



Linking Land Tenure and Use for Shared Prosperity

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LARGE-SCALE LAND GRABBING IN CAMBODIA: FAILURE OF INTERNATIONAL AND NATIONAL POLICIES TO SECURE THE INDIGENOUS PEOPLES' RIGHTS TO ACCESS LAND AND RESOURCES

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Abstract:

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Indigenous communities in Cambodia are legally recognized and should thus have been protected by the Land Law and the Forestry Law, entitling them to communal land titles. A number of national and international instruments including the Cambodian Land Law of 2001, the UN Declaration on the Rights of Indigenous Peoples, the ILO Convention no. 169 on Indigenous and Tribal Peoples and the World Bank Safeguard Policy recognize both collective and individual Indigenous Peoples' rights.

Indigenous peoples are estimated to be managing more than 4 million hectares of Cambodia's forests, lands and ecosystems, and have preserved stable environmental conditions in many other parts of the country. Over the last two decades, however, at least 2.1 million hectares of the country's land have been transferred to more than 300 ELCs or companies from various countries, for commercial large-scale agricultural investments, in the form of Economic Land Concessions. Indeed, with each of these concessions, the government is allowed to lease up to 10,000 hectares of state land for up to 99 years – a program that currently affects between 400,000 and 700,000 Cambodians. As many of these concessions are situated in areas populated by indigenous peoples, the latter have been particularly impacted by these policies.

This paper will examine the failure of current policies of the Cambodian government, the World Bank and the UN, as those policies have led to a loss in culture, community cohesion and traditional governance structures of indigenous peoples that, as we shall see, have not been fully protected.

Key Words:

Cambodia

Collective Land Title

Economic Land Concessions

Indigenous Peoples

Land Rights

INTRODUCTION

The Kingdom of Cambodia is situated in South-East Asia and bordered by Vietnam in the east, by Lao PDR in the north and by Thailand in the west. Cambodia's land area is of 181,035 square kilometers. Officially, the kingdom is a pluralist and liberal democracy where the king reigns but does not rule. All the powers are supposed to be with the people, including indigenous peoples, who elect the periodic legislature every five years. Since the 1990s, the Cambodian state has attempted to encourage economic development in rural areas through a system of "Economic Land Concessions" (ELCs) in the agro-industry, the mining sector and tourism, concluding lease agreements with companies – both foreign and domestic – over hundreds of thousands of hectares in the country. This development pattern has been especially critical in indigenous upland regions, including the northeast, where less intensive land-use patterns prevail and natural resources are commonly seen as underutilized. Many economic projects have gone ahead without an assessment of how the development of these regions was going to impact on the lives of indigenous peoples. Furthermore, the indigenous peoples in Cambodia regularly see themselves denied the rights and laws they, theoretically, are entitled to. Indeed, with very little political and financial power, claiming those rights is often impossible – or results in a number of unwanted consequences for the indigenous peoples.

Indigenous communities often do not even figure in the large-scale economic development plans, and they are only rarely consulted. Also, small-scale land grabbing by the rich and politically influential has become common practice in indigenous regions, as the country's infrastructure improves and indigenous areas become more accessible. Communal land-titling programs for indigenous communities exist, but there is little protection for indigenous land, even under interim protective measures.

The economic development trends that currently hold influence on Cambodia are increasingly affecting the culture and traditional livelihoods of the country's indigenous communities. Due to the rapid expansion of mining operations, agro-industrial plantations and other economic ventures in indigenous regions, land alienation has emerged as the leading issue for these communities, the more so as most do not yet possess legal titles over ancestral lands and territory. These land concerns have the potential to cause conflict and to further intensify the unfair treatment of a historically marginalized population.

Cambodia, as an emerging market among other least developed countries, moreover risks developing an international reputation as a country of insecure investment opportunities, both in the land sector and in general. The current climate of development is characterized by low transparency levels, uneven access to information, inadequate consultation practices and non-inclusive participation methods – a situation that is unsustainable and likely to hamper economic growth in the future (OHCHR, 2012).

There are 24 different groups of indigenous peoples living in 455 villages across 15 provinces in Cambodia, including Ratanakiri, Mondulakiri, Kratie, Preah Vihear, Kompong Thom, Stung Treng, Udon Meanchey, Kompong Cham, Pursat, Kampong Speu, Koh Kong, Battambang, Preah Sihanouk, Banteay Meanchey and Siem Reap. According to a 2008 population census, about 1.34% of the total Cambodian population of 13.5 million (i.e. about 179,000 people) were reported as indigenous, based on their local languages. The total indigenous population could be higher than the number reported, though, as a number of indigenous peoples are not able to speak their peoples' language anymore, or do not feel comfortable with identifying themselves as indigenous. The majority of the indigenous population lives in the northeastern provinces, like Ratanakiri, Mondulakiri, Kratie, Stung Treng or Preah Vihear.

For indigenous peoples everywhere in the world, the concept of land is directly linked to traditional territorial boundaries such as forests, lakes, streams, mountains, roads, housing lands, lands used or reserved for shifting cultivation, spirit forests and so on. Scientific measures are not common to indigenous peoples. Also, land is not primarily seen as an asset, but as a guarantee for survival. It is not only used for growing rice, vegetables or other agriculture products; indigenous peoples cultivate a special relationship to their land, as they consider it linked to their continued existence as a society – in cultural, social, economic, environmental and political terms (ILO convention 169).

Indigenous communities in Cambodia are remarkably dependent on agriculture and forest areas for their livelihoods and for the survival of their cultural identity, which is among others expressed in the traditional slogan: “land is life, the forest is a market” (NTFP, 2000). Beyond this, land issues gain an even greater importance as the land itself has spiritual significance, which often articulates itself in situations where indigenous peoples' access to land or forests is being hampered. While there is a general belief that spirits reside throughout the landscape, each community has several spirit forests that are considered particularly powerful. It is believed that misfortune can result from not treating these areas with respect, which has given rise to several “taboo” systems governing the activities undertaken in spirit forests (NTFP, 2000). Such rules often control the exploitation of natural resources, the cutting of vegetation as well as hunting and fishing activities. Spirit forests also serve as important components of an indigenous community's cultural and religious life.

There have been numerous cases in which spirit forests were encroached upon or entirely ruined by ELC-driven development or mining explorations. Consequently, spirit forests have become an important and emotionally charged factor in the land struggle of indigenous communities. Furthermore, while indigenous spiritual beliefs do add gravity to the loss of indigenous land, those same beliefs also play an important role in its defense. Indeed, indigenous spiritual traditions have critical importance in promoting

community solidarity, and they comprise part of the basis for a wider indigenous identity in the country. In turn, both community solidarity and indigenous identity are key concerns for legal titling efforts, and many suggest that they remain important for defending land and culture, whatever the eventual outcome of the communal land-titling process may be.

This report focuses on reviewing the existing documents related to land governance and the rights of indigenous peoples in Cambodia. Documents reviewed include the Land Law and the policies dependent thereon, the Forestry Law, the Protected Area Law as well as other legal instruments relevant in the context of indigenous land registration. Geographically speaking, our review targets indigenous communities located in the northeastern provinces of Cambodia. Also, two case studies were conducted in the provinces of Ratanakiri and Mondulakiri, where indigenous communities have been particularly affected by Economic Land Concessions, among others during the land-registration campaign based on Directive no. 01 run by the Prime Ministry in 2012 and 2013.

There has been consultation with a number of institutions that work on land governance and promote the rights and livelihood programs in favor of indigenous peoples. These institutions include the NGO Forum, Open Development Cambodia, the International Labor Organization, Licadho, Adhoc, the GIZ, the Indigenous Community Supporting Organization and My Village (MVI).

Indigenous People in Cambodia

The Cambodian Constitution does not provide for a specific provision on indigenous peoples' rights. However, it incorporates such rights by reference to certain international conventions and covenants. Article 31, for instance, states that Cambodia recognizes and respects human rights that are enshrined in the UN Charter, the Universal Declaration of Human Rights and the Conventions and Covenants related to human, women and children's rights. In addition, the Article mentions the principle of equality before the law as well as the rights and freedom of the Cambodian people without regard to race, belief, ethnic origin etc.

Another constitutional article that is worth discussing relates to property. According to Article 58, state property includes primarily lands, the underground, mountains, the seabed, undersea areas, the coasts, the airspace, islands, rivers, streams, lakes, forests, natural resources, economic and cultural centers, national defense bases and all other buildings that have been determined as belonging to the state.

The management, use and disposition of the state property shall be determined by law. However, in practice, Article 58 has been interpreted in a way that all properties enumerated belong to the state unless

the latter, through legal enactment, recognizes otherwise. As a result, all lands occupied or possessed by the indigenous peoples belong to the state, unless the latter grants them to those communities.

According to Andersen (2001), in common property or common pool resources theory, communal tenure can be defined as a set of self-governing forms of collective action by a group of people, often a village. Common pool resources (CPR) are subject to collectively held rights that follow two models. The first model implies permanent communal tenure rights held by indigenous communities in their ancestral domain, while the state permanently relinquishes its right to the land. The second model refers to temporary communal tenure, the state maintaining ownership of the land but delegating the resource management (for instance of a state forest, fishery grounds or pasture lands) to a group of people for a specific number of years (Andersen, 2001).

These resource-tenure regimes and their respective characteristics have been subject to significant discussion, research and policy advocacy since 1996, notably in the context of debates in Cambodia on sustainable development, environmental management and a rights-based approach to the development of areas populated by indigenous peoples. Finally, the concepts of indigenous peoples' right to land management based on their ancestral practices have been transformed into social rights by the Land Law of 2001, the Law on Forestry of 2002 and the Protected Areas Law, all of which form part of a legal recognition of indigenous peoples in Cambodia.

From the beginning, the indigenous spirituality has played an important role in putting communal land rights on the agenda in Cambodia. Economic Land Concessions in indigenous regions and connected issues came to the attention of the development community in the late 1990s, amid controversy over the destruction of spirit forests based on a logging concession in Ratanakiri province. This event publicly drew attention not only to the need for legal protection of indigenous lands, but also to the inescapable spiritual element in the complicated debate on land rights in Cambodia.

While the legal instruments of the Land Law and the Forestry Law aimed at allowing for Collective Land Titles (CLT) were not yet in place, a CLT pilot project was launched in 2003, in order to formulate what became the Sub-Decree 83 on the Procedures for Land Registration of the Indigenous Communities Land, finally adopted in June 2009.

There are four main phases in the process and procedure that indigenous peoples need to go through to be granted Collective Land Titles as indicated in existing legal arrangement. Those phases are:

- 1) self-identification by the indigenous people and determination by MRD;

2) registration of the indigenous community as legal entity;

3) obtaining interim protective measures;

4) obtaining collective land titling for the indigenous community.

Four different government institutions take care of each phase and process respectively.

PART 1: LEGAL STATUS TO SUPPORT INDIGENOUS PEOPLES

International instruments

The government of Cambodia voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) at the UN General Assembly in 2007 (NGO Forum 2012). The contents of that declaration provide a strong commitment to recognizing the rights of indigenous peoples. For example, Article 2 of the declaration states that “indigenous peoples are free and equal to all other people and have the rights to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity”. The Cambodian government also ratified the International Covenant on Economic, Social and Culture Rights and the Convention on Biological Diversity in 1992. Among others, the Covenant stipulates the rights to practice a specific culture and to livelihood (NGO Forum, 2012).

The ILO Convention no. 111 on Discrimination in Employment and occupation is equally relevant to the protection of indigenous peoples. In fact, indigenous peoples depend almost totally on land and natural resources for their subsistence. They cultivate a special relationship with their land in a number of dimensions, including socially, economically and culturally. Therefore, the loss of control over land and resources in their territory has profound consequences on the economic and cultural survival of indigenous peoples, among others with regard to the practice of their traditional occupations, such as shifting cultivation. It is worth noting, therefore, that Cambodia has ratified ILO Convention no. 111, which provides protection of the indigenous peoples’ access to their traditional occupations.

ILO Convention no. 169 on the Lands of Indigenous Peoples is based on the concept that indigenous ownership and possession are inherent rights that existed before the creation of the nation state; and that the state should recognize, rather than regulate, those rights. The Convention also touches upon cultural and spiritual aspects, stipulating that the regime of land tenure is part of the indigenous peoples’ culture. Article 13 describes indigenous lands not only as a source of economic exploitation and dwelling, but reminds the close connection between lands or territories on the one hand, cultural and spiritual values on the other. Article 14.2, in turn, requires that the government take steps to identify the location and boundaries of lands traditionally occupied by indigenous peoples, and to guarantee effective protection of their rights of ownership and possession. The right to consultation and participation ensures that indigenous peoples effectively participate at all levels of decision-making in all those political, legislative and administrative bodies or processes that may directly affect them. Finally, under the Convention, consultation is viewed as a crucial means of dialogue to reconcile conflicting interests and prevent as well as settle disputes.

Cambodian legal instruments

The indigenous peoples in Cambodia are protected by different laws, policies and international treaties. The 1993 Cambodian Constitution confirms that indigenous peoples are considered citizens of Cambodia, having the same rights and equal access to the development of the country as other citizens of the country. It is observed, however, that the implementation of those laws and international treaties represents another challenge for Cambodia on its way to ensuring full protection of the rights of indigenous peoples.

The 2001 Land Law

The 2001 Land Law classifies Cambodian land into five categories: state public property, state private property, private individual property, monastery property and collective indigenous community property. In this context, state public property refers to land that is being used in the public interest, including land of natural origin such as forests.

Article 23 of the 2001 Land Law defines indigenous communities as groups of people residing in the territory of the Kingdom of Cambodia; whose members manifest ethnic, social, cultural and economic unity; and whose members practice a traditional lifestyle, cultivating the lands according to customary rules of collective use. The law recognizes the rights of indigenous communities independently of formal titling, and acknowledges the use of traditional customary rules in managing the community and lands. While there is no formal definition of an indigenous person as such, the law that shall benefit from protection under its provisions who meets the ethnic, cultural and social criteria of belonging to an indigenous community, and who is recognized as such by a majority of that same community . Thereby, anyone who identifies themselves as member of the community and “*who accepts the unity and subordination leading to acceptance into the community*” shall be guaranteed the rights and protection organized by the Land Law.

According to Article 23 (2) of the Land Law, “*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 follow the provisions of this law*”. Article 23 thus intentionally allows indigenous communities to continue their practices while waiting for administrative titling. Article 25 further states: “*The lands of indigenous communities include not only lands actually cultivated but also reserves necessary for the shifting of cultivation which is required by the agricultural methods they currently practice*”. As regards the titling process as such, the 2001 Land Law only provides a general foundation by briefly mentioning the interim protection of indigenous land.

Article 26 of the Land Law explicitly recognizes the concept of collective land ownership by indigenous communities, namely in the form of communal land titles. A separate provision in the 2002 Forestry Law grants (indigenous and other) communities the right to traditional land use, for instance as regards the collection and use of non-timber forest products, or grazing livestock. However, “*for the purposes of facilitating the cultural, economic and social evolution of members of indigenous communities*”, the 2001 Land Law also allows any individual to opt out of the communal titling process, by claiming a percentage of community land under an individual title. Importantly, the law finally allows indigenous communities to apply for titles not only covering currently exploited agricultural plots, but also forest areas reserved for shifting cultivation. Indeed, Article 28 states: “*No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community*”. However, the fact that the “immovable property of indigenous communities” has not yet been mapped is of concern and represents an obstacle to the enforcement of this clause.

The 2002 Forestry Law

Similar to the 2001 Land Law, the 2002 Forestry Law includes specific provisions covering the rights of indigenous communities. These provisions include Article 15, requiring that companies receiving forest concessions do not interfere with “*customary user rights taking place on land property of an indigenous community that is registered with the state consistent with the Land Law*”.

Another important feature of the 2002 Forestry Law is the explicit recognition of the moral command to respect and conserve spirit forests, while stopping short of granting communities the ability to obtain legal ownership of these areas. Article 45 states that the “Ministry of Agriculture, Forestry and Fisheries shall recognize the religious forest of local communities, living within or near the forest, as Protection Forest serving religious, cultural or conservation purposes. It is prohibited to harvest any spirit trees, thus they may be specially marked and shall be identified in a Community Forest Management Plan.” Under this management model, spirit forests are classified as “Protection Forest,” a subset of “Permanent Forest Estates”. While local communities can retain customary rights within protection forests according to this arrangement, these areas are technically classified as public state land and officially under the authority of the Ministry of Agriculture, Forestry and Fisheries.

Article 29 of the Forestry Law prohibits the harvesting of trees that yield high-value resin, or that local communities tap to extract resin for customary use. Chapter 9 of the law further recognizes and ensures the traditional user rights of local communities to collect and use forest by-products. Traditional user rights include livestock grazing and the sale of forest by-products. Chapter 9 also enables the allocation of any part of a permanent forest reserve as a community forest, granting communities living inside or near

the forest rights to manage and utilize the forest resources in a sustainable manner. Since December 2011, a total of 281 community forestry sites covering 244,265 hectares of forest land area in 18 provinces have been recognized by the Prakas of the Ministry of Agriculture, Forestry and Fisheries.

The 2008 Protected Areas Law

The Protected Areas Law came into force in January 2008 and defines the framework for the management, conservation and development of protected areas. The original four categories of protected areas are expanded to additionally include national parks, wildlife sanctuaries, protected landscapes, multiple-use areas, Ramsar sites, biosphere reserves, natural heritage sites and marine parks, which had been defined by previous regulations on national resource management and environmental protection.

The 2008 Protected Areas Law introduces a new zoning system in order to effectively manage the conservation and development of protected areas. The law states that protected areas should be divided into four distinct zones: core zones, conservation zones, sustainable-use zones and community zones. No clearance or building is allowed in the core or conservation zones, and any development within the sustainable-use or community zones needs the approval of the government, at the request of the Ministry of the Environment. Any development in these areas or in areas adjacent to protected areas must first be subjected to an environmental and social impact assessment. In recent years, however, a number of Sub-Decrees have designated land within protected areas as sustainable-use zones and approved development projects therein, usually for agro-industry as will be discussed later.

The law defines conditions for the establishment or modification of protected areas and states that adjustments must be adopted by a specific Sub-Decree. The modification of the boundaries of each zone can only be carried out based on clear scientific information on the ecosystems that would be subject to change or even under threat; moreover, any change must be in compliance with the policies and strategies of the government. The Ministry of the Environment is in charge of mapping protected areas in cooperation with the Ministry of Land Management, Urban Planning and Construction (MLMUPC), local authorities and communities as well as relevant agencies.

Chapter 6 of the law determines the involvement and access rights of local communities and indigenous communities, and re-affirms the state's recognition of the right to secure access to traditional uses, local customs, beliefs and religions of all local communities and indigenous ethnic-minority groups residing within and adjacent to protected areas. The law empowers the Ministry of the Environment to allocate land to communities residing within or adjacent to a protected area in the form of community protected

areas. Since the end of 2011, the Ministry of the Environment has set up 102 community protected areas, including 23 indigenous communities (OHCHR, 2012).

In general, the Land Law and the Forestry Law recognize the collective land titling process to register indigenous community land. However, the important challenge is to define and distinguish between state private and public land, with a majority of the lands in the northeastern provinces not clearly mapped in the state public land register. Harmonization between the Forestry Law, the Protected Areas Law and the Land Law is another challenge in the area of collective land titling.

Collective land titling process:

IP self-identification and determination

According to the circular on the Procedures and Methods of Implementing National Policy on the Development and Identification of an Indigenous Community Land, the MRD is in charge of identifying and determining indigenous peoples' identity and their community. In this process, the MRD will develop a procedure to identify indigenous peoples and their community. Each indigenous community is required to prepare two steps of procedure:

- 1) self-identification;
- 2) identity appraisal and determination.

Registration as legal entity

From a technical point of view, the community will set up a working group to develop a preliminary draft by-law, before asking the approval of the plenary meeting with all community members. Then, the MoI conducts appraisal on the draft by-law, in order to ensure that the entire community is aware and gets ownership of the draft by-law. This approach ensures an effective way of involving all community members.

When the community by-law is approved at the plenary meeting, the community is required to file an application for registration at the MoI through the commune council, the district administration and the provincial governor – before submitting the final application order again to the Ministry of the Interior. In case the MoI agrees to the application, the community will receive a letter that certifies the community as a legal-entity, entitled to apply for Collective Land Titles as stated in Article 8 of the Sub-Decree no. 83 (ILO, 2012).

Interim protective measure

The interim protective measures include the prohibition of sale, purchase, lease or transfer of lands under application for registration. Also, the authorities have to stop any authentication process related to the transaction of lands already under application for registration. There are four processes towards obtaining interim protective measures, as an intermediate stage towards actual land titling:

- 1) developing preliminary land-use mapping, in 7 steps;
- 2) the formulation of internal rules on land use and management, in 3 steps;
- 3) filing application;
- 4) issuance of an interim protective measure.

The protective measure does not apply to those plots of land that, before the adoption of these measures, had been clearly demarcated and whose boundaries had been agreed upon by all concerned parties. Equally excluded are those state lands that the Royal Government has in principle set aside for investment or development, the purpose of which is to avoid the negative effect on private and public ownerships of lands. The current practice of preliminary land-use mapping was narrow down the IP land as competing claim and imposing titling reason over the remaining territory even before or after IC obtained legal status or registered as legal entity.

In the case of the Sre Ktum community, participatory land-use maps showed that the total land area was of 2,285 hectares; after obtaining a Collective Land Title, the remaining area was of only 1,068.5 hectares, including one of two spirit forests bulldozed by Sovann Reachsey company during the implementation process. This experience indicates that the absence of interim protective measures after the self-identification process conducted by the community can lead to the loss of further land by indigenous peoples.

The story of Samuth Krom community from Ratanakiri province was resulted from adequate empowerment to IC awareness of their rights to land and natural resource.

Current trends and dangers of indigenous peoples

The government's intention to integrate indigenous communities into the mainstream culture and economy of Cambodia is quite clear, but the success of this strategy on the ground has by no means been uniform. For this paper, the authors studied the current situation of land tenure security in two indigenous villages in Ratanakiri and Mondulhiri.

The indigenous peoples in Cambodia are fully protected by the laws and international treaties. The rights of indigenous peoples consist of four main aspects:

- 1) citizenship and political rights;

- 2) economic and social rights;
- 3) traditional and cultural rights;
- 4) rights to development and environmental management.

However, the concept of Economic Land Concession has provided a new challenge and might impact on the rights of indigenous peoples. Indeed, it is reported that most indigenous communities have lost their shifting cultivation lands and forests for Non-Timber Forest Products (NTFP) collection, which are the main form of their traditional way of life and culture (NGO Forum, 2012).

According to the legal frameworks, the Ministry of Rural Development, the Ministry of Interior, the Department of Local Administration (DoLA) and the Ministry of Land Management, Urban Planning and Construction (MLMUPC) have knowledge and authority to support the Collective Land Title process. They are supposed to assist the indigenous peoples to go all the step to establish the Collective Land Title through promotion of self-identification, legal recognition (issued by the MRD), registration of indigenous communities as legal entities (issued by the MoI), interim protective measures (issued by provincial governor) and collective land titling (issued by the MLMUPC). Donors like the GIZ, the Canada Fund, UN agencies such as ILO and UNOHCHR as well as other NGO stakeholders have worked intensively with these ministries and departments to build capacity at the level of provincial authorities and indigenous peoples communities, in order to formulate Collective Land Titles as effectively as possible.

Still, the current system of land and forest governance show a limited benefit to indigenous peoples and their communities. It has been very difficult to influence the policy of the government and therefore land and livelihood of indigenous peoples in the areas affected by ELCs are threatened, even where several donors are supporting the process. The indigenous peoples have tried in many ways to claim their rights to traditional land and resources or tenure. Change has been limited, however, namely due to a lack of documentation, evidence and informed participation of the indigenous peoples concerned.

FACTORS LEADING TO FAILURE OF NATIONAL AND INTERNATIONAL INSTRUMENTS

Non-consistency and prolonging of legal and policy instruments

The Circular on the Procedures and Methods of Implementing National Policy on the Development and Identification of an Indigenous Community was issued on 22 July 2009, several years after the 2001 Land Law. The Sub-Decree no. 83 on the Procedure of Registration of Indigenous Communities Land was approved in June 2009, while the Sub-Decree on Economic Land Concessions as well as the Sub-Decree

on State Land Management came into force in early 2005. The three pilot indigenous communities were granted their Collective Titles four years later in implementation of these processes. Other Economic Land Concessions were granted as early as 1996, long before the Sub-Decree on ELCs was issued. Almost half of the total ELC areas (40% to be more precise) are located in the northeastern provinces, where most forestlands and indigenous communities can be found (Adler et al., 2010) while there was less progress of implementation of sub-decree on state land management was in place in 2005.

Poor enforcement of Land Law, Forestry Law and other legal instruments

Apart from large-scale land grabbing via ELCs, land alienation among indigenous communities generally occurs due to the poor enforcement of the Land Law, the Forestry Law and the Protected Area Law. On the other hand, small-scale land grabbing and illegal sales or speculation on indigenous peoples' territory also happened before the 2001 Land Law, the 2002 Forest Law and the 2008 Protected Areas Law were passed. For example, hundred hectares belonging to two communities taking part in the pilot project on Collective Land Titling (La En and La) in Ratanakiri province were taken by a private land owner and its neighbor, while wide-spread illegal logging was happening all over the country. The two case studies below show the different patterns of land grabbing by local land owners and foreign companies.

Absence, inefficiency of interim protective measures and grabbing of indigenous lands

The Provisional Measures Circular no. 001 was issued on May 31, 2011 by the MoI and the MLMUPC. It was followed by a Circular instructing the concerned provincial governors to prepare a Deika (i.e. a provincial decree) to be passed by the provincial council, in order to protect all those indigenous lands under the process of registration. The protective measures include the prohibition of sale, purchase, lease or transfer of lands under applications for registration. Also, the authorities have to stop any authentication process related to transaction of lands already under application for registration. In the case of Sre Ktum community, this experience indicates that the absence of interim protective measures during community the self-identification process can lead to the loss of further land by indigenous peoples (case study 1).

Furthermore, the Circular does not apply to those plots of lands that, before the adoption of these measures, had been clearly demarcated and whose boundaries had been agreed upon by all concerned parties. Equally excluded are those state lands that the Royal Government has in principle set aside for investment or development, the purpose of which is to avoid the negative effect on private and public ownerships of lands. Moreover, the participatory land-use mapping that was produced by local NGOs

supporting the Sre Ktum community – and that highlighted the zone that could have become a Community Protected Area – was completely ignored.

Taking advantage of Prime Ministry's announcement (Sor Chor Nor) to protect the ELCs and threaten the indigenous communities

Most of the ELCs were approved by the Council of Ministers and supposed to undergo checks by the technical ministry as well as environmental impact assessments; still, a few of those ELCs simply jumped this process. Indeed, activities were started without any consultation with provincial and local authorities. The existing mechanisms, especially the Sub-Decree on State Land Management, were poorly implemented, as – due to corruption and the influence of certain political parties – no-one actually had those ELCs respect the rules. Since then, the local authorities have threatened the villagers, warning them against any kind of protest vis-à-vis the government or local authorities. After all, the rationale goes, the Prime Minister of Cambodia has already given the company his permission to develop and clear the land; the state has its laws and policies, aiming at developing the country, and the citizens have but one option: obey the law and show their respect to the state, at any price.

Indeed, the government has never accepted any request letter, and has never replied to the communities' reactions. In case of Samot Krom, the local authorities tried to arrest two community members who had supported the struggle against ongoing land concessions. Other community members grasped the opportunity to advocate for the two men, who were threatened with arrest at a press conference. In this context, it must be stressed that there are no warrant letters allowing the arrest of any community member, since no-one has committed any crime against the government.

The Directive no. 01 issued by Prime Minister Hun Sen in response to growing criticism and unrest over land issues has placed a moratorium on new ELCs to get license, starting in May 2012. The directive states that indigenous communities should get their land title only if they accept the private title. During the process of Directive No. 01, a team of student volunteers had approached some indigenous communities and individual community members to apply for a private title, in order to get the land that overlapped with ELCs. This trend, however, tends to negatively affect the community's membership, population and solidarity– after all those years in which the community has fought to register under a Collective Land Title.

PART 2: LARGE-SCALE LAND GRABBING AND ITS IMPACT ON INDIGENOUS COMMUNITIES

Economic Land Concessions and systematic land grabbing approach

Over the past five years, Cambodia has witnessed rapid economic growth following the liberalization of the national economy begun in 1994, with an aim of attracting foreign investments. The Cambodian government has set up many policies to attract more foreign investors into the country. A number of policies have removed business restrictions, including on tax holidays, special economic zones, favorable export quotas, low corporate income taxes, export and import taxes as well as the transformation of state public land into state private land.

The government has adopted liberal legislative acts such as the 1994 Investment Law, the 1997 Law on Taxation, the 1997 Law on Foreign Exchange and the 1997 Labor Law – all aimed at attracting foreign investment by, for instance, allowing foreign investors to control 100% of a company's shares.

Although progress has been achieved in reducing poverty, Cambodia ranked 124th out of 168 countries in the 2014 UNDP Human Development Report. The Cambodian economy is dominated by agriculture (35% of its GDP) with close to 60% of the labor force working in agriculture. 23% of the country's rural population are suffering from extreme poverty, making it the group of population affected the most in Cambodia. The majority of the population lives in rural areas (where, in turn, the majority of Economic Land Concessions are granted) and depends heavily on land as well as natural resources for their livelihood.

Large-scale land grabbing has been categorized into three sub-groups:

- 1) granting Economic Land Concession;
- 2) mining concession;
- 3) hydropower

The Open Development Cambodia website listed a total number of 301 ELCs run by 288 (foreign and national) companies in 21 provinces, including Phnom Penh (ODC, 2014). Moreover, there were 87 mining concessions (mainly for exploration) in 19 provinces, and 23 special economic zones in 8 provinces. The Sithi Project (Sithi, 2015) has published a map of land conflicts, which documents 223 publicly reported cases between 2007 and 2011, including ownership disputes, land grabs and land

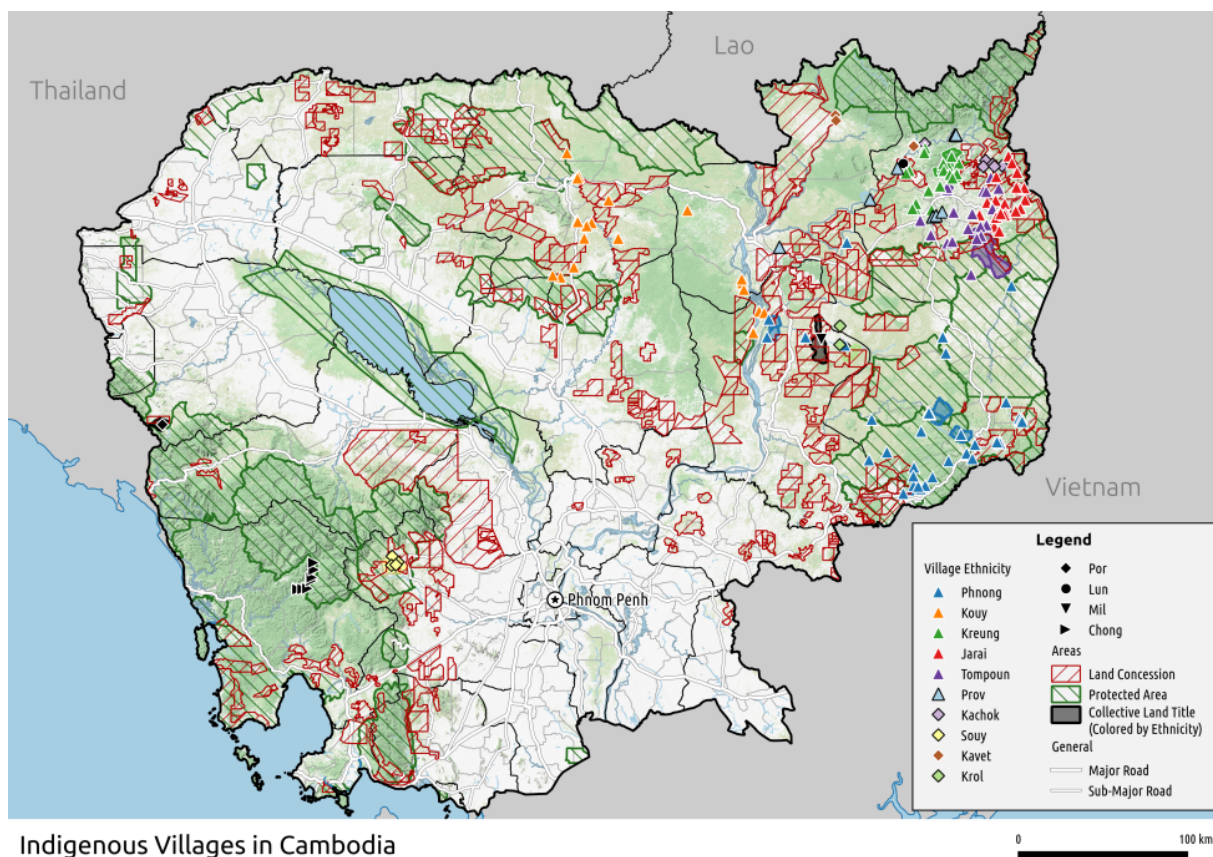
evictions; the map does not, however, separately report the cases related to economic or other land concessions.

The emerging trend of firms setting up different companies with different names to circumvent the legal size limitation and obtain ELCs over areas located next to each other is widely used. Also, a number of ELCs have been granted in forest areas, which is illegal as forests are classified as state public land. Indeed, for ELCs to be legal in forest areas, the land would have to be re-classified as state private land, which was not the case. The same happened in protected areas and protected forests, where parts were classified as sustainable-use zone before being granted to ELCs that later turned them into plantation.

These kinds of procedures once again prove the lack of transparency and accountability as regards the practice of ELCs in Cambodia.

ELCs vs indigenous peoples areas

Many concessions have been granted on indigenous peoples' land, despite protections under the Land Law, the Sub-Decree on the Procedure of Indigenous Land Registration and the National Policy on Indigenous People Development. A 2012 OHCHR report lists at least 25 ELCs known to affect indigenous land in Kampong Thom, Kratie, Monduliri, Oddar Meanchey, Ratanakiri and Stung Treng provinces. The study also finds concessions on indigenous land for other purposes in Kampong Speu (Oral district), Monduliri (Bousra commune), Pursat and Preah Vihear provinces. On 30 July 2012, 118 companies had been granted ELCs in areas inhabited and/or traditionally used by indigenous communities in Battambang, Kampong Speu, Kampong Thom, Kratie, Monduliri, Oddar Meanchey, Preah Vihear, Ratanakiri and Stung Treng provinces. At least 98 ELCs were granted on indigenous peoples' lands, affecting ten indigenous ethnic minority groups (OHCHR, 2012). The following map shows the affected indigenous villages:

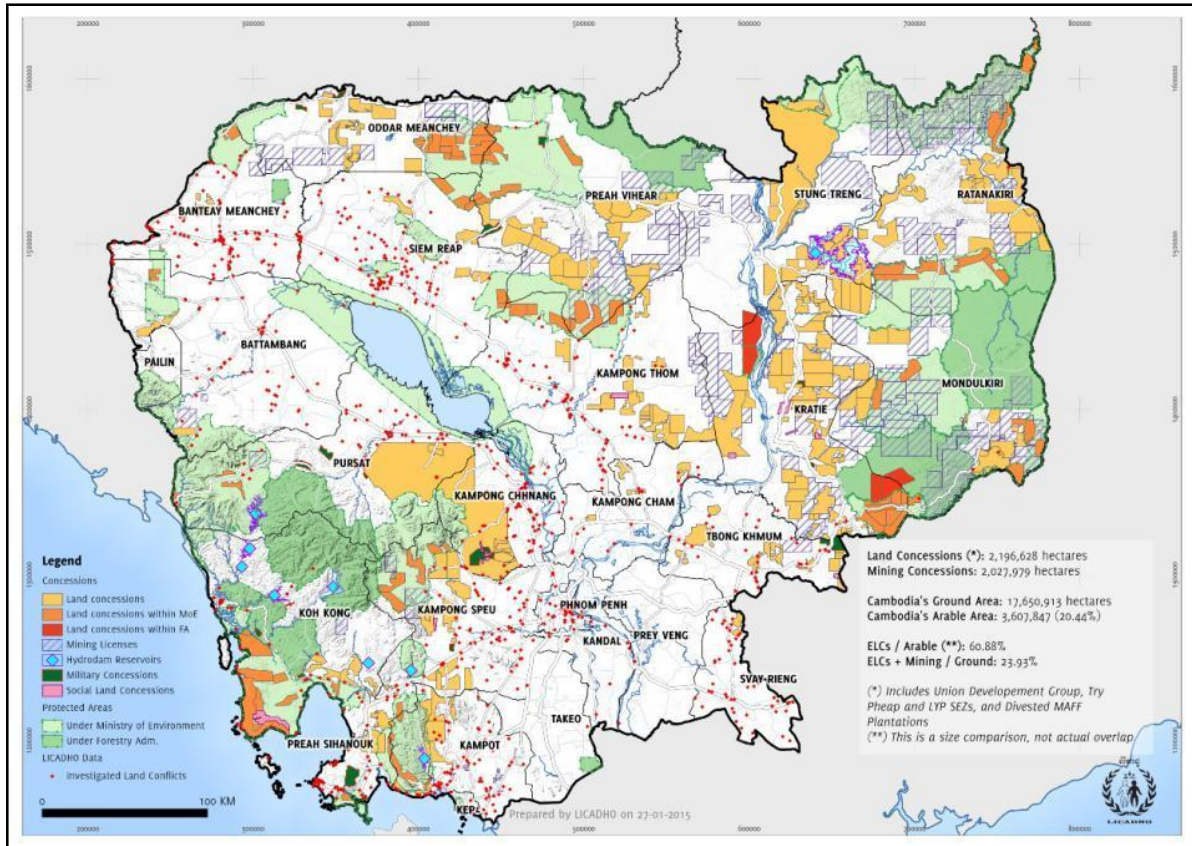


Indigenous Villages in Cambodia

Source: generated by Authors

In 2015, a total of 267 ELCs occupied 2,196,628 hectares of land, which is more than 60% of Cambodia's arable land (Licadho, 2015). Based on information obtained by spatial analysis of 167 indigenous villages and ELCs:

- 30 indigenous villages are falling within ELCs;
- 26 indigenous villages are within 1 km of ELCs;
- 16 indigenous villages are within 1 to 2 km of ELCs;
- 85 indigenous villages are outside known ELCs and buffer areas;
- 6 out of 18 communities that had received and being processed a title are overlapping with ELCs.



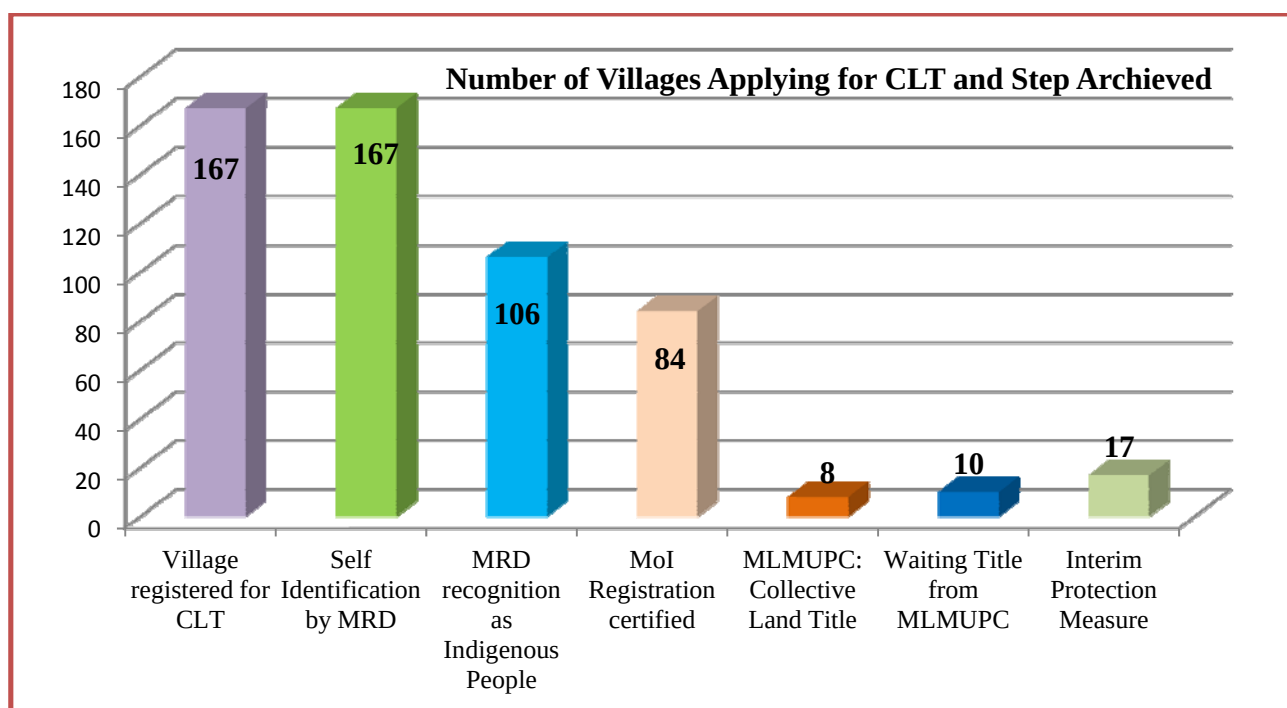
Source: Licadho, 2015

According to information published by the MoE on the total land surface exploited in natural protected areas in 2011, the total protected land surface was of 3,143,763 hectares. 322,113 hectares thereof were used for rubber plantations, 172,731 hectares for other agro-industrial crops, 38,831 hectares for mining exploration, 4,593 hectares for hydro-power dams and 89,359 hectares for eco-tourism. In other words, 20 percent of all Cambodian protected areas (627,627 hectares) were exploited in 2012 (OHCHR, 2012).

This again proves that the protection of indigenous peoples' rights continues to represent a big challenge in Cambodia, despite a large number of laws and international conventions that have been adopted. Obviously, the country is classified a high rate of land-use change.

Currently, the ILO statistics on indigenous communities shows that 14 ethnicities in 167 villages belonging to seven provinces are involved in Collective Land Title processes and procedures. So far, only eight villages have received Collective Land Titles (while ten communities are waiting only the title from MLMUPC sometime in 2015), while 17 communities were granted interim protective measures. 84 villages have seen their legal identity recognized by the MoI. Only 106 out of 167 indigenous communities have obtained a letter recognizing their identity as indigenous peoples from the MRD.

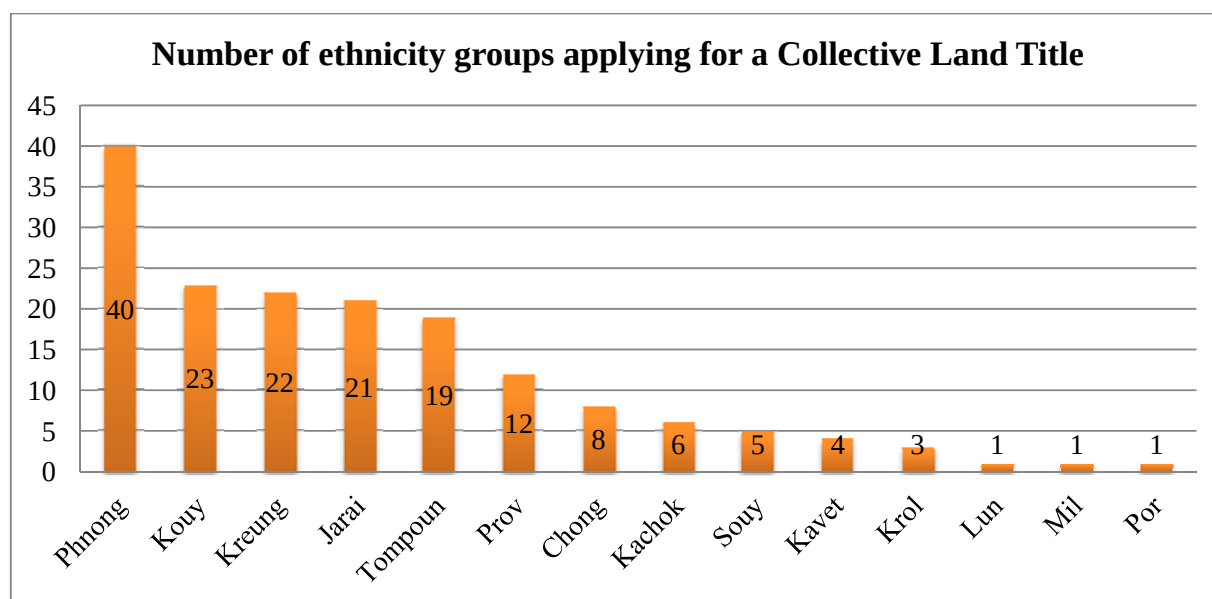
Table 1: Number of indigenous communities compared with steps to establish Collective Land Title



Source: Graph generated by the authors based on 2015 ILO data

There are currently 14 ethnicity groups that are collectively applying for a title. They have formed elected community committees to manage and coordinate the work with all stakeholders.

Table 2: Number of ethnicity groups applying for a Collective Land Title



Source: Graph generated by the authors based on 2015 ILO data.

Impact of concessions

The approach of large-scale Economic Land Concessions and large-scale development projects in Cambodia has had a disturbing impact on non-indigenous and indigenous populations alike. Still, the indigenous communities, whose rights to collective ownership of land are protected under national and international law, have become particularly more vulnerable amidst a trend of integration development. The slow and limited capacity of addressing encroachment of their land and territory in indigenous areas has destabilized their ability to have their collective ownership registered, including through the legalization of Community Forestry or Community Protected Area. This is under the context of traditional land uses with ensuring traditional rights on resources and way of religious practices, and enforcing their rights to collective land title under the Land Law.

The implementation and enforcement of Directive no. 01, aimed at addressing illegal state land encroachment, has had many negative effects on the Collective Land Title process. It has become more complicated over time, given the weakening of indigenous institutions by policy and legislation as well as a loss of trust between community members and the competent authorities. In turn, these developments have led to a further degradation of local resources as well as to social conflicts.

The impact of Economic Land Concessions has shown the same trends as documented in various reports and studies, and in subsequent reports submitted by the Special Representative to the United Nations Commission on Human Rights and Human Rights Council. These include concerns about a lack of consultation with local communities, encroachment on land, detrimental impacts on traditional livelihoods, displacement, adverse environmental impacts, employment and labor conditions, violence and intimidation as well as a lack of effective remedy or recourses for affected communities.

Trends and challenges

In response to the need to solve or at least reduce the number of land conflicts between ELCs and local communities, the government committed to conduct far-reaching reforms on ELCs. Since then, particularly after the national elections in July 2013, the government has initiated a number of measures aimed at improving ELC and land governance. These initiatives have proven to be highly important tools for the indigenous peoples and civil society to engage in the process of monitoring and land security.

Following the adoption of the new National Strategic Development Plan 2014-2018, the government of Cambodia has committed to reforms in all sectors, including land and forest. While the implementation of

these reforms requires the participation of the affected people, gaps exist in terms of awareness and access to the required documents on the affected areas. Communal land rights and CF/CPA claim might be benefits from the assistance through pressure from the affected communities.

Collective Land Titling toward Tenure security or IP Land Grabbing

Collective land title of Sre Ktum community has reflected the implementation of Cambodian legal instruments against to international norms that respect cultural and economic right to land and territory. Most of communities are proud of no threat and dispute with outsiders and ELC beyond post titling because of clear boundary, awareness of stakeholders and legal protection. The Phnong community in Sre Ktum has received a long term legal protection though titling in exchanging of abandoning or excising some part of lands which is important for livelihood (NTFP forest) and cultural identity (spirit forest) within economic development framework while competition claim intervention by MVI was slower than ELCs. Loss part of land and territory (shifting cultivation, NTFP and spirit forest) have created a competition environment among individual member claiming land and resources in post titling, especially the members who aware of experience of land interest from outside, got large access to reserved land, for example, the village chief or other committee members.

The chief and other members of the Indigenous Community Committee have realized that in some cases, the selling or leasing of land without the acknowledgement and approval of the community as a whole can create land disputes among community members.

In practice, the community has limited capacity to enforce their rules and regulations after the titling process. An appropriate community administrative procedure should be developed and provided as on-job training, with an additional plan and a small fund supporting an adequate adaptation of the Indigenous Community Committee. There are significant cultural differences among the 24 ethnic groups, but they share a number of key traits that have potentially made them prime targets for land grabs (Vize and Hornung, 2013) after titling procedures.

There are sensitive problems with the Sub-Decree 83 as well. Cemeteries and spirit forests are limited to a maximum size of seven hectares each, a limitation in conflict with the Land Law and the Forest Law which do not allow for actual limitations on such land.

According to the PLUP map of Sre Ktum, the proposed titling included two spirit forests equal to 17 hectares, one of which was called Phnom Krohorm – the most secret site among the Phnong or Bunong¹ indigenous community which plenty and high values of ecology and NTFP in evergreen forest. The result

¹ Khmer call them Phnong, while they call themselves Bunong.

of post titling claim via CLT left one spirit forest of 2.41 hectares, while the Andong Kraloeung spirit forest left to 5.57 hectares (in three sites) among other eight sites were not in the title².

The former counterpart of WCS and the vice director of PLMUPCC of Monduliri have confirmed that “the way of spirit forest titling was demarcated and measured the core one which is below the actual size and left the remaining to reserved land for agriculture”. After the PLUP map had been submitted to the Council of Land Policy (CLP) for acknowledging, one member from MAFF argued that the government needed more land for investment, and that reserving a larger area for the spirit or burial forests would affect the economic development project, that why this trend provisioned in sub-decree 83.

Case Study 01: pre and post collective land titling challenges in Sre Ktum community

Sre Ktum is one of four Phnong indigenous communities located in the Sre Ktum commune, Keoseima district, Monduliri province. The community traditionally continues shifting and paddy cultivation, non-timber forest products collection (mainly resin tapping) and animal breeding. Over the last six years, the community land and territory has experienced a high level of pressure, including through small-scale land grabbing, land speculation and illegal logging. Recently, most of the community members have reacted by starting to grow cash crops such as cashew nuts or cassava, and have increasingly abandoned shifting cultivation, resin tapping and animal breeding – among others as a result of ELCs bulldozing areas cultivated by the community, forests and spirit forests. The government has granted 6,525 hectares to Sovann Reachsey Company on April 03, 2009, designating the land as sustainable-use zone despite its location in the midst of the Snoul Wildlife sanctuary.

Sre Ktum gained its title as legal entity in 2010, and a Collective Land Title in 2013. There are missing steps like self identification did not in place and the policies changes between from 2008 to 2013. Even, there were lack of legal instrument to support the organizing; the lesson learnt from the nearby pilot community had provided the knowledge and capacity to the community to produce the internal rule and by-law to be used within the community.

In addition to the by-law, the community has developed an internal rule on land use and management which was certified by the commune chief. The preliminary land use mapping the community to updated the previous Phum Land Use Planning mapping from 2,284.5 hectares to 1,084.48 hectares seen in the collective land title later.

According to the Sub-Decree 83, the Phnong indigenous community of Sre Ktum village spent six months (which is less time than the five other indigenous communities in the Keo Seima district)

²*Villagers and Indigenous Community Committee chief interviewed in Jan 2015.*

organizing the collective titling, starting on September 18, 2012 and finishing on June 06, 2013. The total land areas of 1,084.48 ha in one cadastral index map equally to 62 land parcels (52 parcels overlapping with state private land and 9 parcels overlapping with state public land). The areas under examination include:

- actual cultivated land of 465.38 hectares;
- land reserved for agriculture of 563.02 hectares;
- burial land of 6.67 hectares;
- spirit forest of 2.41 hectares;
- residential land of 334.33 hectares³.

MVI has assisted the community in developing a participatory land use map (PLUP) starting in 2009, aimed at identifying the community land and protected forest areas that should receive legal recognition through communal land titling and Community Protected Area. 2,284.50 hectares were demarcated in 2010, including two spirit forests where most of the community members traditionally collect resin and NTFP.

The actual community land was reduced to 1,084 hectares after obtaining the title. This shows that the size of land that is claimed by a community gets smaller and smaller with each day of waiting for the official recognition by the government. At the same time, obtaining an ELC as a company is much easier and faster.

During the last conflict resolution process, there was a meeting with 20 community representatives, company representatives, district officers responsible for land management, urban planning and cadaster as well as commune and district authorities under the chairmanship of the Mondulkiri vice-governor. The vice chief of the Indigenous Community Committee said that, “the government granted a license to Sovann Reachsey company. It had a legal paper with a map in the area. If the community claims large land areas that are under dispute with a legal company, the government may not register the proposed communal land because it is under conflict”.

After the demarcation with ELCs and local authorities, the Indigenous Community Committee and the community members decided to accept the amount of the remaining land, that is 449 hectares of degraded forest, and they classified it as a reserved land for agriculture.

The reserved land for agriculture that was handed over from the company has been allocated to all community members (by family) in the form of plots that are 40 meters wide and 50 meters long. The

³ Paper presentation by Mr. Chhim Kan, director of PDLMUPCC, on 10 January 2014 at Snoul, Kratie.

each family agreed to gradually annual clear for cultivation purpose only. Some community members do not happy with some members whose resin trees or old fallow behind their plot, did not allow them to clear land as distributed but these members themselves starting to clear the rest of the land starting from their resin trees and land to the ELCs border. This is one issue for the plot where located to ELCs border.

Another issue is that the timber collected from cutting the resin trees was not shared with another landowner whose land was located in front of this plot. The community member explains: “Before the ELCs were coming, or during our conflict with the ELCs and others, we altogether joined in patrolling and protecting our cultivated and forest lands from the ELCs encroachment. Now, land resources are not shared and used properly anymore.” For example, a few community members have sold or rented their land secretly and without any contract to outsiders, in violation of community by-laws and internal rules.

Case Study 2: Samuth Krom in Pre-Collective Land Titling vs Private Title and ELCs

Samuth Krom village is one of seven Tumpoun indigenous communities in Seda commune, Lumphat district, Ratanakiri province. All communities, especially the Samuth Krom community have recently experienced the new challenge of land grabbing through Economic Land Concessions. There are three ELCs located in the area, affecting more than 50 families and their land. The community applied for a Collective Land Title in 2008, shortly after the arrival of the ELCs. Two steps towards the granting of Collective Land Titles have been achieved: self-identification and determination such as certified by the MRD, and getting a legal entity certified by the MoI. Recently, the application for interim protective measures has been sent to MLMUPC.

The community has received far-reaching threats since it applied for CLT and the protection of their natural resources. A land dispute began in February 2012 with Jing Zhong Ri Cambodia Co. Ltd when the company’s workers started clearing community land without consultation with the community.

Later, in October 2012, a team of youth volunteers established under Directive no. 01 arrived and started to explain the private title concept to the community. They then started to register private land of individual community members, using intimidation and misinformation.

During the process of private titling by the student volunteers, the team rejected to measure the land and territory that overlapped with the ELC map, while the community demanded that the occupied land and reserved land be demarcated. This ELC and two other ELCs have thereby violated the indigenous peoples’ rights, the 2001 Land Law, the 2009 Sub-Decree on Procedure of Indigenous Land Registration and the interim protective measure. The ELCs did not consult with the indigenous community.

The village chief and community members have claimed that Directive no. 01 had a negative impact on community land, livelihood and traditional culture. On the other hand, there were eight families that applied for a private land title under this directive. They are now rejecting the title in order to participate, with the rest of their community, in the application for CLT.

This shows the lack of supporting instruments and political willingness to address the problem, probably as the importance of indigenous communities cannot compare with the relevance of ELCs. There are numerous indigenous villages facing the same challenge.

Post-CLT challenges

The concept of collective ownership is central to the identity of indigenous peoples in Cambodia. Their beliefs, cultural systems and ways of living are linked to the land. In a very real sense, land is culture for Cambodia's indigenous peoples (Vize, and Hornung, 2013).

The exercise of ownership rights on collective land recognized under the Land Law is vested into the "traditional authority", i.e. the "Indigenous Community committee (ICC)" in accordance with the "community decision-making mechanism" and subject to the laws in force. A member is allowed to leave the community if he/she so decides. The land plot can be transferred to those members that follow the mechanism of decision-making set by the Land Law and governed by the internal rules of each community. The establishment of these mechanisms provides special protection to indigenous peoples and their lands. After collective land registration, the community enjoys rights to collective land and to development interventions either of the government or the private sector.

However, internal issues seem to have arisen over the enforcement of community by-laws and internal rules.

The lessons learnt from those internal conflicts could be helpful in the context of arising conflicts on access to land and resource use in areas reserved for agriculture. For instance, there are complaints that land was sold and rented without community approval. According to a draft guidebook on the implementation of CLT in Cambodia (Winrock, 2014), communities that have obtained their land title have to respect three main aspects with capacity of ICC in order to enforce a community-driven administrative management for sustaining IP historical continuity:

- 1) Community management;
- 2) immovable property management;

3) financial management.

The most powerful people, those that can claim most resources and take most benefit in general are the ICC committee members, the village chief and some activists that have experienced similar situations in other communities.

The experience gathered in Sre Ktum and Samuth Krom illustrates that community empowerment is key to claiming resources through administrative procedures. However, the weak leadership, by-laws and internal rule-enforcement procedures created serious internal problems and internal conflict, while various external forces first led to the dissolving of community land, then to the alienation of indigenous land. Partnership monitoring should be put in place to ensure that indigenous land is fully protected after granting the title, which would in turn strengthen community organization and economic development. On the other hand, the functioning of the Indigenous Communities Committee is closely related to each individual family's livelihood as well as to community funds, which should be aimed at improving effective land use rather than having community members solving their financial problems by selling land to outsiders – against by-laws and tradition. The chief and other members of the Indigenous Community Committee have realized that in some cases, the selling or leasing of land without the acknowledgement and approval of the community as a whole can create land disputes among community members.

Most communities have limited capacity to enforce their rules and regulations after the titling process in vis-à-vis the competent local authority.

CONCLUSION AND RECOMMENDATIONS

Indigenous communities in Cambodia are legally recognized and subject to special protection provided by the Land Law, the Forestry Law and the Protected Areas Law as well as through communal land management. Both the collective and individual rights of the peoples are recognized in a number of national and international instruments, including the 2001 Land Law of Cambodia, UNDRIP, and ILO Convention no.169 on Indigenous and Tribal Peoples. The current efforts to strengthen the land rights and tenure of indigenous peoples, however, is not yet effective as the support and cooperation between the development partners and related ministries is still limited.

The majority of the challenges identified in this report derive from a failure to apply the domestic legal framework – that is, the laws, policies and regulations that the government itself has developed. The granting and management of economic and other land concessions in Cambodia suffers from a lack of transparency and adherence to existing laws. Many of the legal frameworks on these matters are relatively

well-developed on paper, but the challenge of correctly implementing the procedure of Collective Land Titling remains large.

The experience gathered in Sre Ktum and Samuth Krom illustrates that community empowerment is key to claiming resources through administrative procedures such as Collective Land Tilting, Community Forestry and Community Protected Areas. However, the weak leadership, by-laws and internal rule-enforcement procedures created serious internal problems and internal conflict, while various external forces first led to the dissolving of community land, then to the alienation of indigenous land. Partnership monitoring should be put in place to ensure that indigenous land is fully protected after granting the title, which would in turn strengthen community organization and economic development.

An appropriate community administrative procedure should be developed and provided as on-job training, with an additional plan and a small fund supporting an adequate adaptation of the Indigenous Community Committee. On the other hand, the functioning of the Indigenous Communities Committee is closely related to each individual family's livelihood as well as to community funds, which should be aimed at improving effective land use rather than having community members solving their financial problems by selling land to outsiders – against by-laws and tradition. The experience gathered in the village of Samuth Krom has provided a valuable lesson on the importance of strong collaboration between communities and local administrative authorities in order to prevent ELCs or others from taking indigenous land. Social empowerment can sometimes be stronger than legal papers, such as in Sre Ktum where policy makers and implementers have explored the practical approach, using interim protective measures in the right way and at the right time, according to the Land Law. Still, indigenous land security needs to be further addressed, especially as regards legal titling procedures in the context of large-scale land grabbing by ELCs.

The remaining challenges in Samuth Krom and Sre Ktum should be addressed and used to revise and harmonize existing legislation such as the Sub-Decree no. 83, inter-ministerial circulars and other related instruments – to ensure that indigenous peoples' rights to land and resources are finally protected and guaranteed.

A number of recommendations, a part of which was presented at the 2013 Land and Poverty conference organized by the Heinrich Böll Foundation Cambodia, should be mentioned in this context:.

1. **Prioritize and accelerate the collective land titling registration:** The number of land areas that the government has proposed for CLT registration is still very low, especially compared with the number of identified indigenous villages in Cambodia. Current political change should provide an

opportunity to secure that the registration of indigenous peoples and their lands be prioritized at the national level. Also, the mechanisms aimed at involving indigenous communities in monitoring ELCs (like the UN REDD+ program that allowed indigenous representatives to be steering members) need to be improved.

2. **Returning IP Rights who obtain private title to apply CLT:** Indigenous families that received individual private titles via Directive no. 01 should be allowed to return them if they desire to withdraw the private title in favor of a collective land title. Even more so as it is clear that the process of distributing these private titles has been characterized by misinformation and intimidation, as observed in Samut Kroam.
3. **Guarantee interim tenure security:** The indigenous communities should be given interim protective measures right after they complete the first step of the collective titling process – i.e. the establishment as a legal entity. Only then can the rights to land be secured and indigenous communities empowered. Under immediate interim measures, the communities would be properly informed and could take careful decisions about their land in their own best interests.
4. **Capacity-building and management plans for registered CLTs:** Communities that have received their land title should undergo capacity-building measures, to ensure and support an effective land use on the community's territory. Likewise, management plans should be introduced and developed for CLT communities, in order to promote land-use planning – which would benefit the indigenous community, while sustaining the indigenous committee members' governance. The local authorities and all the other stakeholders cannot just leave the community manage the resources alone as soon as the titling process has ended. Communities need post-titling institutional support and encouragement, due to the limited knowledge, and therefore their vulnerability as regards encroachment and land grabbing.

References:

Adler, Daniel Jeremy Ironside and Mean Ratanak. 2009. Mapping and Tenure Security in Cambodia's Indigenous Communities Discussion Paper October 2009. Heinrich Böll Stiftung Cambodia. Retrieved Jan. 20, 2015 from http://library.opendevdevelopmentcambodia.net:8080/newgenlibtxt/CatalogueRecords/Mapping_and_Tenure_Security_in_Cambodias_Indigenous_Communities_final.pdf/.

Andersen, K. Ewers. 2001. Communal Tenure and the Governance of Common Property Resources. Food and Agriculture Organization.

Economic Land Concession. 2010. Ministry of Agriculture, Forestry and Fisheries. Cambodia. Retrieved Oct. 3, 2011, from Ministry of Agriculture, Forestry and Fisheries: www.elc.maff.gov.kh/overview.html/.

Environmental Protection and Natural Resource Management Law of Cambodia. 1996 (Khmer Version). Retrieved Jan. 15, 2015, from OHCHR website: http://cambodia.ohchr.org/klc_pages/KLC_files/section_008/section08_003_1996.pdf/.

Forestry Law of Cambodia. 2002 (English translation). Retrieved Jan. 20, 2015, from Cambodian Forestry Administration website: http://www.forestry.gov.kh/Documents/Forestry%20Law_Eng.pdf.

Inter-ministerial Circular no. 001 on Interim Protective Measures Protecting Lands of Indigenous Peoples, adopted by the Ministry of Interior and Ministry of Land Management, Urbanization and Construction, dated May 31, 2011 [Cited as "Circular 001"].

International Federation for Human Rights (FIDH). 2011. Cambodia Land Cleared for Rubber Rights Bulldozed: The Impact of Rubber Plantation By Socfin-KCD on Indigenous Communities in Bousra, Mundulkiri. Retrieved Jan. 16, 2015 from FIDH website: https://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf.

International Labor Organization (ILO). 2015. Working Paper: Final List of Indigenous Communities in Cambodia (2005-15).

International Labor Organization (ILO). 2012. Land Rights Mean Social Justice for Cambodia's Indigenous Peoples. Retrieved Jan. 15, 2015, from ILO website: http://www.ilo.org/asia/info/public/WCMS_172209/lang--en/index.htm/.

Instructive Circular on Procedures and Methodology for Implementing National Policy on the Development and Identification of Indigenous Communities. 2009. The Cambodian Ministry of Rural Development, no. 0974/09KAC, dated Jul. 22, 2009.

Law on Nature Protection Area (Protected Areas Law). 2008 (English translation). Retrieved Jan. 20, 2015, from Cambodia Investment website: http://www.cambodiainvestment.gov.kh/law-on-nature-protection-area-protected-areas-law_080104_080104.html/.

Land Law of Cambodia. 2001 (Khmer Version). Retrieved Jan. 15, 2015, from OHCHR website: http://cambodia.ohchr.org/klc_pages/KLC_files/section_008/section08_011_2001.pdf/.

LICADHO. 2012. The Great Cambodian Giveaway: Visualizing Land Concessions over Time. Retrieved Jan. 20, 2015, from LICADHO website: http://www.licadho-cambodia.org/concession_timelapse/.

LICADHO. 2012. Updated 2015. The Great Cambodian Giveaway: Visualizing Land Concessions over Time. Retrieved Feb. 7, 2013, from LICADHO website: http://www.licadho-cambodia.org/concession_timelapse/.

NGO Forum on Cambodia. 2012. Free, Prior and Informed Consent in the Development Process in Indigenous People's Communities of Monduliri and Ratanakiri Province. NGO Forum, Phnom Penh, Cambodia.

Non Timber Forest Products (NTFP). 2000. Cultural Resource Study: Impacts of Hero Taiwan Company Concession on Sites of Religious and Cultural Significance in O Chum District, Ratanakiri.

Open Development Cambodia (ODC). 2015. Companies Profiles: Economic Land Concessions. Retrieved Jan. 18, 2015 from ODC website: <http://www.opendevdevelopmentcambodia.net/company-profiles/economic-land-concessions/>.

Protected Areas Law of Cambodia. 2008 (English translation). Retrieved Jan. 20, 2015 from Cambodia Investment website: http://www.cambodiainvestment.gov.kh/law-on-nature-protection-area-protected-areas-law_080104_080104.html/.

Sithi. 2015. Reported Land Conflict. Retrieved Jan. 15, 2015 from Sithi Project website: http://sithi.org/temp.php?url=land_case/land_case_new.php&lg=.

Sothath, Ngo & Sophal, Chan. 2010. Does Large Scale Agricultural Investment Benefit the Poor?. Research Report 2, Cambodia Economic Association, Phnom Penh. 2012.

Sothath, Ngo & Sophal, Chan. 2012. Economic Land Concessions and Local Communities. NGO Forum Cambodia, Feb. 2012.

Subedi, Surya. 2012. Report of the Special Rapporteur on the Situation of Human Rights in Cambodia. A Human Rights Analysis of Economic and Other Land Concessions in Cambodia. A/HRC/21/63/Add.1/Rev.1, Oct. 11, 2012. Retrieved Jan. 20, 2015, from UN website: http://www.ohchr.org/Documents/Issues/Business/A.HRC.20.29_AEV.pdf/.

Sub-Decree on Economic Land Concession. 2005. The Royal Government of Cambodia, no. 146 ANK/BK, dated Dec. 27, 2005.

Sub-Decree on Procedures of Registration of Land of Indigenous Communities. 2009. The Royal Government of Cambodia, no. 83 ANK, BK, dated Jun. 9, 2009.

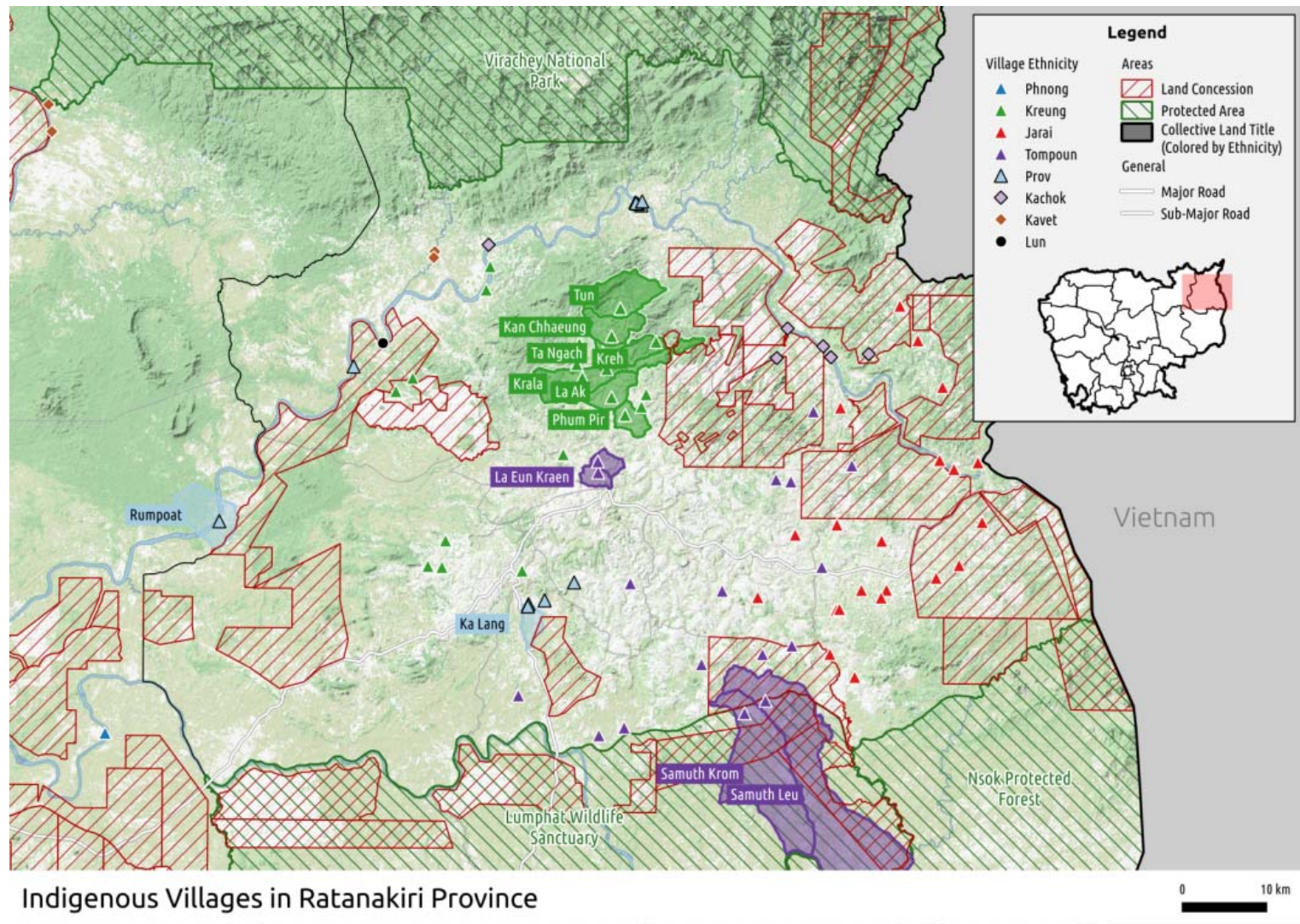
Vize, Jeff & Hornung, Manfred. 2013. Indigenous Peoples and Land Titling in Cambodia: A study of Six Villages. Heinrich Böll Stiftung. Apr. 2013.

Wildlife Conservation Society (WCS). 2015. Demarcation of Communal Land in Monduliri Project. Retrieved Jan. 10, 2015 from WCS website:

<http://www.wscambodia.org/AboutUs/LatestNews/tabid/8496/articleType/ArticleView/articleId/706/categoryId/60/Demarcation-of-communal-land-in-Mondulkiri.aspx>.

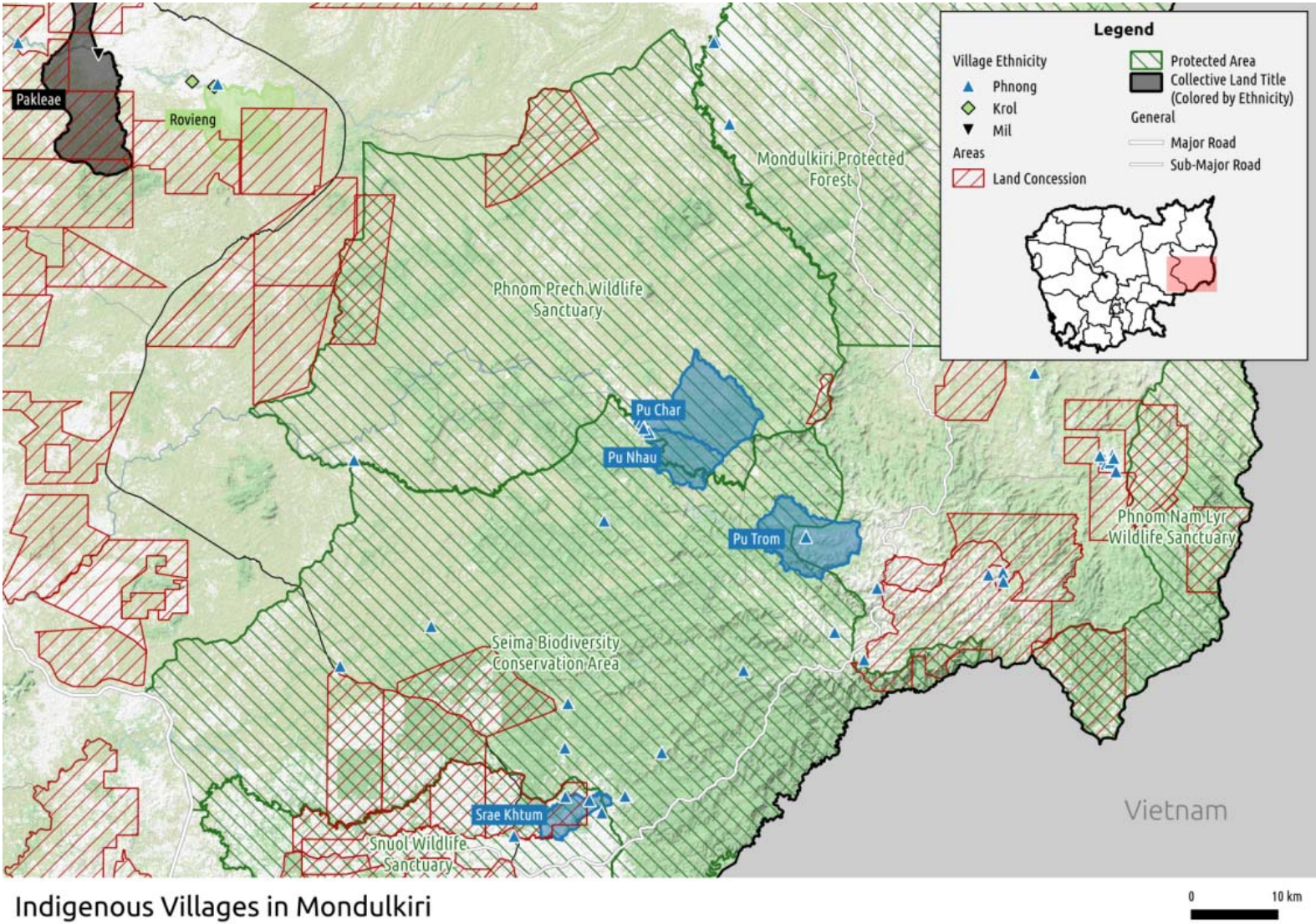
Winrock International. 2014 (Khmer version). Draft Guidebook On Process and Procedure of IP Identity Determination, Registration as Legal Entity, Interim Protective Measure and Collective Land Tilting. Dec. 2014.

Annex1: indigenous villages in Ratanakiri



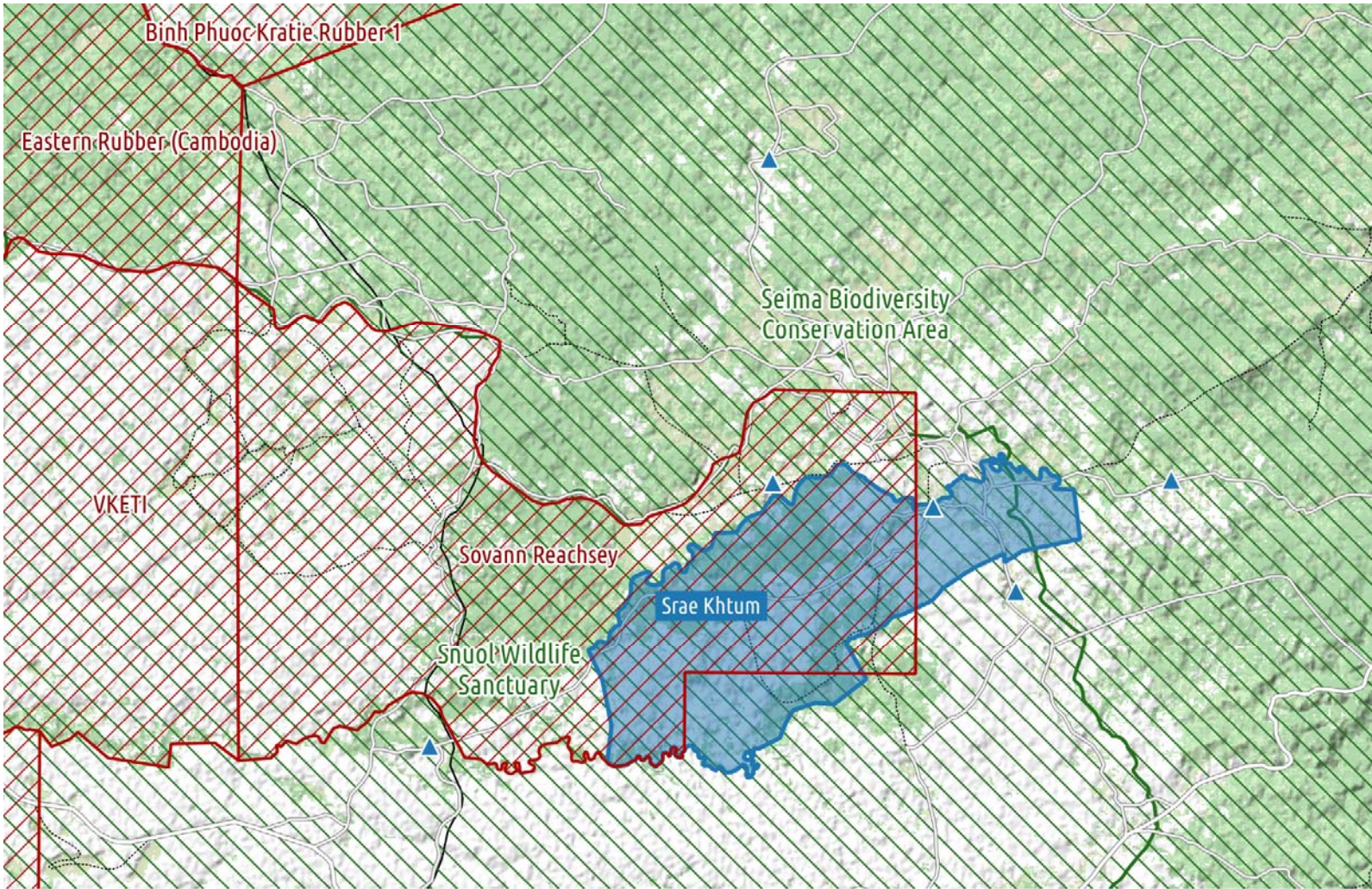
Indigenous Villages in Ratanakiri Province

Annex 2: indigenous villages in Mondulkiri



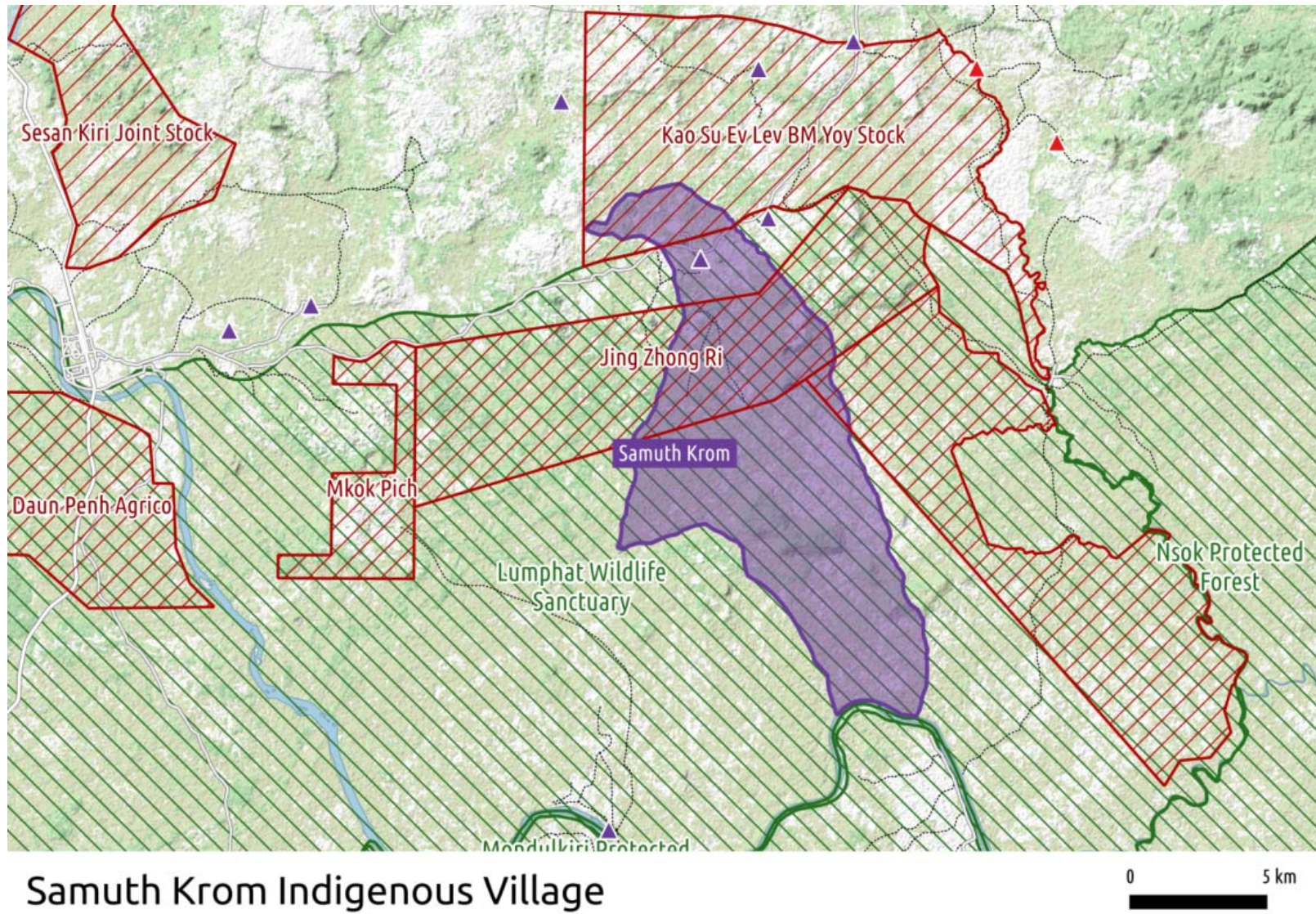
Indigenous Villages in Mondulkiri

Annex3: Sre Ktum collective land title community map in Mondulkiri province



Srae Ktum Indigenous Village

Annex 4: Samuth Krom collective land title community map in Ratanakiri province



Samuth Krom Indigenous Village