

# **Comments of Civil Society Organizations as Inputs for Facilitating the Procedure of Preliminary Mapping for Collective Indigenous Communal Land Registration in Cambodia**

## **Introduction**

This position paper has been prepared with an important objective to see an agreement between relevant agencies on the preliminary mapping process, which is simple, easy, and effective, as an important part of the process of indigenous communal land registration (including previous communities not preliminarily mapped). It is in this regard that a reflection workshop on preliminary mapping experiences on collective indigenous communal land registration was held on 2-3 July 2020 with participation of three ministries, i.e., the Ministry of Land Management, Urbanization and Construction; the Ministry of Interior; and the Ministry of Rural Development, and 29 representatives of national and international non-governmental organizations working with indigenous people. This position paper provides a brief, orderly description of the background of registration, the importance of preliminary mapping, the legal framework, experiences, and challenges, positions raised and conclusion.

## **Brief background of collective communal land registration and vulnerability**

### **Brief history and achievements of collective land registration**

It is generally recognized that there are 24 indigenous groups in Cambodia. Indigenous people's rights in Cambodia, in particular, the right to access to land, have been formally recognized under the 2001 Land Law. Further, the Sub-Decree No. 83 (2009) on "Procedure of Indigenous Communal Land Registration" in compliance with the Forestry Law (2002) and the Law on Natural Protected Areas (2008) provides detailed guidelines on how indigenous people can register collective communal land. At the beginning of 2010s, a collective land titling project was piloted in 2 indigenous communities in Rattanakiri and one community in Mondulkiri. These communities received collective land titles between 2011 and 2013. Generally, the registration process undergoes three main phases: 1) identity recognition by the Ministry of Rural Development, in which 150 community identities had been recognized as of November 2019; 2) registration as a legal person by the Ministry of Interior, in which 150 communities had been registered as of 15 May 2020; and 3) provision of collective land titles by the Ministry of Land Management, Urbanization and Construction, in which 30 of the 68 communities applying for land titles were issued with land titles as of end of December 2019. Meanwhile, between phases 2 and 3 relating to preliminary mapping referred to as phase 2.5, it was recognized that civil society organizations played an important role together with local officials.

### **Vulnerability of indigenous communities**

After almost a decade of implementing collective indigenous land registration, Cambodia has fared better than other countries in Southeast Asia, in particular, the recognition of indigenous people's rights to access to and use of land resources. However, agencies involved see that, in

general, the process of collective land registration should be adjusted to make it simple, easy and effective. For instance, so far, a great deal of time has been spent on technical work related to preliminary mapping resulting in delays, in particular, decisions on overlapping areas within natural protected areas because no identification of the four types of areas within a natural protected area yet. With the delays and provisional protection being absent or not enforced, indigenous communities have become further victimized due to external factors, i.e., the rapid socio-economic and technological changes, inducing indigenous people to sell land, and to want to have private land ownership to ensure easy use for daily livelihood, e.g., deposit of the land ownership with banks. Such changes work in contrary to laws and sub-decrees related to indigenous communities as well as the general aspiration for collective livelihoods relying on the land and natural resources available in the areas of their residence.

### **Importance of preliminary mapping**

To date, as part of phase 2.5, the preliminary mapping requirement is a cadastral officials' specific need probably based on Article 8 of Sub-Decree No. 83, but there are not any other more specific laws or guidelines to meet the requirement. It is also a step not under the jurisdiction of any ministry, which so far has been implemented by civil society organizations in collaboration with cadastral officials prior to application for collective land registration. The fact that cadastral officials require sufficient documents for mapping has been viewed as an overlapping with the process to be implemented under phase 3 relating to similar land survey. Therefore, this workshop was conducted focusing mainly on specific experiences of civil society organizations working on indigenous communal land registration and to present its positions to ensure ease and effectiveness.

### **Relevant legal framework**

Article 23 of the Land Law stipulates that an indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use. Article 25 States 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 neighbors, and as prescribed by procedures of this law and relevant sub-decrees.

Article 41 of the 2002 Forestry Law States that the Minister of Agriculture, Forestry and Fisheries has the authority to allocate any part of the Permanent Forest Reserve to a community living inside or near a forest area in the form of a Community Forest.

Article 44 stipulates that a local community, operating under a Community Forest Agreement, shall have the rights to harvest forest products and by-products within the demarcated forest area Stated in the Community Forest Agreement. A local community cannot use the Community Forest in the form of a concession, nor sell, barter or transfer its rights in such forest to a third party.

Like the Forestry Law, Article 22 of the 2008 Law on Natural Protected Areas States that the State recognizes and secures access to traditional uses, local customs, beliefs, and religions of the local communities, and indigenous ethnic minority groups residing within the protected areas only for sustainable use zone and conservation zone following guidelines of the Ministry of Environment. Article 25 States that the Ministry of Environment has the authority to allocate part or parts of sustainable use zone to communities to develop into a community protected area.

In compliance with the Forestry Law and the Law on Natural Protected Areas, Article 7 of the Sub-Decree No. 83 States that as for other State land on which an indigenous community has traditionally used, the community can continue to use and enjoy the usufruct according to its tradition, but it has to enter into an agreement with a relevant institution with a mandate to manage the State land.

## **Experiences and challenges**

### **- Brief steps applied for past preliminary mapping**

**Step 1** aimed at involving communities in decision making in demarking clear village boundaries and avoiding problems between neighboring villages. In order to realize this objective, meetings were held with community commissions and village elders, and explanation made on a map manually drawn by communities to demark village boundaries (for villages without clear boundaries). Then, villagers were consulted on locations of land use. The next step could proceed only when there was an agreement. A draft map was manually drawn with acceptance by thumb prints of elders and villagers residing next to the boundaries in the draft map. The village authorities were also involved in this stage.

**Step 2** aimed at presenting a manually drawn map for neighboring villages and communes to know and to accept and/or to modify the manually drawn draft map. Participants included respective commune councils, elders of all villages and village chiefs involved, the district cadastral office, the forestry administration, the environment office, involved communes, and partner organizations. Partner organizations facilitated communities to specify coordinates to produce a common map for submission to the provincial department of land management, urbanization, and construction with five types of land specified. Then, the draft map was discussed in a commune meeting with bordering communities and commune authorities invited to attend, and cadastral officials invited to assist with technical matters. Community owners gave a presentation for all participants to agree, and to ask members and bordering communities to give official thumb prints with seals stamped by all bordering commune chiefs.

**Step 3:** Communities applied to the provincial department of land management, urbanization, and construction through the district cadaster requesting collaboration in using GPS to identify the five types of land based on the draft map produced by partner organizations and communities. With the draft map, a plan was developed to specify coordinates using GPS and to identify the five types of land, which were then given to technical officials to register in the system in order to issue a preliminary map with proper measurements and based on the draft

map produced by partner organizations and communities. The land was divided into specific types, such as sacred land, residential land, etc.

#### - **Key challenges**

With regards to *legal and technical factors*, the Sub-Decrees No. 83 and 118 do not seem to reflect the communities' real situations, such as living customs (actually, the size of the sacred forest and burial forest can be larger than specified by laws), but some communities also demanded an excessively larger and unclear range of community territories for collective land registration.

Moreover, collective land registration of unresolved communities leading to difficult decisions, especially, those relating to economic land concession and protected areas, sanctuaries, and State's permanent land reserves because there had been no zoning (for example, community, sustainable use, conservation, and core zones). At present, there are 10 indigenous communities residing in areas overlapping with those of the Ministry of Environment and the Ministry of Agriculture, Forestry and Fisheries, which had not been resolved. Besides, in Rattanakiri, registration seemed to be fast because of application of the 2002 forestry coverage map, i.e., not much forest remained. According to the discussion with the Ministry of Agriculture, Forestry and Fisheries, this is the reason why registration proceeded fast within about 6 months only compared with generally longer registration of up to two years.

Conflicts over boundaries with neighboring communities were also raised, resulting in delays of efforts for quicker registration, in addition to issues involving other company and State land as mentioned above. At the same time, there was no clear mechanism or guidelines for resolving conflicts over communal collective land registration for communities or other stakeholders to rely on during identification process.

*Concerning socio-economic factor*, it was reported that communities had been incited by powerful people or better-off people from within or outside of the communities to abandon collective land registration because it limited individual or family beneficial use when needs for both productive and non-productive use kept increasing over time.

*Regarding understanding and participation*, it was reported that persons concerned or their representatives in the registration process leading to stalling, difficulties in decision making, or delays in drawing a draft map (absentees included companies located on boundaries, community members, and bordering villagers, commune chiefs or village chiefs). The absence of community members could have been due to failure to understand the benefits of a preliminary map or failure to disseminate widely. Further, relevant officials and authorities seldomly visited the local areas.

#### **Our suggested positions**

##### **General suggestions**

- Systematic land registration should not begin in indigenous areas to avoid indigenous communities' conversion to individual registration. As a consequence, communities may become vulnerable because they cannot control their land under management, such as selling or encroachments.
- In addition to requirements for registration of five types of land, there should be dissemination for communities to understand clearly the importance of separate agreements on CFs and CPAs with relevant institutions in the form of co-management between communities and relevant State agencies, such as the Ministry of Environment or the Ministry of Agriculture, Forestry and Fisheries.
- Expedition of zoning with comprehensive participation in accordance with Sub-Decree No. 83 on Procedure of Indigenous Communal Land Registration and Sub-Decree No. 118 on Management of State Land. Zoning aims at avoiding conflicts over use and management of natural resources in protected areas, increasing effective conservation, and improving socio-economic benefits and ecology.
- Application of the leopard skin policy for collective land registration to avoid conflicts over community or village boundaries or over a larger range. Doing so allows communities to include their land located in other villages or communes. It is an interesting loss because, in some cases, community land was lost because it was separated by provincial boundaries, e.g., the cases in Kratie and Monduliri provinces.

### Specific suggestions

- Below are specific steps suggested in an orderly manner to expedite registration process by showing responsible persons and participants in each step.

Orderly steps that should be taken	Persons who should be responsible	Persons who should participate
<p>After acceptance of self-identification, dissemination of, among others, indigenous people's rights, land use and implementation, should start</p> <p>Stringent law enforcement in collective land management (communities, village, commune, district authorities)</p>	<p>Officials of district cadaster and provincial department of land management</p>	<p>village, commune, district authorities, communities</p>
<p>Preliminary sketch mapping identifying land boundaries by locations, by types of land and by probable sizes, by list of community households located in a common parcel of land (grouping) using symbols (colors) by different types of land.</p>	<p>Provisionary community commission, and elders</p>	<p>community members, village/commune authorities</p>

Review types of land applied for by communities to see if the land overlaps with a protected area or permanent forest reserves?	Provisionary community commission and elders	Community members; village, commune, district authorities; provincial department of environment; forestry administration cantonment
Apply for provincial provisional protection measures to prevent land transactions (public dissemination). Provide complaint and monitoring mechanisms for general communities.	Provisionary community commission	Elders, supporting organizations
Develop statute: request registration as a legal person at the Ministry of Interior (recognize the statute and appoint a commission)	Provincial inter-sectoral officials, Ministry of Interior and provisional community commission	Elders; community members; village, commune, district and provincial authorities; relevant provincial departments; supporting organizations
Develop internal regulations to manage, use and resolve conflicts over collective land.	District cadastral office, provincial department of land management and MLMUC	Elders; community members; village, commune, district and provincial authorities; relevant provincial departments; supporting organizations
Apply for collective land registration based on the existing preliminary sketch map after receiving the legal person status (announcements).	Community committee	Commune chief, district cadaster
After applying for collective land registration, it is the procedure of the Ministry of Land Management, Urbanization and Construction		

## Conclusion

Preliminary sketch mapping or preliminary mapping remains necessary in the process of collective land registration, and it is requested to be placed close to the initial phase, i.e., after recognition of self-identification, using simple methods in which communities can participate, such as identification of land boundaries by location, types of land, and by probably sizes, and by

lists of community households located in a common parcel of land (grouping). Doing so will also make it easy for communities as well as other stakeholders to identify resources and types of land over which the communities are enjoying usufruct before developing internal regulations for management and use. Then, provisional measures need to be developed with stringent enforcement to avoid stalling due to transfers or exchanges of land because these are an important risk. Implementing the suggestions above can bring about significant benefits, i.e., land is protected legally and safe thanks to the provisional protection measures; more communities can apply and obtain collective land titles, saving time and money, and communities trusting and getting involved. Meanwhile, a coordination mechanism between the institutions having land areas overlapping with those of communities should be established to discuss solutions in mutual interest, along with awareness raising on registration of other types of land (community forest or community protected forest, which is an option of co-management between communities and relevant ministries).

### **List of participating agencies**

1. Ministry of Rural Development (MRD)
2. Ministry of Interior (Mol)
3. Ministry of Land Management, Urbanization and Construction (MLMUPC)
4. NGO Forum on Cambodia (NGO Forum)
5. Diakonia
6. Norwegian People's Aid (NPA)
7. HEKS
8. Office of the High Commissioner for Human Rights (OHCHR) in Cambodia
9. Highlander Association-Rattanakiri
10. Ponlok Khmer (PKH)
11. Community Legal Education Center (CLEC)
12. My Village (MVi)
13. Wildlife Conservation Society (WCS)
14. Indigenous Community Support Organization (ICSO)
15. Development and Partnership in Action (DPA)
16. Forests and Livelihood Organization (FLO)
17. Save Vulnerable Cambodians (SVC)
18. Analyzing Development Issues Centre (ADIC) (coordination and report writing)