

Briefing Note

Senate Region 8

Collective Land Registration of Indigenous Communities in Ratanakiri province

Researcher in charge: Mr. KHAM Vanda
Assisted by: Mr. NUN Assachan
Ms. CHEA Malika
Ms. WIN Moh Moh Htay

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1. Introduction

In Cambodia, there are 23 different indigenous groups¹ (approximately 200,000 people) living in the remote north-eastern provinces of the country, mostly in Ratanakiri, Mondulakiri, Kratie and Steung Treng accounting for 59%, 49%, 12%, and 10% respectively of the total population of the four provinces.² They are heavily reliant upon forest products in the surrounding environment. Although the development of the country tends to change the indigenous way of life, land is still the foundation of their livelihoods, social organization, and identity.³ The Constitution of Cambodia provides the same formal rights for all Cambodians, regardless of ethnicity. While the 2001 Land Law provides a unique chance for indigenous people to exercise their rights with collective indigenous land titles⁴, other key policies have also been formulated to ensure the right of indigenous people to land title. These policies and legal instruments include, but are not limited to: (i) the 2009 National Policy on the Development of Indigenous People and, (i) the sub-decree on procedure of registration of land of indigenous communities. Despite various efforts made by the RGC to tackle issues of land registration in indigenous communities, the state of indigenous land registration can be currently described as being slow.⁵

This briefing note⁶ will briefly discuss the existing government policies and relevant legal instruments on indigenous communities in Cambodia. It also provides an overview of the current situation and issues related to indigenous communities' land registration in Ratanakiri province. It will then provide suggested improvements to address the issues of land registration in indigenous communities.

2. Government policies and legal instruments regarding indigenous communities

2.1 Legal and policy framework for supporting indigenous communities

Like Cambodian citizens, indigenous people's rights are guaranteed by the 1993 Constitution.⁷ Moreover, their rights to land are stipulated in the 2001 land law, the 2009 National Policy on the Development of Indigenous People and other related legal instruments.^{[8][9]} The 2001 land law clearly articulates the land rights of indigenous people in part 2 of Chapter 3, which covers "Immovable Property of Indigenous Communities." The same section also refers to "an indigenous community" as "*a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.*"¹⁰ The land law, moreover, provides an explicit explanation on the collective ownership of indigenous communities' land in terms of collective land titles (see more detail in article 26).¹¹ The implementation of rights to ownership regarding immovable property of indigenous communities and specific conditions of land use are under the responsibility of the traditional authority, and the community's decision making mechanism is in compliance with their traditional practices. Collective ownership means that all rights and protective rights of the indigenous community are the same as individual ownership. However, the indigenous community is not entitled to make parcels of land that are public property of the state, available for collective ownership.¹²

In addition to the 2001 land law, the government of Cambodia developed the National Policy on the Development of Indigenous People (NPDIP) in 2009. This policy aims to provide support and ensure that the development of Cambodia contributes to the betterment of

indigenous communities. This NPDIP has laid out many sectoral policies for supporting indigenous communities such as culture, education, vocational training, health, environment, land tenure, agriculture, water resource, infrastructure, justice, tourism, and extractive industry policies.¹³ With regard to the land tenure sector, some key points of land tenure policy for supporting indigenous community articulated in the 2009 NPDIP are consistent with some articles stipulated (i.e. Article 25 on the scope of indigenous people's land and Article 26 on the concept of collective ownership) in the 2001 land law.¹⁴ This consistency appears to enhance the rights of indigenous communities regarding land, especially the registration of the collective land title (CLT).

In 2009, the sub-decree on procedures of registration of land of indigenous communities (or Sub-decree 83) was adopted by the government. The sub-decree identifies the land types eligible for the CLT of the indigenous community including:¹⁵

- (i) **state private land-** (a) residential land, (b) cultivated land; and
- (ii) **state public land** that has already been registered with the State- (a) reserve land necessary for shifting cultivation (not exceeding 7 hectares in total), (b) spiritual forest land, and (c) burial ground forestland (not exceeding 7 hectares in total).

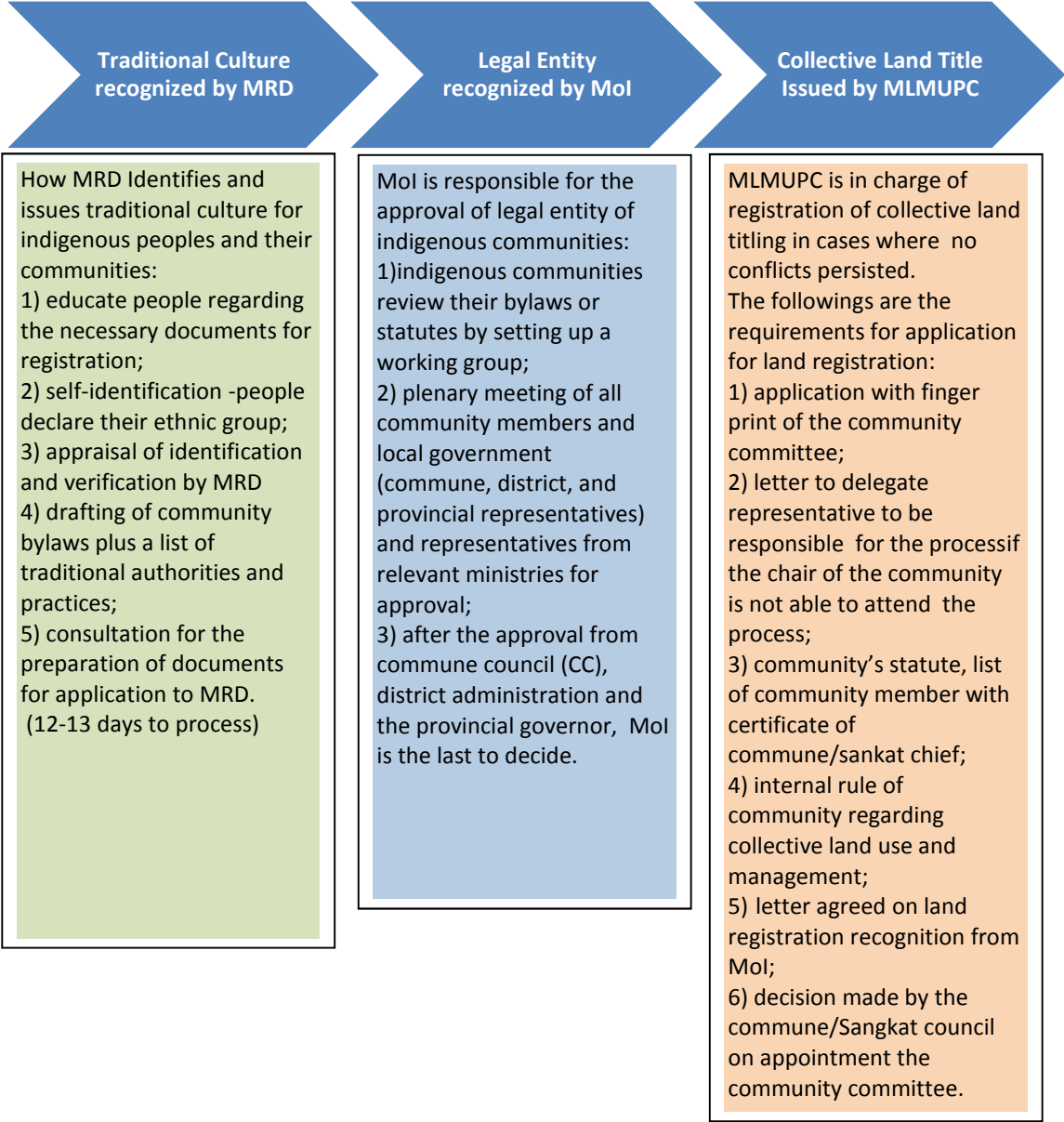
Sub-decree 83 also lays out the procedure and mechanism for registration of land of indigenous communities, which is summarized in section 2.2 below.

2.2 Key procedures to register collective land titles for indigenous communities

As stipulated in Sub-decree 83, the process for the registration of CLTs appears to be complicated and lengthy. In practice, the community is required to complete three main stages plus various steps in each stage to be granted a CLT. The three key stages consist of:^{[16][17]}

- (i) the indigenous community (IC) obtaining formal self-identification recognition as a “traditional culture” by the Ministry of Rural Development (MRD);
- (ii) the IC must then apply for recognition as a “legal entity” with the Ministry of Interior (MoI); and
- (iii) the community has to submit a collective land registration request to the Ministry of Land Management, Urban Planning and Construction (MLMUPC), to register their land and to be granted a CLT.

Figure 1: Process of Collective Land Registration for Indigenous Community



3. Collective Land Registration of the Indigenous Community and Challenges in Ratanakiri province

Ratanakiri province is currently home to approximately 183,092 people (90,947 female), and eight ethnicities of indigenous people (Tompoun “8019 households”, Kreung “6175 households”, Charay “6003 households”, Prov “2542 households”, Kachok “840 households”, Kavet “588 households”, Pounong “139 households” and Lon “220 households”)^{[18][19]} are residing in the province, accounting for 59% of the total population.²⁰ Currently, there are 81 indigenous communities in Rattanakiri province.²¹ Based on the information posted on the GIZ’s website, there are approximately 450 indigenous communities established across Cambodia.²² The following section illustrates the situation regarding collective land registration of indigenous communities and its challenges.

3.1 Collective Land Registration of Indigenous Communities

In order to cope with land disputes between economic land concession companies and local villagers, and to speed up the land registration process as well as issuance of land titles, the Royal Government of Cambodia (RGC) announced its initiative (entitled as “Directive 01”) to carry out its land titling campaign to be implemented by youth volunteers with support from relevant authorities.²³ Following the announcement of “Directive 01”, the RGC also issued a number of instructions (i.e. instruction #15 issued on 04 July 2012, and instructions #17 issued on 13 July 2012) for further implementation of land title registration for indigenous people and communities.²⁴ The Government and the MLMUPC in particular, has committed to register collective land titles for up to ten communities per year in the final stage of this process.²⁵

As a result, and according to the ILO’s updated list, 166 indigenous communities have started the CLTs. Of these indigenous communities, 114 have completed the first stage with recognition from the MRD, and 16 have been granted collective land title (CLT).²⁶ Given the fact that the indigenous community must satisfactorily finish the first stage of the CLT process before going on to the next one, postponements in the early stages may prolong the registration process. Based on the MLMUPC’s information as cited in the CCHR (2016), it is found that “as of January 2016 the MLMUPC has received CLT applications from only 43 communities, of which 11 have already received CLTs, and nine more will receive CLTs by summer 2016. (p.20)”²⁷ This indicates that the applications of indigenous communities for collective land title seem to be lengthy at the first two key stages of the registration process.²⁸

With regard to the collective land registration of indigenous communities (ICs) in Rattanakiri province, it is found that 57 out of the 60 ICs who applied as traditional culture communities have been recognized by the MRD. Moreover, 47 of the 57 ICs who applied for legal entity have been recognized by the MoI.²⁹ However, the ILO’s updated list on indigenous communities’ land registration indicates that only 16 ICs in Rattanakiri province applied for collective land titles at the MLMUPC. Of the 16 ICs, 6 indigenous communities have been granted land titles (5 in Ochum and one in Konmom districts).

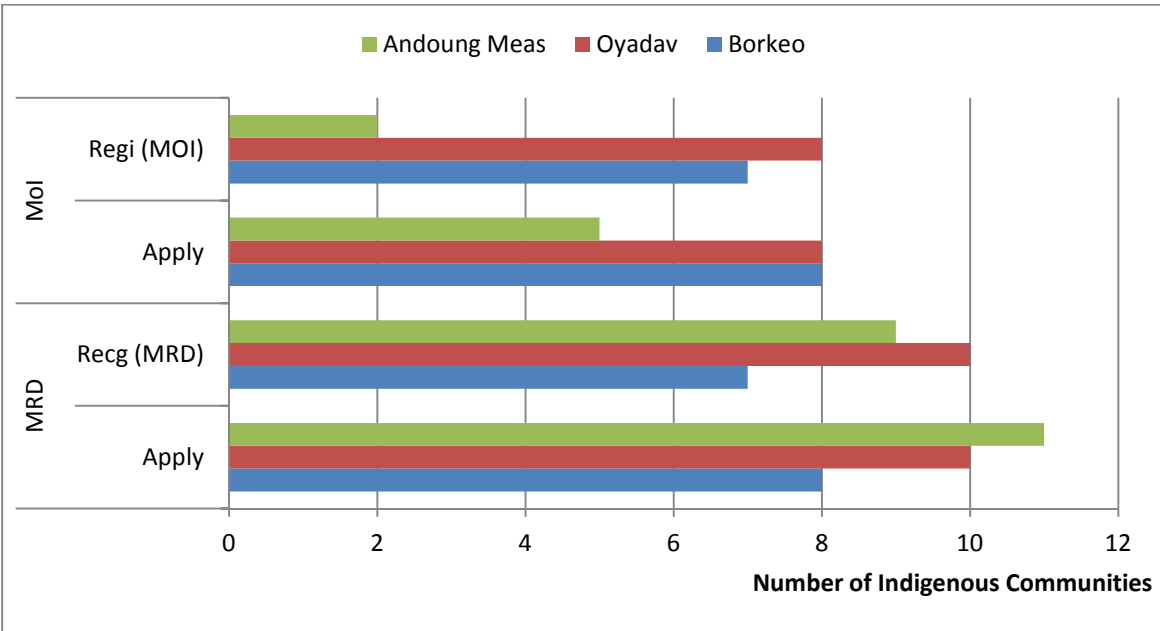
Table 1: Status of collective land registration of indigenous communities

No	District	Number of indigenous community	MRD		MoI		MLMUPC	
			Apply	Recognized (MRD)	Apply	Recognized (MOI)	Apply	Title
1	Borkeo	10	8	7	8	7		
2	Oyadav	12	10	10	8	8	1	
3	Andoung Meas	11	11	9	5	2		
4	Ochum	15	11	11	14	12	10	5
5	Konmom	5	4	4	5	2	1	1
6	Ban Lung	0	0	0	0	0	0	
7	Lumphat	13	9	9	8	7	3	
8	Taveng	6	5	5	5	5	1	
9	Voeunsai	9	2	2	4	4		
Total		81	60	57	57	47	16	6

Source: Source: ILO, “Update list of collective land titling progress with support of ILO, GIZ, NGO, and target affected by Directive 01 from 2003-13/01/2015. ”

Graph 1 indicates that indigenous communities in Borkeo, Oyadav and Andoung Meas districts have not received collective land titles (CLT) from the MLMUPC. This is because only one IC in Oyaday district has applied for the CLT at the MLMUPC,³⁰ and it might be in the process of assessing the application. Graph 1 also shows that while 7 ICs in Borkeo, 10 ICs in Oyadav, and 9 ICs in Andoung Meas districts have been recognized by the MRD as traditional culture communities, the MoI has recognized several ICs as legal entities in Borkeo, Oyaday and Andoung Meas, accounting for 7 ICs, 8 ICs and 2 ICs, respectively. The authors could not find out the reasons why ICs in Andoung Meas district have been less recognized as legal entities by the MoI.

Graph 1: Number of Indigenous Communities Recognized by the MRD and MoI in Andoung Meas, Oyadav and Borkeo districts



Source: ILO, “Update list of collective land titling progress with support of ILO, GIZ, NGO, and target affected by Directive 01 from 2003-13/01/2015.”

3.2 Challenges of collective land registration of indigenous communities

Although some progress in collective land registration for indigenous communities have been made after the implementation of Directive 01, it is observed that there are some key issues and challenges encountered by indigenous communities in registering collective land titles (CLT). First, the collective land title’s registration process seems to be lengthy and complicated as the process involves three institutions and requires various documents for each stage.^{[31][32]} This may lead to a small number of indigenous communities attempting to register CLTs. In this respect, there could be a review of the existing procedures for indigenous communities, and a more simplified process could be taken into consideration.

Second, some indigenous communities over-claim spiritual forest and forest burial land. Article 6 of Sub-decree 83 (on Procedures of registration of collective land titling of indigenous communities) states that the maximum size of a spiritual forest or forest burial land for each community is 7 hectares.³³ In practice however, some indigenous communities claim hundreds of hectares of spiritual forest and forest burial land.³⁴ This conflicting claim

tends to prolong the registration of CLT. In this respect, further awareness raising activities concerning procedures for registration of CLT could be regularly conducted in indigenous localities in order to educate the people on these issues.

Another challenge that tends to prolong the CLT registration process is land disputes between indigenous communities and the economic land concession (ELC) companies. This is because Sub-decree 83 states that the registration of land title is carried out as long as there is no land conflict occurring on the indigenous community's land with its neighboring land's owners.³⁵ In this regard, many indigenous communities in the northeast have been facing land disputes, often with ELC companies.³⁶ This suggests that in order to speed up the land registration process, further examination of the land disputes cases could be carried out in order to resolve them as soon as possible. Dispute resolution mechanisms may include out-of-court land dispute settlements.³⁷

4. Conclusion

In general, policies and related laws regarding indigenous people's development have proved promising. The collective land title process (CLT) for IC has been accelerated after the implementation of Directive 01, although only a small number of IC have been granted to the communities. Some challenges facing the IC in the collective land title registration process have been observed, such as: (i) the lengthy and complicated registration process for the CLT, (ii) some indigenous communities over-claim spiritual forest and forest burial land exceeding the maximum size of such types of land plots stipulated in Sub-decree 83, and (iii) land disputes between indigenous communities and economic land concession (ELC) companies. To address these challenges, a number of suggested improvements have been proposed below:

- (i) a review of the existing procedures for CLT for indigenous communities with a more simple process taken into consideration;
- (ii) further education concerning procedures for the registration of CLT could be conducted on a regular basis in the indigenous community's locations and;
- (iii) more examination of land disputes cases could be carried out to resolve disputes as soon as possible. Dispute resolution mechanisms may include out-of-court land dispute settlement procedures.

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- ⁴ NGO FORUM ON CAMBODIA 2006. INDIGENOUS PEOPLES IN CAMBODIA
- ⁵ ALISON, R. 2013. Directive 01BB in Ratanakiri Province, Cambodia: Issues and impacts of private land titling in indigenous communities.
- ⁶ This briefing note has been written in response to the Regional Group 8 of the Senate of Cambodia, as a key document for its mission scheduled to be early April 2016 to Ratanakiri province.
- ⁷ Article 31 of the constitution stipulated that “the Constitution guarantees all citizens the same rights *regardless of race, color, sex, language... religious belief or other differences.* ”
- ⁸ RGC 2001a. Land Law 2001. Phnom Penh, Cambodia.
- ⁹ MINISTRY OF RURAL DEVELOPMENT 2009a. National Policy on the Development of Indigenous People Phnom Penh, Cambodia: Ministry of Rural Development,.
- ¹⁰ RGC 2001b. Land Law 2001. Phnom Penh, Cambodia., p. 1409. Article 23
- ¹¹ *Ibid.*, Article 25 & 26
- ¹² *Ibid.*, Article 26
- ¹³ MINISTRY OF RURAL DEVELOPMENT 2009a. National Policy on the Development of Indigenous People Phnom Penh, Cambodia: Ministry of Rural Development,.,p.2
- ¹⁴ *Ibid.*, pp. 9-10
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- ¹⁶ CCHR 2016b. Access to Collective Land Titles for Indigenous Communities in Cambodia, Phnom Penh, Cambodia.
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- ²⁰ *Ibid.*
- ²¹ ILO 2015. Update List of Collective Land Titling Progress with Support of ILO, GIZ and NGO and Target Affected by Directive 01 from 2003-13/01/2015. Phnom Penh.
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²⁶ ILO 2015. Update List of Collective Land Titling Progress with Support of ILO, GIZ and NGO and Target Affected by Directive 01 from 2003-13/01/2015. Phnom Penh.

²⁷ CCHR 2016b. Access to Collective Land Titles for Indigenous Communities in Cambodia,. Phnom Penh, Cambodia.

²⁸ CCHR 2016a. Access to collective land titles for indigenous communities in Cambodia. Phnom Penh: Cambodian Center for Human Rights.p.20

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³⁰ Ibid.

³¹ CCHR 2016b. Access to Collective Land Titles for Indigenous Communities in Cambodia,. Phnom Penh, Cambodia.

³² PRACHVUTHY, M. 2011. Land acquisition by non-local actors and consequences for local development: Impacts of economic land concessions on the livelihoods of indigenous communities in northeast provinces of Cambodia

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