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Collective land titling in Cambodia – a case for reform?



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ABBREVIATIONS

| | |
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| ADIC | Analyzing Development Issues Centre (Cambodia) |
| CIPO | Cambodia Indigenous Peoples Organization |
| CLT | Collective Land Title |
| DP | Development Partner |
| DPA | Development and Partnership in Action |
| DSA | Daily Subsistence Allowance |
| FAO | Food and Agriculture Organization of the United Nations |
| FLO | Forest and Livelihood Organization |
| GIZ | Deutsche Gesellschaft für Internationale Zusammenarbeit (formerly GTZ) |
| GPS | Global Positioning System |
| HA | Highlanders Association |
| HEKS | HEKS/EPER Swiss Church Aid |
| ICSO | Indigenous Communities Support Organization |
| ILO | International Labour Organization |
| IPC | Indigenous Peoples Community |
| IRAM | Indigenous Rights Active Members |
| LANGO | Law on Associations and Non-Governmental Organizations |
| MRLG | Mekong Region Land Governance |
| NGO | Non-Governmental Organization |
| NTFP-EP | Non-Timber Forest Products Exchange Programme |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| PKH | Ponlok Khmer |
| SDG | Sustainable Development Goals |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |
| UPR | Universal Periodic Review |
| USD | United States Dollars |
| WCS | Wildlife Conservation Society |
| WWF | World Wildlife Fund |



INTRODUCTION

Indigenous peoples in Cambodia are not legally defined other than for the specific purposes of the 2001 Land Law. Article 23 describes indigenous peoples as peoples “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.” This lays the foundation for the Land Law’s provision for indigenous communities’ collective ownership of immovable property. The Land Law contains important provisions on the protection of indigenous lands, which allow for communal land titles (CLT) rather than individual titles, while preventing the sale and transfer of indigenous lands.

In April 2009, the Royal Government of Cambodia further defined its policy on indigenous peoples and adopted the sub-decree on indigenous land registration, which details the procedures required for the communal land titling of indigenous lands, including steps for boundary demarcation, surveying and public display.

However, the process to obtain a CLT

established by the sub-decree is cumbersome and three-fold: first, communities must be identified by the Ministry of Rural Development as ‘indigenous communities’; second, they must be registered with the Ministry of Interior as a legal entity prior to applying for land registration; and third, they apply to register their communal land with the Ministry of Land.

It is feared that the process of implementation is too complex, expensive, slow and inaccessible to secure protection of indigenous land, especially in a context where land is sold or leased easily and often in full disregard of procedural safeguards and national law.

The Royal Government of Cambodia has publicly pledged to provide at least ten communities with communal land titles per year starting from 2014. However, in July 2018, the state budget for collective land registration was reduced by half, meaning that only five communities are now likely to receive a CLT per year. As of 2020, the Ministry of Rural Development’s CLT budget allocation only allows it to register

three indigenous communities per year.¹ Moreover, indigenous communities are reliant on technical and financial support from development partners, United Nations Agencies and civil society organizations in order to develop and submit their applications.

As of September 2020, 154 communities have been recognized by the Ministry of Rural Development as Indigenous Communities (step 1); the Ministry of Interior had endorsed and registered 150 indigenous communities as “legal entities” through the process of formalizing their community by-laws (step 2); and 30 communities have received communal land titles from the Ministry of Land (step 3).

If the current average yearly rate of validations continues, it will take approximately 100 years to validate the identity of the remaining 304 indigenous communities in Cambodia that have not yet been validated, or not yet embarked on the process to self-identify as indigenous. Bearing in mind that there is no exact figure on the number of indigenous communities in Cambodia, although the commonly held view is that there are 455, and that budget allocated for their registration could be

reduced even more as a result economic impact of the COVID-19 pandemic on the State budget, the 100-year estimate may, in fact, be higher.

In the past four years, the Office of the High Commissioner for Human Rights (OHCHR) in Cambodia has developed, jointly with the Ministry of Rural Development, the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction a practical CLT manual for local authorities² and carried out regional trainings on the CLT process for over 300 representatives of local authorities. It has also accompanied Ministry officials and local authorities in the field to carry the 1st, 2nd and 3rd steps of CLT registration of over 20 indigenous communities.

OHCHR gained from this experience the conviction that there is an urgent need for a simplification of the CLT procedure. OHCHR therefore decided to develop a discussion paper on CLT reform with proposed amendments to the current legal provisions governing CLT registration. It reflects the OHCHR assessment of the registration of CLT of indigenous communities in practice since 2009, and identifies challenges and good practices.

1 OHCHR meeting with the Department of Ethnic Minorities Development of the Ministry of Rural Development on 8 September 2020.

2 Manual on Indigenous Communities Identification; Legal Entity Registration; and Communal Land Registration Process in Cambodia. Co-published by OHCHR-Ministry of Rural Development-Ministry of Interior-Ministry of Land Management, Urban Planning and Construction in January 2019. Available at: <https://cambodia.ohchr.org/sites/default/files/Promotional-materials-soft/CLT%20ManualKhmer.pdf>

The discussion paper is structured in four parts:

Part I provides an overview of customary land tenure as a key feature of the international protection and recognition of indigenous peoples' human rights. It notes the State's obligation to recognize and uphold indigenous peoples' right to their customary lands and resources and, as described with some level of specificity by international human rights mechanisms, refers to some of the basic elements that collective land titling procedures *should* include to be satisfactory. In addition, part I considers legal developments at the international level that favour a broader scope of application of collective land recognition to not only include indigenous peoples, but all groups with customary land tenure.

Part II introduces Cambodia's international legal obligations in relation to the rights of indigenous peoples, in particular their right to their lands and natural resources.

Part III outlines the proposed way forward to break down the process to obtain a collective land title. For each step, it suggests possible ways to simplify the legal and administrative procedures in order to enable productive participation of indigenous peoples, including indigenous women, in the CLT process, ensure cost effectiveness, and introduce reasonable and less cumbersome processes. This

part draws on comparative analysis from lessons learned in other countries that have legally recognized indigenous and/or local communities' customary land tenure and put in place procedures to that end. At the end of this section, a table with key recommendations and required amendments to the legal framework (where relevant), is provided.

Part IV discusses other human rights challenges that indigenous peoples currently face in Cambodia, including the limited scope of interim protective measures, the lack of funding for both indigenous communities and key line ministries to be able to effectively participate in the process towards collective land titles, the limited awareness among local authorities about indigenous issues and relevant domestic laws, the limitations of the National Policy, and the absence of a gender lens when it comes to indigenous women's empowerment.

This discussion paper was prepared pursuant to the mandate of OHCHR Cambodia to provide support for the development of a legal and institutional framework that protects the exercise of human rights, consistent with international human rights norms and standards and the human rights obligations enshrined in Cambodia's Constitution. It is the result of extensive consultations between 2017 and 2020 with the Ministries and civil society

organizations involved in the CLT process.³

OHCHR believes that the observations and recommendations for reform contained in this discussion paper will be useful to the Royal Government of Cambodia as it advances measures to implement its international legal obligations concerning indigenous peoples, in particular its endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),

the Sustainable Development Goals (SDG) and the principle of leaving no one behind, and its pledges under the Universal Periodic Review (UPR) related to strengthening the legislative framework consistent with international standards. OHCHR anticipates that this discussion paper will be followed by a high-level meeting, in cooperation with the relevant Ministries, to consolidate their support for collective land title reform.

3 This discussion paper was initiated in 2017 after extensive discussions with representatives of the three key line ministries: the Ministry of Rural Development, the Ministry of Land Management, Urban Planning and Construction, and the Ministry of Interior. In addition, OHCHR sought inputs from national and international stakeholders working on indigenous peoples' issues in Cambodia, including the Indigenous Communities Support Organization (ICSO), Cambodia Indigenous Peoples Organization (CIPO), Ponlok Khmer (PKH), Development and Partnership in Action (DPA), Highlanders Association, the Mekong Region Land Governance (MRLG), the Forest and Livelihood Organization (FLO), the World Wildlife Fund (WWF), the Indigenous Rights Active Members (IRAM), the World Bank, the International Labour Organization (ILO), and the Food and Agriculture Organization (FAO). In January 2017, OHCHR undertook a survey to receive wider inputs from NGOs and other stakeholders (in English and Khmer), and their responses are reflected in the discussion paper. Following those processes, in May 2018, OHCHR organized a consultative meeting with the Ministry of Rural Development, Ministry of Interior, Ministry of Land Management, Urban Planning and Construction and the Ministry of Environment, in which all ministries provided comments to the discussion paper. A parallel consultation was held with DPA, NGO Forum, CIPO, IRAM, HA, ICSO, FLO, WWF, and PKH, also in May 2018. OHCHR subsequently continued consultations with relevant ministries and civil society organizations. On 16 April 2020, it requested formal comments to a revised version of the discussion paper from the Ministry of Rural Development, Ministry of Interior, Ministry of Land Management, Urban Planning and Construction and civil society organizations working to support indigenous peoples, International Labour Organization, and the World Bank. Due to the Coronavirus (COVID-19) pandemic, virtual consultations were held with WWF, FLO, NGO Forum, ICSO, HEKS, CIPA, WCS and NTFEP. The discussion paper was also put on a public share drive with Indigenous People and Forestry Network organizations (IPFN) for further comments until 15 May 2020. On 20 May 2020, OHCHR held final meetings with the Department of Associations and Political Parties of the Ministry of Interior on 15 May 2020, and with the Ministry of Land Management, Urban Planning and Construction, NGO Forum and ADIC before finalizing the discussion paper for publication.

Part I:



International human rights norms and standards relating to the recognition of customary land tenure of indigenous peoples

For indigenous peoples⁴ in Cambodia, as much as elsewhere, to secure rights over their lands and resources is *a sine qua non-condition* for their long-term well-being and a precondition to continue to exist as distinct peoples. Secure land and resource tenure is one of the most basic human rights for indigenous peoples, including indigenous women,⁵ and is a key feature of the international recognition of their rights. It is also a step towards the achievement of the SDG, including SDG 1 on ending poverty by ensuring equal access to ownership and control over land and SDG 2 on ending

hunger and achieving food security by securing equal access to land, in particular for women and indigenous peoples. A long-term occupancy of lands and resources is considered to be the basis for their collective property rights which, under international human rights norms, the State has a duty to respect and uphold.

Cambodia's obligations to respect, protect and fulfil the rights of indigenous peoples arises under several international human rights treaties to which it is a party. This includes the International Covenant on

4 In Khmer, groups that identify as indigenous and/or are considered as such are commonly referred to as original ethnic minorities (chuncheat daoem pheak tech), where the term original is used to distinguish them from other ethnic minorities in Cambodia such as the Cham, the Chinese and the Vietnamese. In the English translations of Cambodian laws and policies relating to indigenous peoples, the term "indigenous communities" is used. For sake of consistency with international human rights standards, this discussion paper uses the term "indigenous peoples" when referring to the original ethnic minorities in Cambodia.

5 For more information on the disproportionate impact of land dispossession on Cambodian indigenous women, see The Impacts of Land Dispossession on Indigenous Women, Asia Indigenous Peoples Pact, 2015.

Civil and Political Rights,⁶ the International Covenant on Economic, Social and Cultural Rights⁷ and the International Convention on the Elimination of All Forms of Racial Discrimination.⁸ In December 2019, the Committee on Elimination of Racial Discrimination, which monitors compliance with International Convention on the Elimination of All Forms of Racial Discrimination, expressed, concern that “the current land titling process, which is too lengthy and bureaucratic, (...) prevents some indigenous groups from being able to efficiently register their collective land”.⁹ It recommended Cambodia to “simplify the procedure of land titling allowing for

indigenous peoples to gain recognition and claim their land; [and] Expedite the settling of land disputes and take measures to prevent displacement of and homelessness among indigenous peoples.”¹⁰

In her report to the United Nations Human Rights Council presented in September 2019, the Special Rapporteur on the situation of human rights in Cambodia stated that “Land titling continues to be a problem. Progress remains slow with a cumbersome and complicated procedure for securing CLTs in Cambodia. Whilst the Ministry of Land Management, Construction and Urban Planning is progressing its ambitious plan to resolve all land titling disputes by 2023,

6 In regard to Article 27 (rights of minorities) of the International Covenant on Civil and Political Rights, the Human Rights Committee has stated “that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. [...] The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them”, Human Rights Committee General Comment No. 23: Article 27 (Rights of Minorities), CCPR/C/21/Rev.1/Add.5, paragraph 7 (1994). Also relevant is Article 1 of the Covenant, which states that “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”.

7 The Committee on Economic, Social and Cultural Rights, in its General Comment No. 21 on the Right of everyone to take part in cultural life, has noted the “strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” (UNITED NATIONS Doc E/C.12/GC/21). The Committee, in its review of State Parties’ implementation of their obligations under the International Covenant on Economic, Social and Cultural Rights commonly raises issues relating to indigenous peoples’ rights and access to land, and has done so on several occasions in its review of Cambodia.

8 Interpreting the obligations of States under the Convention, the Committee on the Elimination of Discrimination has called upon States to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories” General Recommendation on the rights of indigenous peoples, A/52/18, annex V, paragraph 5 (1997).

9 CERD/C/KHM/CO/14-17, paragraph 27 (e).

10 CERD/C/KHM/CO/14-17, paragraph 28 (e) (f).

there is evidence that indigenous peoples will be left behind”.¹¹

In January 2019, Cambodia went through its third cycle UPR examination. The Government accepted two recommendations specifically related to the need to simplify the land registration system for indigenous peoples.¹²

Cambodia is a State party to the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) which provides for equal access to indigenous communities to employment and occupation, including traditional occupations.¹³ In this context, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), in its most recent comments addressed to Cambodia, stressed the importance of ensuring access to land and natural resources to indigenous peoples for the exercise of traditional occupations. More specifically, it requested the Government to inform it of measures

taken to ensure that indigenous peoples have access, without discrimination, to land and other natural resources, and of “the measures taken to accelerate the protection of indigenous peoples’ land rights”.¹⁴

It should be noted that Cambodia voted for the adoption of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)¹⁵ by the United Nations General Assembly in 2007. UNDRIP reflects a broad international consensus about the minimum content of the rights of indigenous peoples. Although it is not legally binding, it represents an extension of the commitment assumed by the United Nations Member States – including Cambodia – to promote and respect human rights, including with regard to elders, women, youth, children and persons with disabilities, under the United Nations Charter, customary international law, and human rights treaties to which Cambodia is a party.¹⁶

11 Assessing Protection of those at risk of being left behind, report of the special rapporteur on the situation of human rights in Cambodia. Human Rights Council, 42nd Session, 9-27 September 2019 (agenda 10, para. 44). A/HRC/42/60/Add.1.

12 “Take measures to simplify the allocation of community land concessions to indigenous peoples” and “Implement a coherent resettlement policy and simplified process for granting CLTs, consulting communities, civil society and indigenous groups”. A/HRC/41/17, 5 April 2019, paragraphs 110.21, 110.22.

13 See ILO, Eliminating discrimination against Indigenous and Tribal peoples in employment and occupation – A guide to ILO Convention no. 111, 2007.

14 CEACR, Direct Request, 2016.

15 A/61/295, available at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

16 See generally, A/HRC/21/47/Add.1, paragraphs 79-84.

UNDRIP provides extensive recognition of indigenous peoples' individual and collective rights and is anchored in the human rights to equality and self-determination. It confirms a number of rights in areas of special significance to indigenous peoples, such as the rights to self-government and participation (including consultation and consent); cultural and spiritual heritage; lands, territories and natural resources; and development and social services. UNDRIP establishes that "indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired".¹⁷ It further requires States to "give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned".¹⁸

Though not ratified by Cambodia, ILO Convention No. 169 sets out principles reflective of international human rights standards regarding indigenous peoples,

rights to land and natural resources, which can guide the Government's future actions. It highlights the crucial importance of indigenous peoples' relationship with their lands, while stressing the State's duty to identify and protect such land, including through legal recognition and the prevention and punishment of unauthorized intrusions.¹⁹

It should be noted that there is no "one size fit for all" or "right" model for recognizing indigenous peoples' rights over their customary lands and resources, but international human rights norms and standards offer guidance for developing national legislative, policy and institutional frameworks that are respectful of these rights and that take into account the specific national circumstances. Careful tailoring of the approach to indigenous land and resources' recognition requires a detailed understanding of the national context and the diversity of existing land tenure practices that prevail.²⁰ In most cases, the regularization of land ownership of indigenous peoples will be a complex task that involves a variety of stakeholders and steps, beginning with the adoption of legislation, the definition of adequate procedural steps and the

17 UNDRIP, Article 26.

18 Ibid.

19 Convention No. 169, Part II (Land). See also ILO, *Understanding the Indigenous and Tribal People Convention, 1989 (No. 169): Handbook for ILO Tripartite Constituents*, 2013, pp. 21-23.

20 USAID: *Community Land and Resource Tenure Recognition: Review of Country Experiences*, 2016.

establishment of institutional mechanisms for implementation and resolution of competing claims to land.²¹

The basic elements that collective land titling procedures should include have been described with some level of specificity by various international human rights bodies. For instance, the Inter-American Court of Human Rights, in its consideration of States' obligation to recognize and guarantee the exercise of the right to communal property by indigenous peoples, has noted that the mere adoption of legislative or administrative mechanisms is insufficient if these do not lead, in practice, to guaranteeing the right to communal property, and within a reasonable time.²² The Court has also noted that while international standards and practice are clear in requiring that indigenous peoples be consulted and fully involved in all steps along the way, including in the design of the legal and policy framework and implementing administrative procedures, the State is expected to play a leading role, in particular by ensuring that delimitation and demarcation of the territory to which the

people's collective property right extends is effectively carried out.²³ The Court stressed that the State needs to fulfil its duty to delimit and demarcate indigenous peoples' lands without delay.²⁴

A key consideration is the cost of implementing measures to delimit, demarcate and title indigenous lands. Depending on the complexity of the administrative procedures that the State chooses to put in place, costs may be significant and therefore, sufficient financial and human resources need to be allocated on a continuous basis to the agencies tasked with implementing these measures. In their consideration of country-specific situations of indigenous peoples, the successive United Nations Special Rapporteurs on the Rights of Indigenous Peoples have underscored the need for States to ensure that indigenous peoples have the necessary technical support, including for cadastral surveys of their communities, recognition of their legal status, and completion of the necessary procedures once they have submitted their applications.²⁵

21 ILO Indigenous and Tribal Peoples' Rights in Practice – a guide to ILO Convention No. 169, 2009.

22 Inter-American Court of Human Rights (IACHR), Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs: Judgment of November 28, 2007. Series C No. 172, para. 115].

23 IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 132. Emphasis added.

24 IACHR Democracy and Human Rights in Venezuela: Doc. OEA/Ser.L/V/II, Doc 54, 30 December 2009, paragraphs 1060, 1071, 1137 – Recommendation 1.

25 A/HRC/12/34/Add.2, paragraph 83; A/HRC/18/35/Add.5, paragraph 80; A/HRC/18/35/add.4, paragraph 70; A/HRC/15/37/Add.4 paragraph 87.

Finally, international human rights mechanisms have emphasized that until indigenous peoples' lands have been delimited, demarcated and titled, States must refrain from any acts that might affect the existence, value, use or enjoyment of the property located in the geographic area occupied and used by the peoples concerned.²⁶ Interim protective measures should apply whenever indigenous peoples are present in an area proposed for development activities

and should remain in place until the process to delimit, demarcate and title the lands has been concluded. Therefore, as a general rule, interim protective measures are not contingent on indigenous peoples' lands having been delimited or demarcated, but are an essential safeguard to ensure respect for indigenous peoples' rights before these rights have been clarified and formalized through a national legal framework and process.

26 IACHR, Report No. 40/04, Case 12.053, Maya indigenous communities of the Toledo District (Belize), October 12, 2004, para. 197 – Recommendation 2.

Part II:



Cambodia's national legal framework relating to the rights of indigenous peoples to their customary lands and resources

In Cambodia, the 2001 Land Law is the principal national legal framework formalizing customary land ownership of indigenous peoples through the granting of collective land titles. The Law recognizes the collective land management practices of indigenous peoples and the need to safeguard their right to maintain their traditional ways of life, which are closely associated to the lands and resources under their customary use.

The Law establishes two categories of lands

that indigenous peoples can claim under a collective land title:

- Private land, encompassing residential land and permanent agricultural land; and
- Collectively managed land, encompassing gravesites, sacred forests and reserved land (the latter to ensure that future generations will have access to land and that communities are not restricted to their current size but can grow in numbers).



The Law lays down the actions needed to provide indigenous peoples with collective titles to their customary lands.²⁷ These provisions give rise to two important rights: a right for indigenous peoples to “manage community and immovable property according to [their] traditional customs” (Article 23), and the right to have

their collective property demarcated and registered in the Cadastre (Article 25).

In 2002, one year after the Land Law was promulgated, the National Council of Land Policy²⁸ issued an interim strategy on the Land Policy Framework. This strategy foresaw that the process to transfer land to indigenous communities “will require careful

27 Article 23: An indigenous community is 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. Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.

Article 24: An individual 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 shall be considered to be a member of the indigenous community and is eligible to have the benefit of the rights, guarantees and protections provided by this law.

Article 25: The lands of indigenous communities are those lands where they have established their residences and carry out traditional agriculture. They include lands actually cultivated as well reserve land necessary for the shifting of cultivation required by the agricultural methods they practice and which are recognized by the administrative authorities. The measurement and demarcation of boundaries of immovable properties of indigenous communities shall be determined according to the factual situation as asserted by the communities, in agreement with their neighbours, and as prescribed by procedures under Title VI of the law and relevant sub-decrees.

Article 26: Ownership of the immovable properties described in Article 25 is granted by the State to the indigenous communities as collective ownership, which includes all the rights and protections of ownership enjoyed by private owners. However, the community does not have the right to dispose of any collective ownership that is State public property to any person or group. The exercise of all ownership rights related to immovable properties of a community and the specific conditions of the land use shall be subject to the responsibility of the traditional authorities and mechanisms for decision-making of the community, according to their customs, and shall be subject to the laws of general enforcement related to immovable properties, such as the law on environmental protection. The provisions of this article are not an obstacle to the undertaking of works done by the State that are required by the national interests or a national emergency need.

Article 27: For the purposes of facilitating the cultural, economic and social evolution of members of indigenous communities, and in order to allow them 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. Immovable property that is subject to such private individual ownership cannot fall under the general definition of public properties of the State.

Article 28 No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community.

28 The National Council of Land Policy was established under the World Bank-funded Land Management Administration Program (LMAP) with a mandate to adopt necessary sub-decree and policies, including on indigenous land titles, to give the 2001 Land Law practical effect.

research and pilot efforts which utilize the participation of indigenous peoples. This research and piloting will result in a Sub-decree under the Land Law to enable indigenous communities to register collective title.”²⁹

Consequently, the Government, together with international development partners, ILO and civil society organizations actively supporting indigenous communities, piloted a process to register collective land title in two communities located in Ratanakiri province (Le En village in Teun commune, Koun Mom district and L’eun Kraen village in Ou Chum commune, Ou Chum district) and one community in Mondulakiri province (Andong Kraloeng in Sen Monorom commune, Ou Reang district).

The legal provisions relating to indigenous peoples’ rights to their traditional lands and resources enshrined in the Land Law were reinforced by *the Policy on Registration and Rights to Use of Lands of Indigenous Communities in Cambodia*, adopted by the National Council of Land Policy in April 2009. Importantly, this Policy established that the community land registration process “shall be simple in both administrative and technical aspects and be transparent.”³⁰

This policy and the pilot project informed the preparation of a sub-decree on the

procedural steps and requirement for the community land registration process, which was adopted on 9 June 2009 as Sub-Decree 83 on Procedures of Registration of Land of Indigenous Communities.

Sub-Decree 83 establishes a three-step procedure that indigenous communities must follow in order to obtain a collective land title. This process involves several ministries.

First, an indigenous community must self-identify and apply to be recognized as indigenous. Second, it must be registered as a legal entity. Third, it must submit an application for a collective land title. The Ministry of Rural Development, through its Department of Ethnic Minorities Development, handles the processing of step 1, the Ministry of Interior oversees and approves step 2, and the Ministry of Land Management, Urban Planning and Construction deals with step 3. In addition, if the claim for title includes land that has been designated as a protected area, the Ministry of the Environment becomes involved.

As of 28 April 2016, the Ministry of Agriculture, Forestry and Fisheries no longer bears responsibility for overseeing protected forests, which has been transferred to the Ministry of Environment - meaning that only

29 ILO Support to Indigenous People in Cambodia project: Indigenous by-law development, p. 5.

30 Policy on Registration and Rights to Use of Lands of Indigenous Communities in Cambodia (2009), p. 1.

one additional ministry is involved.³¹ Nonetheless, the role and responsibility of this Ministry is not specified in the Law or the Sub-Decree 83 and there is currently no mechanisms for indigenous peoples to file an appeal against decisions made by the Ministry of Environment about the removal of protected areas and natural protected areas from collective land titles.

In December 2017, in a joint communication to the Royal Government of Cambodia, the United Nations Special Rapporteur on the Rights of Indigenous Peoples and the United Nations Special Rapporteur on the Situation of Human Rights in Cambodia expressed their concern about the complexity and slowness of the CLT process “especially in a context where land is sold or leased easily, often in disregard of national law and procedural safeguards”.³² They noted that

“the complex process is further hampered by insufficient coordination between the key line ministries (...) [and the fact that] local authorities often lack knowledge about the domestic legal framework relating to the rights of indigenous peoples to their lands and resources and the overall process to ensure these rights, including their own roles and responsibilities in this regard”. These comments came on top of previous communications issued in 2008 and 2009, by the United Nations Special Rapporteur on the Rights of Indigenous Peoples about the newly adopted Sub-Decree 83.³³

In May 2011, the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction issued an inter-ministerial circular outlining the application of interim protective measures for indigenous

31 In May 2016, via sub-decrees, these protected forests were transformed into natural protected areas, with the exception of Ta Moa Protected Forest in Takeo. According to Open Development Cambodia, more than 50% of these natural protected areas were classified as wildlife sanctuaries. <https://opendevdevelopmentcambodia.net/topics/protected-forest/> accessed on 20 July 2018.

32 OL KHM 6/2017.

33 In a letter dated 22 July 2008, the Special Rapporteur noted with concern that the draft Sub-Decree did not include a provision to protect indigenous lands prior to the registration of collective title. He expressed concern that the failure to protect indigenous lands before title registration would leave lands vulnerable to alienation or other threats in the interim, also noting several provisions that may lead to a prolonged titling process, such as the requirements that all indigenous communities be registered as legal entities prior to applying for collective title (Article 3) and that all land disputes be resolved before the collective title is issued (Article 3 in conjunction with Article 7). The Special Rapporteur recommended that Article 3 of the Sub-Decree be amended to allow indigenous communities to register to become legal entities at the same time as they apply for title. A/HRC/12/34/Add.1, paragraph 20. Additionally, the Special Rapporteur noted that “the first of these requirements diverges from the Cambodian Land Law, which only requires that a community be registered as a legal entity prior to holding its title, rather than prior to applying for its title”. A/HRC/12/34/Add.1, paragraph 20. On 19 May 2009, the Special Rapporteur sent another letter to the Royal Government of Cambodia on the same issues. The Special Rapporteur included this letter with his 19 May 2009 communication. See A/HRC/12/34/Add.1, paragraphs 12-24 for additional information.

peoples awaiting their collective land title.³⁴ While a welcome development, protective interim measures only apply to the communities that have submitted their application for collective land title to the Ministry of Land Management, Urban Planning and Construction.³⁵

In 2016, the Ministry of Land Management, Urban Planning and Construction also issued a ministerial circular together with a guidance for its staff at the national and provincial levels concerning procedures related to converting private land titles into collective ones, and vice versa. OHCHR notes that this circular remains unknown to indigenous communities. Consequently, indigenous villagers who have opted for a private land title and found themselves wishing to join the collective title (or, alternatively, where villagers have originally been included in the collective title, but

wish to leave it to apply for a private title) are not aware of their right to do so. As titles will only be converted upon the request of indigenous community members, this circular will have limited effect unless the Ministry undertakes comprehensive awareness-raising initiatives and NGOs working in indigenous communities.

In addition to Sub-Decree 83, internal guidelines issued by the Ministry of Rural Development³⁶ also apply to the first step of the CLT process. An unpublished handbook dated 2010 concerning the work of the Ministry of Rural Development and the Ministry of Interior on their role during the CLT process has also been referenced in preceding legal and policy documents.³⁷ The Ministry of Land Management, Urban Planning and Construction developed separate guidelines on how to process the applications for CLT³⁸.

34 Ministry of Interior and Ministry of Land Management, Urban Planning and Construction, Inter-ministerial Circular on Interim Protective Measures Protecting Lands of Indigenous Peoples that Has Been Requested for Collective Ownership Titling, While Awaiting Titling Process According to Procedure to be completed, issued 31 May 2011.

35 Such approach is not in line with international human rights standards relating to the rights of indigenous peoples which state that until indigenous peoples' land have been delimited, demarcated and titled, States must abstain from any acts that might affect the existence, value, use or enjoyment of the property located in the geographic area occupied and used by the peoples concerned (IACHR report n. 40/04, case 12.053, Maia indigenous communities of the Toledo District (Belize), Oct. 12 2004, para. 197, recommendation 2; referred to in OL KHM 6/2017).

36 Circular No. 0974 on Procedures and Methodology for Implementing the National Policy on the Development and Indigenous Community Identification, issued on 22 July 2009.

37 Reference is made to Handbook for Identification of Indigenous Communities, Development of By-laws, Internal Rules, Preliminary Mapping, Adjudication, and Registration of Collective Land of Indigenous Communities in Cambodia (Kirsten Ewers Andersen and Loeung Kesaro, supported by GIZ), p. 5.

38 Ministry of Land Management, Urban Planning and Construction: Training manual on indigenous communities land registration, February 2012.

It should be noted that the Land Law does not evenly apply the recognition of indigenous peoples' right to customary lands and resources across the different land types. Indeed, it only covers agricultural, housing and shifting cultivation land, including reserve land kept for swidden agriculture (Article 25). Therefore, there is less security for indigenous communities and individuals with customary rights on forest lands and rivers. Further limitations on land that can be claimed for collective land title were also introduced in Sub-Decree 83, which specified that indigenous communities' sacred forests and gravesites should not exceed 7 hectares each (Article 6).³⁹ This limitation had not been part of the consultative discussions leading up to the adoption of Sub-Decree 83 and may pose concerns for indigenous communities whose gravesites and sacred forests total more than the 14 hectares that they can claim, which may force them to choose what parts to include in their title and what parts to leave behind. In their December 2017 joint communication to the Government of Cambodia, the United Nations Special Rapporteur on the rights of Indigenous Peoples and the United

Nations Special Rapporteur on the Human Rights situation in Cambodia, reminded the Royal Government of Cambodia that "international human rights standards – including UNDRIP in its Article 26 – establish that indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied, or otherwise used or acquired. Therefore, parts of indigenous peoples' lands and resources, such as sacred forests and gravesites, should not be excluded for consideration from collective land titles, nor should limitations – such as the 7 hectare limitation on sacred forests and gravesites in Sub-Decree 83 – be imposed on indigenous communities".⁴⁰

As most groups that self-identify as indigenous peoples in Cambodia have close livelihood and cultural ties to forests, the 2002 Forestry Law has a particular bearing on their rights. The Forestry Law affirms the protection of resin-tapping rights of local communities and their right to collect forest by-products (Article 40) and prohibits the cutting of trees that local communities have tapped to extract resin for customary use (Article 29). Importantly, a sub-decree on community

39 In discussions with representatives of the Ministry of Rural Development on 8 December 2016, it was brought to OHCHR attention that many indigenous communities in Cambodia did not have, or claimed, more than 7 hectares of sacred forest or graveyards. It however cannot be readily assumed that this applies to all indigenous communities across the country. While some may only have two hectares of sacred forest left, others may be in customary possession of much larger tracts than seven hectares. OHCHR also notes that limiting the size of sacred forest and gravesites to some extent contradicts the 2001 Land Law which establishes that the "measurement and demarcation of boundaries of immovable properties of indigenous communities shall be determined according to the factual situation as asserted by the communities, in agreement with their neighbours."

40 OL KHM 6/2017.

forest management was adopted in 2003 in accordance with this provision of the Forestry Law.⁴¹ This sub-decree enables the transfer of management rights over forest resources to local communities through so-called community forest agreements that local communities can enter into with the Forestry Administration – a Government agency operating under the jurisdiction of Ministry of Agriculture, Forestry and Fisheries – for a renewable period of 15 years. Such lease transfers are different from community forestry agreements that communities have entered into with the Ministry of Environment in Protected Areas (regulated by the Protected Areas Law).

The Protected Areas Law (2008) sets the framework for the management, conservation and development of protected areas in Cambodia. It recognizes user rights of local communities to sustainably use the natural resources and to continue to reside within zones that have been classified as Protected Areas⁴². Oversight of the implementation of the Protected Areas Law rests with the Ministry of Environment. Of particular concern is the restriction on land rights for indigenous peoples. While the Law recognizes user rights of local communities, it is also clear that local

communities and indigenous peoples cannot obtain a land title over farmland in community protected areas.⁴³ This provision seemingly contradicts the Land Law's recognition that State public land can be included in indigenous peoples' collective land titles.

The Environment and Natural Resources Code of Cambodia, currently in draft form, is likely to have far-reaching impacts on indigenous peoples' rights to claim CLT in forested areas and in protected areas, in particular in light of the proposal that biodiversity conservation corridors be established (significantly expanding the geographical scope of current protected areas) and that new co-management schemes be put in place. The current final draft (made public in early 2017) is largely silent on how customary tenure rights will factor into decisions on land-use planning, including in forested areas.⁴⁴

A new sub-decree, 184 ANK/BK, "on the roles and structures of district administration" was issued on 2 December 2019, which may also have an important impact on the CLT process. Known as the "decentralization sub-decree", it aims to "promote the efficiency of administration management, public service delivery and

41 Sub-Decree #79 on Community Forestry Management (2003).

42 Chapter 6, Articles 21-26.

43 Chapter 6, Articles 21-26

44 Reference is made to OHCHR's submission on the sixth draft of the Environment and Natural Resources Code of Cambodia (draft of 20.11.2016, OHCHR comments on 5.12.2016).

local development at district level” (article 1) by determining “the functions, structure, roles, responsibilities, working relations and accountabilities of district administration” (Article 2). Consequently, all public servants under the provincial departments will be transferred to and managed by the district level during 2020. Neither Sub-Decree 184 ANK/BK nor its five annexes mention the promotion of and support to indigenous communities to register their communal land. However, Annex I of the sub-decree lists the departmental “sectors” to be transferred, including the Land Management and Cadastral sectors. Both these sectors have traditionally had an active role in the CLT registration process.

Administrative decentralization seeks to redistribute authority, responsibility and financial resources for improving services and managing resources more efficiently among different levels of government. The

main advantage of decentralization would be to facilitate the tailoring of solutions for local problems to local conditions. In the case of Cambodia, since each district will be empowered to manage its own affairs, they will be able to tailor programmes or solutions to local problems to reflect the special circumstances or preferences of their respective localities. Such delegation of tasks at the district level could limit the administrative layers involved in the CLT registration process – enabling savings in travel time and costs from officials from the central level, as well as fast-tracking the process – and bringing the process closer to its recipients. However, decentralization, by relaxing national control, de facto creates the potential for more regional variation in civil service conditions. Thus, if districts lack clear guidance on how to conduct the CLT registration, indigenous peoples may face different CLT registration processes depending on the districts.

Part III:



The process to obtain collective land title in Cambodia: proposed simplification

Step 1: Recognition of a community as indigenous (Ministry of Rural Development)

Current practice

The current practice begins with the community first organizing itself to self-identify as an indigenous people. However, many indigenous villages that embark on the collective land title process consist of indigenous families and non-indigenous Khmer families, where only the indigenous families are eligible for collective title. Therefore, awareness-raising and self-identification would need to differentiate between indigenous and non-indigenous families and only include indigenous families for the thumb-printed registration sheets that are required for the application to the Ministry of Rural Development.

The community meetings to self-identify as indigenous are where the community agrees on its indigenous status and membership.

Following the nomination of community members, the meeting participants select a management committee based on majority vote that will represent the community and supervise that internal rules on land management and dispute resolution (to be developed when preliminary land mapping has commenced, in preparation of application for land title) are adhered to by community members.

Local authorities attend all meetings as they play a key role in signing off on the documents that will need to accompany the application to the Ministry of Rural Development.

Once the community members have agreed on their status as an indigenous people, the elected management committee prepares a request to the Ministry of Rural Development for “Ethnic Identity Validation”. The following documents need to be attached to the application:

- The minutes of the meeting where the community self-identified as indigenous⁴⁵
- A list of participants in this meeting⁴⁶
- A declaration of self-identification and a list of all community members wishing to be part of the indigenous community⁴⁷
- A signed application form by each household/family that wishes to be considered a member of the community⁴⁸
- The community's application form to the Ministry of Rural Development for the recognition and validation of its status as indigenous⁴⁹

Under established practice, the community's application has to be approved and signed by the commune chief, the district governor, the director of the provincial department of rural development, as well as the governor of the provincial council.

Once the Ministry of Rural Development has received the application package, representatives from the Ministry in Phnom Penh will visit the community and validate the indigenous identity of the community. This validation is based on the Ministry's

assessment of the community's social, cultural and economic practices, including collective land management, interviews with community members and neighbouring communities, and verification of the community members' willingness to be considered indigenous.

The criteria for "indigenouness" is established in Article 23 of the Land Law. It states that an indigenous community is "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." The Land Law and implementing legislations do not provide additional criteria or guidance. In 2011, the Ministry of Rural Development promulgated additional guidance for "verifying" the ethnic identity of communities through its internal Circular 974, which builds on the definition of Article 23 of the Land Law. The circular does not, however, contain any technical details for the ethnic verification process, rather, these details

45 Ministry of Rural Development: Format for Minutes of Consultation (on Ethnic Identity and Interest in Collective Land Titling).

46 Ministry of Rural Development: Form for the List of Participants in Meeting that Declares the Community's Ethnic Identity.

47 Ministry of Rural Development: Form for Declaration/Letter of Self-identification and List of Members.

48 Ministry of Rural Development: Form for Household/Family Application Form for Membership of Community Rights-Holders.

49 Ministry of Rural Development: Form for the Community's Application Form to Ministry of Rural Development for the Recognition and Validation of Ethnic Identity.

can be found in the various formats that the Ministry prepared in 2010,⁵⁰ such as the format for the declaration of self-identification and list of members in the community, which specifies that the community uses and manages land as a collective, not for individual property, and that its members cultivate paddy and farm agricultural crops within the collective communal land⁵¹. Local authorities are required to participate in the validation exercise.

Issues

❖ Limited ownership by the Government

In theory, step 1 should be initiated and substantively supported by the Provincial Department of Rural Development, which is expected to conduct awareness-raising about indigenous peoples' rights under domestic law for the indigenous community in question and for local authorities, and facilitate the meetings that ensue.

In practice, NGOs and/or development partners have taken over this responsibility as, until 2019, the Ministry at the provincial level did not have an earmarked budget to cover the participation of their representatives in most meetings included in step 1 of the CLT process. Only where NGOs and development partners provided funds for daily subsistence allowance

and transport, representatives from the Department of Rural Development would participate in awareness-raising meetings with communities.

Since 2019, the Provincial Departments of Rural Development have been allocated an annual budget of 15 million Riels (approx. USD 3,700) specifically to support indigenous communities' identification processes. However, in practice, most of them have been using it for general awareness raising activities (not necessarily targeting indigenous communities) and indigenous peoples' day celebrations.

❖ Lengthiness

As it stands, in theory, proceedings required under step 1 can be concluded through a few meetings: first, where the provincial department of rural development (in practice, supporting NGOs and/or development partners) raise awareness among the community about its rights as an indigenous people under national laws; second, when the community meets to declare its intent to self-identify as indigenous, which, as a third and final step, is followed by a validation mission of the Ministry of Rural Development from the capital, to ensure that the group can indeed be considered indigenous and that members have consented to be part of

50 Handbook for Identification of Indigenous Communities, Development of By-laws, Internal Rules, Preliminary Mapping, Adjudication, and Registration of Collective Land of Indigenous Communities in Cambodia (Kirsten Ewers Andersen and Loeng Kesaro, supported by GIZ), pp.8.

51 Ministry of Rural Development: Format for Declaration/Letter of Self-identification and List of Members.

the community. Ministerial staff at the central level have observed that if there are no challenges to the process, the first step can be handled and approved in less than two months.⁵²

In practice, however, this process can be much more complicated and may require several meetings with local authorities - who are often unfamiliar with the provisions of the 2001 Land Law, international human rights norms and standards pertaining to indigenous peoples - as well as several meetings with the indigenous community to clarify the procedure, which implies multiple missions from the Ministry of Rural Development at the provincial and national levels.

NGOs and development partners supporting indigenous land titling have also noted that because of the complexities on the ground – often compounded by the arbitrary granting of economic land concessions and limited capacity of local authorities to deal with land disputes – the first step may take as long as two years to complete and will involve several missions to “unlock” the situation that communities find themselves in when land disputes are rampant both between communities themselves, but more often with economic land concessionaires and non-indigenous migrants and local authorities.

❖ Cost

As indicated, the lengthy processes, requiring several missions, travel and daily subsistence allowance for participants, including local authorities and Ministry representatives, has cost implications. OHCHR experience in supporting the first step for three indigenous communities in the Areng Valley between 2016 and 2019 totalled approximately USD 40,000.

The work of the Ministry of Rural Development and its Ethnic Affairs department – the main agency overseeing step 1 of the collective land title process – is also challenged by lack of funding for its activities. The department – which employs 23 staff at the central level – has an average annual budget of 300 million Riel (approximately USD 80,000) which is used to cover validation missions to the field (including petrol), office supplies and furniture, and the organizing of annual celebrations, such as indigenous peoples’ day on 9 August, which is seen as an important event to raise awareness about indigenous peoples in Cambodia and under international and domestic norms and standards. Only approximately USD 30,000 go for the identity registration of indigenous communities and, as per the estimation of the Ministry,⁵³ this amount can only cover the registration of three communities. With only 154 indigenous

52 The meeting between OHCHR and the Ministry of Rural Development’s Department of Ethnic Minorities Development on 5 January 2017.

53 Source: meeting between OHCHR and the Ministry of Rural Development’s Department of Ethnic Minorities Development on 8 September 2020.

communities registered out of approximately 455. At this rate, it will take 100 years for all indigenous communities in Cambodia to be registered as such.

The annual budget of the department is distributed on a quarterly basis, meaning that the department receives a third of its budget every four months rather than all of it in one go. This has made it difficult for its staff to deploy on priority missions when needed, as money may have already been spent for the quarter. In sum, ministerial staff at both provincial level (which are expected to oversee the first part of step 1) and central level (which are expected to finalize step one by validating the communities' indigenous identity) are often unable to attend crucial meetings in the field.

Due to financial constraints, in 2016, 2017, 2018 and 2019 the Ministry could respectively only evaluate 10, 11, 13 and 7 indigenous communities. The prospects for 2020 are even lower with only three communities.

The budget for the Provincial Department of Rural Development is also a matter for concern. As noted, its staff are expected to play a key role in raising awareness among indigenous communities and local authorities on indigenous peoples' rights under domestic law (in particular the Land Law and the national policy on the development of indigenous peoples) and to support communities in organizing

themselves to self-identify as indigenous. However, only since 2019 has the Government started allocating funds – 15 million Riel (approx. USD 3,700) per year – to the indigenous peoples' office of the provincial departments of rural development where indigenous communities live. Many provincial departments that have received this allocation have not yet used it to support any indigenous community identification process.

In practice, NGOs and development partners have taken over the responsibility over key aspects of step 1, and the role of the Ministry has been reduced to a validation exercise done by central level staff. The absence of ministerial representatives throughout may in part explain the protracted processing times for step 1, which are often a result of reluctance on the part of sub-national authorities to sign off on the documentation that needs to be submitted to the Ministry in Phnom Penh.

❖ Scope of groups eligible to apply for a Communal Land Title

From a comparative point of view, in some countries where customary land tenure is recognized and protected, collective tenure rights have been applied broadly to rural communities. In others, including Cambodia, such tenure rights have been designed to address the needs of indigenous peoples only. This approach requires the need to ascertain the indigenous identity of a group

and its eligibility to apply for a collective land title.

While much debate at the international level has been devoted to what groups can be considered indigenous peoples, no such definition has ever been adopted by the United Nations system or specialised bodies. Reflecting the heterogeneity of indigenous peoples, both United Nations Member States and indigenous peoples have agreed that a single definition is not necessary, and instead favour a broad approach based on indigenous peoples' own identification of themselves as indigenous peoples.⁵⁴ Likewise, ILO Convention No. 169 does not strictly define who indigenous and tribal peoples are, but describes in broad terms the peoples it aims to protect, noting that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply (Article 1.2).

While it can be legitimate for the Royal Government of Cambodia to play a role in ascertaining or taking cognizance of the facts on which indigenous peoples base

their self-identification, there is certainly room for streamlining the process by reducing the number of authorities that have to sign off, for instance. In line with international human rights norms and standards relating to the rights of indigenous peoples, the procedural requirements currently in place to "recognize" indigenous communities should be reduced to a minimum and be mainly based on the community's own perception of its indigenousness, rather than Ministerial assessments of their traditions and livelihoods. Focus should rather be on building the capacity of the community, including through the establishment of the community as a legal entity and through the development of associated by-laws and internal rules.

Another option to consider could be to extend the scope of eligible groups. Indeed, there is growing support for recognizing customary tenure of non-indigenous communities. Such support has been manifested, amongst others, by the adoption of the Food and Agriculture Organization (FAO) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the

54 "Understanding the term "indigenous" Considering the diversity of indigenous peoples, an official definition of "indigenous" has not been adopted by any United Nations body. Instead the system has developed a modern understanding of this term based on the following: Self-identification as indigenous peoples at the individual level and accepted by the community as their member; historical continuity with pre-colonial and/or pre-settler societies; strong link to territories and surrounding natural resources; distinct social, economic or political systems; distinct language, culture and beliefs; form non-dominant groups of society; resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities". (UNPFII factsheet "Who are indigenous peoples?", available at: https://www.un.org/esa/socdev/unpfi/documents/5session_factsheet1.pdf).

Context of National Food Security in 2012. These Guidelines affirm the importance of recognizing and respecting all legitimate tenure holders and their rights, whether these have been formally recognized or not. They apply to indigenous and other local communities with customary tenure systems that exercise self-governance of land, fisheries and forests. Many countries have adopted a broad definition of community land rights holders, which extends beyond the concept of self-identified indigenous groups to rural communities with long-standing occupation and use of their lands.

In OHCHR view, the scope of eligible groups for collective land title should be broadened to include all communities with customary patterns of land tenure. Such an approach would not only be in line with recent international legal developments that affirm the need to recognize and respect all legitimate tenure holders – indigenous and other local communities (protecting and upholding all legitimate customary land tenure rights rather than focusing solely on indigenous peoples), and would see the collective land titling process reduced to two steps: legal entity registration and application for collective land title. In addition, this approach could serve to diffuse the reluctance that OHCHR has oftentimes perceived on the part of local authorities to single out some communities as indigenous peoples.

Extending the scope to all legitimate

collective land tenure rights-holders demands an amendment to both the Land Law and Sub-Decree 83 to include other local communities with customary land and resource tenure.



Proposed recommendations to the Royal Government of Cambodia:

- Increase the budget allocated to the Ministry of Rural Development and local authorities tasked with the indigenous peoples' registration process and ensure that it is solely used for this purpose.
- Reduce steps required for the first step of the CLT process, in line with established international human rights norms and standards.
- When changes are made to the process, diligently inform all relevant local authorities. For example: issue a guidance note to all district offices detailing the new roles and responsibilities of their agents related to the CLT process (step 1) as per the new Sub-Decree, 184 ANK/BK, "on the roles and structures of district administration" issued on 2 December 2019.
- Organize, with support from relevant NGOs and development partners if necessary, systematic training for all local authorities of provinces where indigenous peoples are living on

the CLT process and their respective obligations in this process.

- Consider addressing the situation of other local communities who practice customary land tenure patterns.

Step 2: Registration as a legal entity (Ministry of Interior)

Current practice

The Land Law establishes that land can only be owned by natural persons and legal entities of Khmer nationality.⁵⁵ Based on this provision and provisions established by Sub-Decree 83, an indigenous community wishing to hold collective land title must be recognized as a legal entity (Sub-Decree 83: Articles 3⁵⁶ and 5⁵⁷).

Article 5 of Sub-Decree 83 further elaborates that registration of a legal entity requires the community to develop internal rules (commonly referred to as “community

by-laws”) which “specify the management of and conditions for collective land use and reconciliation-mechanisms at community level in case of conflicts over traditional land use”.⁵⁸ These community by-laws are submitted to the Ministry of Interior for validation and formalization and, once approved, confer the indigenous people in question the status of a recognized legal entity, enabling them to collectively own land. The Ministry of Interior has developed a standardized format for community by-laws.⁵⁹

The process to establish the by-laws usually follows the following six steps:

1. Initial meeting of the community with representatives of the provincial office to raise awareness about the by-laws and their format.
2. Several consultation workshops with the community, organized by the provincial office and the NGO/development

55 Land Law, 2001, Article 8: “Only natural persons or legal entities of Khmer nationality have the right to ownership of land in the Kingdom of Cambodia. Thus, the following persons or entities may be owners of land in Cambodia: Cambodian citizens, public territorial collectives, public institutions, Cambodian communities or associations, public enterprises, Cambodian civil or commercial enterprises and any Cambodian organization which is recognized by law as a legal entity.” This is reinforced by the Constitution of Cambodia (1993) which, in Article 44, states that “only Khmer legal entities and citizens of Khmer nationality shall have the right to own land.”

56 Sub-Decree 83 (2009), Article 3: “This Sub-Decree has the scope of application for indigenous communities which have legally been established as legal entity in the territory of the Kingdom of Cambodia.”

57 Sub-Decree 83 (2009), Article 5: “General principles that shall be applied to the registration of land of an indigenous community are below: (...) Communities established as a legal entity with registered statute and official recognition can apply for land registration as collective title”.

58 Sub-Decree 83 (2009), Article 5: “General principles that shall be applied to the registration of land of an indigenous community are below: (...) Communities established as a legal entity with registered statute and official recognition can apply for land registration as collective title”.

59 Ministry of Rural Development and Ministry of Interior Guidebook on the Procedures for Establishment of Indigenous Communities as legal entities, 2010, annex: format 6.

partner supporting the indigenous community to draft the by-laws.⁶⁰

3. Once an agreement has been reached on the by-laws, they are sent to the Provincial Inter-Sectorial Division, which sends them to the Department of Associations and Political Parties of the General Department of Administration at the Ministry of Interior, requesting for a field mission from the Ministry of Interior at the central level to come and validate their content.
4. The community requests permission to hold a community congress from the governor of the provincial council. Following this request, the Governor issues invitation letters to concerned stakeholders at commune, district, provincial and central levels no later than 15 days before the community congress is scheduled to take place.
5. During the community congress, the draft community by-laws are reviewed and validated, and an Indigenous Peoples' Community Committee is elected.
6. After the community congress, the chairperson of the Indigenous Peoples' Community Committee sends a letter and attached documentation (in five copies) to the Ministry of Interior in Phnom Penh requesting the Legal

Entity Registration. This letter needs to be signed by the commune, district and provincial authorities and should enclose the following documents:

- List of community members (two copies certified by the commune chief)
 - Letter from the Ministry of Rural Development recognizing the indigenous identity of the community
 - Community by-laws (two copies)
 - CVs of the community committee members (two copies of each CV, with an attached photo and copies of their ID cards or other identity documents)
 - Letter from the Commune Council endorsing the community's draft by-laws and the members of the Community Committee (two copies)
- Application to the Ministry of Interior requesting to register the community as a legal entity (two copies).

When the Ministry of Interior has approved the by-laws and the community management committee, it issues a letter recognizing the community as a legal entity, and the Ministry of Interior representatives join the community together with local authority representatives and NGOs/development partners at the

60 Handbook for Identification of Indigenous Communities, Development of Bylaws, Internal Rules, Preliminary Mapping, Adjudication, and Registration of Collective Land of Indigenous Communities in Cambodia (Kirsten Ewers Andersen and Loeng Kesaro, supported by GIZ), p. 11.

event where the community receives a copy of the letter in hand. While the Ministry of Rural Development is not required to attend the meetings, its representatives usually attend, subject to funding for their daily subsistence allowance by NGOs and development partners.

Issues

❖ Lack of legal basis

Analysis of good practices about collective land titling provides useful policy guidance. As noted, established processes to formally recognize groups' rights to their customary lands and resources vary widely across countries. However,

the requirement that groups need to be recognized or incorporated as legal entities is commonplace. For instance, Botswana,⁶¹ Ghana,⁶² Indonesia,⁶³ Liberia,⁶⁴ Mozambique,⁶⁵ Papua New Guinea⁶⁶ and South Africa,⁶⁷ require communities and groups to register as legal entities for the purpose of collective land ownership and/or management.

The incorporation of a community as a legal entity for the purpose of land registration has generally been perceived to enhance certainty for communities while reducing the potential for exploitation of their lands.⁶⁸ A corporate structure provides the group with a formal legal identity and allows it

61 Botswana is one of the first countries in Africa to have recognized, modernized and codified customary systems of land tenure. Customarily held land has been converted to formal, legally recognized, secure title and is administered by legally incorporated land boards composed of customary leaders, government-appointed members, and community elected representatives. See, USAID: Community Land and Resource Tenure Recognition: Review of Country Experiences, 2016, p. 32.

62 Ghana's Land Title Registration Law of 1986 requires that land under customary ownership be registered under an incorporated entity. See, USAID: Community Land and Resource Tenure Recognition: Review of Country Experiences, 2016, p. 31.

63 Under the Forestry Affairs Act of 1999, to acquire rights to forestlands, the community must, amongst other, be legally recognized through the promulgation of a regulation documenting their customary authorities (Article 67.2). See, USAID: Community Land and Resource Tenure Recognition: Review of Country Experiences, 2016, p. 15.

64 The Liberian Land Rights Policy of 2013 proposes that the Government assist communities to self-define, obtain title deeds and establish the community as a legal entity, amongst others. See, USAID: Community Land and Resource Tenure Recognition: Review of Country Experiences, 2016, p. 36.

65 USAID: Community Land and Resource Tenure Recognition: Review of Country Experiences, 2016, p. 38.

66 The Papua New Guinea's Land Group Incorporation Act 1974 allows a customary group to incorporate as a formal legal entity with the capacity to hold, manage and deal with land in its own right. In order to incorporate, the group must prepare a written constitution, which sets out the qualifications for membership, the nature of its controlling body, the nature of its dispute-settlement authority, the way in which the corporation will act, and the manner in which those acts will be evidenced. See, Fitzpatrick, D: 'Best Practice' Options for the Legal Recognition of Customary Tenure, 2005, pp. 460-61.

67 South Africa's Communal Property Associations Act 1996 also allows customary groups to incorporate, with a view to acquiring, holding and managing property in accordance with an agreed written constitution. See, Fitzpatrick, D: 'Best Practice' Options for the Legal Recognition of Customary Tenure, 2005, p. 461.

68 Fitzpatrick, D: 'Best Practice' Options for the Legal Recognition of Customary Tenure, 2005, p. 460.

— should it so wish — to enter into legally secure transactions with outside investors. The legal entity structure also allows for certain constitutional provisions, particularly relating to decision-making and distribution of benefits, and assists, in theory, to ensure that decision-making and sharing in benefits is done in a fair and equitable manner.⁶⁹

In Cambodia, while Article 23 of the Land Law foresees that the legal recognition of indigenous communities would happen “under a legal determination of the statutes of communities”, for several years after the Land Law and Sub-Decree 83 were passed (in 2001 and 2009, respectively), there was no law regulating the establishment of either associations or indigenous communities as legal entities.⁷⁰ For indigenous land titling, the current practice to develop community by-laws emerged in the context of the pilot project of the National Council of Land Policy to examine how to implement the provisions in the land law relating to

indigenous land titles.⁷¹

Prior to the adoption of the Law on Associations and Non-Governmental Organizations (LANGO) in 2015, NGOs were usually recognized by the Ministry of Interior through a letter.⁷² It is unclear to what extent LANGO should apply to indigenous communities wishing to register as legal entities⁷³. For instance, while its requirements for documentation to be provided by domestic associations to apply for registration⁷⁴ largely correspond to those set for indigenous communities.⁷⁵ The timeframe set for the Ministry of Interior to process applications is 45 days at a maximum⁷⁶ while there is no time limit for the processing of indigenous communities’ applications.

❖ Lengthiness

At present, estimates by NGOs supporting indigenous communities and the Ministry of Interior suggest that the time required for

69 Fitzpatrick, D: ‘Best Practice’ Options for the Legal Recognition of Customary Tenure, 2005, p. 460.

70 A 2001 Sub-Decree on Recognition of Indigenous Communities as Legal Persons was drafted by Janet King, an adviser to the Ministry of Land Management, Urban Planning and Construction. This Sub-Decree, however, was not adopted by the Ministry, and therefore not forwarded to the Council of Land Policy for Approval. See, GTZ-Cambodia: Land Management Project: Legal Issues Related to Registration of Lands of Indigenous Communities in Cambodia, prepared by Susie Brown, Katrin Seidel and Todd Sigaty, May 2005, p. 10.

71 ILO Support to Indigenous People Project in Cambodia – Indigenous By-Law Development, p. 6.

72 Law on Associations and non-governmental organizations, adopted by the National Assembly on 13 July 2015.

73 Although the Ministry of Interior, in a meeting with OHCHR on 3 February 2017, stated that LANGO does not apply to indigenous peoples’ registration.

74 Law on Associations and non-governmental organizations, Articles 6-7.

75 E.g. profiles of founding members - or in the case of indigenous communities: management committee members - sources of resources and properties and rules for their management.

76 If the Ministry of Interior does not meet this time limit, the domestic association shall be deemed registered under the law cf. Article 8.

this step is 1.5 – two years. As described, this is mainly due to the complexity of the process⁷⁷. According to NGOs, the approximate total of costs of the step is between USD 7,000-10,000⁷⁸.

❖ An unnecessary or misplaced step?

The requirement that a community registers as a legal entity prior to application for land titling diverges from the Land Law, which

only requires that a community be registered as a legal entity “prior to holding its title, rather than prior to applying for its title”.⁷⁹ While some countries require communities to register as legal entities to hold communal land, in many others, the recognition of the community as a legal entity is not necessarily a prerequisite but happens in connection with the approval of the land claim or after a land title has been granted.

Case study: Mozambique

The case of Mozambique provides an interesting comparison. Mozambique’s legally recognized form of land tenure right is the ‘*direito de uso e aproveitamento da terra*’ (DUAT, in short) which is recognized in the country’s Land Law of 1997 (Lei de Terra). One of the most important components of the Land Law is its legal definition and recognition of a “local community” as a formal legal entity.⁸⁰ Through this recognition, local communities that choose to delimit their land and apply for a delimitation certificate (land title) are automatically considered legal entities for the purpose of holding land. As a delimitation certificate holder, the community acquires legal personality and can thereafter enter into contracts with investors, open bank accounts and undertake other legal actions in the country.⁸¹ The example of Mozambique show that recognition of a community as a legal entity does not need to be a stand-alone step but that it could be done in connection with other steps of the process to register collective land (including automatically after the application has been submitted and approved).

77 According to NGOs interviewed by OHCHR, delays in the process are also caused by illegal land encroachment and the granting of economic land concessions, as well as local authorities’ limited capacity or unwillingness to deal with the situation in favour of indigenous communities.

78 Cost estimate provided by ICESO.

79 A/HRC/12/34/Add.1, paragraph 20, emphasis added.

80 FAO Statutory recognition of customary land rights in Africa, IV Mozambique, pp.12 at <http://www.fao.org/docrep/013/i1945e/i1945e02.pdf>. The Law defines a local community as: “a grouping of families and individuals, living in a territorial area that is at the level of a locality or smaller, which seeks to safeguard their common interests” This definition is grounded in community occupation and customary use of land (based on the prevailing land use, kinship and internal management systems of each community) and was designed so that it could be used in a wide variety of cultural contexts.

81 FAO Statutory recognition of customary land rights in Africa, IV Mozambique, p.12 at <http://www.fao.org/docrep/013/i1945e/i1945e02.pdf>

In Cambodia, delegating the legal entity registration process to the local level would ensure a one-door policy, which would reduce the requirement of participation of number of government agencies. By doing so, the process can be completed quickly as time spent in the field by ministry and local authorities' representatives, as well as financial issues, would be significantly reduced.

❖ The need to dissociate the community by-laws from the legal entity registration

Another issue for consideration relates to the distribution of tasks within the Government

ministries for supporting a community to develop their by-laws⁸² and to issue the formal letter of approval recognizing the community as a legal entity. In OHCHR view, the development of community by-laws should be the responsibility of the Ministry of Rural Development, which traditionally has been the key line ministry for indigenous issues as well as for land management matters.⁸³ The work of the Ministry of Interior is constrained by insufficient budget to cover travel and related expenses for staff in charge of the development and approval of community by-laws. The Ministry does not have any

82 The development of community by-laws is a crucial aspect of the collective land title process, and serves as a critical document for the community and its neighbours. In particular, community by-laws establish the rules and processes for land use and management, dispute resolution, and importantly, the code of conduct for engagement with outsiders, including village members (indigenous and non-indigenous) that have not joined the community "legal entity" application. To the extent possible, the development of by-laws should respect the right of indigenous communities to determine their own strategies and priorities with regard to the management of their lands, rather than meet externally imposed criteria on land use. In terms of requirements, by-laws should also specifically address the situation of indigenous women, who tend to be marginalized in traditional decision-making structures and struggle to assert their rights to land and other assets. For more guidance towards indigenous women's consultation and inclusion, see: Gender and Indigenous Peoples, Briefing note by the United Nations Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the United Nations Permanent Forum on Indigenous Issues, 2010.

83 In this regard, OHCHR notes that discussions between the key ministries following the adoption of the Land Law suggest that the Ministry of Interior initially assumed that supporting communities to develop by-laws, and approving the same (for the purpose of legal entity registration), would be the responsibility of the Ministry of Land Management, Urban Planning and Construction (ILO Support to Indigenous People Project in Cambodia – Indigenous By-Law Development, p. 22). This presumption likely relates to the fact that under Sub-Decree 83, rules for land ownership and management and dispute resolution, were expected to be principal reason for the development of community by-laws and their core substance. Sub-Decree 83, Article 5, reads: "community shall be officially established as legal entity which has internal rule stipulating the management and collective land use as well as setting some conditions such as collective land management and land use according to land type and reconciliation at community level in case of conflict over traditional land use." The lead of the Ministry of Land Management, Urban Planning and Construction was also presumed in light of the donor-funded project on Participatory Land Use Planning, which was set in motion in 2004 with the Ministry of Land Management, Urban Planning and Construction, and developed a process for the identification of lands and land use zones, and lead to digitalized village resource maps for communities, including indigenous communities. The methodology employed for the Participatory Land Use Planning Project (now defunct), paved the way for the development of actual by-laws for indigenous communities in line with the 2001 Land Law (ILO Support to Indigenous People Project in Cambodia – Indigenous By-Law Development).

State budget allocated for this process and its support in this regard is affected by limited capacity of line department officials at the provincial and district levels.⁸⁴ Given the challenges of the Ministry of Interior-led process to develop community by-laws, the effective involvement of the communities in question has de facto largely fallen on the responsibility of the supporting NGOs and development partners.⁸⁵

One way to make the process quicker and smoother is to merge the community by-law development with the first step of the collective land title process (application for indigenous identity registration) overseen by the Ministry of Rural Development. The mandate of the Ministry of Rural Development would therefore be extended to include responsibility for the support to communities in developing their community by-laws. From a capacity point of view, such an approach would make sense as the Ministry of Rural Development has traditionally been, and remains, the Ministry with in-house expertise on indigenous peoples, and has a unit in place entirely devoted to this matter. This merge could also reduce the number of missions of Ministry of Interior and Ministry of Rural Development's officials from national and sub-national level. However, the Ministry of Rural Development

would need an increase in its financial and human resources to effectively implement this new task.

In OHCHR view, the role of the Ministry of Interior and/or local level authorities (as per the December 2019 decentralization sub-decree) could focus on the approval of applications on a non-objection basis only, meaning that the Ministry of Rural Development would take the lead and submit the paperwork to the Ministry of Interior for approval. This approach would not require changes to the Land Law nor to the Sub-Decree, as neither spells out the role of the Ministry of Interior in the process but only at the approval stage.



Proposed recommendations to the Royal Government of Cambodia:

- Clarify the linkage between the Law on Associations and Non-Governmental Organizations (LANGO) – in particular the timeframe of maximum 45 days of processing applications – and the requirements for indigenous communities in their application for registration as a legal entity to ensure a timely consideration of their applications. Consider issuing a circular clarifying that the legal entity of indigenous peoples is distinct from that

84 According to the Ministry, some of the provincial staff in Ratanakiri and Monduliri have gained experience on these issues and the process, but other provincial staff in other regions have never received training and therefore have very limited knowledge.

85 ILO Support to Indigenous People Project in Cambodia – Indigenous By-Law Development, p. 23.

of organizations covered by LANGO.

- Consider authorizing the Ministry of Interior to approve indigenous communities' legal entity registration applications on a non-objection basis.
- Issue a guidance note to all district offices detailing their new roles and responsibilities specifically related to the CLT process (step 2) as per the new Sub-Decree, 184 ANK/BK, "on the roles and structures of district administration" issued on 2 December 2019; and/or requesting the Ministry of Interior to look into the possibility of delegating its duty to register indigenous peoples' Legal Entities to the provincial level.
- Merge the development of the community by-laws with another step (preferably step 1) of the process, and transfer the responsibility to support the communities in drafting their by-laws to the Investment Planning Unit of the Provincial Hall (as official secretariat of the Ministry of Interior) with technical support from officials from the Provincial Department of Rural Development (Ministry of Rural Development).

Step 2.5: Preliminary mapping and development of internal rules (no ministry currently assigned)⁸⁶

Current practice

Similar to steps 1 and 2, step 3 concerning the application for registration of collective land requires several supporting documents. Annex 1 to Sub-Decree 83 is the form to be used to register indigenous community lands. This form requires a number of attachments, which are referred to as "preliminary documents".⁸⁷ These documents have to be prepared after step 2, and be attached to the application for land title to the Ministry of Land Management, Urban Planning and Construction (step 3). Because of this sequencing, the preparation of these documents has commonly been referred to as Step 2.5.

While Annex 1 to Sub-Decree 83 does not specify the technical procedures for the survey of community lands and the preliminary mapping, it establishes that the latter should clearly identify the location, size and boundaries of each parcel of land in the application form.⁸⁸ For this purpose, GPS coordinates of at least some

86 This section relies on the following publication: GLZ: Technical Document on Collective Land Registration for Indigenous Community – Preliminary Mapping, Internal Rule Development, Application for Collective Land Title, 2016.

87 Training Manual on Indigenous Communities Land Registration, issued by the Ministry of Land Management, Urban Planning and Construction in 2012 (9).

88 Sub-Decree 83, Article 5.

of the parcel boundary corners must be obtained.⁸⁹

Under current practice,⁹⁰ in preparation of the preliminary mapping exercise, NGO/development partners and community committee members organize among themselves as a community working group.⁹¹ Such working group will request maps showing administrative borders from the Commune Council and the Provincial Land Department, in addition to aerial photos and topographical maps from the Ministry of Interior showing the geography and exact location of the community. The Commune Council will invite neighbouring villages and other relevant institutions for an initial meeting to discuss village boundaries and the mapping process.⁹²

First, the community and supporting NGO/development partners will produce a hand drawn map – commonly referred to as a *sketch map* – showing the approximate village boundaries and the types of land use therein. The village chief, village elders, members of the community management committee, representatives

from neighbouring villages and members from the commune council, including the commune chief, should join this activity.⁹³ A meeting report is prepared, and a list of all participants at the meeting is annexed to this report.

Then, a meeting is organized at the commune level with representatives of the neighbouring villages and the commune council to agree on the sketch map. Local authorities and representatives from the State Land Working Group - the sub-national agency tasked with conducting state land identification, mapping and classification - should attend, in addition to community committee members, village elders, and commune council members (including the commune chief), and their travel and DSA costs will need to be covered by the NGO and/or development partner. District authorities (the district governor) should chair the meeting, which should result in agreement on all of the sketch map's village boundary mark points. Thumbprints on the map of all the meeting participants will indicate consent to the map and its boundaries and described land use types.

89 Training Manual on Indigenous Communities Land Registration, issued by the Ministry of Land Management, Urban Planning and Construction in 2012 (9).

90 The following section relies on GIZ: Technical Document on Collective Land Registration for Indigenous Community – Preliminary Mapping, Internal Rule Development, Application for Collective Land Title, 2016, pp. 4-10.

91 Technical Document on Collective Land Registration for Indigenous Community – Preliminary Mapping, Internal Rule Development, Application for Collective Land Title, 2016, p. 6.

92 In case the Commune Council does not have the capacity to support this matter, the working group will have to ask the district governor to send the official invitation letters.

93 GIZ: Technical Document on Collective Land Registration for Indigenous Community – Preliminary Mapping, Internal Rule Development, Application for Collective Land Title, 2016, p. 6.

A written report of this meeting will also need to be prepared by the commune chief.

Finally, the sketch map will be transformed into a digital map. For this purpose, different teams – each usually consisting of five or six members, including community members, representatives of neighbouring communities and local authorities – start surveying the land and record the GPS data. Prior to the GPS surveying start, however, the teams will need to be trained by a supporting NGO on data collection and GPS use, how to write the relevant reports and complete the data collection forms.

Local authorities, the district State land working group, village elders, community committee members, village chiefs from neighbouring communities, and commune council members representing other nearby villages would participate in this exercise, which will result in a digital map with clearly delimited village boundaries.

After the GPS mapping is done, a digital map is created to show the information agreed between all relevant parties, especially on the land administration boundaries, the locations and the land use sizes of the community's land.

Once the digital map has been finalized, a meeting will be held to validate it. This meeting will include village elders, community committee members, village

chiefs, and commune council members. In case of disagreement, new data has to be collected to adjust the map, and new meetings will be conducted. The preliminary map should not include any zones over which there are known conflicts with neighbouring communities or land concession-holders or overlapping claims, as this will not be accepted for the processing of the application for land titling.

In parallel to the preliminary mapping, the community will need to develop internal rules relating to land management and use, and dispute resolution in case of conflict. This requirement has its basis in Sub-Decree 83, which notes that an indigenous community "shall be officially established as a legal entity which has internal rules stipulating the management and collective land use as well as setting some conditions such as collective land management and land use according to land type and reconciliation at community level in case of conflict."⁹⁴ The internal rules are important as they regulate the community's relationship with "outsiders", including members of the village that have not opted to join the collective land title claim, or Khmer residents that cannot join.

The internal rules should, to the extent possible, pay attention to the different State land classifications that will be included in the land claimed by the community. Therefore, the development of internal rules

94 Sub-Decree 83, Article 5.

on land management and use usually takes place in conjunction with the preliminary mapping. The NGOs/development partners supporting the community to develop by-laws need to have a good understanding of the different types of State land classifications.⁹⁵ While no Ministry is clearly linked to this process, it is mainly supported by local officials from the Ministry of Rural Development.

The development of internal rules will entail a meeting between the community committee and elders to develop a first draft of the internal rules. It should be noted that community by-laws, which are done as part of the legal entity registration, and subsequent internal rules tend to read the same for communities that have completed step 2 and step 2.5.⁹⁶ Once a draft has been prepared, there will usually be several meetings with community members to review and amend the draft. These meetings will be facilitated by the Provincial Department of Rural Development. The internal rules should be endorsed by all community members in a general assembly, and then by the

Commune Council,⁹⁷ before submission to the Ministry of Land Management, Urban Planning and Construction along with the application for collective land title.

Issues

❖ Lack of ownership by the Government

While the other steps (1, 2 and 3) of the collective land title application process are clearly linked to a specific ministry, step 2.5 is not. Indigenous communities are therefore left in an institutional vacuum for one of the most complex part of the collective land titling process.⁹⁸ This is of particular concern as NGOs/development partners often lack the financial and technical capacity to produce maps of the required detail.

Preliminary mapping is a complex undertaking that requires significant skills in order to produce maps of the level of detail required for the land registration application. Many NGOs/development partners lack the capacity to use GPS recordings and to transfer the sketch maps into technical documents with GPS coordinates. Incorrect preliminary maps

95 Handbook for Identification of Indigenous Communities, Development of Bylaws, Internal Rules, Preliminary Mapping, Adjudication, and Registration of Collective Land of Indigenous Communities in Cambodia (Kirsten Ewers Andersen and Loeung Kesaro, supported by GIZ), p. 16.

96 GIZ's assessment of seven communities' internal rules showed that these were the same word for word (Personal communication, Poch, 5 January 2017).

97 The minutes of the general assembly receive official approval by the Commune Council.

98 It has been noted that "the Ministry of Land Management, Urban Planning and Construction cannot take any action to speed up the collective land registration of indigenous communities until it receives the application with full supportive documents." See, Handbook for Identification of Indigenous Communities, Development of Bylaws, Internal Rules, Preliminary Mapping, Adjudication, and Registration of Collective Land of Indigenous Communities in Cambodia (Kirsten Ewers Andersen and Loeung Kesaro, supported by GIZ).

have been noted as the main reason for why provincial cadastral offices have requested communities to revise or resubmit collective land title applications.⁹⁹ Training is required to understand the computer equipment, video production, photographic editing and file management software. Using a high-level technical approach that the GPS entails also runs the risk of focusing too much on the technology at the expense of the participatory mapping exercise.¹⁰⁰ Moreover, in many remote indigenous communities, access to electricity is intermittent or unavailable.

Although no specific policy or guidance provides for the involvement of the provincial cadastral office, the process de facto requires its involvement. The current practice has also shown that demarcation is easier when cadastral officials prepare the preliminary map with the support of the District State Land Working Group. However, the latter needs an additional budget allocation to be able to assist the Cadastral officials.

❖ Complexity, cost and lengthiness

Step 2.5 appears to be the most complicated and lengthiest of the three procedural steps and, as noted, requires significant technical know-how to complete,¹⁰¹ especially the preliminary mapping. The ministries involved in the process have acknowledged that advanced technical knowledge and skills are required for the mapping, while dealing with boundary disputes has proven to be more time-consuming than creating the map. The mapping must be completed as a full Cadastral Index Map¹⁰² but only after the application has been received and approved by the Ministry of Land Management, Urban Planning and Construction. The latter is currently drafting a faster model for the preliminary mapping process and drafting of internal rules (overall step 2.5).

Financial costs associated with the preliminary mapping exercise are significant, in particular as the recording of GPS data can last several months, requiring a significant amount of travel expenses for

99 GIZ Lessons Learned on Indigenous Communal Land Titling, June 2016, p. 12.

100 Good practices in participatory mapping – a review prepared for the International Fund for Agricultural Development, 2009, p. 18.

101 The following section relies on GIZ: Technical Document on Collective Land Registration for Indigenous Community – Preliminary Mapping, Internal Rule Development, Application for Collective Land Title, 2016, pp. 4-10.

102 Land mapping will show the parcels of different land types that jointly make up the property in which the community as a group of right-holders have collective rights. The land parcels will consist of both State private land and State public land. The registration of land of indigenous communities is the registration of all pieces of land of the community on a single cadastral map. It has a reference number for the location, size, boundary, and coordinates of the each of the land parcels collectively owned, also where parcels of land are located in other villages and communes. See GIZ: Technical Document on Collective Land Registration for Indigenous Community – Preliminary Mapping, Internal Rule Development, Application for Collective Land Title, 2016, p.4.

all participants.¹⁰³ Estimates by NGOs¹⁰⁴ supporting this process have suggested that the time required for step 3 is between three to four years, with the preliminary mapping taking up a significant part of that time, as

well as important resources. Experience by OHCHR in supporting preliminary mapping suggests that approximately USD 30,000 were spent on the exercise.

Case study: Mozambique

Mozambique's mechanisms for dealing with and formalizing customary land rights (which is largely bound up in a legal process known as "community land delimitation"¹⁰⁵) can provide a useful model to consider. In many ways, it is similar to the practice established in Cambodia: first, a community-based advisory group is established. Worthy of note is that a district level cadastral officer must avail themselves to join the working group.¹⁰⁶ A series of meetings are then organized at the community level to raise awareness about the delimitation process and to elect community representatives that will be directly involved in the delimitation work. A participatory appraisal and mapping is then undertaken where the community and the leaders of the neighbouring communities agree on sketched maps where boundaries are marked, and defined physically on the ground.¹⁰⁷ Once the community and its neighbours have agreed on the sketch map, it is converted into digital form with a descriptive report attached. State technical staff do this validation exercise. Once validated by the community and its neighbours, the sketch map and descriptive report are entered into the national cadastre.¹⁰⁸

103 The provincial department of land management and the district office of land management will participate in as many meetings as possible. This requires financial support from local NGOs and development partners.

104 Information received from various NGOs during OHCHR consultations in preparation for this report.

105 The Technical Annex (to the 1997 Land Law) defines delimitation as "identification of the boundaries of the areas occupied by local communities including the entry of the information into the National Land Cadastre."

106 Rachael S. Knight for the Development Law Service - FAO Legal Office: Statutory recognition of customary land rights in Africa - An investigation into best practices for law making and implementation (2010), IV Mozambique's Land Law, accessible at <http://www.fao.org/docrep/013/i1945e/i1945e02.pdf>, p.114.

107 Ibid. pp. 115-116.

108 Ibid. p. 117.

To overcome the aforementioned financial constraints and lengthy timespan, it is suggested that the preliminary mapping be carried out as a joint exercise between indigenous communities and staff of the Ministry of Land Management, Urban Planning and Construction at the sub-national level as a joint exercise. The Ministry of Land Management, Urban Planning and Construction at the subnational level (notably through the District State Working Group on Land) and other stakeholders should work together from the beginning to produce a digital map of the detail required to be readily approved by the Ministry of Land Management, Urban Planning and Construction. This approach will be cost-effective and will significantly shorten the time in field for participants including indigenous communities and other

stakeholders (including local authorities and neighbouring communities' representatives). While this approach does not require any amendments to the Land Law or Sub-Decree 83, it may require an instruction by the Ministry of Land Management, Urban Planning and Construction to their sub-national counterparts (notably to the District Cadastral Officials and the District Level Working Group on Land) to support the preliminary mapping, and allocate a sufficient budget to facilitate their participation.

❖ Unsolved long-standing land disputes over communal land

In several instances, the CLT registration process has been put on hold as a result of unsolved disputes over indigenous peoples' traditional lands. The National Cadastral Commission¹⁰⁹ deals with all cases involving

109 In June 2002, the Ministry of Land Management, Urban Planning and Construction established the Land Management and Administration Project (LMAP) to improve "land tenure security and promot[ing] the development of efficient land markets". To a significant extent, LMAP has focused on implementing the 2001 Land Law, particularly through the rollout of systematic land registration. LMAP had five components. Of these, Component 4, 'Strengthening Mechanisms for Dispute Resolution', was designed as a direct response to the problem of land dispute resolution. Its key objective was to ensure that land disputes "are resolved quickly and to the satisfaction of the parties involved". In pursuit of this objective, the Royal Government of Cambodia established the National Cadastral Commission. Cf. Sub-Decree No. 47 ANK.BK (May 31, 2002) 'On the Organization and Functioning of the Cadastral Commission', available at: <https://data.opendevlopmentmekong.net/dataset/2820be90-9020-4711-b4fa-c0912c1821e8/resource/f016c22e-3f5f-42c2-b824-7bc2b2966733/download/4164189c-2198-494caf32-ed19f1631972.pdf>. Procedures were elaborated by Prakas No. 112 DNS/BrK (August 21, 2002) 'On the Guidelines and Procedures of the Cadastral Commission'. On November 26, 2003 the Ministry of Land Management, Urban Planning and Construction and the Ministry of Justice issued Inter-Ministries Prakas No. 02 BRKN.03 'On Determination of Duty of the Court and Cadastral Commission Related to Land Disputes'. This Prakas clarified the jurisdictions of the courts and of the Cadastral Commission. For more information on the creation of the Cadastral Commission, see: World Bank. 2002. Cambodia - Land Management and Administration Project (English). Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/643811468770346842/Cambodia-Land-Management-and-Administration-Project>

unregistered land¹¹⁰ and is represented at the district and provincial level¹¹¹, which makes it the most suitable complaint mechanism for indigenous communities affected by land encroachment or involved in land disputes over traditional land they aim to register as communal.

However, there is a lack of clarity over the jurisdiction of each land dispute resolution mechanisms – including Cadastral Commissions - “which leads to confusion for complainants”¹¹². Other challenges include “poor access to dispute resolution mechanisms by impacted individuals and communities, time-consuming administrative and procedural burdens, and financial costs associated with submitting a complaint.”¹¹³ (...) In addition, complainants have reported that decisions issued by dispute resolution bodies are inconsistent and subject to external pressures”. Furthermore, according to a report by the World Bank Centre for Advanced Study and the German Technical Cooperation Agency (GTZ), although the

Cadastral Commissions have a better record of addressing conflicts over small parcels of land, they usually struggle to resolve complex cases that involved multiple parties and parties with external connections.

¹¹⁴ The same report indicates that “while cases may fall under the jurisdiction of the Cadastral Commissions, weaker parties may not file cases due to lack of faith in the process and outcome”. Another study by the World Bank¹¹⁵ indicates that people involved in land disputes avoided filing complaints because “formal institutions of justice such as the Cadastral Commissions or the courts were perceived as costly, time consuming and biased toward the rich.” According to NGOs working with indigenous peoples interviewed by OHCHR, indigenous peoples have limited knowledge of the Cadastral Commissions’ existence, mandate and functioning. As a result, many land disputes remain unsolved and CLT applications are indefinitely put on hold.

110 Except those involving inheritance (between heirs) or contract (between parties to a contract), which would be within the primary jurisdiction of the courts.

111 The district and provincial level offices are responsible for the initial conciliation of disputes. Cases that cannot be successfully conciliated at these levels are referred to the National Cadastral Commission for decision. At the district and provincial level, the Cadastral Commission is headed by the district/provincial governor, whereas the chief of the National Cadastral Commission is the Minister of Land Management, Urban Planning and Construction.

112 Land Dispute Resolution Mechanisms in Cambodia, PIC, February 2016, available at: https://www.pic.org.kh/images/2016Research/20160805%20Land%20Dispute%20Resolution%20Mechanism_Eng.pdf

113 While there are no official fees such as those associated with court filings, the costs associated with transportation, lost wages and legal assistance often prohibit individuals from seeking remedies before dispute resolution bodies.

114 World Bank, Centre for Advanced Study and GTZ, ‘Towards Institutional Justice? A Review of the Work of Cambodia’s Cadastral Commission in Relation to Land Dispute Resolution,’ p. xii, October 2006.

115 World Bank and Centre for Advanced Study, “Justice for the Poor? An Exploratory Study of Collective Grievances over Land Local Governance in Cambodia,” p. 37, October 2006.

❖ Limited land types authorized for registration

As noted, article 6 of the Sub-Decree 83 on “Procedures of Registration of Land of Indigenous Communities” allows indigenous communities to register five types of land as their collective land: residential land and actual farming land (which are State private land), and reserved land (shifting cultivation land), graveyard and sacred forest (which are State public land).¹¹⁶ Indigenous communities have been complaining about two types of land that have been excluded from this closed list, namely land that the community could use to raise cattle and land for their community hall.¹¹⁷

❖ Internal rules duplicating the by-laws

Article 5 of Sub-Decree 83 establishes that an indigenous community “shall be officially established as a legal entity which has internal rules stipulating the management and collective land use as well as setting

some conditions such as collective land management and land use according to land type and reconciliation at community level in case of conflict.” Based on a careful reading of this provision, it appears that the content of the internal rules and community by-laws is in fact the same.

A straightforward way of simplifying the CLT process would be to go back to the original reading of Article 5 of Sub-Decree 83 (cf. *supra*) and consider that the by-laws adopted during step 2 could serve as internal rules, or that the internal rules be written at the same time as the by-laws, to reduce the number of meetings.



Recommendations to the Royal Government of Cambodia:

- Assign the Ministry of Land Management, Urban Planning and Construction to be primarily responsible for the preliminary mapping.

¹¹⁶ Sub-Decree 83 ANKr/BK on Procedures of Registration of Land of Indigenous Communities in Cambodia, Article 6 “Land to be registered as collective title of indigenous community includes:

- State Private Land such as:
 - . Residential land or Land on which the community has built houses
 - . Land on which the community practices traditional agriculture such as actual cultivated land, rice and farm land, and
- State Public Land that has already been registered with the State such as:
 - . Reserved land necessary for sifting cultivation, which has been recognized by administrative authorities and agreed by the neighbours.
 - . Spiritual forest land can be one or more plots, for each community shall not exceed seven (7) hectares in total size.
 - . Burial ground forest land (cemeteries), can be one or more plots, for each community shall not exceed seven (7) hectares in total size.”

¹¹⁷ Although Ministry of Land Management, Urban Planning and Construction officials and some NGO workers stressed during the consultations with OHCHR that this issue had been raised during the drafting of Sub-Decree 83, and that it was concluded that these two types of land were included in the existing five types, OHCHR has not found any written document or evidence supporting these claims.

- Through the Ministry of Land Management, Urban Planning and Construction, instruct sub-national counterparts (district cadastral office/provincial department of land management, urban planning and construction) to conduct the preliminary mapping exercise together with the indigenous community, and allocate a sufficient budget to facilitate this work. The Ministry of Land Management, Urban Planning and Construction should then approve the detailed digital map produced by the joint exercise.
- Through adequate human and financial resources, reinforce the provincial cadastral commissions, tasked, among other duties, with solving land disputes over land claimed by indigenous communities in their preliminary mapping; and disseminate information among indigenous communities about the mandate and procedures of cadastral commissions.
- Ensure that the registration of communal land includes cattle fields and community hall land, in addition to the two types of traditional land (encompassing five types of land, namely housing land, actual farming land, and shifting cultivation land, graveyard and sacred forest.
- Ensure that internal rules are written at the same time as the by-laws, or written as one document during step 2.

Step 3: Applying for title (Ministry of Land Management, Urban Planning and Construction)

Current practice

Once the preliminary mapping and the development of internal rules relating to land management and dispute resolution have been agreed upon internally as well as with external stakeholders (commune council and neighbouring communities), the community submits for approval its application for the registration of collective title, with all necessary documents, to the agency offices of the Ministry of Interior (commune, district, provincial, Ministry-level). Once these steps have been followed, the chairperson of the community management committee applies for registration of the land as collective title at the District Office of Land Management, which, in turn, forwards the application to the Ministry of Land Management, Urban Planning and Construction in the capital.

Seven attachments need to accompany the application:

- The letter from the Ministry of Interior recognizing the community as a legal entity;
- A letter from the community committee chairperson allowing delegation of the chairperson role to a community committee member in case they cannot perform the tasks;

- The decision of the Commune Council endorsing the appointment of the community management committee;
- The community by-laws;
- A list of all community members validated by the commune chief;
- The community's internal rules on land management and use and dispute resolution mechanisms; and
- The preliminary map showing the location, size and boundaries of the community land.

When the Ministry of Land Management, Urban Planning and Construction has assessed the application, it will ask the provincial governor to declare an adjudication area for the community. If the preliminary mapping has clarified that the boundaries of the land parcels are agreed upon by neighbours, the provincial/district governor will issue a public notification no later than 20 days prior to the date of the official surveying of the land.¹¹⁸ In case of complaints, the map has to be revised again until all complaints and disputes have been solved.

Importantly, in assessing the application, the Ministry of Land Management, Urban Planning and Construction will liaise with the Ministry of Environment to ascertain that the claim does not overlap with land declared protected areas. Any Protected Areas included in a claim will be excluded from the title.¹¹⁹

If boundaries are clear, and neighbours' participation in the preliminary mapping has been ascertained, when 20 days have passed, the District Working Group undertakes a field visit with the community representatives, neighbouring communities and relevant State authorities (such as the Forestry Administration) to define the location, boundaries and size of the land which the community has been occupying and using, identify the different types of State Land within the area,¹²⁰ and define the boundaries of each parcel forming part of the common property of the community. The commune council chief must be present during this visit. The technical work is carried out by demarcation officers that map and obtain the measurements necessary to prepare the full Cadastral

118 If preliminary mapping has not ensured full participation of neighbours and State land trustees and the boundaries are not clear, the Provincial Governor must ask the District State Land Working Group to conduct State land identification, mapping and classification according to the Prakas, 2006. The work may require funding from development partners to cover the daily subsistence allowance for district and province State land working groups.

119 GIZ: Technical Document on Collective Land Registration for Indigenous Community – Preliminary Mapping, Internal Rule Development, Application for Collective Land Title, 2016, p.34.

120 The fieldwork – done by State demarcation officers - will classify State Land within the future CLT as State private land and State public land, and will define the boundaries of each parcel constituting part of the community's common property.

Index Map showing all the parcels that will be produced by the Provincial Land Department. In essence, this exercise is a validation of the preliminary map, meaning that the technical officers will do the same GPS mapping undertaken with community representatives and other stakeholders as indicated above, that community members and others have already done as part of step 2.5.

Once a Cadastral Index Map showing all the parcels is ready, the Provincial Governor announces a public display of the index map for 30 days in the commune and at the district land management office. If there are no complaints, the signed map and adjudication papers are submitted to the Cadastral Administration within 15 days for registration and issuance of the final title. This is handled by the provincial land management department, which has delegated power to handle this and who prepares a report on the adjudication process.

As a final step, designated Government officers will hand over the title to the community at a ceremony in the village. The title is issued in the name of the community representing the legal entity (rather than in the name of the management committee under that entity).

Issues

❖ Cost and lengthiness

NGOs supporting indigenous communities for application for collective land title registration, including the preparation of the preliminary map estimates that this process on average lasts three to four years. Delays depend on a wide range of issues, including capacity and budget constraints of indigenous communities and supporting NGOs/development partners, disagreements over boundaries and the willingness of local authorities to solve these conflicts. Costs vary accordingly. However, an estimate by GlZ suggests, based on its long-standing engagement with supporting communities for steps 2.5 and 3, that the land demarcation amounts to USD 30,000. In addition, costs for step 2.5 amount in average to at least USD 8,000 per community.

The Ministry of Land Management, Urban Planning and Construction uses its annual budget of USD 300,000 to channel funds to its provincial offices to support their work to survey and register the land. Of the three key line ministries involved in the collective land title application process, the Ministry of Land Management, Urban Planning and Construction is the only one to have

an earmarked budget for supporting its sub-national staff fulfil their mandate to conduct land registration. Ministerial staff in Phnom Penh have noted that USD 300,000, allows to annually process approximately 10 applications for collective title. This is a rough estimate and the actual figure depends on the size of the land claimed and the time spent in the field for the surveying.

It must be noted that some applications for registration of collective land have been rejected because agreement with neighbouring communities or concessionaries could not be reached or because local authorities did not approve the size of the area under claim¹²¹ although the Land Law does not impose restrictions on the size of land that can be claimed and Sub-Decree 83 only does so with regard to sacred forest and gravesites.

❖ The impossibility to register communal land in Protected Areas

As highlighted, in assessing the application, the Ministry of Land Management, Urban Planning and Construction will liaise with the Ministry of Environment (its respective line department at the provincial and district level) to ascertain that the claim does not overlap with land declared protected areas. Any protected Areas included in a

claim will be excluded from the title until agreement with the Ministry of Environment has been reached on if and how to include the area in the final title.

In May 2019, the Ministry of Rural Development established a “national technical working group to preserve and develop indigenous peoples” (letter No 148/19 dated 6 May 2019). The creation of this entity should have improved coordination and communication between the Ministry of Land Management, Urban Planning and Construction and the Ministry of Environment and reduced the time for processing collective land title applications. However, the Ministry of Rural Development decided to dissolve it in February 2020 (letter No 041 dated 4 February 2020) without providing any official reason.

There is currently no process allowing communities to object to the instructions from the Ministry of Environment. While communities often invite authorities from different ministries to the preliminary mapping, Government agencies rarely join, in part as funding for their participation is often lacking.

On 3 July 2020, the Prime Minister, in a meeting of the Council of Ministers, advised the Ministries of Environment, Land

121 GIZ: Lessons Learned on Indigenous Communal Land Titling, June 2016, p.11.

Management and Agriculture and Forestry to grant land inside Protected Areas to its long-term occupants. The Prime Minister added that receiving land they live on, people would be provided by the State an additional 10 percent of extra land for communal use, “to find wood or for cows to graze”.

As a result, on 6 July 2020, the Minister of Environment issued letters to Provincial Governors requesting all relevant documents relating to pending land dispute cases involving Protected Areas, and the Ministry of Agriculture created 18 teams to “compile and compare data on forests which are occupied by citizens in 24 provinces”. It is unclear how this new instruction will apply to indigenous communities who have applied or intend to apply for CLTs within Protected Areas.



OHCHR recommendations to the Royal Government of Cambodia:

- Issue a guidance note to all district offices detailing their new roles and responsibilities specifically related to the CLT process (step 3) as per the new Sub-Decree, 184 ANK/BK, “on the roles and structures of district administration” issued on 2 December 2019.
- Establish formal complaint mechanisms at the Ministerial level (within both the Ministry of Land Management, Urban Planning and Construction and the Ministry of Environment) for communities to appeal decisions made by these Ministries regarding CLTs.
- Clarify the process for indigenous communities to register communal land within Protected Areas, as per instruction of the Prime Minister dated 3 July 2020.

Overview of OHCHR main recommendations

| Step | Ministry | Current practice | Legal basis | Suggested change | Legal / sub-decree amendment required for suggested change |
|-----------|---|--|---|--|--|
| All steps | Ministry of Interior, Ministry of Rural Development, Ministry of Land Management, Urban Planning and Construction | | Sub-Decree, 184 ANK/BK, “on the roles and structures of district administration” (2 December 2019) | Issue a guidance note to all district offices detailing their new roles and responsibilities (according to Sub-Decree, 184 ANK/BK) specifically related to the CLT process | No |
| 1 | Ministry of Rural Development | Following self-identification of a community as indigenous, Ministry of Rural Development assesses the indigenous status of the community and issues a letter of recognition if the group meets the Ministry’s assessment. | The Land Law specifically recognizes collective land rights for indigenous peoples in addition to Monasteries. Articles 23-28 deal with indigenous communities and their right to collectively manage their land. | The scope of eligible groups for collective land title could be broadened to include all communities with customary land tenure patterns. | Yes, to Land Law and Sub-Decree 83. |
| | | | | The Governmental process to “recognize” indigenous communities should be reduced to a bare minimum and based mainly on the community’s own perception of its | No |

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|---|----------------------|--|--|---|---|
| | | | | indigenous status ("self-recognition"), rather than Ministerial assessments of their traditions and livelihoods. | |
| 2 | Ministry of Interior | At provincial level, in theory, the Ministry supports indigenous communities to develop their by-laws. This is, however, constrained by lack of budget, and NGOs tend to assume the responsibility and financial costs for this step. Once by-laws have been developed and supporting documentation submitted to the Ministry at central level, the community is recognized as a legal entity. | <p>Land Law, Article 8 states that only Khmer nationals and legal entities can own land in Cambodia.</p> <p>Sub-Decree 83, Article 5, states that communities established as a legal entity with a registered statute and official recognition can apply for land registration as collective title.</p> <p>Article 5 also notes that a community shall be officially established as legal entity, which has internal rule stipulating the management and collective land use, as well as setting some conditions such as collective land management and land use according</p> | The Ministry of Rural Development takes over the responsibility for supporting communities in drafting their community by-laws as part of step 1 of the CLT process. All required documentation is then sent to the Ministry of Interior for approval on a non-objection basis. | Transferring the main responsibility for the community by-law development to the Ministry of Rural Development would not require an amendment as long as the Ministry of Interior is the issuing agency. Changing the sequencing of this step to take place in connection with the indigenous peoples' identity |

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| | | | <p>to land type and reconciliation at community level in case of conflict over traditional land use.</p> <p>Article 4 specifies that a community established as a legal entity refers to indigenous communities that have assembled and were officially registered by the Ministry of Interior.</p> | | <p>recognition would require an amendment to Sub-Decree 83, Article 5.</p> |
| 2 | Ministry of Interior | <p>The Ministry validates the community by-laws and approves the community management committee, thereby granting the community the status as unified legal entity eligible to hold collective land.</p> | <p>Land Law, Article 8 states that only Khmer nationals and legal entities can own land in Cambodia.</p> <p>Sub-Decree 83, Article 5, states that communities established as a legal entity with registered statute and official recognition can apply for land registration as collective title.</p> <p>Article 5 also notes that a community shall be officially established as legal entity, which has internal rule stipulating the</p> | <p>Clarify to what extent LANGO applies to indigenous communities wishing to register as legal entities.</p> | No |

| | | | | | |
|-----|---------------------------------|---|--|--|---|
| | | | <p>management and collective land use, as well as setting some conditions such as collective land management and land use according to land type and reconciliation at community level in case of conflict over traditional land use.</p> <p>Article 4 specifies that a community established as a legal entity refers to indigenous communities that have assembled and were officially registered at the Ministry of Interior.</p> | | |
| 2.5 | No specific Ministry identified | While the other steps of the collective land title application process are clearly linked to a specific ministry, step 2.5 is not. Indigenous communities are therefore left in an institutional void for one of the most | No reference document. | <p>Clearly mandate the Ministry of Land Management, Urban Planning and Construction to support indigenous communities in the preliminary mapping process.</p> <p>The preliminary mapping should be a joint exercise involving the District Cadastral officials and</p> | The Ministry of Land Management, Urban Planning and Construction could issue a directive. |

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| | | complex parts of the collective land titling process. | | <p>indigenous communities, with assistance from relevant members of the District State Working Group on Land.</p> <p>The Ministry of Land Management, Urban Planning and Construction should instruct their sub-national counterparts to support the preliminary mapping, and allocate a sufficient budget to facilitate their participation. It should readily approve the detailed digital map produced by the joint exercise.</p> | |
| 2.5 | No specific Ministry identified | Based on a careful reading of Sub-Decree 83, Article 5, it would seem that the internal rules and by-laws are in fact the same. Under current practice, however, this | Sub-Decree 83, Article 5, establishes that an indigenous community "shall be officially established as a legal entity which has internal rules stipulating the management and collective land use as well as setting some | Draft internal rules should be written at the same time as the by-laws, or written as one document during step 1. | No |

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|---|--|--|---|--|-----|
| | | is not the case as the by-laws have been part of the second step and handled by the Ministry of Interior. Those approved to date have been generic and not specifically dealt with land management and dispute resolution mechanisms. | conditions such as collective land management and land use according to land type and reconciliation at community level in case of conflict." | | |
| 3 | Ministry of Land Management, Urban Planning and Construction | In assessing applications for registration of collective land, the Ministry of Land Management, Urban Planning and Construction will liaise with the Ministry of Environment and its respective line department at the provincial and district level to ascertain that the claim does not overlap with | No reference document. | Sub-Decree 83 should be amended to spell out the role and responsibility of the Ministry of Environment if a claim overlaps with Protected Areas. A process for communities to appeal decisions of the Ministry of Land Management, Urban Planning and Construction and Ministry of Environment should also be specified. | Yes |

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| | | land declared Protected Areas. Any Protected Areas included in a claim will be excluded from the title until agreement with the Ministry of Environment has been reached on how, and if, to include the area in the final title. There is no process for communities to appeal decisions of this kind. | | | |
| 3 | Ministry of Agriculture, Forestry and Fisheries, the Ministry of Land Management, Urban Planning and Construction | On 3 July 2020, the Ministry of Environment, the Ministry of Agriculture, Forestry and Fisheries, the Ministry of Land Management, Urban Planning and Construction and Sub-National Administrations were asked by the Prime | Press Release No.5 of the Council of Ministers on Outcomes of the Council of Ministers in its meeting of 3 July 2020. | To be confirmed once detailed process is made public. | Unknown at this stage. |

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| | | Minister to "measure the land and grant land titles to those peoples who have occupied and harvested for many years the land in protected and forest areas (...) and shall allocate them an additional ten percent of land as reserve land for communal use." | | | |
|--|--|--|--|--|--|

Part IV:



Other issues for consideration

Lack of disaggregated data on indigenous peoples

In Cambodia, indigenous peoples are commonly estimated to number approximately 200,216, or 1.2 per cent of the national population. The Government of Cambodia has categorized indigenous peoples into 24 groups¹²² spread across 15 provinces¹²³. Estimates of their actual number tend to vary according to different Government agencies, NGOs, United Nations entities, with less than two per cent of the total population being a commonly quoted figure. The number of actual distinct indigenous peoples is also unclear, as figures range from 455 to closer to 600 communities (peoples).

However, there is little reliable data to indicate the exact number of indigenous

peoples in Cambodia. The most recent national census dates back to 2008 and does not provide figures for indigenous groups. The lack of census data disaggregated by ethnicity makes it an impossible undertaking to accurately estimate the number of both indigenous peoples and indigenous individuals. If information gathered by the Ministry of Planning for the 1998 national census serves as a tentative list of ethnic groups - based on the criterion of mother tongue - indigenous peoples' wariness of State authorities, and a history of being subjected to assimilation efforts, may have reasonably led many to not disclose their mother tongue in official surveys of this kind.¹²⁴

In the absence of disaggregated data on indigenous peoples, developing evidence-based, targeted and effective interventions

122 The Raang, Saauch, Suoy, Kachak, Thmaun, Mil, Kraol, Kavet, Lun, Khaonh, Phnong, Khe, Samre, Kroeng, Charay, Tompuon, Stieng, Kuoy, Chorong, L'Eun, Roder, Por, Prov and Spung.

123 Ratanakiri, Mondulakiri, Kratie, Preah Vihear, Kampong Thom, Stung Treng, Udor Meanchey, Kampong Cham, Pursat, Kampong Speu, Koh Kong, Battambang, Preah Sihanouk, Banteay Meanchey and Siem Reap.

124 IFAD: Country Technical Note on Indigenous Peoples' Issues – Kingdom of Cambodia, November 2012, p.3. Available at: https://www.ifad.org/documents/38714170/40224860/cambodia_ctn.pdf/02148186-48e9-4c08-bc09-b3565da70afb

remains challenging. This includes the possibility to track progress towards the achievement of the SDG.



OHCHR recommendation:

For the next national census, data should be disaggregated, in addition to sex, by ethnicity, including indigenous identity, to accurately assess the impediments to the full enjoyment of human rights of indigenous peoples in the country and to inform the development of corrective measures.

The limited scope of application of interim protective measures

In May 2011, the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction issued an inter-ministerial circular providing for interim protective measures for indigenous peoples awaiting their collective land title.¹²⁵ While a welcome development, protections have in reality been few as the foreseen measures only apply to the communities that have submitted their application for a collective land title to the Ministry of

Land Management, Urban Planning and Construction.

The limited scope of applicability is of concern as the clearing of traditionally owned lands, territories and resources, as well as involuntary displacement of indigenous communities for economic development is ongoing and affects the survival and well-being of indigenous peoples in Cambodia, and challenges their management and rights over natural resources.

As noted earlier, international human rights mechanisms have emphasized that until indigenous peoples' lands have been delimited, demarcated and titled, States must abstain from any acts that might affect the existence, value, use or enjoyment of the property located in the geographic area occupied and used by the peoples concerned.¹²⁶ Therefore, interim protective measures should apply whenever indigenous peoples are present in or have a collective attachment to an area proposed for development activities or land sales, and these measures should remain in place until the process to delimit, demarcate and title the lands has been concluded.

¹²⁵ Ministry of interior and Ministry of Land Management, Urban Planning and Construction, Inter-ministerial Circular on Interim Protective Measures Protecting Lands of Indigenous Peoples that Has Been Requested for Collective Ownership Titling, While Awaiting Titling Process According to Procedure to be completed, issued on 31 May 2011.

¹²⁶ Inter-American Court of Human Rights, Report No. 40/04, Case 12.053, Maya indigenous communities of the Toledo District (Belize), October 12, 2004, paragraph 197 - Recommendation 2.



OHCHR Recommendation:

The Provincial Governors could issue interim protective measures to apply to all communities that have completed the first step of the collective land titling process, that is recognized by the Ministry of Rural Development as indigenous communities eligible to apply for collective land title, and which have indicated their intention to apply for collective title.

Lack of funds

Applying for collective land titles is costly. Estimates by GIZ put the total amount at USD 70,000 per community.¹²⁷ GIZ calculations suggest that the expenses for step 1 and 2 can amount to approximately USD 20,000 per community. These costs are usually paid by donor organizations. Excluding the operational costs, step 2.5 amounts to USD 8,000 per community. The Ministry of Land Management, Urban Planning and Construction receives the necessary budget for step 3 through the Ministry of Economy and Finance.

A disproportionately large share of the total cost for the process is the payment of daily subsistence allowance - payments made to cover travel related expenses, such as accommodation, transport and meals -

for national and sub-national authorities that are required to attend community-organized discussions to validate key requirements of the application packages to the respective ministries. These costs are ultimately mostly borne by NGOs and development partners supporting indigenous communities with the process, through their own or development partner funding. One objective of OHCHR proposal for simplifying steps of the CLT process is to reduce the number of field missions of Government representatives from national, provincial and district levels.

This discussion paper is guided by the view that in order for collective land titling schemes to be effective, they should be driven and sufficiently funded by the State itself, which is not the case.¹²⁸ The lean allocation of resources to support collective land titling processes does not reflect a serious commitment to guarantee that all indigenous peoples in Cambodia have an equal access to CLT, in line with the SDG and the principle of leaving no one behind.



OHCHR Recommendation:

OHCHR recommends that the Government increase the budget for the collective land titling process to increase the number of communities granted CLT per year.

¹²⁷ GIZ Lessons Learned on Indigenous Communal Land Titling, June 2016, p.5. NGOs working on indigenous land titling have indicated to OHCHR that, in their experience, the total expense for the three steps amounts to 60 000 USD.

¹²⁸ The lack of funding was raised with OHCHR in every meeting with government officials.

Limited awareness among indigenous peoples, supporting NGOs and local authorities about the 2001 Land Law and inadequate capacity to implement it

Many stakeholders – including indigenous peoples, supporting NGOs, and Government representatives – appear confounded about the procedural steps and requirements that should be followed to register indigenous peoples' collective land for title. Part of this confusion lays in the multitude of applicable legal and policy documents (laws, sub-decrees, prakas, inter-ministerial circulars and policy guidance). For instance, with regards to the last step of the process – the verification of the preliminary mapping, the training Manual on Indigenous Communities Land Registration (prepared by the Ministry of Land Management, Urban Planning and Construction in 2012) lists nine legal and policy documents, in addition to the Land Law, and most of them are not public or extremely difficult to source.¹²⁹

Indigenous communities typically lack the knowledge to effectively engage in the collective land titling process. With regards to supporting NGOs, it has already been noted that their capacity tends to

be low, in particular in terms of technical skills, particularly for data collection on land use and digitizing of preliminary maps.¹³⁰ NGOs also experience a high turnover rate of staff, which further hampers the sustainability of capacity building initiatives.¹³¹

Undermining registration of collective land titles is also a seeming lack of commitment on the part of both local and national government and registration authorities, infused by limited awareness of domestic laws relevant to indigenous peoples.

During four regional capacity-building workshops organized by the Ministry of Rural Development and OHCHR in 2016 and 2017 (Sihanoukville, 24-25 October 2016; Stung Treng, 27-28 October 2016; Kampong Thom, 17-19 October 2017, and Pursat, 14-16 November 2017), it was agreed that in collaboration with the Ministry of Rural Development, OHCHR would work towards producing a manual with action-oriented guidance on the collective land title procedures and clear references to the legal and/or policy basis of each step. In December 2018, OHCHR published, in partnership with the three line Ministries, a practical manual for local authorities, indigenous communities and supporting NGOs, including an overview

¹²⁹ Ministry of Land Management, Urban Planning and Construction: training Manual on Indigenous Communities Land Registration, 2012, p.8.

¹³⁰ GIZ Lessons learned, p.12.

¹³¹ Ibid.

of the process to obtain a collective land title (including all three steps), and compiling all the required documentation and formats of each Ministry¹³².



OHCHR Recommendation:

The Royal Government of Cambodia should consider developing a long-term plan for the capacity building of sub-national authorities on the collective land titling process and their duties in this regard.

Limited cooperation between the relevant ministries

As a process that involves three, sometimes four, ministries, collective land titling of indigenous communities requires close cooperation between the ministries at both national and sub-national level. At present, there is no technical collaboration between the ministries.



OHCHR Recommendation:

As a first step, a technical working group consisting of representatives from the Ministry of Rural Development, the Ministry of Interior, the Ministry of

Land Management, Urban Planning and Construction and the Ministry of Environment should be established and meet on a regular basis to discuss the status of pending land claims, and seek solutions to blockages to individual communities' cases.

National policy on indigenous peoples

In 2009, the Royal Government of Cambodia adopted a National Policy on the Development of Indigenous Peoples (hereafter, 'National Policy'), which recognizes the distinct relationship that indigenous peoples have to their lands and natural resources, and notes the challenges they face in relation to access to basic services, including education and health care. Importantly, the National Policy seeks to ensure that the cultures of indigenous peoples throughout the country are safeguarded and that their living conditions are approved in a consistent manner across all sectors.¹³³

More specifically, the Policy sets as its goals that indigenous peoples will reach a living standard beyond starvation and extreme poverty; that they be provided at

132 Manual on Indigenous Communities Identification; Legal Entity Registration; and Communal Land Registration Process in Cambodia. Co-published by OHCHR, the Ministry of Rural Development, the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction in January 2019. Available at: <https://cambodia.ohchr.org/sites/default/files/Promotional-materials-soft/CLT%20Manual-Khmer.pdf>

133 National Policy on the Development of Indigenous Peoples, approved by the council of ministers at plenary session, 24 April 2009, 1. Emphasis added.

least nine years of education, in addition to appropriate vocational skills training; that they have access to good healthcare services; and that their cultures are safeguarded and protected.¹³⁴ The Policy notes that the active participation and involvement of indigenous communities is imperative for its success.¹³⁵

To achieve these goals, the National Policy outlines goals in ten thematic sectors – culture; education and vocational training; health; environment; land; agriculture and water; infrastructure; justice; tourism; and industry, mining and energy – which are linked to relevant ministries. OHCHR notes that there is no precise identification of which ministries are “relevant” in each sector. A consequence is that Ministries in these sectors do not clearly understand their mandate and what is expected of them to ensure implementation of the National Policy, which hampers implementation of it in a consistent manner across all sectors.

With regard to the land sector, the National Policy establishes that laws and standard legal documents for the protection of collective ownership of land and the implementation of land use plans should

be disseminated in a manner and format understood by (all members of) indigenous peoples.¹³⁶ The Policy also reiterates the Land Law’s protective articles in noting that the lands of indigenous peoples’ communities that are collectively used should not be sold or transferred to any individual or group outside the communities.¹³⁷

In terms of implementation of the National Policy, OHCHR also notes the absence of coordination between the relevant ministries and that no regular follow-up on implementation has been done since its adoption in April 2009. In addition, there is no budget to implement it.

In May 2019, the Ministry of Rural Development established a “national technical working group to preserve and develop indigenous peoples” (letter No 148/19 dated 06 May 2019),¹³⁸ which it decided to dissolve in early 2020 (letter No 041 dated 4 February 2020) without providing any official reason.

Such dissolution goes against Cambodia’s international commitments, for example the Outcome Document of the World Conference on Indigenous Peoples,

134 Ibid. 2.

135 Ibid. 13

136 Ibid. 8.

137 Ibid. See also Land Law, Article 28.

138 In addition to the 16 members of the technical working group secretariat who were mainly from the department of ethnic minorities’ development of the Ministry of Rural Development, the Technical Working Group included 79 representatives from at least 20 relevant ministries, representatives from the provinces where indigenous communities exist, and six civil society/development partners working on indigenous peoples’ issues.

which was adopted unanimously by all United Nations Member States, including Cambodia, in September 2014.¹³⁹ At this High-level meeting, Member States reaffirmed their commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples, and to cooperate with indigenous peoples to develop and implement national action plans, strategies or other measures to achieve the ends of the Declaration.¹⁴⁰



OHCHR Recommendation:

To ensure the implementation of the policy, its goals should be clearly assigned to specific Ministries, together with an allocated budget. Indicators should also be identified and benchmarks set to monitor its implementation. To ensure indigenous voices are heard at the national level, OHCHR recommends the establishment by the Royal Government of Cambodia of a new national consultation and coordination mechanism or forum where indigenous peoples could raise and discuss issues affecting them.

The absence of a gender lens

While the National Policy on Indigenous Peoples sets ambitious goals and targets in different sectors, it does not consider the particular situation of indigenous women and the discrimination they face both within their own communities and in society at large. The absence of analysis and measures to ensure gender equality and women's social, economic and political empowerment is a common feature across many, if not most, national policy documents relating to indigenous peoples that OHCHR has come across.



OHCHR Recommendation:

To correct this and to ensure that more attention is devoted to indigenous women and girls, the Ministry of Rural Development, together with the Ministry of Women's Affairs, with the possible support of other United Nations entities, should develop a rights-based action plan that addresses the needs of indigenous women specifically. In addition, gender considerations should be mainstreamed across all future legal and policy documents.

¹³⁹ A/RES/69/2 (2014).

¹⁴⁰ A/RES/69/2, paragraph 8. Other countries' ongoing work to develop such action plans, including Canada and El-Salvador, could serve as models in this regard.

UNITED NATIONS
OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS IN CAMBODIA



NATIONS UNIES
BUREAU DU HAUT COMMISSAIRE
AUX DROITS DE L' HOMME AU CAMBODGE

អង្គការសហប្រជាជាតិ
ការិយាល័យខុត្តមស្តង់ដារការទទួលបានសិទ្ធិមនុស្សប្រចាំកម្ពុជា



Ref.: OHCHR/220/20

Phnom Penh, 13 November 2020

Excellency,

I write to you on behalf of the Office of the United Nations High Commissioner for Human Rights in Cambodia (OHCHR) with regard to a communication campaign on the need for simplification of the Communal Land Titling (CLT) process in Cambodia.

I take this opportunity to thank Your Excellency for assigning Dr. Thol Dina a focal person to collaborate with OHCHR on this campaign via an internal letter of the Ministry of Land Management Urban Planning and Construction (MLMUPC), dated 25 August 2020 and a remark as agreed by Your Excellency, Deputy Prime Minister on 26 August 2020.

To support the Royal Government of Cambodia in its efforts to protect security of tenure for indigenous peoples to collective land, the simplification of CLT process is a way forward to this endeavor, my office has been developing, in consultation with your Excellency's Ministry, a discussion paper titled "Communal Land Titling Process in Cambodia; a case for reform?" The discussion paper is currently being finalized and is ready to be published in the coming months. In spirit of cooperation and collaboration between OHCHR and your Excellency's Ministry, I am seeking your agreement to display your ministry logo on this publication. I enclosed the final draft of the discussion paper for your reference.

I would like to reiterate that OHCHR in Cambodia is committed to monitoring, promoting and implementing the rights of indigenous peoples in the country, including their rights to land and resources, as well as to support the Royal Government of Cambodia to meet its obligations under the human rights treaties it has ratified.

My colleague, Mr. Touch Huan, will contact your office, or alternatively, your assistant can contact him at 012 476 493 or by email: htouch@ohchr.org, to confirm your Ministry's agreement to display the MLMUPC's logo on the discussion paper.

Please accept, Excellency, the assurance of my highest consideration.


Pradeep Wagle
Representative a.i.

His Excellency Chea Sophara
Deputy Prime Minister
Minister of Ministry of Land Management, Urban Planning and Construction
No. 771-773, Preah Monivong Boulevard, Phnom Penh



អង្គការសហប្រជាជាតិ
ការិយាល័យឧត្តមស្តង់ដារការទទួលបន្ទុកសិទ្ធិមនុស្សប្រចាំកម្ពុជា



Ref.: OHCHR/221/20

Phnom Penh, 13 November 2020

Samdech Krolahom,

I write to you on behalf of the Office of the United Nations High Commissioner for Human Rights in Cambodia (OHCHR) with regard to a communication campaign on the need for simplification of the Communal Land Titling (CLT) process in Cambodia.


I take this opportunity to thank Samdech Krolahom for assigning Mr. Am Veasna, Deputy Director of the Department of Political Parties and Associations, the Ministry of Interior (MoI) as a focal person to collaborate with OHCHR on this campaign.

To support the Royal Government of Cambodia in its efforts to protect security of tenure for indigenous peoples to collective land, the simplification of CLT process is a way forward to this endeavor, my office has been developing, in consultation with Samdech Krolahom's Ministry, a discussion paper titled "Communal Land Titling Process in Cambodia; a case for reform?" The discussion paper is currently being finalized and is ready to be published in the coming months. In spirit of cooperation and collaboration between OHCHR and your Ministry, I am seeking your agreement to display your Ministry logo on this publication. I enclosed the final draft of the discussion paper for your reference.

I would like to reiterate that OHCHR in Cambodia is committed to monitoring, promoting and implementing the rights of indigenous peoples in the country, including their rights to land and resources, as well as to support the Royal Government of Cambodia to meet its obligations under the human rights treaties it has ratified.

My colleague, Mr. Touch Huan, will contact your office, or alternatively, your assistant can contact him at 012 476 493 or by email: htouch@ohchr.org, to confirm your Ministry's agreement to display the MoI's logo on the discussion paper.

Please accept, Samdech Krolahom, the assurance of my highest consideration.


Pradeep Wagle
Representative a.i.

Samdech Krolahom Sar Kheng
Deputy Prime Minister
Minister of Interior
N°275 Norodom Blvd, Phnom Penh



អង្គការសហប្រជាជាតិ
ការិយាល័យខ្ពង់ខ្ពស់នៃការទទួលបន្ទុកសិទ្ធិមនុស្សប្រចាំកម្ពុជា



Ref.: OHCHR/222/20

Phnom Penh, 13 November 2020

Excellency,

I write to you on behalf of the Office of the United Nations High Commissioner for Human Rights in Cambodia (OHCHR) with regard to a communication campaign on the need for simplification of the Communal Land Titling (CLT) process in Cambodia.


I take this opportunity to thank Your Excellency for your agreement through H.E Soun Serey Ratha, Secretary of State of the Ministry of Rural Development (MRD) at a meeting on 07 September 2020 to collaborate with OHCHR on this campaign.

To support the Royal Government of Cambodia in its efforts to protect security of tenure for indigenous peoples to collective land, the simplification of CLT process is a way forward to this endeavor, my office has been developing, in consultation with your Excellency's Ministry, a discussion paper titled "Communal Land Titling Process in Cambodia; a case for reform?" The discussion paper is currently being finalized and is ready to be published in the coming months. In spirit of cooperation and collaboration between OHCHR and your Excellency's Ministry, I am seeking your agreement to display your Ministry logo on this publication. I enclosed the final draft of the discussion paper for your reference.

I would like to reiterate that OHCHR in Cambodia is committed to monitoring, promoting and implementing the rights of indigenous peoples in the country, including their rights to land and resources, as well as to support the Royal Government of Cambodia to meet its obligations under the human rights treaties it has ratified.

My colleague, Mr. Touch Huan, will contact your office, or your assistant can contact him at 012 476 493 or by email: htouch@ohchr.org, to confirm your Ministry's agreement to display the MRD's logo on the discussion paper.

Please accept, Your Excellency, the assurance of my highest consideration.


Pradeep Wagle
Representative a.i.

His Excellency Dr. Ouk Rabun
Minister of Rural Development
Street 169 (Czechoslovakia) on the corner of Russian Boulevard
Phnom Penh



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HUMAN RIGHTS
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August 2020

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