clearly classified as indigenous peoples and as Cambodia's most marginalized minorities. Moreover, highland peoples can be rather unambiguously differentiated from other minorities, none among which fits the conventional profile of an indigenous people. Specifically, the Cham are not a homeland minority and the Lao are a kin-state-minority. Nevertheless, according self-determination to highland peoples but not any group-differentiated rights to the Lao and the Cham, as international norms suggest, would be normatively inconsistent. The Lao and the Cham have not re-identified as indigenous peoples to seek application of the respective international norms. However, they may do so in the future, and this would make it harder to generate and sustain domestic support for indigenous rights in Cambodia. But even if the Lao and Cham sought indigenous rights, their claims would challenge the security and integrity of the Cambodian state much less than similar minority rights claims from homeland minorities in most other post-colonial countries. The absence of large homeland minorities and of minority nationalism means that liberal multiculturalism is a relatively low-risk policy choice in Cambodia. Minority rights claims do challenge traditional notions of Khmer citizenship, they might well challenge the interests of Cambodia's elite, but they do not credibly threaten the security of the state.

7.3. Incomplete Inclusion: Immigrant Groups and Khmer Citizenship

Cambodia's constitutional concept of 'Khmer citizenship' includes highland peoples and the Cham through their misrecognition as 'Khmer Loeu' and 'Khmer Islam', respectively. At the same time, Khmer citizenship, as well as the laws governing immigration and nationality, are in part meant to exclude people of ethnic Vietnamese origin. Field research confirms that many ethnic Vietnamese in Cambodia are not considered citizens, in their own descriptions of their legal status as well as in statements of government officials. The regulation of ethnic Vietnamese residents operates largely outside the legal framework. The lack of secure status is directly linked to a wide range of disadvantages ethnic Vietnamese experience in many spheres of social, political, and economic life. They have no right to vote or to stand in elections, are unable to legally work or own land, face

considerable difficulties in accessing public services, and in traveling inside and outside Cambodia. The limited access ethnic Vietnamese metics have to the legal system reinforces their vulnerability to abuse and discrimination by public institutions and the wider society. Ethnic Vietnamese metics are unable to develop a sense of securely belonging in Cambodia, even though most consider Cambodia their home country and wish to become citizens. The physical separation of many Vietnamese communities, floating communities in particular, contributes to limiting participation in public institutions, restricting interaction with the wider society, preventing integration, and reinforcing exclusion. Educational opportunities are severely limited for children of ethnic Vietnamese parents, perpetuating separation and exclusion from one generation to the next. Ethnic Vietnamese are explicitly prevented from participating in local governance, and the benefits of local development projects tend to bypass their communities, often as a matter of deliberate exclusion.

Like Cambodia's ethnic Vietnamese, ethnic Chinese were historically regarded as foreigners in Cambodia. However, field research shows that the problems ethnic Vietnamese face due to their lack of citizenship status are not faced by ethnic Chinese, neither vis-à-vis the state nor the general population. While ethnic Vietnamese remain beyond the realm of 'Khmer' and outside the Cambodian nation, ethnic Chinese have made the transformation from foreigners into citizens, demonstrating the possibility of metics becoming full members of the Cambodian nation. A large part of the crucial difference between the inclusion of ethnic Chinese and the exclusion of ethnic Vietnamese can be attributed to the Khmer majority's strong sense of geopolitical insecurity and historical injustice vis-à-vis the state of Vietnam. Cambodia does not share a border with China. Neither geopolitical risk nor historical injustice is perceived to be involved in the contemporary residence of ethnic Chinese in Cambodia. In contrast, the exclusion of ethnic Vietnamese from citizenship is seen as justified by Cambodia's security needs and the inherent right to self-government of a Khmer majority that perceives of itself as threatened by the territorial and colonial ambitions of its more powerful neighbors. Ethnic Vietnamese in Cambodia continue to be portrayed not only as being outside Cambodian political authority but as helping to subject Cambodia to Hanoi's control. Moreover, the historical and contemporary mistreatment of ethnic Khmers in Vietnam for many justifies reciprocal unfavorable treatment of ethnic Vietnamese in Cambodia. Further complicating the prospects of ethnic Vietnamese becoming citizens is that Cambodia's national culture is nominally defined in particular ways of life, even as membership in the Khmer race, which supports claims that ethnic Vietnamese are incapable of assimilation. Finally, the anti-Vietnamese rhetoric of non-CPP parties reinforces strong sentiments against ethnic Vietnamese among the general population, contributing to creating strong incentives for the CPP to enable ethnic Vietnamese to vote but not to grant citizenship rights to them. Field research confirms that a significant proportion of ethnic Vietnamese metics vote in elections, overwhelmingly for the CPP.

The identification of ethnic Vietnamese with the state of Vietnam is what underlies many of the objections to their inclusion in Cambodia, even though ethnicity is all that links many ethnic Vietnamese metics to Vietnam. Inclusion rather than exclusion is the most adequate response to concerns about the loyalty of ethnic Vietnamese metics. Citizenship fosters the sense of belonging that promotes allegiance to Cambodia. Exclusion alienates ethnic Vietnamese from Cambodian institutions and undermines loyalty to state and society. Residents with citizenship prospects have great incentives to make the considerable efforts required for integration while exclusion and the latent threat of deportation undermine such incentives. Helping ethnic Vietnamese metics to become Khmer citizens legally but also linguistically and institutionally is the most viable and normatively adequate response to concerns that Vietnamese immigration marginalizes the Khmer in Cambodia. It would also reduce the considerable potential for ethnic conflict, limit grounds for anti-Vietnamese politics, and shift the focus of political debate to issues that are shared by residents of different ethnicity. The adoption of a thin conception of national identity would help advance the idea that ethnic Vietnamese can be loyal and integrated Cambodian citizens.

Among the most promising measures to foster inclusion would be to enhance access to public education for children of ethnic Vietnamese parents. The experience of shared participation in public education is among the most powerful tools of integration and citizen-making. Immigration and nationality laws should be implemented with a view to regularizing the legal status of ethnic Vietnamese. The benefit of the doubt should be given to law-abiding ethnic Vietnamese. It should be recognized that, in many cases, the original terms of admission have become irrelevant. Determining the legal status of a child born to ethnic Vietnamese parents today based on whether or not its grandparents entered Cambodia within an immigration framework that may have existed on paper only is neither feasible nor justifiable. Ethnic Vietnamese who have lived for many years in Cambodia and in many cases were born there are de facto members of Cambodian society and should be legally recognized as such. Given that many Cambodian citizens oppose naturalizing ethnic Vietnamese, it would be prudent to regulate more thoroughly and possibly limit future immigration. This would reduce the perception that recent, temporary, or future immigrants benefit indiscriminately from the inclusion of those who qualify under relevant laws. It would also reduce the plausibility of anxieties about large numbers of future settlers flooding Cambodia and help create a transparent and predictable process that is trusted by citizens, encourages integration of immigrants, and contributes to an inclusive and just conception of Cambodian citizenship.

7.4. International Failure to Promote Indigenous Rights

The international community's promotion of minority rights in Cambodia over almost two decades focused virtually exclusively on highland peoples. This focus mirrors the privileging of the indigenous category in international law and policy, but it also corresponds to the particularly marginalized and disadvantaged situation of highland

groups in Cambodia. However, numerous international initiatives across a wide range of reform sectors failed to accomplish convergence with international indigenous rights norms in actual practice, despite Cambodia's liberal Constitution, cultural homogeneity, financial dependence, the absence of minority challenges to state authority, and the relative ease with which indigenous peoples can be identified and distinguished from other groups. With regard to highland peoples, the international community has contributed to a shift in domestic and legal discourse in Cambodia, reframing the terms of the debate and introducing the idea that indigenous peoples are legitimate political actors. To some extent, the international community helped to raise awareness of rights among minority communities, to open up some access points for ethnic political mobilization, to promote a sense of commonality across different highland groups, and to assist in enhancing indigenous self-organization. Together, this has enabled more assertive minority claims making and contributed to accomplishing the limited extent to which ethnic political mobilization and claims making of indigenous communities have become a more normal and legitimate part of Cambodian politics. This accomplishment is most apparent in the Land Law's recognition of indigenous communities and institutions and the group-differentiated notion of citizenship this introduces into Cambodia's legal framework. However, the international community has accomplished little in terms of making the Khmer and the Cambodian state more willing to accept significant minority rights claims.

The UNDP-supported Highland Peoples Program (HPP) aimed at comprehensively enhancing capacity to address issues related to highland peoples and to this end, helped establish the Inter-Ministerial Committee for Highland Peoples' Development (IMC). The IMC was supported by several international organizations in developing a General Policy for Highland Peoples' Development that was modeled on ILO Convention 169. However, the draft policy was rejected by the Council of Ministers in 1997, and the IMC never functioned as a policy-making and -implementing body. The same was true of the Department of Ethnic Minority Development (DEMD) that replaced the IMC. Numerous studies, workshops, seminars, and symposiums on the increasingly urgent challenges faced by highland peoples were organized by international and non-governmental organizations. The resulting recommendations regularly reflected international indigenous rights norms but were virtually never meaningfully implemented.

Intense international advocacy eventually achieved the inclusion of indigenous rights into a new Land Law that was adopted in 2001. Though limited in scope, the Land Law's provisions for indigenous communities correspond to international norms in recognizing indigenous land claims, applicable customary rules, and traditional authorities. However, the law's provisions deviate considerably from the liberal character of international minority rights. Underlying the Land Law and related policy-making is a conservative and distinctly illiberal conception of indigenous communities that risks diminishing freedom within highland groups and reinforcing inequality between Cambodia's majority and minority groups. The law does not acknowledge the presence of non-Khmer identities,

languages, and institutions. It avoids recognizing highland peoples as political actors and does not acknowledge any language- or self-government rights. Rather than protecting culturally distinct, historically self-governing minorities, the Land Law emphasizes the subordination of members and depicts highland peoples as undeveloped, traditionalist, collectivist communities in need of protection from modernity and individualism. Moreover, the law makes recognition and protection conditional on indigenous communities maintaining supposedly authentic, traditional ways of life and on abstaining from modernizing, developing, and reforming their cultures. Rather than enhancing options available to minority members, the Land Law's conception of indigenous community potentially limits the options and human rights of indigenous persons and reinforces the notion of highland peoples as essentially collectivist cultures who prioritize group interests over those of individuals. This notion contradicts not only Cambodia's liberal Constitution and international minority rights norms but also the actual aspiration of highland peoples.

Concerns about the human right of highland people being compromised by the Land Law's empowerment of traditional authorities remain largely theoretical, however. Following the law's adoption, the government has limited its scope, delayed its implementation, and failed to enforce its provisions in the face of accelerating land alienation. More than a decade later, only five village-level communities have been granted communal titles to their lands. In the meantime, land alienation among indigenous communities kept accelerating. Thus, substantial international support to the revision and implementation of the Land Law so far has accomplished little in terms of realizing international indigenous rights norms for Cambodia's highland peoples. For the most part, it has merely increased the gap that exists between law and reality, adding one layer of illegality to the actual developments on the ground without effectively improving protection. The legal multiculturalism that emerged in Cambodia, driven by international minority rights promotion, is usefully regarded as a nominal concession by the state to the international community and to foreign conceptions of citizenship and statehood. This concession obscures the government's profound resistance to international indigenous rights norms.

This resistance is also evident in the UNDP Access to Justice Program's (A2J) unsuccessful attempt to accomplish formal recognition of indigenous institutions and customary rules. Several studies commissioned by the program were inspired by international norms and ambitiously but unsuccessfully recommended recognition of highland peoples' customary laws and institutions. A2J's modest attempt to document the customary rules of six highland groups mirrored the Land Law's conservative conception of indigenous cultures. The 'documentation' proposes supposedly ancient, fixed, uncontested rules for formal recognition, assuming that these rules represent not just interpretations of tradition but an 'authentic', 'pure' manifestation of it. Moreover, the initiative ended up discouraging the use of customary institutions in favor of the courts, at least rhetorically, while ignoring the major problems the documentation was meant to address, such as illegal land alienation and forest destruction. The resulting reports tend to

portray human rights abuses as integral to customary law and to stereotype indigenous cultures as backward, irrational, and incapable of civilized justice, without basis in the literature or actually documented cases. This misrepresentation of highland peoples and their actual aspirations contributes to justifying the imposition of state institutions upon indigenous peoples and to legitimizing a Khmer civilizing mission, rather than providing protection from it. In a liberal-democratic context of the kind UNDP and the government are mandated to promote, laws are not determined by ancestors or self-declared guardians of tradition. Rather, laws are made based on deliberations of citizens and their representatives and within the constraints of human rights norms and democratic process. The UNDP's advocacy for highland peoples' submission under supposedly ancient rules and Khmer state authority does not conform to the aspirations and human rights of group members or to international indigenous rights norms.

International initiatives have assumed the village-level to be the relevant administrative and territorial unit for the empowerment of highland peoples in Cambodia. This choice corresponds to the village-based societal organization of highland peoples. However, villages formally do not enjoy any autonomy within the territorial organization of the state in Cambodia and do not offer access to decision-making at higher levels of government. In contrast, commune councils are directly elected and enjoy, at least on paper, considerable autonomy, a broad mandate, and access to relevant decision-making. Commune councils are the main recipients of powers transferred to lower state levels within Cambodia's decentralization reform. Because Cambodia is a unitary state, devolution to the commune-level is the only way to transfer powers to indigenous peoples within the organizational framework of the state and its general reform.

Decentralization reform is supported by numerous bi- and multilateral donors, the World Bank among them. In preparation of Bank-support to decentralization reform through the Rural Investment and Local Governance Project (RILGP), a Screening Study was undertaken among highland peoples. The study determined that the Bank's safeguard policy for indigenous peoples, OD 4.20, applies to highland groups (Helmerts & Wallgren, 2002: 1). In line with OD 4.20 requirements, a plan was adopted to safeguard indigenous peoples' interests within decentralization reform (World Bank, 2003). However, the study as well as the plan limit their consideration to local development projects. They do not consider impacts from the imposition of the mainstream system of governance or possibilities to utilize and strengthen existing indigenous institutions. The plan mimics international norms but does not address the study's anticipation of increased land alienation and forest destruction resulting from improved road infrastructure. The plan also fails to incorporate any of the mitigating measures proposed by the Screening Study. It conceals, rather than responds to, the fundamental problem that decentralization reform imposes a foreign system of governance upon indigenous cultures, that it excludes and further marginalizes highland peoples linguistically and institutionally, and that it facilitates land alienation, forest destruction, and in-migration. For example, the plan

charges a commune-level advisory body with protecting highland peoples from immigration and loss of resources, even though this strategy was regarded as “*unrealistic*” by the Screening Study (2002: 142). The plan claims “*broad agreement*” with RILGP among highland peoples (World Bank, 2003: 4) even though the Screening Study found disagreement with key aspects of implementation arrangements, such as the appointment of village-leaders by commune councils (Helmets & Wallgren, 2002: 106). The denial of negative impacts in RILGP safeguard-documents contradicts key findings from the Screening Study and the fact that the majority of supported local projects focuses on road infrastructure. RILGP’s withdrawal from Ratanakiri Province in 2007 reflects the desire to reduce safeguard obligations and is part of a larger strategy of avoiding engagement with indigenous peoples due to the perceived burdens and risks of having to comply with the safeguard policy. This strategy is a rational response in contexts where individual projects lack the ability to ensure compliance. However, the outcome of this strategy is that highland peoples are either left without support or supported by actors with less demanding or no safeguard policies, which directly contradicts the purpose of the policy.

The considerable potential of decentralization reform for the realization of indigenous rights norms for highland peoples in Cambodia has not been tapped. To the contrary, decentralization reform in its current design facilitates the ongoing imposition of the mainstream system of governance upon indigenous peoples and further marginalizes their cultures and institutions. Decentralization also facilitates the capture of the lands and resources of highland peoples by Cambodia’s neo-patrimonial elites. Decentralization reform profoundly privileges the Khmer majority, by helping to consolidate a state that operates at all levels and in all places in Khmer language only and that excludes minority languages and institutions from local governance. Indeed, decentralization reform contributes to the centralization of powers and functions that are vital to highland peoples’ ability to maintain distinct societies, such as those pertaining to land and natural resources. Previously relatively autonomous communities now find themselves at the bottom of a highly centralized, hierarchical, often predatory state organization that undermines the institutional, cultural, and natural resources upon which their empowerment, participation, and the reduction of their poverty depends.

Field research shows that highland people routinely identify, and are identified by others, as members of particular ethnic groups and as belonging to a particular category of indigenous peoples that does not include the Khmer, Chinese, Vietnamese, Lao, and Cham. Highland peoples in many cases continue to resist considerable pressure to integrate into mainstream Khmer societal culture and language. A sense of commonality among highland groups across the kingdom, and an awareness of human and minority rights, is slowly emerging, greatly facilitated by the activities of the international community. Nevertheless, the level of indigenous self-organization and rights-awareness remains very low. Highland identities retain great social relevance, even where assimilation has progressed relatively far. Most members of highland groups cherish their unique identities and continue to maintain

and to modernize their distinct cultures. A great majority of indigenous respondents expressed a desire to incorporate aspects of modernity into their own cultures, often quite enthusiastically. Many felt that this desire for modernization does not contradict the aspiration to maintain cultural, institutional, and linguistic distinctiveness. The keen interest highland people often have in benefiting from modernity is widely misinterpreted by outsiders as evidence that they want to integrate into the Khmer mainstream, while their desire to remain distinct and separate is often misinterpreted as a preference for perpetuating an unchanging, pre-modern past. The traditionalist, conservative conception of indigenous communities present in public discourse as well as in the Land Law and the A2J's documentation initiative is incapable of accommodating the aspiration of highland groups to modernize without becoming Khmer.

In-migration from the lowlands into ancient indigenous homelands has far-reaching implications for the potential to realize the aspirations of highland groups and indigenous rights norms in Cambodia. Decentralization reform facilitates in-migration, such as through improved infrastructure and by establishing and consolidating public institutions that operate in Khmer language and are tailored towards the majority society. In-migration exacerbates land alienation and forest destruction. It also contributes to diminishing territorial concentrations of highland peoples, increase the number of communes in which they are outnumbered and outvoted and thereby reinforces their political marginalization.

The role of customary institutions and their relationships with state institutions vary greatly across communes and provinces. Among many communities in the northeast, elders enjoy more authority and often, more legitimacy than village chiefs or commune councilors. In many communes, a remarkable proportion of local disputes are handled by village-based traditional institutions according to customary practices, in line with the preferences of most indigenous respondents. Most Khmer officials considered this situation an undesirable deviation from the ideal of an undifferentiated legal system and felt that such deviation should be tolerated only transitionally. Many indigenous respondents, in contrast, were in favor of customary institutions playing a greater role in local governance. Customary institutions tend to be effective only in regulating internal affairs. Where powerful outsiders are involved in disputes, they are routinely supported by local state institutions regardless of the circumstances, while minority institutions are bypassed. There are no institutional mechanisms for the participation of indigenous groups in relevant government decision-making. In the absence of indigenous persons from higher levels of the state, the ruling party, and patronage networks, there are virtually no access points to relevant decision-making available to indigenous communities. State institutions, including empowered commune councils, are widely distrusted among highland communities, not least because of their failure to apply the law, and because many laws do not reflect indigenous conceptions of justice.

Commune boundaries in highland areas are in most cases not conducive to the empowerment of indigenous groups through decentralization. There are relatively few communes where one or more indigenous groups form a strong majority, most of them in Ratanakiri and Mondulhiri. Particularly outside the northeast, most indigenous citizens are constituents of culturally diverse communes in which they form a minority. A majority of indigenous respondents expressed a preference for commune councilors to be of their own ethnicity and felt that the council should reflect the cultural composition of the constituency. However, highland groups are underrepresented on commune councils, not least because of requirements for local councilors to be literate in Khmer language. These requirements limit the choice of indigenous communities for local leaders to community members who are literate in Khmer language and culture. In part for this reason, indigenous communities are under-represented on local councils. This representation gap tends to be bigger the smaller the proportion of highlanders in the constituency is. This gap is much more pronounced at the district, provincial, and central levels of the state. Only in Ratanakiri and Mondulhiri are there substantial numbers of indigenous officials at the district and provincial levels. Indigenous government officials are widely perceived as docile agents of the state and the ruling party. Contributing to the exclusion of indigenous peoples from meaningful participation in local governance institutions is that these institutions operate in Khmer language. Most Khmer officials consider any linguistic diversity in local governance a temporary and transitional deviation from a norm that is the universal and exclusive use of Khmer language, even though indigenous languages are much more widely used among highland communities in the northeast, and only few of their members understand Khmer language.

The protection of land and natural resources, as well as education- and health-related projects, are top development priorities of many indigenous communities. However, an overwhelming proportion of commune budgets in indigenous areas are spent on the construction of road infrastructure that facilitates land alienation and forest destruction. In the absence of effective protection, indigenous communities regularly lose much more than they gain from the construction of roads. Large scale economic land concessions affect a great number of indigenous communities and are regularly granted without consultation. State officials, including commune councilors, tend to hold favorable views of these developments, whereas constituents often perceive of these officials as working for their own benefit and those of higher levels of the state, the ruling party, and well-connected companies. In conflicts with powerful outsiders, commune councils almost always obey higher levels of the government and the ruling party and assert the claims of the state against their constituencies. Constituents have no means to sanction unresponsive local officials, not least because councilors are elected from party lists. Because village chiefs and commune councils are assumed by many constituents to be involved in practices that negatively affect their communities, villagers tend to abstain from complaining to them.

Despite of the abundance of cases of illegal conduct by members of commune councils, no case was encountered of the state using sanctions against the respective councilors.

Highland peoples are systematically marginalized in the public education system. The unavailability of schools and teachers but also the exclusive use of Khmer language prevents many from meaningful participation. The government limits considerably the scope and scale of bilingual education organized and provided primarily by internationally supported initiatives. Bilingual education is tolerated only to the extent that it facilitates the learning of Khmer language and the integration of highland people into mainstream institutions. Bilingual education is rarely provided in state schools and the approved model phases out indigenous languages over the course of only three years. Underlying statements of government officials and politicians is a norm of unitary, undifferentiated, monolingual membership in the Cambodian nation in which the use of indigenous languages in public schools as well as in local governance is merely tolerated, as a temporary deviation from a norm of linguistic homogeneity, and only to the extent that it contributes to realizing this norm. Because the norm or ideal of modern governance is considered to be a unitary and monolingual state, official linguistic and legal pluralism are seen as a signs of flawed statehood.

7.5. Why International Rights Promotion Failed and What to Learn from It

The international community's promotion of indigenous rights norms over almost two decades failed to bring about significant convergence with international norms in Cambodia. A few reasons for this remarkable outcome were mentioned already, namely the neo-patrimonial system of governance, the particularities of Cambodian conceptions of indigenous peoples, geo-political insecurity, and the minoritized majority phenomenon. The international community works to increase demands for indigenous rights without effectively addressing the issues that limit the supply of indigenous rights. Moreover, highland peoples have barely any access to relevant decision-making at higher levels of the state. In the absence of consolidated democratic institutions, mobilizing behind minority rights claims remains unsafe. Furthermore, neo-patrimonial elites have a vital interest in exploiting the lands and resources of highland peoples. The financial support the ruling party receives from high-ranking politicians, officials, business people and military leaders in return for concessions to land and natural resources enables the provision of material benefits that helps generate the support of voters, victory at the polls, and maintenance of power. Neo-patrimonialism perpetuates land alienation and limits land policy reform (K. Un & So, 2011). Highland peoples' lands and natural resources are particularly suitable for neo-patrimonial exploitation, because they are often very lucrative and because highland peoples have even fewer means than poor Khmer communities to resist dispossession. The realization of international indigenous rights norms would directly contradict the interest Cambodia's neo-patrimonial elites have in exploiting the lands and resources of highland peoples. Thus, neo-patrimonial governance helps explain the failure of international

initiatives aimed at protecting highland peoples' lands and natural resources. In fact, these initiatives have themselves become a domain for patronage, with state officials receiving salary supplements, being invited to join international study tours, and receiving per diems for workshop attendance, all in return for imitating commitment to international norms, producing draft policies and vague policy papers, or approving miniscule pilot projects. Neo-patrimonial leaders in Cambodia have long become accustomed to mimicking commitments to liberal democracy, and many have simply added liberal multiculturalism to their repertoire.

Neo-patrimonial governance also helps explain the government's unwillingness to recognize the authority of customary institutions and rules. Recognizing highland groups as political actors, rather than as collectivist communities stuck in the past, would limit the control neo-patrimonial elites exercise over lands and natural resources in highland areas. The government's time-consuming elaboration of an unnecessarily complex and vague policy framework has kept international organizations and donors busy and indigenous lands and resources available for exploitation. The IMC, the DEMD, the Land Law and related instruments, as well as A2J's documentation are all examples of institutions, laws, and policies the international community created or reformed without effectively addressing the underlying neo-patrimonial power relations. Internationally supported institutions and policies often legitimize, rather than challenge, neo-patrimonial governance arrangements and remain marginal to actual state-minority-relations.

Another factor explaining the international community's very limited success in promoting indigenous rights norms in Cambodia is the difference between Cambodian and international conceptions of 'indigenous people'. There is in Cambodia a longstanding practice of considering highland peoples as a distinct category of groups. This category covers rather accurately the same groups that conventional international definitions single out as indigenous peoples in Cambodia. International norms identify indigenous peoples as previously self-governing, colonized peoples entitled to self-determination. The incorporation history of Cambodia's highland peoples corresponds to this notion, suggesting that the application of international indigenous rights standards is normatively adequate. However, the idea that highland peoples were unjustly incorporated is largely absent from public discourse in Cambodia, where these groups are widely seen as being disadvantaged, poor, and marginalized because of their supposed primitiveness and lack of development.

In June 2012, Prime Minister Hun Sen launched a contentious land titling scheme in which more than 1,600 poorly trained students in military uniforms were sent to the provinces to measure land and facilitate land titling, ostensibly to clamp down on land conflict across the kingdom. Coming one year before the 2013 elections, this initiative was widely seen as an attempt by the Prime Minister to boost his popularity, by appearing to address the highly controversial land issue, even though students are tasked only with demarcating

uncontested land (Fitzpatrick, 2012; Titthara & Boyle, 2012). Originally, the scheme included a directive for granting collective property rights to indigenous communities. However, a directive issued weeks later stated that the “*determination of boundaries of all parcels being the collective ownership of indigenous communities ... requires a long time, as well as extensive budget spending*”. Therefore, “*registration of collective ownership shall be postponed to be implemented later*” (quoted in: Woods & Naren, 2013). Rather than instructions for issuing communal titles, the directive provides a draft contract for “*indigenous individuals who do not want to be part of an indigenous community and want to live as a private person*”, which declares any individual who opts for private title ineligible for benefiting from a communal title (quoted in: Woods & Naren, 2013). These contracts are used by local officials to persuade, often force, indigenous villagers to accept private titles to very small plots of land, which diminishes the prospects of communal land titling and further inhibits access to forest, land, and rotational agriculture (Pheap & Woods, 2012; Woods & Bopha, 2012). That communal titles were dropped from Hun Sen’s land titling scheme underlines the absence of commitment to implement pertinent Land Law provisions widely and suggests that responding to the interests of highland peoples was not an important part of the ruling party’s election strategy.

During a recent visit to Ratanakiri, Prime Minister Hun Sen presided over a ceremony in which 521 private land titles were delivered to mostly Tampuan families (Naren, 2012b). During the ceremony, ethnic Jarai villagers who wanted to petition the Prime Minister over a land dispute with a company were ignored. Reportedly, Hun Sen in his speech mocked indigenous villagers, saying: “*Do you want to have development or do you want to have the indigenous people collecting stuff in the forest*” (quoted in: R. Sok & Vandenbrink, 2012). Hun Sen emphasized the province’s potential for rubber cultivation and the need to build more roads to promote the nascent rubber industry (Naren, 2012b). This episode underlines that the ways of life of indigenous communities are considered obsolete, obstacles to the kind of economic development envisaged by the government.

Highland groups are widely seen not seen as distinct peoples, but as representing an earlier stage of Khmer civilization, as a segment of Khmer society that has not developed and retains an ancient but genuinely Khmer state of affairs. On this view, it appears self-evident that Khmer ways of life are superior and that the Khmer have an obligation to extent their civilization to highland groups. In this normative frame, decolonization and self-determination, as prescribed by international norms, would be normatively inadequate, because enabling indigenous groups to maintain their distinctness alongside mainstream society would perpetuate, rather than elevate, their disadvantaged condition. Integration into mainstream society, in contrast, is seen as allowing members of highland groups to benefit from modernity, civilization, and development. This portrayal of highland peoples as undeveloped and backwards is based on the kind of ethnic hierarchy that has historically justified Vietnamese and French colonization and civilizing missions in Cambodia. The Khmer have historically dismissed the idea that more highly civilized peoples have a right

to rule over them. Domestically, however, Khmer superiority, supervision, and civilization of highland groups continues to be taken for granted. For the Khmer to claim self-determination as a matter of equality between peoples while invoking the superiority of Khmer civilization to rationalize the colonization and assimilation of highland peoples is hypercritical but politically convenient, because it helps justify the imposition of Khmer control over highland peoples and the exploitation of their lands and natural resources.

The misrepresentation of highland cultures as ancient but genuinely Khmer implies a cultural proximity between highland peoples and the Khmer that makes integration of highland peoples into the Khmer mainstream appear normatively more defensible. Highland groups are portrayed as being culturally not 'different enough' to justify differential treatment. However, this view underrates the often profound differences between the ways of life of Khmer and highland peoples and conceals the large degree to which contemporary cultural proximity is the result of violent Khmer nation-building. Accepting this view creates perverse incentives, because it exonerates the state and the Khmer majority for the involuntary incorporation and assimilation of minority cultures. Moreover, the Khmer are also culturally close to the Thai, for example, yet no-one in Cambodia advocates for Khmer incorporation and integration into Thailand.

International and Cambodian conceptions of indigenous peoples support profoundly different policy prescriptions. International indigenous rights norms provide for permanent accommodation and protection to enable highland groups to maintain their distinct cultures indefinitely, if they so choose. Khmer notions, in contrast, suggest temporary, provisional protection to enable integration. By emphasizing the poverty and vulnerability of highland peoples, rather than the injustice of their ongoing colonial incorporation, international organizations in Cambodia implicitly support the notion that justice for highland peoples requires only transitional measures. If highland groups were just poor and vulnerable segments of the population, then transitional measures to facilitate their integration into mainstream society would indeed be a more plausible remedy than self-government and the perpetuation of their distinct cultures. Taken together, Cambodian as well as international misconceptions of highland groups have contributed to the international community's failure to promote indigenous rights norms in Cambodia. These misconceptions help justify Khmer nation-building and colonization as being in the interest of highland peoples, as making civilization, development, and modernity available to them.

Geo-political insecurity, specifically the self-perception of the Khmer as an existentially threatened people, is yet another factor that contributes to explaining the Cambodian state's resistance to international indigenous rights norms. The Khmer are usefully considered a 'minoritized majority', a dominant group that perceives of itself as threatened with extinction (Goshal et al., 1995: 28). This finding is underlined by the Constitution's preoccupation with Khmer cultural preservation, territorial integrity, and sovereignty. Concerns over Cambodia's borders and independence as well as its essential Khmerness

are also at the heart of contemporary political debate. There are no effective regional security institutions to mitigate the Khmer perception of territorial insecurity.

The homelands of highland groups tend to be near, or even transcend, poorly demarcated, disputed, highly contentious borders with Cambodia's more powerful and mutually antagonistic neighbors Vietnam and Thailand, as well as with Laos. A threat is perceived to originate less in the actual or potential autonomy claims of highland peoples than in the territorial ambitions of neighboring states, which might be encouraged if Cambodia exercised less than full control over these regions. Cambodia's frontiers are perceived to be more secure the more the inhabitants identify as Khmer. Thus, Cambodian territorial anxieties contribute to securitizing the relations between highland peoples and the Cambodian state, and to making the state and the Khmer majority less willing to accord any degree of autonomy to highland peoples. Khmer obsession with cultural survival highlights once more the double standard involved in the state's treatment of highland peoples, for whom cultural extinction is not a threat but a reality brought upon them by the Khmer majority and policies of the nation-building state.

7.6. China and the International Community's Decreasing Influence

International attempts to promote indigenous rights norms in Cambodia were largely unsuccessful, despite the country's considerable and longstanding financial dependence on the international community. This dependence motivated much of the government's nominal accommodation of indigenous rights norms, but it was insufficient to encourage compliance with international norms. Plausibly, motivation will further deteriorate with the emergence of China as Cambodia's dominant investor and single largest source of foreign aid. Whatever 'leverage' international organizations and donors might have had over the Cambodian government because of financial assistance is diminishing. Chinese companies have invested US\$ 8.2 billion in Cambodia between 2006 and August 2012 (Coates, 2012), while Cambodia has accumulated between US\$ 2 billion and US\$ 6 billion of debt to China (May, 2012). China's 2011 investment in Cambodia totals nearly 15 per cent of the country's GDP and 10 times the investment of the United States (Coates, 2012). The huge influx of investment from Chinese firms is perceived by many as fueling corruption, inhibiting progress on human rights, and as limiting the ability of other donors to influence the government (Campbell, 2012; Jeldres, 2012; Lyttleton & Nyíri, 2011; T. Miller, 2011; Strangio, 2012b). At least nominally, multilateral and Western donors make their support conditional on accountability, respect for human rights, democracy and, occasionally, indigenous rights. China, in contrast, is often hailed by the Cambodian government for providing aid supposedly without 'strings' attached. Prime Minister Hun Sen has repeatedly blamed traditional donors for their "*complicated conditions*" (Strangio, 2012b), while praising Chinese support for the absence of such conditions and describing China as Cambodia's "*most trustworthy friend*" (Campbell, 2012).

Of course, Chinese aid does come with conditions and reportedly, at high interest rates (Heijmans, 2012; Lyttleton & Nyíri, 2011). Chinese aid is typically provided in the form of loans for infrastructure projects such as roads, bridges, hydroelectric dams, and natural resource exploration. It does not involve requirements for transparency, accountability, and respect for rights of the kind that are routinely attached to multilateral and Western aid and that potentially undermine the interests of Cambodia's neo-patrimonial elites. Since 1992, Beijing has funded construction of more than 2,000 kilometers of roads and bridges in Cambodia and currently supports 19 infrastructure projects worth a total of US\$ 1.1 billion (Wong, 2012). Conditions attached to Chinese aid tend to be relatively attractive to Cambodia's elite but particularly disadvantageous for Cambodia's highland peoples. In many instances, Chinese companies are accorded privileged access to Cambodia's mineral and natural resources in return for aid (May, 2012; T. Miller, 2011). According to the non-governmental Cambodian Center for Human Rights, the government granted 4,615,745 hectares in forest-, land-, and mining concessions to 107 Chinese-owned firms between 1994 and 2012, which accounts for half of the total concession area and for about one quarter of Cambodia's 17 million hectares of agricultural land and forest (May, 2012). Over-proportionally, these concessions are located in indigenous homelands. Chinese companies are also involved in at least six major hydropower projects, several of which were assessed by other donors and dismissed based on environmental and social concerns (D. D. Gray & Kurtenbach, 2012; T. Miller, 2011). As the US-ambassador to Cambodia, Carol Rodley, stated in a cable published by Wikileaks, the "*lure of Chinese and other investment overrides serious consideration of the cumulative environmental and social impacts of many dams throughout the country*" (quoted in: T. Miller, 2011). Naturally, hydropower projects, too, are over-proportionally located in the mountainous homelands of highland peoples. In 2009, the reservoir and surrounding areas were logged and cleared for the Stung Atai dam in Ou Saoum, the only commune with a Chong majority, with the result that "*vast tracks of once-pristine land are left looking like a bombsite*", according to one newspaper article (Titthara, Boyle, & Cheong, 2013). The Lower Sesan 2 dam in Stung Treng Province is set to displace 5,000 villagers in Sesan district alone and to deprive as many as 100,000 people in Stung Treng and Ratanakiri provinces of the ability to catch fish (Baird, 2009a; Certo & Titthara, 2012; Naren, 2012a). Highland peoples benefit little from Chinese aid and investment but experience negative impacts over-proportionally, from the actual infrastructure projects as well as from the concessions that are granted to Chinese companies in return.

One prominent case illustrates how Chinese aid reduces the ability of the international community to influence Cambodian policy-making. About 4,000 families were violently evicted from the Boeng Kak Lake area in the capital to make way for the development of the land by a consortium including a company linked to high-ranking Cambodian policy makers and the Chinese Inner Mongolia Erdos Hongjun Investment Company. Following complaints by NGOs, the World Bank's independent Inspection Panel found the Bank-

supported Land Administration and Management Project in non-compliance with operational policies, because the project had failed to provide land titles to lake side residents (Inspection Panel, 2010). Therefore, the World Bank, which was lending about US\$ 50-70 million annually to Cambodia, suspended further loans in 2011. In contrast, the Inner Mongolia Erdos Hongjun Investment Company has pledged to spend US\$ 3 billion in Cambodia, half of which is earmarked for bauxite exploitation and processing in the northeast (Weinland & May, 2011). The weakening influence of the international community relative to that of China is further demonstrated by the illegal deportation of 20 ethnic Uighur asylum seekers in 2009. The Uighurs in China's Xinjiang region are a large, homeland-based national minority seeking greater autonomy, an aspiration to which the Chinese government is vehemently opposed (Côté, 2012). The group was fleeing from persecution following a violent crackdown on protests. Cambodia deported the group to China, despite protest by the United Nations, the United States, and human rights groups and one day before a delegation led by Chinese vice-president Xi Jinping arrived in Phnom Penh with US\$ 1.2 billion of grants and loan agreements (Colm, 2010; Jeldres, 2012: 90; Mydans, 2009: 13). In cables published by Wikileaks, US officials noted the questions this incident raised "*about the non-transparent quid pro quos often attached to China's 'no strings attached' assistance*". They added that "*China's conditions on assistance appear more palpable to the RGC [Royal Government of Cambodia] than other international development partners' 'strings', and could erode donor efforts to use assistance to promote improved governance and respect for human rights*" (quoted in: T. Miller, 2011). In response to the deportation, the US halted shipments of 200 surplus military vehicles to Cambodia. Promptly, China gifted 257 brand new military trucks as well as 50,000 uniforms to the Cambodian military, in an apparent attempt to demonstrate the superiority of China's support to Cambodia (Campbell, 2012). China is also among the countries that explicitly reject the view that the international concept 'indigenous people' applies outside European settler states (Kingsbury, 1999: 339; Kymlicka, 2005: 46). China likely does not see the realization of international indigenous rights norms in Cambodia as being in its interest. The realization of these rights would contradict China's position on international rights norms as well as Chinese objectives in Cambodia, such as access to natural and mineral resources and contracts for large-scale infrastructure projects. Clearly, China's increasing influence at the expense of Cambodia's traditional donors makes application of indigenous rights norms less likely.

7.7. The Complicity of the International Community

Further contributing to the disappointing record of international indigenous rights norms promotion in Cambodia is the insular, disconnected, and often insincere character relevant international initiatives have in the bigger picture of cooperation with Cambodia. Initiatives to promote indigenous rights have remained confined to small units within the respective organizations, as marginal to mainstream development cooperation as highland peoples are to the standard operations of the Cambodian state. In practice, international

organizations as well as bilateral donors promote a model of economic development and state-building that, in the absence of effective protection, is detrimental to the realization of indigenous rights and mirrors the Khmer nation-building of the Cambodian state.

The international community at the global level proclaims indigenous peoples' rights to self-determination. In Cambodia, international organizations and bilateral donors actively support the government's imposition of state authority upon highland peoples. They help construct the institutional infrastructure of a nation-building state in highland areas, to build the capacity and extend the reach of state institutions that are controlled by the political elites of the Khmer and operate exclusively in Khmer language. International organizations in practice work with central-level institutions and favor system-wide, undifferentiated, 'national' programs and designs that privilege the language, institutions, and norms of the Khmer majority. The international community proclaims indigenous peoples' right to land and natural resources. In Cambodia, international organizations accept the claims of the Cambodian state to the lands and resources of highland peoples. International assistance to the construction of physical infrastructure in highland areas facilitates in-migration, land and resource alienation, and Khmer nation-building. These trends undermine the future possibility of highland peoples enjoying the rights indigenous peoples have in international law and policy. The development industry operates virtually exclusively in Khmer and English languages and translates myriads of reports, manuals, action plans, research and policy papers, and other documents between these two languages. The process helps modernizing the language of the majority but not the languages of minorities. Like the Cambodian state, international organizations create opportunities for Khmer speakers but rarely for speakers of minority languages. In these and many other ways, the international development industry helps building public institutions around a Khmer identity, and making that identity a source of economic opportunity, political power, and social prestige. By doing so, the international community contributes to further marginalizing the bearers of minority identities. The international community did contribute considerably to shaping public and legal discourse pertaining to indigenous peoples, such as by normalizing the notion that highland peoples have group-specific interest, by improving rights-awareness among minority communities, and by facilitating minority mobilization. However, the international community failed to transform the power relations that undermine indigenous cultures. Instead, it has provided significant international legitimacy to these power relations, which involve a considerable range of abuse of the rights Cambodia's indigenous peoples have in international law as well as in domestic legislation.

7.8. Recommendations

Many members of Cambodia's highland peoples seek to maintain the existence of their groups as distinct societies and should be entitled and enabled to do so. Measures to enhance their political powers, economic opportunities, and social status are called for, as a matter of equality and fairness between groups. To overcome systematic disadvantages

faced by highland groups, the application of international indigenous rights norms is normatively adequate and desirable. However, full application of these norms is politically unfeasible in the current situation, as above discussion of geo-political insecurity, neo-patrimonial governance, long-standing norms of ethnic hierarchy, and patterns of colonization demonstrate.

Further development on the current trajectory would undermine future chances of realizing international norms, such as by reducing the amount of land controlled by indigenous communities, by diluting their territorial concentrations, and by weakening indigenous languages and institutions. Therefore, the international community should adopt a sequenced approach to promoting indigenous rights in Cambodia, with pragmatic, less ambitious shorter-term measures that work progressively towards achievement of international norms in the longer-term. To a varying degree, many of the measures proposed in the following have the potential to limit the control the ruling party exercises over Cambodia's state institutions, to contradict widely shared norms of ethnic hierarchy, and to be seen as compromising national security. Therefore, many of these measures will be resisted by political elites, all while the international community's influence over the political elite is decreasing.

The international community should use its diminishing influence in Cambodia more wisely and more consistently. Protection of indigenous peoples should be made a concerted effort of all relevant donors. Within these organizations, promoting respect for indigenous rights should not be limited to specific thematic initiatives but mainstreamed across relevant operations. International organizations should work towards harmonizing their approaches. In order to consolidate the impact of initiatives across different sectors and regions, closer cooperation is required to obtain formal government agreement on a strategy and a timeline with concrete, measurable, verifiable steps to be taken to progressively increase compliance with indigenous rights norms. Such agreement would make it easier for individual organizations and projects to address the particular challenges they face in specific reform sectors and regions. International donors should define specific outputs related to the improvement of the situation of indigenous peoples in the design of projects and specify clear accountabilities for monitoring disaggregated impacts with specific indicators that capture indigenous perceptions. Efforts to engage indigenous peoples and their representative institutions must be maintained through all phases of projects.

A decentralized framework of governance offers opportunities for more inclusive democracy and participation and for improving the protection of indigenous rights. It is not politically realistic for entire provinces or districts to be recognized as autonomous indigenous homelands. In contrast, utilizing the general autonomy of communes and capitalizing on the overall transfer of power to local councils is among the more practical and realistic opportunities to create some measure of self-government for indigenous

peoples, and to incrementally enhance the control they exercise over themselves and their cultures' change. Efforts aimed at village-level legal recognition of indigenous communities and their communal land ownership should be complemented with strategies that draw on the power transfer to commune councils. Such strategies would help create larger, more viable, aggregated units capable of providing more effective governance and economic management. Enhancing indigenous access to commune councils would help connect the promotion of indigenous rights to the larger decentralization effort, to the considerable international system supporting it, and to decision-making at higher levels of the state. A multinational conception of citizenship and of decentralization reform should be adopted that recognizes indigenous groups as peoples and particular villages and communes as constituting parts of their homelands. Powers relevant to the maintenance of distinct indigenous cultures, such as pertaining to land, natural resources, language, conflict resolution, and education, should be devolved to village-level indigenous institutions and commune councils controlled by indigenous communities. A commune-level majority of indigenous constituents is in many instances a necessary but by no means sufficient precondition for highland groups to benefit from the empowerment of communes. Therefore, indigenous groups should be enabled to limit migration into their villages and communes. Restricting in-migration would protect existing territorial concentrations of particular groups and help maintain the integrity of their cultures. Where appropriate, commune boundaries should be redrawn along ethnic lines to ensure that particular indigenous groups form a majority in the respective constituency. The role of customary institutions to handle certain kinds of conflicts and to oblige outsiders to respect certain local customs should be formalized and mechanisms introduced to safeguard the human rights of minority and majority members alike.

Several measures would contribute to making local authorities more accountable to highland communities and less dependent on higher levels of the state, political parties, and patronage networks. Village chiefs should be elected by villagers rather than selected by commune councils. Voters in commune elections should be able to select candidates rather than political parties. Local political parties and independent candidates should be able to run in local elections. There should be reserved seats on commune, district, and provincial-level councils for representatives of highland groups, in proportion to the indigenous population in the respective constituencies. It would be useful to create groups or associations of councils in highland areas, as forums for sharing experiences, building the capacity of indigenous councilors, coordinating advocacy strategies, and consolidating the indigenous voice for participation in decision-making at higher levels of the state. The international community should continue to support the self-organization and -representation of indigenous groups and to strengthen links between different groups in different parts of the country and regional and international advocacy networks and alliances.

The Khmer literacy requirement for councilor candidates and other local state officials should be dropped in highland communes and indigenous tongues locally recognized as additional official languages. Knowledge of these languages should be included among the selection criteria for public officials in the respective areas. Local languages should be used in relevant public meetings alongside Khmer and suitable interpretation made available, to enhance democratic participation. The formal legal and judicial systems, too, should provide for the use of minority languages. The Cambodian state needs to learn the languages of its indigenous citizens and to engage in meaningful dialogue with them. This would contribute to enhancing equality between different ethnic groups and promote democratic deliberation at the local level. It would enhance access of indigenous people to public offices and state decision-making, help counter the under-representation of highland groups in state institutions, and improve the responsiveness of local governance to their distinct needs. Laws and policy documents as well as relevant information materials should be made available in local languages. Promoting public use of highland languages would contribute to recognizing, validating, and maintaining these languages and the distinct cultures they support, and to underlining that speakers of these languages are not second-class citizens. Persisting ethnic hierarchies and depictions of highland peoples as undeveloped, traditionalist, collectivist, and backward should be challenged and public awareness of historical injustice and colonial incorporation promoted. The protection of minority cultures should not preclude their modernization, development, and reform, and it should accommodate indigenous aspirations to modernize without becoming Khmer.

The international community should continue to facilitate and help institutionalize dialogue between indigenous communities and higher levels of the state. Indigenous people's participation should be built, in part, upon their own representative organizations. Capacity building for state institutions should be paralleled by efforts to build the capacity of indigenous institutions, with a focus on the ability of both to engage in meaningful dialogue with each other. Specific mechanisms for the consultation and participation of indigenous groups should be created. This should include special representation on relevant government bodies and veto rights for decision-making with particular impacts on indigenous groups, such as pertaining to large-scale infrastructure and concession projects in their traditional homelands. The international community should also seek to promote minority rights at the regional level. Plausibly, ASEAN is in a better position than the UN to respond to the particularities of state-minority-relations in its member countries and to develop a sequence of reforms that would progressively lead towards respect for a credible local interpretation of international norms.

Most Khmers support the idea of having a separate state and restricted access to citizenship, explicitly in order to ensure the survival of Khmer culture and civilization. External protections for highland peoples can be justified on the same grounds. Such measures would not be privileges or special advantages. Rather, they would compensate for specific disadvantages faced by members of indigenous groups and promote equality

between the Khmer majority and highland groups as well as freedom within highland groups. A shift towards a more multicultural conception of citizenship will not be accomplished in the short term, but it would contribute to ensuring that the value of cultural membership is equally protected for Cambodian citizens of different ethnicity.

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