



Kingdom of Cambodia Nation Religion King

REPORT

CONSULTATIVE WORKSHOP ON COMMUNITY TENURE IN THE FOREST AREA FOR THE AMENDMENT OF THE LAW ON FORESTRY AND THE LAW ON PROTECTED AREAS



1. Introduction

Sub-national democratic development is an important strategy in improving local development and reducing poverty, which is defined in the Strategic Framework for Decentralization and Decentralization of Royal Government of Cambodia. To date, the Royal Government of Cambodia had approved the organic law and establishment of sub-national administrative councils, as well as the establishment of a 10-year national program for democratic development at the sub-national level in order to create unified sub-national administrations that are capable of local development and improving the management and provision of public services to meet the priority needs of local people and reduce poverty.

The vision of the Royal Government of Cambodia is to build a more efficient, effective and credible public administrations, and to improve the public services delivery, improve the professional conscience of civil servants, and to turn public administration into an effective public service provider and to serve the people better.

In 2019, the Royal Government of Cambodia decided to restructure district/municipal/Khan administration (DMAK) by integrating line offices at the DMK level to under the DMA administrative structure, and transferred functions and resources from the national level to the DMK administrations through Sub-Decree No. 182, Sub-Decree No. 183 and Sub-Decree No. 184 on the functions and structure of the Municipal, District, Khan Administration. At the same time, the functions and resources of the natural resources sectors have also been transferred to the DMK administrations.

Meanwhile, the Secretariat of National Committee for Sub-National Democratic Development (NCDD) has been leading and coordinating inter-ministerial technical working groups, including the Ministry of Agriculture, and the Ministry of Environment to amend the Law on Forestry, the Law on Fisheries and the Law on Protected Areas. Therefore, the NCDD Secretariat, in collaboration with and supported by the NGO Forum, organized three consultative workshops at the sub-national level to collect input from sub-national administrations, relevant line departments, CSOs, and communities for the preparation of the draft Law on Forests and the Law on Protected Areas. The workshops were divided as 3 regionals as below:

- The first regional workshop: was held at Preah Vihear provincial hall on May 05th, 2022 in Preah Vihear province with the participation of sub-national administrations including Preah Vihear, Battambang, Siem Reap, Kampong Thom and Oddar Meanchey.
- The second regional workshop: was held at Hor Bunny Hotel, Kratie province on May 05, 2022, with the participation of sub-national administrations including Kratie, Mondulkiri, Ratanakiri and Stung Treng provinces.
- The third regional workshop: was held at Kampot Provincial Hall on May 11, 2022 in Kampot province with the participation of sub-national administrations including Kampot, Sihanoukville, Kampong Speu, Koh Kong, Pursat and Kampong Chhnang provinces.

2. Objectives

The main objectives of the consultation workshops are to:

- 1). Introduce the progress and the content of the draft law on forests, the draft law on protected areas and the results of the study on the standards related to community tenure in the forest area, including the relevant standards of protected area communities.
- 2). Collect inputs from sub-national administrations, civil society and local communities for the process of amending the law on forestry and Law on Protected Areas.
- 3). Organize national consultative workshop with line ministries, CSO, development partners, local community representatives to discuss in detail the inputs received from the sub-national level.

3. Participants

The three regional consultative workshops were attended by approximately 311 members, 54 of whom were women, consisting of:

- 1). National Representative
 - H.E. Chan Sothea, Undersecretary of State, Ministry of Interior and Deputy Director of the NCDD Secretariat (Online)
 - Representative of the Ministry of Interior
 - Representative of the Ministry of Environment
 - Representative of the Ministry of Agriculture, Forestry and Fisheries (Forestry and Fisheries Administration)
 - Representative of NCDD Secretariat
- 2). Subnational Administration

First Regional Workshop	Second Regional Workshop	Third Regional Workshop
Deputy Governor in charge of Natural Resource Management – H.E. Ly Sararith, Deputy Governor of Preah Vihear Province – H.E. Chan Dara, Deputy Governor of Kampong Thom Province – H.E. Prak Sophoan, Deputy Governor of Siem Reap Province – H.E. Houn Van Nith, Deputy Governor of Oddar Meanchey Province	Deputy Governor in charge of Natural Resource Management – HE Pen Linath, Deputy Governor of Kratie Province – HE Chak Mengheang, Deputy Governor of Mondulkiri Province	Deputy Governor in charge of Natural Resource Management – HE Ney Kong, Deputy Governor of Kampot Province – HE Ney Chary, Deputy Governor of Kampong Chhnang Province – HE Kong Vitanak, Deputy Governor of Preah Sihanouk Province – HE Sok Phea, Deputy Governor of Kampong Speu Province
- DMA Governor - Director of the Department of Land Management, Urban Planning, Construction - Director of the Department of Environment and Technical Officer - Director of Forestry Administration	- DMA Governor - Director of the Department of Land Management, Urban Planning, Construction - Director of the Department of Environment and Technical Officer - Director of Forestry Administration	- DMA Governor - Director of the Department of Land Management, Urban Planning, Construction - Director of the Department of Environment and Technical Officer - Director of Forestry Administration

3. Representatives of CSOs and DP: University, MRLG, RECOFTC, WCS, FAO, HA, CEDT, WMC, HEKS, Birdlife, NTFP-EP, MB, MVI, CEPA, CIYA, CIPO, CIWG, ClientEarth and NGO Forum.

4. Community representatives: forest communities, protected area communities, and indigenous communities.

4. Workshop process

The consultation workshop was held following to the planned time and agenda, which included the following main activities:

a). Introduction

At the beginning of workshop, the facilitator greeted and welcomed the members of the workshop participants, salute the flag of the Kingdom of Cambodia, announced the presidency members, workshop program, as well as informed the purpose and methodologies of workshop.

b). The contents of presentation

After the beginning of the workshop, participants listened to the 6 presentations as below:

- Presentation on "Progress and Draft Law on Protected Areas" by a representative of the Ministry of Environment, focusing on Chapter 6 on the participation and rights of local communities of the new draft law on protected areas, which stipulates the rights of local communities involved in providing and receiving information related to the management, conservation and development of protected areas and the right to use natural resources as tradition, customs and as needed of the community for household demands in sustainable use areas and conservation areas in accordance with the guidelines. It also stipulates the rights, roles and responsibilities of the Ministry of Environment and the sub-national administration in granting and canceling the Protected Area Community Contracts, facilitating, supporting, approving, and recognizing the establishment of community-protected areas.
- Presentation "Amendment of the Law on Forestry" by Mr. Long Rattanak Komar, deputy director of the Department of Forestry and Community Forestry under the Forestry Administration of the Ministry of Agriculture, Forestry and Fisheries. This presentation introduces the legal documents related to forest management, the terminology used in the new draft law, and only the section 6 on community forestry, Chapter 5, on productive forest management. Section 6 describes the community forest, which is part of the productive forest provided by the Ministry of Agriculture, Forestry and Fisheries for purpose of economic management, development and sustainable use of forest resources through the establishment of community forestry in accordance with the guidelines on community forestry establishment. The development of legislative documents for the establishment, management and use of community forests and the traditional rights to use non-timber forest products by local communities, as well as stipulating the roles and responsibilities of relevant ministries, and sub-national administrations in managing, coordinating, supporting and monitoring the implementation of the community forestry management and development plan funded by government budget and the National Forest Development Fund and by development partners, private sector and donors.
- Presentation on "Community Protected Areas in Cambodia. Analysis of Legal Framework, Practice and " Representatives of ClientEarth presented the results of the study and finding some issues, experiences and recommendations related to community-protected area as below:
 1. Land tenure: is caused by the insecurity of land tenure, in which the community has only partial rights (access, use, withdrawal, and management, but no exclusion rights). Recommendation: Land tenure should be formalized by registering CPAs in a centralized registration system, land tenure guaranteed to be more appropriate for communities, and land tenure duration extended to at least 30 years, renewable.
 2. Market access: Lack of clarity of regulatory requirements for economic activities (such as permits, responsible authorities, and pertinent regulations). Recommendations: shall clarify and develop the legal framework for market access CPAs, strengthen partnerships between CPA communities and the private sector, and support capacity building for communities.
 3. Establishment of CPAs: There is an administrative complexity of establishing protected area communities. Recommendations: simplify the process of establishing CPAs and ensure the participation of local communities in the mapping and demarcation of entire PAs/CPAs.
 4. Internal governance and community representation and participation: Lack of transparency and accountability guidance, and inclusion of vulnerable groups.

- Recommendations: Provide accountability and transparency mechanisms, and strengthen the participation of vulnerable groups.
5. CPA management and benefit sharing: Community management plans are too complex to implement and lack clarity on benefit sharing. Recommendations: simplify conditions of management plan, expand community management rights to enter into agreements with third parties, and provide additional guidance for benefit sharing.
 6. Conflict Resolution: Most PA communities are in an inferior position when there is a land dispute, and dispute resolution mechanisms and guidelines are vague. Recommendations: Establish clear guidelines for conflict resolution (respectful of customary practices).
 7. Law enforcement: there is still a lack of strong enforcement and dissuasive penalties. Recommendation: Empower the communities to enforce CPA rules and laws, and ensure adequate funding and capacity for patrolling and enforcement.
 8. External support: Importance of the external support, including NGOs, in providing technical and financial assistance to CPA communities. Recommendation: The need for greater collaboration between CPA communities and the private sector. The need for adequate funding and capacity building from the government to CPA communities.
 9. Describe on good lessons and experiences learned from other countries in West Africa (Gabon and the Republic of the Congo) and Central Africa (Liberia, Ghana and Côte d'Ivoire). The good practices include the ambitious forest law framework in Liberia which recognizes customary land tenure and the importance of the community in managing forest resources and in engaging with third parties. It also includes the Republic of the Congo having successfully implemented the Forestry Code (2021) with the active and effective participation of civil society organizations in each step of the implementation of the procedure.
 10. Another good Practice refers to access to market in Liberia: ClientEarth and local partners have developed a Medium-Scale Commercial Use Contract (MS-CUC) to establish a standard agreement between communities and third-party timber companies.
- Presentation on "Strengthening the Sharing of Benefits and Economic Opportunities for Protected Areas Community in Cambodia" by Mr. Say Jeudi, Forest Governance Network Coordinator. The presentation covered three topics: background, contents and recommendations, and conclusions. History has shown that rural families and communities rely on natural resources, but benefiting less from investment and protection of natural resources. Key points highlighted the rights of protected area communities to harvest, process, transport and sell non-timber forest products, and promote community-based ecotourism projects in protected areas, including in selected conservation areas. Protected areas management committee shall get authorized to sign agreements with private companies for activities set in the Management and Implementation Plan, and protected area communities should benefit from their protected forest carbon rights through transparent benefit sharing mechanism. A number of key recommendations related to community land use rights, exploitation of forest products, and the implementation of the principles, expansion of plantations, reforestation activities and REDD + should be considered in the draft law.
 - Presentation on "Sub-Decree on Community Forestry" Prof. Von Monin, Independent consultant, presented seven main contents, including:
 1. Background of the law

2. Overview of law on forest management
3. Sub-Decree on Community Forest Establishment / Management
4. Prakas on Guidance for Community Forestry
5. Recommendations for the amendment of the Forestry Law 2002
6. Analysis and revision of wording in Internal Regulation of the Community Forest Management Committee, Community Forestry Status, Community Forest Agreement, Community Forest Management Plan
7. Conclusions and Recommendations

After the presentation, the participants were divided into small discussion groups on the experiences of sub-national administrations on natural resource conservation and presentation of the results of group discussion.

5. The results of workshop

During this one-day workshop, participants gained important knowledge and information related to legal norms, policies related to the conservation of natural resources, the tenure of local communities in protected areas and forests, the draft law on forests and draft laws on protected areas, as well as providing a number of important inputs and recommendations. Especially in the four discussion groups, with key results following discussion questions:

Questions for all 4 group discussions

1. Anything other than the challenges and recommendations presented by the presenters?
2. How should sub-national authorities contribute more (roles and responsibilities) in the new draft law?
3. What good experiences do you want to include in this new draft law?

Results of group discussion

N	Comment, suggestions
1.	<p>Challenges in implementing the Law on Forests and the Law on Protected Areas</p> <p>In implementing these two laws, the participants encountered some of the following challenges:</p> <ul style="list-style-type: none"> ✓ No clear demarcation of core areas and protected areas leads to have conflicts. ✓ The general population does not have sufficient rights to protect and conserve. ✓ All offenses must be addressed at the authority and line department levels. ✓ Mining has not yet been consulted with local communities (red gravel, stone for construction, marble), community forests that have been declared should be preserved for the benefit of the community. ✓ There is no incentive for local communities, including compensate to communities affected. ✓ Committee, citizens who actively participated in natural resource protection receives complaints from the courts. ✓ Confiscated (wood) were not provided to the community. ✓ The Ministry of Mines and Energy did not consult with the relevant ministries before issuing any license. ✓ Not given full and clear rights. ✓ Large population, small land size.
2.	<p>Comments on the draft forest law</p>

- ✓ Article 24: is amended to: In accordance with the sub-decree on community forestry management and the Prakas, guidelines and principles on community forestry.
- ✓ Article 55: proposes to remove “impact” and use “related to the livelihood of the local community”. And request the removal of “serious”. Request to allow “local communities have the rights to participate in public consultations on all government decisions related to the management, use and management of community forests”.
- ✓ Article 56: Add paragraph “Establish a forest sustainability impact assessment working group and their roles and responsibilities.
- ✓ Article 56: Request to amend the second point to “the use of wood and non-timber forest products to build houses, stables, fences and for making agricultural equipment”.
- ✓ Article 57: Request to write in accordance with Article 24 of the new Law on Protected Areas.
- ✓ Article 58: Second paragraph: proposes to be amended as follows: The line office/unit in charge of forestry and sub-national administration has the authority to sign an agreement with the community forestry recognized by the Ministry of Agriculture, Forestry and Fisheries.
- ✓ Article 58 Request for contract duration between the community forestry and the government shall not longer than 50 years (at this point, the community forestry requests to sign a community forestry agreement for every of 50 years, equivalent to the Civil Code) because it is difficult to sign an agreement with private sectors in community forestry development.
- ✓ Article 59 Proposed to change to “the line offices in charge of forestry and sub-national administration, shall be representing state legal entities to request the registration of community forest land recognized by the Ministry of Agriculture, Forestry and Fisheries as the public forest land of the state in accordance with the law and regulations”.
- ✓ Article 60: Request to add the line office in charge of sub-national forestry in the first, second and third paragraphs and to change the community forestry committee to the community forestry management committee in the fourth paragraph.
- ✓ Article 61: request to add the extension of wildlife raising, natural zoos in community forests in the first paragraph.
- ✓ Article 63 Propose amendments to: The Royal Government of Cambodia and / or the Ministry of Agriculture, Forestry and Fisheries and / or the sub-national administration shall provide incentive to individuals and communities forestry who manage, protect, and maintain or planting of trees that achieve quantity and quality results.
- ✓ Request to give the community the rights to decide on the development of the community's livelihood (in addition to Article 6) of the draft law on forest such as development partners have the rights to benefit from development agreements with the community.
- ✓ Request to increase the national budget (commune fund) for the protection of natural resources / community forestry and the conservation of natural resources (material and budget for capacity development to help vulnerable people, children and women).
- ✓ Propose to update the forest cover every 5-10 years and register.
- ✓ The articles on non-timber forest products trade should be developed: markets should be expanded and community livelihoods shall be supported and benefits-sharing mechanisms shall be clearly defined.
- ✓ Request outreach to the community If there is a project or company investing in community land, shall have direct discussion and decision by the community in accordance with FPIC principles

- ✓ All development projects must involve local people and stakeholders in full consultation, that is, participate in decision-making.
- ✓ Authorize and support the establishment of provincial-to-national community forestry networks, including the legal and technical and financial registration process.
- ✓ Give the forestry community the rights to arrest or detain the perpetrators and exhibits to be kept in the community temporarily and will participate in case developing with judicial police officers and monitor the criminal process.
- ✓ Give the community the right to crack down on actual crimes, rather than just the right to detain perpetrators and exhibits.
- ✓ The Development affecting community forest areas shall be remunerated in accordance with the agreement of consultation with the members and the community forestry committee and local authorities.
- ✓ Request to use “any person who commits a forest crime shall be punished, including the conspirator and instigator of incitement”.
- ✓ Authorize the provincial administration to issue protective measures during the community forest registration process.
- ✓ Change the term Committee to Commission for protecting permanent forest reserves.
- ✓ Provide community forest land titles to communities to manage and tenure.
- ✓ Request to add “local communities and indigenous peoples”.

3. Comments on the Draft Law on Protected Areas

- ✓ Article 20: Request to add “local community and indigenous peoples”.
- ✓ Article 23: Request to change from nomadic plantation to rotation plantation (practice of rotation plantation by indigenous people in the traditional way, but it is not possible to cut, clear and burn to make plantation).
- ✓ Article 24: The request for measures to establish a protected area community and shall be properly determined by the Prakas of the Ministry of Environment and does not require a sub-decree level.
- ✓ Article 25: Request to use the terms and contents as stated in the new article 58 of the Law on Forestry.
- ✓ Article 25: Proposing to add “collateral or mortgage” in the first paragraph.
- ✓ Request for community land registration with the Ministry of Land Management, Urban Planning and Construction so that protected area communities have more solid land tenure rights and are recognized as legal entities and have rights for access to land in the protected area community.
- ✓ The new law shall clearly state the rights of protected area communities to use land in protected area communities. For example, Usage Right, which can define the plan for using and allocating land in the protected area community, such as tourism, common rice fields, forest lands, agriculture, agricultural cooperatives, fruit crops
- ✓ Use the right to confiscate non-timber forest products for commercial purposes and will be transported to the protected area community market (right to transport).
- ✓ Potential areas for community-based tourism management, the new law shall encourage the facilitation of processes and documents, as well as reserves for the establishment of community-based ecotourism.
- ✓ Whoever commits a crime of natural resources must be punished, including the instigator of incitement.
- ✓ Request to add in the new protected area law on the establishment of protected area communities shall have the appropriate areas size ensuring the communities are able to benefit from the activities to improve people's livelihood through tourism, trade in non-timber forest products, conservation of forests and rare resources and others.

- ✓ Request additional punishment for individuals or committee members of the protected area community who participate in crimes that do not comply with the statute and community management plan.

4. General comments on the two draft laws

- ✓ Request to define the roles and responsibilities of local authorities (coordinating and supervising) and communities in the draft law on forest and the draft law on protected areas and shall have provisions on the support (financial resources) of the sub-national authority in the management of protected areas from the Royal Government Cambodia.
- ✓ Increase the national budget (commune fund) to protect natural resources / community forests.
- ✓ Government, relevant authorities increase support for REDD +.
- ✓ Local authorities should provide support and encouragement to protected area communities through providing good infrastructure, good public services.
- ✓ Make consistency of the new laws that decentralize the forest management functions in the protected areas, and the law on commune administration management, which prohibits commune councils from affecting forest management function. At this point, the commune administration management law shall be amended. (Prakas # 72 on delegation of protected area functions).
- ✓ Relevant authorities and line offices support the communities to cooperate in preventing forest crime.
- ✓ Educate the perpetrators and in case of inconsistency, the perpetrators must be sent to court.
- ✓ The rangers and relevant authorities must actively participate in forest patrols on a regular basis.
- ✓ Disseminate forest / protected area laws on a regular basis.
- ✓ Dividends from criminal fines are divided to the community.
- ✓ The new law shall increase the rights to support and encourage communities and stakeholders in the prevention and control of forest crime in protected areas. Increase community rights by improving livelihoods in line with the balance of natural resources. Prevention through rights provision, education, disseminate the law, building the love, patrol and guard house. Support and encourage the community through capacity building related skills on forest governance, funding for border posting, fire ways, reforestation, and patrol activities. Encourage the community by giving commendation cards and bonuses to the community or appointed as role models. Give the rights to protected area communities to fully participate in the effective participation of the community in the fight against crime.
- ✓ Amendments to the law that require relevant parties have sufficient time and consideration to persons with disabilities, women, youth, indigenous peoples.

5. Additional suggestions for drafting legal frameworks under relevant laws

- ✓ Assess living standards and community farming land before community formation
- ✓ Extend the contract agreement period from 25 to 30 years and can be renewed based on the reports and evaluations of the officials in charge of the Ministry of Environment and local authorities.
- ✓ Request a specific date for the response at each step in organizing a protected area community. The duration for getting recognized the protected area community from the Ministry shall be at least 2 years.
- ✓ Shall have clearly conditions for revoking / canceling or renewing a community agreement. In case the community agreement is revoked, a consultation is required.

- ✓ Protected area communities receive a Prakas recognizing that the parties should not overlap land concessions with other protected area communities.
- ✓ Propose the inclusion of FPIC in the process of granting land concessions to developers. Empower to directly affected local communities and project stakeholders to fully participate in the public consultation process, that is, to obtain adequate and accurate information about the development project, project outputs and its impact and mitigation plans and responsive to impact and provide rights to community in decision making on development projects.
- ✓ Strengthen the implementation of Article 35 of the Guidelines for the Establishment of Protected Area Communities and Article 25 of the Law on Protected Areas on the right to remove or revoke protected area communities because the community has not complied with the statute or management plan. In case of withdrawal, the community must receive a reasonable solution or compensation from the project.
- ✓ Propose to formally integrate community structure with state institutions (such as communes, districts, provinces) and have an election mandate.
- ✓ Give the protected area community the right to be a civil party to claim compensation for damage to the forest and other biodiversity resources caused by illegal activities.
- ✓ There must be a community defense lawyer to enforce the law and punish strictly.
- ✓ Establish a system for monitoring law enforcement and stakeholders (authorities, citizens, etc., and CSO) to participate in monitoring and evaluation.
- ✓ Request for financial support to help conserve and protect natural resources (material budget for capacity building, and for helping vulnerable people (children and women).
- ✓ Promote the participation of women, the younger generation.
- ✓ Empower the community to participate in consultation and decision-making.
- ✓ Request training course and support the processing and preparation of natural areas to become ecotourism communities.
- ✓ Request a map location between protected areas and indigenous lands that overlap on the map, leading to the loss of indigenous peoples' rights.
- ✓ Participate in preventing the fire ways to prevent forest fire.
- ✓ Request a public forum around the project area.
- ✓ Request to have local participation feedback
- ✓ The new law should be widely disseminated after the new law is passed.
- ✓ Provide training and support for the processing and organization of ecotourism communities.
- ✓ The agreement should be extended to 25 years, and shall have community performance review in every three years.
- ✓ Environmental officials and the Forestry Administration or the line office staffs in charge of forestry must take action on those forest crimes in a timely manner.
- ✓ The Royal Government of Cambodia shall not allow private sectors to do development.
- ✓ Confiscated non-timber forest products should be provided to the community.
- ✓ Encourage communities that have done well in conservation and protection.
- ✓ The Royal Government encourages people to participate in protecting natural resources.
- ✓ Accelerate or define core areas and protected areas for sustainable use.
- ✓ Define the roles and responsibilities of local authorities (coordinating and overseeing) and communities in the draft law on forest and the draft law on protected areas that shall have provisions stating the support (financial resources) of the sub-national authority in Management of protected areas from the government.

6. Conclusion

Based on the discussions, consultations and suggestions of the workshop, the facilitator can conclude that the inputs collected from the three regional workshops are really important and can be considered for inclusion in the draft amendments' laws on Protected Areas and the Law on Forestry related to the chapters that describe on the citizen participation and rights of communities.

Date:
Reported by
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