



CCHR POLICY BRIEF

Access to Collective Land Titles for Indigenous Communities in Cambodia

1. Background

In the Kingdom of Cambodia (“Cambodia”), the systematic violation of land rights is one of the most prevalent human rights violations. The indigenous population in particular is losing their land at an alarming rate due to large-scale logging of forests, resource extraction, infrastructure projects, and land concessions. In response to these challenges, the Royal Government of Cambodia (“RGC”) has, in theory, recognized collective land rights of indigenous peoples; the 2001 Land Law and the Sub-Decree No.83 on the Procedures of Registration of Land of Indigenous Communities provide for specific recognition of the concept of collective ownership of land, allowing indigenous communities to legally register their communal lands under collective land titles (“CLTs”).

This recognition is crucial, as loss of land and dispossession threaten the very existence of Cambodia’s indigenous population, which comprises as many as 190,000 individuals.¹ Traditionally, indigenous people in Cambodia sustain their livelihoods through cultivating forested land, utilizing a technique known as shifting cultivation,² as well as hunting wild animals and gathering forest by-products. In

addition, the beliefs, traditions, and identities of indigenous communities in Cambodia are closely tied to the land, which carries major spiritual significance as a link to their ancestors and natural spirits.

Despite the importance of land to indigenous communities and the comprehensive legal framework that protects their land rights, in practice the process of obtaining a CLT is lengthy and extremely complex, often subject to lengthy delays due to a lack of political will. Moreover, a lack of implementation of the law has led to Cambodia’s indigenous communities fast losing their communal land and natural resources. As of the time of writing, only 11 indigenous communities have received CLTs.

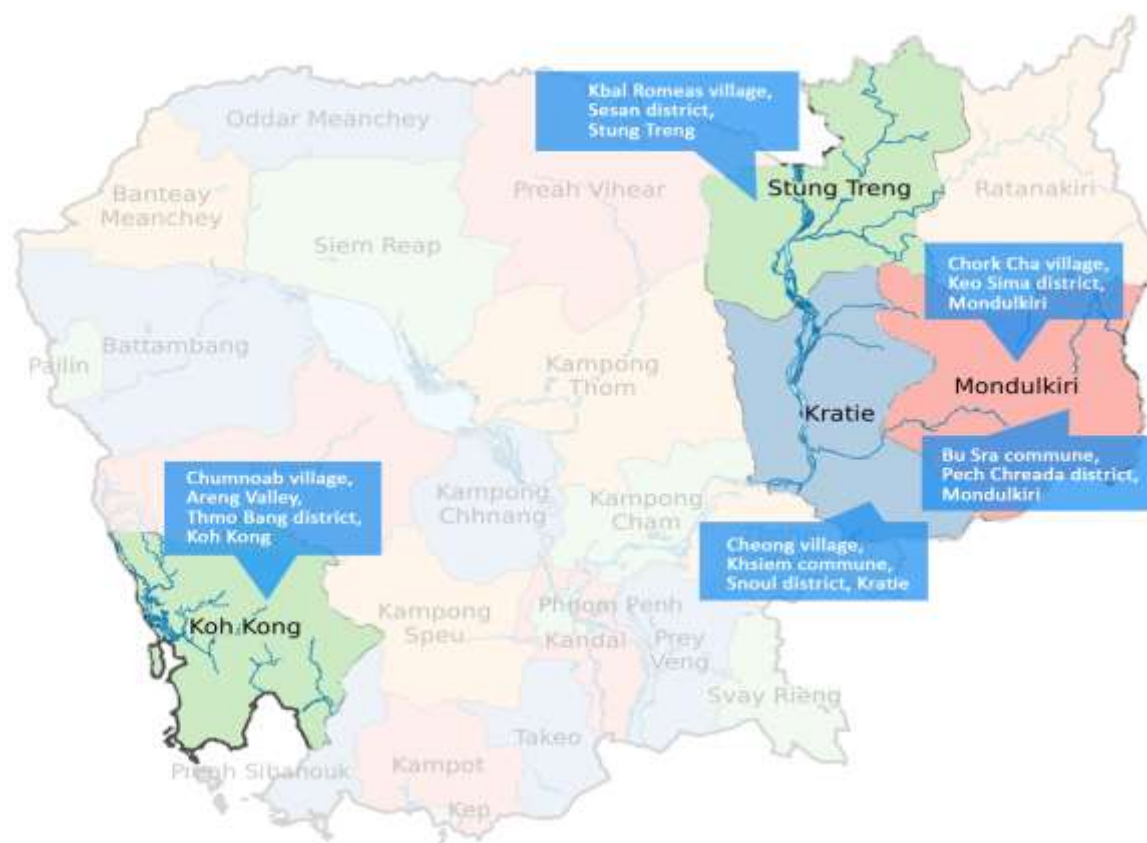
This Policy Brief will outline the main findings of research conducted by the Cambodian Center for Human Rights (“CCHR”) on the challenges within the CLT process, and conclude with key recommendations for relevant stakeholders. More detailed information can be found in CCHR’s Report, *“Access to Collective Land Titles for Indigenous Communities in Cambodia”*.³

¹ NGO Forum on Cambodia, ‘Indigenous Peoples in Cambodia’ (April 2006) <http://bit.ly/21tZ1rr>

² Also known as swidden agriculture and rotational agriculture

³ CCHR, ‘Access to Collective Land Titles for Indigenous Communities in Cambodia’ (Report) (February 2016) <http://bit.ly/1QRHPs7>

Figure 1: Map of primary research sites



This Policy Brief is written by CCHR, a non-aligned, independent non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia.

2. Challenges within the CLT Process

The research indicates that the majority of indigenous community members lack an awareness of the CLT process and its requirements. This is not surprising – the procedure for the registration of CLTs is extensive and extremely complex; the community must complete three stages, each involving several steps, to obtain a CLT: first, the community must obtain formal self-identification recognition as a “*traditional culture*” by the Ministry of Rural Development (“MRD”); then the community must apply for recognition as a “*legal entity*” with the

Ministry of Interior; and finally, the community must file a collective land registration request with the Ministry of Land Management, Urban Planning and Construction (“MLMUPC”) to register their land and be issued with a CLT.

Whilst the lack of awareness of the CLT process within indigenous communities is understandable, the lack of awareness among local authorities in indigenous areas is more concerning. Inadequate knowledge of the process prevents these authorities from fulfilling their mandate to serve the interests of citizens within their jurisdiction.

“I have never known about the process of registration for CLTs... the government has never provided any information or training on how to help indigenous peoples with CLTs.”

(Commune chief)

In addition, the staggering costs associated with the CLT process were identified as a major obstacle for communities attempting to register their communal lands. Although the MLMUPC stated the RGC has allocated an annual budget for the final stage of the process, the research made apparent that adequate funds have not been allocated to other relevant institutions (it was reported that the MRD had requested up to \$20,000 from communities/development partners to process the first stage alone). Thus, for indigenous communities to even consider attempting to obtain a CLT, they must first secure external support from civil society organizations (“CSOs”) or other development partners in order to overcome such insurmountable costs.

The lack of political will to facilitate the process and provide communities with formal protection of their communal lands is further evidenced by the protracted delays at each level of the CLT process; to obtain a CLT can take several years. Such delays are crucial given the lack of tenure security for indigenous communities applying for the CLT – interim protective measures only guarantee tenure security at the final stage of the process. This often means that communities must defend their land from outside interests for many years before their legitimate rights are recognized.

“The main difficulty is the government, they are the ones that gave the concessions. They are preventing the registration of our CLT. It’s no one else.”

(Indigenous community representative)

3. Challenges from the Local Authorities

Attempts made by indigenous communities to protect and register their communal lands are generally met with an overwhelming lack of support by the local authorities. The research

reveals that the lack of support from local authorities can largely be explained by their collusion with private actors, who have an interest in the communities’ lands and natural resources. Rather than assisting the communities in their endeavors, when indigenous community members have attempted to defend their lands and take steps within the CLT process they have been met with verbal, physical and judicial harassment at the hands of the authorities. Furthermore, the local authorities routinely exert pressure on indigenous communities to accept private land titles (“PLTs”) and threaten that if they refuse to accept PLTs they will lose their lands and be left with nothing.

“The authorities never support us, they dismiss our requests to help us register as a legal entity.”

(Indigenous community representative)

Even in the rare instances where the local authorities do want to support the communities, they simply do not possess the capacity or authority to take supportive action. With very little actual power, the local authorities simply act under orders from higher levels, and many fear that insubordination will result in removal from their positions.

“I am afraid that one day I will be removed from the commune council. I am well known for being active in supporting the community and not the company, so I am a target.”

(Commune council member)

4. Challenges from Corporate Actors

The research reveals that companies often collude with the authorities so that they can operate economic land concessions whilst circumventing legal requirements, and prevent any potential support for indigenous communities that may hinder their

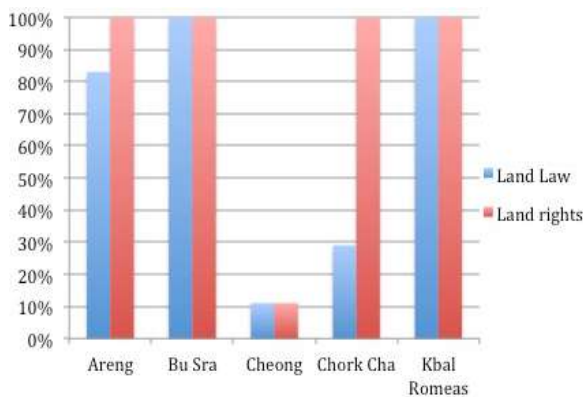
commercial operations. Corporate actors are often directly complicit in harassing indigenous community members, forcibly evicting them from their land, and quashing community confidence and therefore their ability to advocate for their land rights. Furthermore, companies operating in indigenous areas in Cambodia often physically obstruct the CLT process through land grabs and complicity with illegal logging within their concessions, preventing communities from being able to demarcate what was once their traditional lands.

“They commit illegal logging and now the land cannot be mapped anymore, if they ask, “Where is your community land?” there is no evidence, we’ve lost all of the boundaries already.”

(Indigenous community representative)

5. Challenges within the Communities

Figure 2: Awareness of Legal Rights to Land Ownership



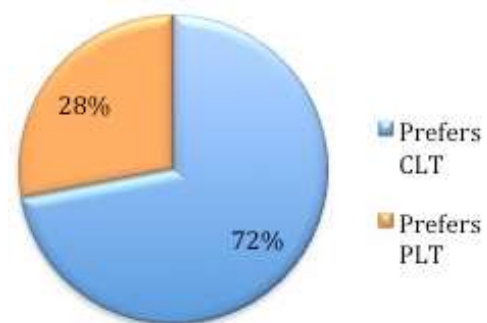
The research makes clear that not all indigenous community members are aware of their legal rights to land ownership.

Overall, there was a level of some understanding among the communities of the Land Law (62%) and of land rights (77%). Nonetheless, it is important to note that those community members included in the

research - the community representatives - are the community members most likely to have knowledge in this area. As such, this level of understanding is not representative of the communities as a whole.

In terms of the types of land ownership available, the majority of the indigenous community members expressed their preference for a CLT over a PLT. However, the research revealed a lack of unity among some communities in relation to their preferred legal protection of their land.

Figure 3: Land Title Preference among Indigenous Communities



In one community all of the community representatives stated their desire for PLTs, however they went on to explain that they had no communal lands left to register under a CLT due to widespread land grabs in the area. A lack of cohesion within this community was identified as a major reason for their inability to defend their land. In another community a representative professed his desire for a PLT, explaining that he would be able to use this title to obtain a bank loan (by law the CLT cannot be used for this purpose).

The MLMUPC has observed that community members that decide they no longer wish to be part of the CLT claim and instead want PLTs during the final stage of the process can cause lengthy delays in the registration

process - as this necessitates the MLMUPC return to the community and re-evaluate the land, which takes time and resources.

There are undoubtedly benefits for those indigenous families who legitimately accept PLTs – they offer immediate protection of their land, and allow the owner to use it as collateral for bank loans. However, indigenous families often decide to accept PLTs under pressure from the local authorities, without being fully informed of the consequences, and in the face of increasing encroachment on their land. In this context, it is fair to conclude that many of those families accept PLTs under duress.

“If we get the CLT we will have all our types of traditional land. If we get PLTs then some families will lose their land in the future, as if they face money issues they may sell the PLTs. The CLT protects the land for the next generations.”

(Indigenous community representative)

6. Challenges from CSOs and Development Partners

While CSOs and other organizations that work to support communal land registration efforts undoubtedly have good intentions, they have the potential to cause unintended obstacles and even do a disservice to indigenous communities. A major issue revealed by the research in this regard was a lack of cooperation between organizations.

“We always criticize the government’s weakness but we rarely criticize ourselves, the gap of civil society... One of the main obstacles is the gap in the cooperation between CSOs.”

(CSO Representative)

7. Policy Recommendations

“When we are evicted from here, everything regarding our identity will disappear. Our

culture and tradition relies on this land. We will become ordinary Khmer people, we will no longer be [indigenous] Chornng.”

(Indigenous community representative)

The alienation of indigenous people from their land threatens the very existence of Cambodia’s indigenous population, yet the process to protect this land is plagued by legal, political and social obstacles.

With this in mind, CCHR wishes to make the following key recommendations to stakeholders:

Royal Government of Cambodia

- Allocate an adequate budget for each stage of the CLT process and strengthen the capacity of relevant institutions to accelerate the process;
- Strengthen the capacity of government at all levels to ensure proper law enforcement;
- Increase awareness of both CLTs and PLTs and their respective benefits/pitfalls among indigenous communities;
- Disseminate to communities information on the CLT process;
- Halt approval of further concessions and development projects in indigenous areas, until the boundaries of indigenous peoples’ lands have been demarcated;
- Amend interim protective measures so they guarantee tenure security for communities from the first stage of the CLT process;
- Put an end to forcibly pressuring indigenous people into accepting PLTs; and
- Cease intimidation and harassment of indigenous community activists who

advocate for the protection of their land rights.

Companies

- Adhere to both Cambodian and international legislation in all operations;
- Avoid causing or contributing to adverse human rights impacts; and
- Address and remedy such impacts when they occur.

CSOs and Development Partners

- Improve cooperation among other organizations working to assist indigenous communities;
- Provide technical and practical support to relevant State institutions to enable better support for indigenous communities;

- Provide capacity building programs for indigenous communities to increase knowledge and confidence;
- Ensure beneficiaries of trainings include community members other than community representatives; and
- Facilitate networking between indigenous communities to strengthen solidarity.

Communities

- Strengthen community cohesion by hosting regular meetings, and encouraging participation in community activities; and
- Ensure community members that attend CSO trainings disseminate knowledge to the rest of the community.

Generously supported by



EUROPEAN UNION

Cambodian Center for Human Rights

#798, Street 99, Boeung Trabek, Khan Chamkarmon,
Phnom Penh, Cambodia

Tel: +855 (0) 23 72 69 01

Email: info@cchrcambodia.org

Fax: +855 (0) 23 72 69 02

Website: www.cchrcambodia.org

