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Cambodian Center for Human Rights

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Access to Collective Land Titles for Indigenous Communities in Cambodia



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Cambodian Center for Human Rights

The Cambodian Center for Human Rights (“CCHR”) is a leading, 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 (“Cambodia”). CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s development. CCHR promotes the rule of law over impunity; strong institutions over strong men; and a pluralistic society in which variety is harnessed and celebrated rather than ignored or punished. CCHR’s logo – a dove flying in a circle of blue sky – represents the twin principles of peace and freedom.

This Report – *“Access to Collective Land Titles for Indigenous Communities in Cambodia”* (the “Report”) - is an output of the Land Reform Project (the “Project”) carried out by CCHR. It highlights the obstacles to registration of collective land for indigenous communities in Cambodia, based on data collected by the Project.

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Definitions and Acronyms

ADHOC	The Cambodian Human Rights and Development Association
Areng Valley	Chumnoab village, Areng Valley, Thmo Bang district, Koh Kong province
Binh Phouc 1	Binh Phouc Kratie Rubber 1 Company Limited
Bu Sra commune	Bu Sra commune, Pech Chreada district, Mondulkiri province
Cambodia	Kingdom of Cambodia
CCHR	Cambodian Center for Human Rights
Cheong Village	Cheong village, Khsiem commune, Snoul district, Kratie province
Chork Cha Village	Chork Cha village, Keo Sima district, Mondulkiri province
CLEC	Community Legal Education Center
CLT	Collective land title
Constitution	Constitution of the Kingdom of Cambodia, 1993 (as amended)
CSO	Civil society organization
Directive 01	Order 01BB issued by the RGC on 07 May 2012
EU	European Union
EIA	Environmental Impact Assessment
ELC	Economic Land Concession
Guiding Principles	United Nations Guiding Principles on Business and Human Rights
HPLS2	Chinese-Cambodian Hydro Power Lower Sesan 2 Company
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
ILO 169	ILO Convention No. 169 on Indigenous and Tribal Peoples
IPRA	Indigenous Peoples' Rights Act
IWGIA	International Working Group on Indigenous Affairs
Kbal Romeas village	Kbal Romeas village, Sesan district, Stung Treng province

Land Law	Land Law 2001
MOI	Ministry of Interior
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MRD	Ministry of Rural Development
MVi	My Village
NGO	Non-governmental organization
PLT	Private land title
PLUP	Participatory land use planning
The Project	CCHR's Land Reform Project
Report	This Report entitled <i>"Access to Collective Land Titles for Indigenous Communities in Cambodia"</i>
RGC	Royal Government of Cambodia
Sinohydro	Sinohydro (Cambodia) United Ltd.
SLC	Social Land Concession
SLG	Samreth Law Group
Socfin-KCD	Socfin-KCD Company
Sub-Decree 83	Sub-Decree on the Procedures of Registration of Land of Indigenous Communities No. 83
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNIPP	UN Indigenous Peoples' Partnership
WCS	Wildlife Conservation Society

Executive Summary

Over the last three decades, the survival of indigenous peoples and cultures across the globe has been threatened by the mounting demand for land and natural resources. The global trend towards individual land ownership - which allows for privatization of land and resources - rather than collective ownership, has been particularly damaging to indigenous communities; for many indigenous peoples, communal land use is of paramount importance for traditional cultures, identities and livelihoods. The increased demand for land and resources, coupled with advances in infrastructure and technologies, has led to previously remote indigenous communities colliding with the modern world with largely disastrous consequences. Moreover, the discrimination against, and exclusion of, indigenous peoples from decision-making has led to the approval of large-scale development projects by national governments, which often encroach on indigenous lands and lead to serious violations of indigenous land rights. As such, dispossession of traditional lands and territories is one of the major problems faced by indigenous peoples worldwide, threatening their very existence.

The threat to the existence of indigenous communities has resulted in an increased focus on indigenous rights within international law and policy, as the world seeks to protect unique cultures and ways of life, as well as the rights of individuals affected. Affirming the vulnerability of indigenous peoples and the need for nations to take measures to ensure their rights are protected, the International Working Group on Indigenous Affairs ("IWGIA") has stated: *"Indigenous peoples remain on the margins of society: they are poorer, less educated, die at a younger age, are much more likely to commit suicide, and are generally in worse health than the rest of the population."*¹

In Cambodia, the systematic violation of land rights is one of the most prevalent human rights violations today. The indigenous population in particular is losing their land at an alarming rate due to large-scale logging of forests, resource extraction, infrastructure projects such as dam and pipeline constructions, and land concessions for agri-business. While collective land ownership by indigenous peoples is theoretically recognized in Cambodia, collective land registration for indigenous communities has in practice been almost non-existent. Of Cambodia's 458² indigenous communities, only 11³ have been able to complete the process and register their collective lands.

This Report examines the obstacles to registration of collective land for indigenous communities in Cambodia, based on data collected by the Project. It aims to highlight reasons for shortcomings in the implementation of land registration for indigenous communities, and identifies recommendations for all stakeholders that will promote better implementation, with a view to increased protection of indigenous land rights in Cambodia.

¹ IWGIA, 'The Indigenous World 2006' (2006) <http://bit.ly/21bgrsZ>

² This is the number of villages in which indigenous peoples inhabit, cited in the Department of Local Administration of the Ministry of Interior's 'The List of Indigenous Peoples Areas' (06 March 2009) Local Administrative Department, however some believe the actual number to be higher.

³ Seven indigenous communities in Mondulkiri province, two in Ratanakiri province, and two in Kratie province, according to the Ministry of Land Management, Urban Planning and Construction

Chapter 1 (Introduction) provides a brief overview of the land situation in Cambodia, outlining the status of land rights, before providing an overview of Cambodia’s indigenous population and the threats they face to land tenure security.

Chapter 2 (Indigenous Land Rights in Cambodia) outlines the status of indigenous land rights in Cambodia, looking at relevant applicable international and domestic rights and obligations. It is revealed that in practice, poor implementation of applicable laws has left many indigenous communities with a lack of tenure security, vulnerable to land grabs and dispossession.

Chapter 3 (Purpose, Scope and Methodology) outlines the purpose of the research, the methodology that was used to obtain the information that informs this Report, and its limitations.

Chapter 4 (Obstacles to Collective Land Registration) presents the cases selected for the research, and the research findings. The findings reveal the numerous obstacles to collective land registration posed by the various actors involved in the process, in addition to the complex and arduous registration procedure, and poor implementation of the law.

Chapter 5 (Regional Lessons) examines case studies from the South Asian region to highlight best practices in protecting indigenous land rights and assesses their relevance to the Cambodian context.

Chapter 6 (Conclusion and Recommendations) summarizes some of the main findings from the research and, based on these, offers concrete recommendations to a variety of stakeholders – the Royal Government of Cambodia (the “RGC”), companies operating in indigenous areas, NGOs and development partners working to assist indigenous land registration, and the indigenous communities themselves. These recommendations aim to facilitate the process of collective land registration, and thereby ensure greater land tenure security for indigenous communities in Cambodia.

1. Introduction

1.1 Overview of Cambodia's Land Situation

Economic liberalization, rapid export expansion and growing foreign investment over the last two decades have led to a huge demand for land in Cambodia. The RGC has permitted large swathes of land to be leased for commercial interests through economic land concessions (“ELCs”). This readiness on the part of the RGC to reallocate land, along with insecurity of land tenure due to a widespread lack of formal titles and weak rule of law, has facilitated a wave of land grabs and forced evictions. ELCs permit beneficiaries to lease State-owned land up to 10,000 hectares for industrial agricultural use for a maximum of 99 years,⁴ although the RGC recently announced its intention to gradually reduce all ELC contracts to 50 years.⁵ According to Sub-Decree No. 146 on Economic Land Concessions, which regulates ELCs, all ELCs must meet certain prerequisites prior to being granted. These include: the completion of environmental and social impact assessments; the provision of solutions for resettlement, which do not necessitate involuntary resettlement; and public consultations with stakeholders, including the affected communities.⁶ In practice however, ELCs have been granted without the fulfillment of such criteria. It has been estimated that over two million hectares of land in Cambodia have been granted through ELCs to foreign and domestic companies, as well as to wealthy political elites for industrial-agricultural activities.⁷

In addition to ELCs, other supposed development activities have been initiated that have severely impacted citizens' land rights in Cambodia. A further two million hectares have been affected by mining concessions, and the construction of at least nine major hydropower dams is underway,⁸ which threatens to flood vast tracts of land throughout the country. Consequently, land rights abuses are among the most prevalent human rights violations in Cambodia today, predominantly felt by the most vulnerable and marginalized groups in society.

Acknowledging the problems surrounding land concessions, the RGC issued a moratorium on ELCs on 07 May 2012 by Order 01BB (“Directive 01”). This prohibited further ELCs from being granted, and called for the review of existing ELCs.⁹ In August 2014, the RGC created an Inter-Ministerial Committee to Inspect, Demarcate and Assess Economic Land Concessions,¹⁰ tasked to examine ELCs and revoke them in instances where companies had failed to comply with the terms and conditions as per their contracts. In 2014, 24 concessions were revoked or reduced in size by a total of 202,210 hectares in 11 provinces, due to non-compliance with the law.¹¹

⁴ Land Law, Article 61

⁵ Statement No. 683, dated 28 July 2015, released by the Ministry of Environment announced that the RGC in principle had decided to reduce all ELC contracts to 50 years.

⁶ Sub-Decree No.146 on Economic Land Concessions, ANK/BK (27 December 2005)

⁷ LICADHO, ‘Cambodia’s Concessions’ (May 2015) <http://bit.ly/1LdkawE>

⁸ Sarah Milne, ‘Extraction: Illicit Logging in the Shadow of Transnational Governance and Investment’, *Critical Asian Studies*, Vol. 47, No. 2, (May 2015)

⁹ Order 01BB, May 7, 2012 on the Measures Strengthening and Increasing the Effectiveness of the Management of Economic Land Concessions

¹⁰ Decision No. 125 SSR, August 18, 2014 on establishment of the Inter-Ministerial Committee to Inspect, Demarcate and Assess ELCs

¹¹ ADHOC, ‘Whose Land? Report on the Land Rights Situation in Cambodia 2014 and first half of 2015’ (July 2015) <http://bit.ly/1Hhk4qe>

Yet, the majority of ELCs that have been granted under dubious legal circumstances remain unchecked. This is largely due to the endemic corruption among the powerful elite in Cambodia, which allows private actors to commit human rights abuses with complete impunity. It has been estimated that 20 percent of the total land that has been allocated through ELCs is held by just five senators of the ruling Cambodian People's Party,¹² indicative of the extent of corruption within the country. Moreover, ELCs and infrastructure projects give rise to a range of logging activities, including widespread illegal logging,¹³ which further impacts on land rights and causes conflict. The link between land concessions and illegal logging has been acknowledged by the former Special Rapporteur on the situation of human rights in Cambodia, Surya Subedi in 2012, who remarked that, "*many concessionaires operate behind a veil of secrecy.*"¹⁴

The culture of corruption in Cambodia that facilitates such clandestine activities has led to the country being ranked 150th out of 168 countries by Transparency International's 2015 Corruption Perceptions Index.¹⁵ In particular, the low score reflects the rampant corruption within Cambodia's judiciary, as the World Justice Project's Rule of Law Index was used to assess the country's justice sector, which ranked Cambodia 98th out of 102 countries.¹⁶ Corruption within the judiciary contributes to a general lack of enforcement and implementation of relevant laws and regulations. Moreover, the endemic corruption in Cambodia is also a major factor as to why citizens are often denied satisfactory resolution of land disputes in which they are involved, despite the number of land conflict resolution mechanisms in existence in Cambodia.¹⁷ While in theory such mechanisms have been established to protect citizens' land rights, in practice they are known to favor the powerful elite.

1.2 Overview of Cambodia's Indigenous Communities

It is estimated that there are over 370 million indigenous people living in approximately 90 countries worldwide. An official definition of what constitutes an "indigenous" person has not been adopted by the United Nations ("UN") due to the diversity of the world's indigenous peoples. Instead, a modern and all-encompassing understanding of the term "indigenous" has been developed. This includes people who: have a historical continuity with pre-colonial and pre-settler societies that developed on their territories; have distinct social, economic or political systems; form non-dominant groups of society; identify themselves and are recognized and accepted by their community as indigenous; maintain distinct languages, cultures, and beliefs; have strong links to territories and surrounding natural resources; and resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.¹⁸

¹² Global Witness, 'Rubber Barons: How Vietnamese Companies and International Financiers are Driving a Land Grabbing Crisis in Cambodia and Laos' (May 2013) <http://bit.ly/1HgC1V8>

¹³ Sarah Milne, 'Extraction: Illicit Logging in the Shadow of Transnational Governance and Investment', *Critical Asian Studies*, Vol. 47, No. 2, (May 2015)

¹⁴ Surya P. Subedi, 'Report of the Special Rapporteur on the situation of human rights in Cambodia' (24 September 2012) <http://bit.ly/1kUyGln>

¹⁵ Transparency International, 'Corruption Perceptions Index 2015' (January 2016) <http://bit.ly/1JKBrkS>

¹⁶ World Justice Project, 'Rule of Law Index 2015' (2015) <http://bit.ly/1cwTwCz>

¹⁷ For more on the shortcomings of dispute resolution mechanisms, see: CCHR, 'The Failure of Land Dispute Resolution Mechanisms', (Briefing Note) (July 2014) <http://bit.ly/12zx4nE>

¹⁸ UN Permanent Forum on Indigenous Issues, 'Fifth Session, Fact Sheet 1: Indigenous Peoples and Identity' <http://bit.ly/1mOchLo>

In Cambodia, there are as many as 190,000 indigenous people, representing approximately 1.4 percent of Cambodia's population.¹⁹ Cambodia's indigenous population comprises 24 different indigenous ethnicities - including the Jarai, Tampuan, Brao, Kavet, Kreung, Lun, Bunong, Stieng, Kuy and others - and 23 minority languages have thus far been identified.²⁰ Cambodia's indigenous population inhabits 15 of the country's 24 provinces,²¹ although the majority resides in the northeastern provinces of Ratanakiri and Monduliri.²² The indigenous communities typically live in self-organized autonomous villages governed by a council of elders, who are responsible for the maintenance of peace and order among their people, and adjudicate based on customary law to resolve disputes when they arise.²³

Traditionally, indigenous people in Cambodia sustain their livelihoods through cultivating forested land, utilizing a technique known as shifting cultivation or rotational agriculture.²⁴ They also hunt wild animals and gather forest by-products including fruit, honey, flowers, fungus and resin. In addition, Cambodia's indigenous communities' beliefs, traditions, and identities are closely tied to the land. The land, and especially the forest, carries major spiritual significance as a link to their ancestors and natural spirits. Relationships with these ancestors and spirits form a key part of the communities' cultural identity and spirituality. In fact, it is difficult for non-indigenous people to comprehend the intimate connection that indigenous peoples have with their land. It seems that it is this lack of understanding of the special link between indigenous people and their land which has had disastrous impacts for indigenous communities - as stated by Erica-Irene Daes, former Special Rapporteur on Protection of the Cultural and Intellectual Property of Indigenous Peoples, *"the gradual deterioration of indigenous societies can be traced to the non-recognition of the profound relationship that indigenous peoples have to their lands, territories and resources..."*²⁵

In recent years, improved infrastructure has enabled commercial enterprises to access once inaccessible and remote areas of the country, which are typically inhabited by large numbers of indigenous peoples. As such, Cambodia's indigenous populations - who generally inhabit resource-rich areas of the country - are increasingly vulnerable to land grabs, deforestation and commercial pressure. The prioritization of large-scale infrastructure developments and the lease of land concessions in the areas where indigenous peoples have traditionally inhabited threaten indigenous communities' livelihoods, cultures and identities. As noted by the UN in 2007, *"The alienation of indigenous land through the grant of economic land and other concessions is undermining the ability of indigenous communities to register their collective ownership of traditional lands, and enforce their rights to land under the Land Law."*²⁶ Such rapid changes to their environments are occurring in a

¹⁹ NGO Forum on Cambodia, 'Indigenous Peoples in Cambodia' (April 2006) <http://bit.ly/21tZ1rr>

²⁰ Ian Baird, 'Indigenous Peoples' and land: Comparing communal land titling and its implications in Cambodia and Laos' *Asia Pacific Viewpoint*, Vol. 54, No. 3 (December 2013)

²¹ Laura M. Kirchner, 'Living on the margins: On the Status and Standing of Minorities and Indigenous Peoples in Cambodia', Heinrich Böll Stiftung Cambodia (June 2015) <http://bit.ly/1XFN911>

²² NGO Forum on Cambodia, 'Indigenous Peoples in Cambodia' (April 2006) <http://bit.ly/21tZ1rr>

²³ Laura M. Kirchner, 'Living on the margins: On the Status and Standing of Minorities and Indigenous Peoples in Cambodia', Heinrich Böll Stiftung Cambodia (June 2015) <http://bit.ly/1XFN911>

²⁴ Also referred to as swidden agriculture. This is a form of rotational agriculture in which land is cleared for cultivation, usually by cutting and burning vegetation, and then cultivated for a short period of time, before being abandoned for a new area until its fertility has been naturally restored.

²⁵ UN Sub-Commission on the Promotion and Protection of Human Rights, 'Indigenous peoples and their relationship to land: Final working paper prepared by Special Rapporteur, Mrs. Erica-Irene A. Daes' E/CN.4/Sub.2/2001/21 (June 2001) <http://bit.ly/1MJYUy7>

²⁶ OHCHR, 'Economic land concessions in Cambodia: A human rights perspective' (June 2007) <http://bit.ly/1a47Sss>

context whereby indigenous people in Cambodia are often functionally illiterate in the national language, Khmer, and where weak local governance and a lack of transparency pose significant barriers to the participation of indigenous peoples in decision-making.²⁷

Cambodia's indigenous communities are fast losing their communal land and natural resources, and consequently their customs and traditions which are crucial for the preservation of their indigenous identity. As previously stated, existing dispute resolution mechanisms are woefully inadequate, but particularly so for indigenous communities who largely lack an awareness of such mechanisms, and lack the means to access them. Without formal registration and legal protection of their communal lands, indigenous peoples in Cambodia remain particularly vulnerable to land grabs by the beneficiaries of land concessions and the powerful elite. Collective land titles ("CLTs") provide protection for indigenous lands; however the process of obtaining them is arduous and protracted, and almost impossible for the communities to obtain without external assistance.

Much external support has been provided for indigenous land registration in Cambodia. For example, the International Labour Organization ("ILO")'s Support for Indigenous Peoples' Project, which began in 2005 to assist indigenous communities register for CLTs in Cambodia, supported 166 indigenous communities in Cambodia during the project's implementation; of these, 114 had completed the first of three stages in the CLT process, successfully gaining identity recognition, and 97 had reached the second stage of registration as legal entities.²⁸ External support for indigenous land registration has also been provided since 2009 through the Land Administration Sub-Sector Program, which is multi-donor supported. However, at the time of writing, only 11 indigenous communities have received CLTs throughout the country; and it is likely that without external support this number would be even lower. As the coordinator of the Support for Indigenous Peoples' Project told the *Cambodia Daily* at the time the project was drawing to a close, "*Without coordination from the ILO, it will take much more time and some villages won't have any more changes [to get CLTs].*"²⁹

Thus, without significantly accelerated intervention, the continued land alienation experienced by indigenous communities will likely see the indigenous population in Cambodia critically diminished as communities lose their traditions and customs.

²⁷ IRAM, 'Facing – Crisis Indigenous People of Cambodia' Submission by indigenous people of Cambodia to the Asia Preparatory Meeting for the United Nations Permanent Forum on Indigenous Issues Held in Malaysia on 04-06 March, 2009 <http://bit.ly/1Ufbvi3>

²⁸ UN Permanent Forum on Indigenous Issues, 'Update on ILO activities concerning indigenous peoples', Fourteenth session, New York, 20 April to 01 May 2015 <http://bit.ly/1NrZHUT>

²⁹ Malia Guyer-Stevens and Kuch Naren, 'Funds Dry Up for Project Advancing Indigenous Land Rights', *The Cambodia Daily*, (February 2015) <http://bit.ly/1VB50qn>

2. Indigenous Land Rights in Cambodia

With land being appropriated at an alarming rate throughout the country, Cambodia's indigenous communities are particularly vulnerable to losing the land that sustains them; they are often subject to forced evictions and blocked from accessing their traditional lands, along with a host of other violations of their land rights. Accordingly, the importance of a comprehensive system of legal protections for land rights of indigenous peoples cannot be overstated. Cambodian domestic law to a large extent incorporates international legal standards in relation to land rights of indigenous people and should, in theory, provide adequate formal protections to the indigenous population. However, despite the existing comprehensive set of legal safeguards, these protections are rarely implemented in practice.

This Chapter provides an overview of the legislative context regarding the land rights of the indigenous population in Cambodia by looking at relevant provisions in both international and domestic law, and examines whether the existing legislation is upheld in practice.

2.1 The Theory: A Protective Legal Framework

2.1.1 Protection of indigenous land rights under international law

Indigenous peoples' land rights are resolutely protected under international law. International human rights protection is incorporated into Cambodian law by Article 31 of the Constitution of the Kingdom of Cambodia (the "Constitution"), which states that Cambodia shall recognize and respect the Universal Declaration of Human Rights (the "UDHR") and the covenants and conventions related to human rights.³⁰ Thus, international human rights standards are directly applicable within the Cambodian legal system, as reaffirmed by a decision made by the Constitutional Council in 2007.³¹

The UDHR, a cornerstone document in the history of human rights, states in Article 17 that *"everyone has the right to own property alone as well as in association with others"* and, *"no one shall be arbitrarily deprived of his property."*³² Article 25 of the UDHR guarantees the right to adequate housing,³³ which encompasses the right to security of tenure and protection from forced evictions. The right to adequate housing is also protected in the International Covenant on Economic, Social and Cultural Rights (the "ICESCR"),³⁴ the Convention on the Elimination of All Forms of Discrimination against Women,³⁵ and the Convention on the Right of the Child.³⁶ In addition, the International Convention on the Elimination of All Forms of Racial Discrimination (the "ICERD") specifically prohibits racial discrimination in the enjoyment of the right to housing.³⁷ Cambodia became a party to the ICERD in 1983, and is therefore obligated to ensure that all minority groups – including indigenous peoples – enjoy the rights laid out by the ICERD. Finally, Principle 9 of the Guiding Principles on Internal Displacement emphasizes, *"States are under a particular obligation to protect*

³⁰ The Constitution, Article 31

³¹ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007) <http://bit.ly/1rmdbcj>

³² UDHR, (10 December 1948), Article 17 <http://bit.ly/1O8f0nS>

³³ *Ibid*, Article 25 (1)

³⁴ ICESCR, (16 December 1996), Article 11 (1) <http://bit.ly/11E1V3>

³⁵ Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979), Article 14

<http://bit.ly/1jk13IM>

³⁶ Convention on the Right of the Child, (20 November 1989), Article 27 <http://bit.ly/1fGCcXV>

³⁷ International Convention on the Elimination of all Forms of Racial Discrimination, Article 5 (e), <http://bit.ly/1k1MoiX>

*against the displacement of indigenous peoples, minorities... and other groups with a special dependency on and attachment to their lands.”*³⁸

Providing specific protection for Cambodia’s indigenous population is the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”). Cambodia voted in favor of UNDRIP in 2007, which contains a number of provisions explicitly protecting indigenous peoples’ rights to land. By this declaration, indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership, occupation or use,³⁹ and States should give legal recognition and protection to these lands.⁴⁰ States must also provide effective mechanisms to prevent actions that dispossess indigenous peoples of their lands, territories and resources.⁴¹ Furthermore, States shall consult with the indigenous peoples concerned in order to obtain their free, informed consent prior to the approval of any projects affecting their lands.⁴² The declaration stipulates that indigenous peoples must not be forcibly removed from their lands, and that no relocation should take place without free, prior and informed consent of the indigenous peoples concerned.⁴³ Moreover, by this instrument indigenous peoples are to have the right to redress for their lands, territories and resources, which have been confiscated, occupied or damaged without their free, prior and informed consent.⁴⁴ While as a General Assembly Declaration UNDRIP is not legally binding, it does *“represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles.”*⁴⁵

However, while Cambodia voted in favor of UNDRIP, it has yet to ratify the ILO’s Convention No. 169 on Indigenous and Tribal Peoples, which offers concrete legal protection for indigenous peoples. This convention is a key international legal instrument supporting the principle of self-management, protecting indigenous peoples’ cultures and communities, and the rights to traditional land and resources, and encouraging equal treatment and access to State services. Importantly, it requires participation and consultation of indigenous peoples on issues that affect them - particularly development issues.⁴⁶ By failing to ratify Convention No. 169, Cambodia has displayed its lack of intention to give real legal force to the protection of indigenous peoples’ rights.

2.1.2 Protection of indigenous land rights in domestic law

The Constitution guarantees all citizens the same rights *“regardless of race, color, sex, language... religious belief”* or other differences,⁴⁷ while the 2001 Land Law (the “Land Law”)⁴⁸ and the Sub-Decree No.83 on the Procedures of Registration of Land of Indigenous Communities (“Sub-Decree 83”)⁴⁹ provide specific protection of indigenous people’s rights to land in Cambodia. The Land Law

³⁸ UN Economic and Social Council, ‘Guiding Principles on Internal Displacement’, Principle 9, (11 February 1998) <http://bit.ly/1GxBOFU>

³⁹ UNDRIP, (General Assembly resolution 61/295 of 13 December 2007), Article 26 (2) <http://bit.ly/1bKlrMs>

⁴⁰ *Ibid*, Article 26 (3)

⁴¹ *Ibid*, Article 8 (2) (b)

⁴² *Ibid*, Article 23 (2)

⁴³ *Ibid*, Article 10

⁴⁴ *Ibid*, Article 28

⁴⁵ UN Permanent Forum on Indigenous Issues, ‘Frequently Asked Questions: Declaration on the Rights of Indigenous Peoples’ <http://bit.ly/1QNk9Wq>

⁴⁶ ILO, Indigenous and Tribal Peoples Convention 1989, (No. 169), 76th ILC session (27 June 1989)(entered into force on 05 September 1991) <http://bit.ly/1O0X1Dc>

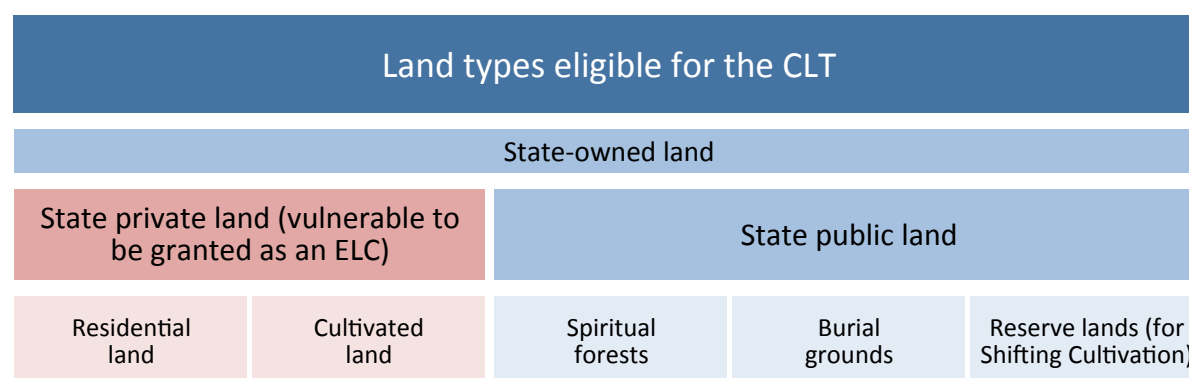
⁴⁷ The Constitution, Article 31

⁴⁸ Land Law, NS/RKM/0801/14, (20 July 2001)

⁴⁹ Sub-Decree No. 83, ANK/BK, (09 June 2009)

was the first piece of legislation in Cambodia to explicitly recognize the existence of indigenous peoples, and clearly outlines the land rights of indigenous people in Chapter 3, Part 2, entitled *“Immovable Property of Indigenous Communities,”* which defines 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.”*⁵⁰ Under Article 26, the Land Law explicitly recognizes the concept of collective ownership of land for indigenous communities in the form of CLTs.⁵¹ Thus, the Land Law is of the utmost importance for indigenous people’s collective rights to land.

Figure 1:



Sub-Decree 83 further defines indigenous community land and states that it can consist of five types: (1) residential land; (2) cultivated land; (3) reserve land necessary for shifting cultivation; (4) spiritual forest land; and (5) burial ground forestland.⁵² The first two categories (residential land and cultivated land) may only be land that has already been registered with the State as State private land⁵³ (see Figure 1). The remaining three categories may include land that has been registered as State public land. Both this requirement and the underlying assumption that land used by indigenous communities is State land, puts such land at risk of being appropriated by the State. This is because, until registered as indigenous community land, these categories of land are classified as property of the State and thus can be granted as ELCs.⁵⁴ However, according to the Land Law, indigenous communities have the right to continue to manage and use their land according to their traditional customs.⁵⁵ Moreover, indigenous communities have the right to continue traditional uses of forest land as per the 2002 Law on Forestry, which includes the right to collect forest by-products, use timber to build houses and stables, and cut grass and allow livestock to graze.⁵⁶ Sub-Decree 83 further adds that indigenous communities have the right to continue using water sources in the forest, for example streams and rivers. However, Sub-Decree 83 states that to continue traditional uses of the land, communities must make an agreement with the relevant authorities,⁵⁷ conflicting

⁵⁰ Land Law, Article 23

⁵¹ Land Law, Article 26

⁵² Sub-Decree 83, Article 4

⁵³ *Ibid*, Article 6

⁵⁴ CCHR, ‘Cambodia: Land in Conflict, An Overview of the Land Situation’, (Report) (December 2013) <http://bit.ly/1KtPNVy>

⁵⁵ Land Law, Article 23

⁵⁶ Law on Forestry, NS/RKM/0802/016, (30 July 2002), Article 40 <http://bit.ly/1tbrB3i>

⁵⁷ Sub-Decree 83

with the Law on Forestry, which states that no permit is required.⁵⁸ As the Law on Forestry is a higher legal instrument than Sub-Decree 83, it takes precedence,⁵⁹ and thus in practice communities should not require permission to continue traditional use of their land.

Table 1: Indigenous Land Rights in Cambodia – Summary

Right	UDHR	ICESCR	ICERD	UNDRIP	ILO Convention 169	Constitution	Domestic law
Right to own property	✓					✓	✓
Right to adequate housing	✓	✓					
Right to equality before the law	✓			✓	✓	✓	
Right to protection from racial discrimination in enjoyment of housing	✓		✓	✓	✓		
Right to own and use traditional lands				✓	✓		✓
Right to legal protection of traditional land ownership				✓	✓		✓
Right to consultation before development affecting				✓	✓		✓

⁵⁸ Law on Forestry, Article 40

⁵⁹ For more on hierarchy of laws in Cambodia, see: CCHR, 'Hierarchy of Laws in Cambodia' (Factsheet) (January 2014) <http://bit.ly/1IKTN4m>

indigenous lands							
Right to redress for abuse of land rights	✓			✓	✓		✓
Right to protect the community's means of subsistence		✓					

2.2 In Practice: Registration of Indigenous Land

While the Land Law recognizes the right of indigenous communities to register their land and obtain CLTs, in practice the process to obtain a CLT is complex and protracted. As of the time of writing, only 11 out of the 166⁶⁰ indigenous communities who have begun the process have managed to obtain a CLT in order to protect their land. The complexity of the legal framework that protects indigenous land rights, coupled with inadequate implementation of the law are the main reasons as to why so few CLTs have thus far been awarded. Guidelines on how indigenous communities could obtain a CLT were only issued in 2009,⁶¹ eight years after the adoption of the Land Law. This lost time was critical: in the period between the implementation of the Land Law in 2001 and the issuance of Sub-Decree 83 in June 2009, over 2,106,343 hectares of land in Cambodia were granted via ELCs.⁶²

2.2.1 Registration process for collective land titles

The process for the registration of CLTs is lengthy and extremely complex, as outlined in Sub-Decree 83. In practice, the community must complete three stages 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 (the “MRD”); then the community must apply for recognition as a “*legal entity*” with the Ministry of Interior (the “MOI”); and finally, the community has to file a collective land registration request with the Ministry of Land Management, Urban Planning and Construction (the “MLMUPC”) to register their land and be issued with a CLT.⁶³

The complex nature of the process, coupled with a lack of resources within indigenous communities, necessitates external assistance to complete the CLT process. Moreover, under Sub-Decree 83, indigenous communities are only permitted to register seven hectares of burial ground and spirit forest respectively, a limitation in conflict with the Land Law, which does not allow arbitrary limitations on such land.

⁶⁰ Figure according to the ILO’s ‘Updated List of Collective Land Titling Progress with Support of ILO, GIZ and NGO and Target Affected by Directive 01 from 2003-13/01/2015’ (January 2015)

⁶¹ Sub-Decree 83

⁶² LICADHO, ‘The Great Cambodian Giveaway: Visualizing Land Concessions over Time’ (01 March 2013) <http://bit.ly/HxpSOV>

⁶³ Sub-Decree 83

2.2.2 Interim protective measures

Given the protracted nature of the registration process, the lack of tenure security for indigenous communities in the process of applying for CLTs is of great concern. In 2011, an inter-ministerial circular on interim protective measures regarding the lands of indigenous communities who have applied for collective ownership titling was issued, whereby local regulations are to be issued instructing people to temporarily cease all forms of land transactions and informing local authorities to halt certifying land transactions for land parcels requested in the CLT. However protections under these guidelines are severely limited - tenure security is only guaranteed at the final stage of the process, when the community has actually applied for a CLT with the MLMUPC.⁶⁴ In addition, the protective measures exclude plots the RGC had agreed for investment or development prior to these measures coming into effect⁶⁵ – thus, affected land within existing ELCs is not protected.

2.2.3 Participatory land use planning

Participatory land use planning (“PLUP”) is a model of land use management aiming to give all relevant stakeholders an input into the allocation of land within a certain area. PLUP involves land use regulations being drafted, land allocation carried out, and protections for land conservation areas being devised. Introduced in Cambodia in the early 2000s following trials, PLUP was eventually dissolved in 2008. During its implementation in Cambodia, PLUP was used in rural communities, including some indigenous communities, to provide clarity on the current land use in each area, and in some instances to resolve land disputes. Although PLUP received criticism and land concessions have been granted over land recognized by PLUP maps, for those indigenous communities who possess them, the maps are a useful tool that legitimize their land use as they recognize various land-use categories such as spirit forests, burial forests, and land used for shifting agriculture.⁶⁶

2.2.4 Accelerated land titling campaign

On 14 June 2012, the RGC announced its intention to launch an accelerated land titling campaign to be implemented by youth volunteers, to cover areas where citizens live without proper legal documentation on State land granted as economic or forestry concessions. The program – which excluded disputed areas of land, thus excluding the most vulnerable populations from the titling program – has received criticism due to its ineffectiveness, lack of transparency, highly politicized and extra-legal nature.⁶⁷ Reports have arisen of the authorities withholding land titles, while others have lost their land in the process. Since the program was resumed in November 2013 following its suspension on 11 June 2013 ahead of the national election of 28 July, implementation has been slow.

Remarkably, indigenous communities have been excluded from this program – only days after Instruction 15 was issued by the RGC, which allowed for the issuance of CLTs, Instruction 20 was released, revoking the right to CLTs. Instruction 20 stated the reasoning behind the suspension of the CLT aspect of the program was the difficulties in identifying indigenous land, which would require “*a protracted period of time and large budgetary expenses.*”⁶⁸ Moreover, Instruction 20 included a provision allowing indigenous peoples to “*opt out*” of their communities if they desired a PLT, by

⁶⁴ MOI and MLMUPC, Inter-ministerial circular on interim protective measures protecting land of indigenous peoples (2011)

⁶⁵ MOI and MLMUPC, Inter-ministerial circular on interim protective measures protecting land of indigenous peoples (2011)

⁶⁶ Sarah Milne and Bill Adams, ‘Market Masquerades: Uncovering the Politics of Community-level Payments for Environmental Services in Cambodia’, *Development and Change*, Vol. 43, No. 1 (February 2012)

⁶⁷ CCHR, ‘Cambodia: Land in Conflict, An Overview of the Land Situation’ (December 2013) <http://bit.ly/1KtPNVy>

⁶⁸ Jeff Vize and Manfred Hornung, Heinrich Böll Foundation, ‘Indigenous People and Land Titling in Cambodia,’ Annual World Bank Conference on Land and Poverty 2013, 8-11 April 2013 <http://bit.ly/1XntSBe>

simply thumb printing a contract in order to do so. Unsurprisingly, there have been several reports of indigenous communities being pressured to accept PLTs.⁶⁹ This is of great concern as under Cambodian law, once they have accepted PLTs, indigenous peoples are ineligible to receive CLTs.⁷⁰ Consequently, an indigenous family who accepts a PLT will be excluded from the community's CLT – as will their land.

Thus, while the legal framework in Cambodia in theory protects indigenous communities' land rights, in practice they are left without protection, completely vulnerable to land grabs and related violations.

⁶⁹ *Ibid*

⁷⁰ *Ibid*

3. Purpose, Scope and Methodology

3.1. Purpose of the research

This Report follows the publication of a number of profiles within CCHR's *Land Activist Profile* series,⁷¹ which focus on indigenous communities affected by the country's volatile land conflicts. In addition to the profiles in this series, the Report builds further upon findings of CCHR's roundtable discussions on "*Land and the Rights of Indigenous People*",⁷² held in 2013 among representatives of indigenous communities, civil society and local authorities, and CCHR's 2013 report entitled "*Cambodia: Land in Conflict, An Overview of the Land Situation*."⁷³

This Report focuses in particular on the issues indigenous communities have encountered when attempting to protect their communal lands by attempting to register such lands under CLTs. The rationale behind the Report is based on the recognition that issues pertaining to the acquisition of formal land titles are one of the most pressing problems facing vulnerable groups, in particular indigenous communities, as evidenced by CCHR's *Land Activist Profile* series and the roundtable discussion on "*Land and the Rights of Indigenous People*".

The purpose of this Report is to present data collected from the Project's research on the obstacles that indigenous communities in Cambodia face when seeking land tenure security through applying for a CLT. The Project hopes that by highlighting the reasons for the shortcomings in the implementation of the CLT process and identifying recommendations, this Report will promote better implementation of collective land registration and protection of indigenous land rights among relevant stakeholders.

3.2 Methodology

Both primary and secondary research was conducted with a view to gaining information on the difficulties faced by indigenous communities attempting to protect their land. Extensive desk research in both Khmer and English built upon the Project's previous research, and was conducted by: analyzing the basic laws and legal structures that define Cambodian land law and provide protection for indigenous land rights; reviewing documents and research from relevant agencies and institutions; and reviewing reports by local and international civil society organizations ("CSOs") that are working on land-related issues. The chairperson of CCHR's Board of Directors, who is indigenous Bunong, also provided insight for the Report, and assisted with the research design.

Primary research, in the form of semi-structured interviews, was conducted in November 2015 in five indigenous communities throughout the country (see Figure 2: Map of Primary Research Sites). The communities, who have not yet received land titles, were identified based on previous research conducted by the Project. A total of 39 community representatives, 18 of whom were female, were interviewed as part of the research: nine from the Bunong community at Cheong village, Khsiem commune, Snoul district, Kratie province ("Cheong village"); eight from the Bunong community at Chork Cha village, Keo Sima district, Monduliri province ("Chork Cha village"); nine from the Bunong

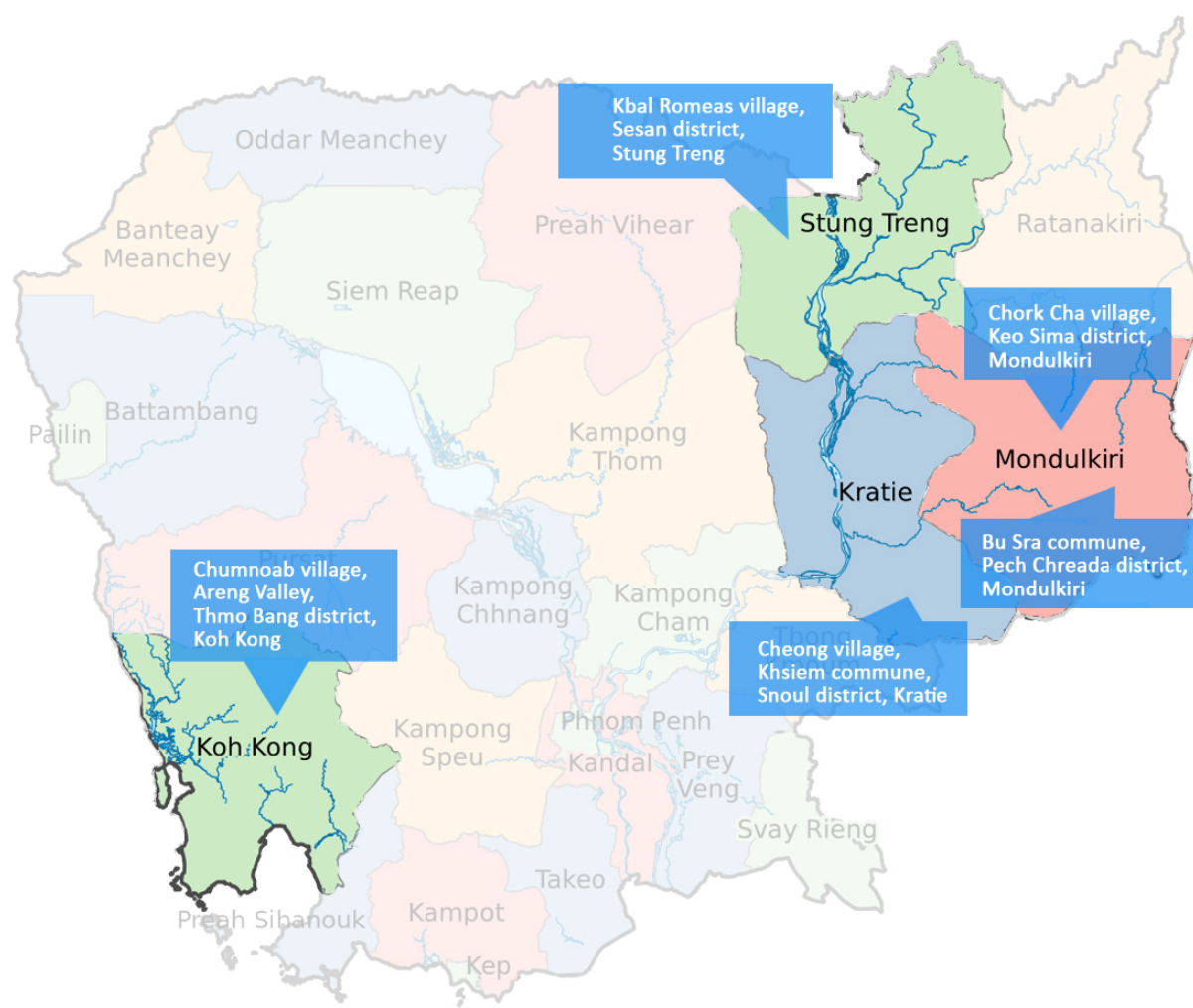
⁷¹ CCHR, 'Land Activist Profiles' (September 2015) <http://bit.ly/21b6V96>

⁷² CCHR, 'Cambodian Center for Human rights (CCHR) hosts Roundtable Discussion on Land and the Rights of Indigenous People' (Media Alert) (13 January 2013) <http://bit.ly/1QWvIJE>

⁷³ CCHR, 'Cambodia: Land in Conflict, An Overview of the Land Situation', (Report) (December 2013) <http://bit.ly/1KtPNVy>

community at Bu Sra commune, Pech Chreada district, Mondulakiri province (“Bu Sra commune”); seven from the Pu Nong⁷⁴ community at Kbal Romeas village, Sesan district, Stung Treng province (“Kbal Romeas village”); and finally six from the Chorn⁷⁵ community at Chumnoab village, Areng Valley, Thmo Bang district, Koh Kong province (“Areng Valley”). Interview questions focused on the importance of the land to the indigenous communities; the impact of the land disputes on their livelihoods and identities; discrimination and human rights violations suffered at the hands of the authorities or companies involved in the disputes; awareness among the communities of Cambodian land law and indigenous land rights; awareness of the process of obtaining CLTs; and the difficulties encountered when land titles have been sought.

Figure 2: Map of Primary Research Sites:



In addition, interviews were conducted in November 2015 with: eight relevant local government officials, two of whom were female, including commune chiefs, commune council members and a representative from the Forestry Administration; and six representatives of CSOs that have worked with the indigenous communities CCHR identified, including the Cambodian Human Rights and

⁷⁴ Please note that Pu Nong and Bunong refer to the same indigenous group, and are referred to by the MRD as “Phnong”. CCHR uses the name identified by the individual communities.

⁷⁵ Also known as “Jong”

Development Association (“ADHOC”), the Cambodian Legal Education Center (“CLEC”), the Wildlife Conservation Society (“WCS”), My Village (“MVi”), and Mother Nature. In January 2016, CCHR met with the MLMUPC regarding information for the Report.

3.3 Scope and Limitations of the Research

Due to time and resource constraints, the Project resolved to focus the research on five indigenous communities that it had already obtained information on from previous research efforts. Not only did this save time and resources, but it also fed into CCHR’s ethos of following up with communities and continuing to monitor their cases. While constraints meant that the Project team was unable to collect data from indigenous communities from all parts of the country, it is hoped that the five communities selected represent a large enough spread to draw insights into countrywide patterns. Furthermore, it is hoped that the results of this research provide the basis for a more comprehensive study in the near future.

4. Obstacles to Collective Land Registration

4.1 The CLT Process

There are a number of issues within the CLT process itself that prevent indigenous communities from obtaining CLTs. The complexity of the process and lack of information has led to a general lack of understanding of the process among indigenous community members, and even among the local authorities and some NGOs. While the communities and those that are meant to assist them remain in the dark about the process, obtaining CLTs remains a challenge. In addition, communities lack the resources to fulfill the numerous steps involved in the CLT process, and to cover the costs associated with obtaining a CLT. These factors necessitate external support for a community to effectively engage in the CLT process. This chapter will elaborate further on the issues with the CLT process and how they present obstacles to land registration for indigenous communities.

4.1.1 Lack of understanding of the process among communities

All of the community members interviewed were familiar with the concept of CLTs - for the most part, they had obtained this knowledge through attending trainings delivered by various CSOs, or dissemination of information from those community representatives who had attended the trainings. In addition, listening to the radio, and to a lesser extent reading the newspaper, were identified as sources of information that had increased the communities' knowledge of CLTs. However, the majority of participants acknowledged a lack of awareness of the process of how to obtain a CLT. As a community representative from Areng Valley stated: *"We do not have legal knowledge, it is complicated, that's why the [CLT] process is still stuck."* In Chork Cha village, during the interviews the community requested that CCHR explain to them the differences between the PLT and CLT, indicating a lack of detailed understanding of what the two different types of land titles entail. Similarly, in Areng Valley the community requested that CCHR provide them with further information on the CLT process.

In addition, it is important to remember that the individuals that were interviewed as part of the research – community representatives and activists – are the community members most likely to have knowledge of the CLT process among their community. Therefore, it is reasonable to assume that the overall level of awareness of the CLT procedure among other community members would be a lot lower. It is evident that without the assistance of CSOs, these communities would be unable to begin the CLT registration process as they lack the knowledge of what it entails. As the representative from WCS surmised: *"[the communities] do not have the ability so they rely on our assistance as well as other partners. It is difficult for them to process the registration on their own."*

4.1.2 Lack of understanding of the process among local authorities

Even among the local authorities there is a marked lack of knowledge of, or confusion over the process to obtain a CLT. For example, in Areng Valley, the community allege, *"Even the commune authorities do not know about the rights of indigenous people and the CLT process,"* citing a need for the RGC to *"strengthen the capacity of local authorities and educate them on the land rights of indigenous people."* CSO representatives confirmed this overall lack of knowledge among the lower-level authorities – as one CSO representative stated: *"the authorities at the sub-national level are less understanding of the CLT process."*

Moreover, the local authorities themselves conceded a lack of knowledge in this area. Within the commune council in Khsem Commune, which has authority over Cheong village, neither the commune chief nor the council members present during the interview had any knowledge of the CLT process. The commune chief stated: *“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.”* In some areas, CSOs are providing trainings to fill the gap where the RGC has failed to provide local authorities with this knowledge – in Bu Sra commune, a commune council member revealed: *“Before I did not know about how to obtain a CLT, until when CLEC came to discuss indigenous peoples’ land rights.”* However, even with CSOs attempting to fill this gap, their capacity to train the local authorities is limited. The same commune council member added, *“even though I have joined trainings, I still don’t know everything.”*

While the commune councils in indigenous areas lack knowledge regarding the CLT process, they are unable to effectively fulfill their mandate of representing the citizens in their communes and serving their general interests, as per the Law on Administrative Management of Communes.⁷⁶ The research findings make it clear that it is vital that local authorities are briefed fully about the CLT process, however, regrettably in some areas it is too late – in Khsem commune, the commune council stated that they would, *“welcome NGOs to provide training on the CLT process for indigenous peoples, but it is too late now as there is no more land here for the indigenous people. Everything is too late, if the authorities want to help the indigenous people, it’s useless, there’s no land for them now.”*

4.1.3 Associated costs

The substantial costs involved in the process to obtain a CLT were revealed as one of the greatest obstacles that need to be overcome by the community to register their land. For example, the first stage of the process – identity recognition with the MRD – is alone estimated to cost between \$10,000 and \$20,000.⁷⁷ This huge cost supposedly covers transportation of the MRD to the community, accommodation, per diem and other costs associated with the process. Without external assistance, it is difficult to imagine how indigenous communities and local CSOs can cover the insurmountable costs involved with the CLT process.

A commune council member in Bu Sra commune, who is herself indigenous and also involved in the CLT process with the community explained: *“The main difficulty is that we don’t have enough money for the registration process - for measuring the land, for submission, for everything we need money, except when organizations support us.”* Yet, the local authorities do not have the financial capacity to assist with this - the commune chief of Khsem Commune described the financial restraints of the local authorities: *“Unless there is financial assistance from organizations involved, the commune council cannot process the registration due to limited budget... the government never provides any budget for this.”* The representative from WCS also emphasized the associated costs coupled with a lack of money: *“The first obstacle is the cost. For everything, even the processing of registration, demarcating, meeting, processing in the relevant ministries, they always need money. So the community does not have money themselves, so they rely on assistance from our projects to support them.”* However, the associated costs can also act as a barrier to external assistance, and there have been instances where organizations have been helping indigenous communities with the CLT process

⁷⁶ CCHR, ‘Law on Administrative Management of Communes/Sangkats’ (CCHR Factsheet) (June 2012) <http://bit.ly/1QvgfiZ>

⁷⁷ Estimates came from CSOs and development partners working on communal land titling, which they received from the MRD

have been forced to cease support due to budgetary constraints, effectively leaving the communities without the means to protect their land. For example, in Areng Valley, the indigenous community began receiving assistance with the first stage of the CLT process in early 2014 from Samreth Law Group (“SLG”) - a Cambodian law firm that offers pro bono assistance – however according to the community: *“now SLG say they do not have enough funds to support the identity recognition process.”*

According to the MLMUPC, the RGC has allocated \$300,000 a year to register the collective land of up to ten communities per year in the final stage of the process; thus the communities are not required to cover any costs during this stage. The MLMUPC was unable to comment on costs during other stages of the process with the MRD and MOI.

4.1.4 Lack of political will to facilitate the process

It is not surprising that a major issue raised during the research was a lack of government will to provide communities with CLTs; while there is a legal framework in place to protect indigenous lands, in practice the laws simply are not implemented. In Bu Sra commune, a commune council member acknowledged that while the RGC has adopted laws and issued sub-decrees to protect the land rights of indigenous peoples, in reality this has no impact, stating, *“They just have the law, but no implementation.”* The majority of local authorities included in the research reiterated this sentiment.

Certainly within the indigenous communities there is a lack of faith in the RGC to protect their lands. For example, in Kbal Romeas village, when asked what the main obstacle to obtaining the CLT was, one community member surmised: *“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.”* Indeed, while the RGC allows beneficiaries of ELCs to encroach upon the land of indigenous communities, and sanctions development projects that will impact on indigenous areas, the lack of concern over protecting indigenous lands seems evident.

A recurring theme that was revealed in the research was the lack of political resolve within varying stages of the CLT process, which ultimately stalls the process. A commune council member in Bu Sra commune noted: *“Each level of government says they don’t have the authority to resolve the situation and then refers it to a higher level. It just goes back and forth.”* This was a sentiment reiterated by the deputy of Sre Chhouk commune, in Chork Cha village, who revealed: *“The problem is that the competent authorities do not pay much attention to accelerate the CLT process.”* The representative from WCS described the situation as follows: *“Sometimes the people in the relevant institutions do not pay attention in their role to accelerate the process, even when we submit the documents those people ignore them and keep quiet so this is very difficult.”*

According to the ILO, of the 166 indigenous communities that have begun the CLT process, 114 have completed the first stage and have been recognized by the MRD.⁷⁸ As indigenous communities must complete each stage of the CLT process before moving on to the next, delays during the early stages before interim protective measures can be granted are crucial – lengthy delays have catastrophic impacts for the communities due to their vulnerability to land grabs. According to information provided by the MLMUPC, as of January 2016 the MLMUPC has received CLT applications from only

⁷⁸ Figure according to the ILO’s ‘Updated List of Collective Land Titling Progress with Support of ILO, GIZ and NGO and Target Affected by Directive 01 from 2003-13/01/2015’

43 communities, of which 11 have already received CLTs, and nine more will receive CLTs by summer 2016. This further suggests that communities attempting to register their collective land are being obstructed at lower stages of the CLT process.

One CSO representative remarked on the lack of political will to facilitate the CLT process: *“Companies immediately receive land concessions from the government when they submit requests, however for the indigenous communities to receive CLTs, it takes them a long time to get it, for example, it took one community almost ten years to get the CLT.”*

4.2 The Local Authorities

4.2.1 Lack of support

In Bu Sra commune, the community revealed that the local authorities had made no attempts to assist them with the CLT process, noting, *“They never support us, but if they were committed to supporting us, we would receive the CLT shortly.”* In Cheong village, where the indigenous community is in dire need of support to protect their remaining plots of land, the community has completely lost confidence in the local authorities to provide them with assistance due to the lack of support. As one community representative stated: *“the authorities never support us, they dismiss our requests to help us register as a legal entity.”* A clear lack of support from the local authorities can be seen in Kbal Romeas village, where one sympathetic commune council member has identified the lack of commitment by the local authorities to support the community as the main obstacle in the CLT process.

Case Study: Lack of support by the local authorities for the indigenous Pu Nong in Kbal Romeas village⁷⁹

CLT Status: Awaiting formal recognition of identity from the MRD.

The land, livelihoods and entire way of life of the indigenous Pu Nong inhabitants of Kbal Romeas village in Stung Treng province’s Sesan district are under threat from the Lower Sesan II dam, which was approved in November 2012 and is currently under construction by the Chinese-Cambodian Hydro Power Lower Sesan 2 Company (“HPLS2”) on the Sesan River.⁸⁰ Residents have lived on the land since the time of their ancestors, and rely on the river and surrounding forests for their livelihoods, where they hunt wild animals and gather forest by-products such as fruit, honey, fungus and resin. The land and forests also carry major spiritual significance as a link to their ancestors and natural spirits, containing important sites where local people pray to these spirits, invoking their help in maintaining the spiritual and physical health of the community.

Construction of the hydropower dam, which will supply electricity to Kampong Cham and Kratie provinces, began in February 2014 and by some estimates is due to be operational by 2017. According to an environmental impact assessment (“EIA”) completed in October 2008, the

⁷⁹ For more information on this case, see: CCHR, ‘Kbal Romeas village, Lower Sesan II Dam Profile’ (Land Activist Profile) <http://bit.ly/21U8oB4>

⁸⁰ Kbal Romeas village lies on a bend of the Srepok River, which joins the Sesan and Sekong rivers before they feed into the Mekong further downstream. This so called 3S river system forms part of the Lower Mekong Dry Forest Eco-Region, an area of rich biodiversity home to a wide range of rare and endangered species.

construction of the dam will destroy 30,000 hectares of forest adjoining the Srepok and Sesan rivers, and 24% of the total agricultural land in Sesan district, greatly reducing the productive capacity of the area. In addition, the project will flood an area of 335km². The dam requires the involuntary resettlement of 1,579 households to six resettlement areas, some of which are in approved forest/land concession areas *“likely be subject to considerable disturbance now and in the future.”* Moreover, local and international CSOs have argued that the impacts of the dam are likely to be even more severe than originally acknowledged, calling for a new EIA to be conducted.



Villagers have graffitied their houses to display their opposition to the Lower Sesan II dam

Photo credit: CCHR

The forest near Kbal Romeas village is already being cleared to make way for the reservoir that will later flood the village, making it increasingly difficult for local residents to sustain their traditional means of income. In 2014, HPLS2 promised to relocate villagers, offering each family a plot of land measuring 80m², five hectares of farmland, \$6,000 in financial compensation and the provision of food for one year, in addition to various infrastructure at the relocation site. Community representatives claim that many of those who have agreed to relocate are those community members that have married non-indigenous peoples and had left the community, only to return when they learned of the company's offer. Yet, the authorities attempt to use their relocation as evidence to portray the remaining community members as being stubborn in refusing to relocate. When villagers have tried to convene meetings in the village to discuss the relocation and compensation issue, they have met with obstruction from the local authorities.

In addition, an 11,257-hectare ELC granted to Chinese-owned Siv Guek Investment Co Ltd. in 2006 is causing further problems for the Pu Nong in Kbal Romeas village. The ELC encroaches upon community land and forest, including spirit forests, and the company has been accused of illegal logging in the area.⁸¹

The provincial governor decided to recognize the community as an indigenous community in October 2012 and submitted the community's request to the MRD; however, the community is still awaiting formal recognition of identity from the MRD. Community representatives want the RGC to grant them a CLT to protect their land, reconsider the dam project, and conduct further EIAs. The

⁸¹ Phak Seangly & Daniel Pye, 'Luxury wood found buried', *The Phnom Penh Post*, (17 February 2014) <http://bit.ly/1QiwecH>

commune council member that continues to support the community in their efforts to obtain the CLT revealed that he believes the process, *“is stuck because of the authorities at the lower levels as they always ignore implementation of the law,”* and refuse to help the community demarcate their land. He added: *“I am very concerned about the future if I cannot protect the people anymore, because the commune council are seeking a strategy to win, and I am alone in supporting them.”*

Commune council members in some areas do continue to support the communities in the CLT process, especially when they themselves are members of the indigenous group. However, they are few and far between, and support the community at great personal risk. The second deputy of Chumnoab commune council explained that while she supports the indigenous community in Areng Valley in the CLT process and has helped with the preparation of the required documents for the first stage, she fears the consequences of her support: *“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.”* This fear is not unfounded – the other commune council member that supports the community, Ven Vorn, was arrested in October 2015 and has since been arbitrarily detained on spurious charges due to his activism in support of the community.

4.2.2 Lack of authority and capacity

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. As revealed previously, many of the commune-level authorities lack knowledge of the CLT process and the necessary steps involved. In addition, the companies involved in land disputes with indigenous communities have obtained their licenses from the RGC, so in order to support the community, ultimately the local authorities would have to challenge decisions that were made at the top levels of the government. 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. As a representative from ADHOC described:

“The problem with the local authorities, especially the commune level, is they do not know about decentralization, they do not know their rights, their power, they rarely can make decisions by themselves, they just wait for orders from the provincial governor. They do not understand their role so how can they implement the law? And they are afraid of their superiors, that if they do not follow orders they will face problems.”

4.2.3 Collusion with the companies

Among all the communities attempting to obtain CLTs, instances whereby the local authorities were acting against the communities in collusion with the companies were revealed. In Areng Valley, the community recounted how previously the commune chief and council completely supported their attempts to register their land under a CLT, however, since, *“the chief has changed his attitude and now supports the company.”* Among the five commune council members, only two continue to support the community’s efforts. *“It was probably bribery, but we have no evidence,”* explained the community representative, regarding the change in attitude of the local authorities. The authorities now routinely pressure the community to accept the hydropower dam project and relocate.

Similarly in Chork Cha village, the local authorities reneged on their initial support for the community’s attempts to obtain the CLT, which the community claims is due to pressure from the

company. In Kbal Romeas village, a commune council member who alleges the company has bribed the rest of the council members, described how the company has approached him on several occasions, which he believes are attempts to buy his support: *"I do not trust the company and never go with them... They never say directly about the money, but when they invite me to go in the car with them somewhere, for drinks, this is a sign."*

4.2.4 Pressure to accept private land titles

As has been noted, it is not uncommon for indigenous communities to face pressure from the local authorities, student volunteers, or private companies involved in the land dispute to accept PLTs through a mixture of threats and incentives. Despite their resoluteness to obtain the CLT, according to the community in Kbal Romeas village they have faced considerable pressure from HPLS2 to accept PLTs, one member describing how, *"almost daily they come to pressure us to accept PLTs at the relocation site."* In Bu Sra commune also, the local authorities routinely attempt to convince the community to accept PLTs. The commune chief has tried to convince the community by telling them that banks will only lend money to those with a PLT - which can be used as collateral for the loan - whereas if they continue to pursue a CLT they will be unable to borrow money, and instead will *"live like in the Pol Pot regime."* Constant references to Pol Pot has long been a tactic utilized by the authorities to keep people in fear, and grateful for the relative peace, stability and basic development that has endured under the current regime.⁸² The commune chief in Bu Sra commune has attempted to urge the community to request a social land concession ("SLC") and accept PLTs, however even in the face of such harassment and intimidation the community representatives remain firm in their commitment to obtaining a CLT. As one community representative explained: *"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."*

The district cadastral officers have also pressured community members in Bu Sra commune to accept PLTs to recognize their land. The officers threaten that without PLTs the community will lose their land and the authorities will accept no responsibility, a sentiment that student volunteers have also reiterated. In addition, the community in Areng Valley has faced pressure from the student volunteers to accept PLTs at the relocation site, who have threatened the community that if they fail to accept, they will be left with nothing.

4.2.5 Judicial harassment

Several members of the communities have faced judicial harassment when trying to protect their land. For example, five community members in Cheong village who attempted to protect their fast-disappearing land were arrested and detained on charges of *"fraud"* (Article 377 of the Criminal Code) in February 2014. This occurred three days after filing a complaint against the deputy police inspector, who has deforested and then sold approximately 40 hectares of the community's forestland. The community members were released on bail four months later, in June 2014. More recently, while the Project team was conducting the research, a family member of a community representative received an anonymous phone call threatening the representative's arrest. This occurred the day after villagers had submitted a petition to district level authorities requesting the dismissal of the village chief due to his lack of support. Such arrests, and threats of arrest are

⁸² Sebastian Strangio, 'Hun Sen's Cambodia' (2014)

undoubtedly a cause for concern among community activists, members, and a stark reminder to others who may have otherwise been motivated to advocate for the protection of their land.

In Chork Cha village, it is widely acknowledged by the local communities and NGOs that the provincial authorities are involved with illegal logging that is rampant throughout the area.⁸³ Yet, while the authorities turn a blind eye to the real perpetrators of the illegal logging, the community members themselves have been accused of this illegal practice, despite the fact that the law permits indigenous communities to continue traditional use of the forest, which includes the use of timber for houses and stables. Accusing indigenous communities of illegal logging, when they are simply using the forest and land in line with tradition and the law, is clearly a tactic utilized by the authorities to harass communities and prevent them from protecting their land. The judicial harassment faced by community activists in Areng Valley is demonstrative of this:

Case Study: Judicial Harassment of the Indigenous Chong in Areng Valley⁸⁴

CLT Status: Still in the process of attempting to gain formal recognition of identity from the MRD



The Areng River, which will flood the Areng Valley if the hydropower dam is constructed
Photo credit: CCHR

The Areng Valley, located in the Thmo Bang District of Koh Kong province, is part of the Central Cardamom Protected Forest, a region of high biodiversity home to a number of endangered species of wildlife and approximately 1,500 people, most of who belong to the Chong indigenous group. The inhabitants and their ancestors have lived on the land since time immemorial; however, a proposed hydroelectric dam project being implemented by Sinohydro (Cambodia) United Ltd. (“Sinohydro”) threatens their land, livelihoods and the natural environment. Two other companies had previously been tasked with implementing the project, but pulled out after conducting feasibility studies.

⁸³ On 21 May 2015, community members from Chork Cha village, with ADHOC and other NGO partners, submitted a petition to the RGC, regarding the provincial military police’s involvement in illegal logging in the area

⁸⁴ For more information on this case, see: CCHR, ‘Areng Valley: Indigenous People’s Land Threatened by Hydroelectric Dam’ (Land Activist Profile) <http://bit.ly/1GvNUBJ>

Sinohydro took over the dam project in January 2014. It is not clear when the dam will be completed, however Prime Minister Hun Sen has announced that construction will not commence before 2018.⁸⁵

The affected indigenous communities have consistently opposed the dam and rejected offers of compensation and resettlement. If built, the dam's reservoir would flood approximately 20,000 hectares of land in the area, submerging their ancestral lands, sacred forests and burial sites. In attempts to defend their land, the community has staged protests against the company and created roadblocks to prevent company staff from reaching the site of the proposed dam. Subsequently, community members have been arbitrarily arrested and detained on a number of occasions.

On 07 October 2015, community leader and activist Ven Vorn was arrested and sent to Koh Kong provincial prison where he has been detained since, charged with *"harvesting timber products and/or non-timber forest products without a permit"* (Article 98 of the Forestry Law) and *"destruction of evidence"* (Article 533 of the Criminal Code). Both charges relate to the construction of a small visitor center and community meeting place for local activists involved in the campaign against the proposed hydropower dam in the Areng Valley, by Ven Vorn and a group of local activists. The Observatory for the Protection of Human Rights Defenders has criticized the arbitrary detention of Ven Vorn as a penalty for *"his legitimate human rights activities"* and has called for his immediate and unconditional release.⁸⁶



The community center built by Ven Vorn and fellow activists, for which they were accused of illegal logging
Photo credit: CCHR

PLUP was conducted in all three communes, evidencing that indigenous land-use exists in the area. In early 2014 SLG began assisting the community with the first stage of the CLT process, however budgetary constraints have paralyzed this process and the community are yet to gain formal recognition of identity by the MRD. More recently the community's prospects at gaining formal identity recognition have increased however, as the Office of the High Commissioner for Human Rights ("OHCHR") has expressed an interest in supporting the communities in this stage of the CLT

⁸⁵ Hul Reaksmeay, 'PM Threatens Use of Rockets in Areng Valley', *The Cambodia Daily*, (25 February 2015)

<http://bit.ly/1IZ1kYm>

⁸⁶ OMCT & FIDH, 'Cambodia: Arbitrary detention and judicial harassment of Mr. Ven Vorn' Urgent Appeal – The Observatory (09 October 2015) <http://bit.ly/1Qe9pjg>

process. The community wants the RGC to accelerate the CLT process, and cancel the dam project, which will not only ruin their livelihoods, but also threatens their existence as an indigenous group. As one community representative surmised: *“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 Chornng.”*

4.2.6 Other forms of harassment

In addition to judicial harassment, in Areng Valley the community has faced extensive verbal and psychological harassment. For example, the local authorities accuse the community of living on the land illegally, and of not being indigenous, due to their ability to speak Khmer, asking them, *“If you are indigenous people, why do you speak the Khmer language?”* The Chornng community has lost their ancestral language (although it was observed that some indigenous words were interspersed throughout their speech) and clearly the authorities use this as a tool for intimidating the community – as the community claim: *“the authorities use this to reject us from being recognized as indigenous people.”* The authorities also use the reputation of prominent environmentalist Alex Gonzalez-Davidson⁸⁷ against the community. According to one community member, *“[the authorities] say this is the area governed by Alex. Even though he’s gone now from the country, they still use his name to prevent us from getting a CLT.”* In addition, following community protests against the dam project, the commune council has threatened to cancel savings groups in the area, which many rely on for financial security.

The indigenous community in Bu Sra commune has also faced harassment by the local authorities, who have accused the community of having double standards – working for the company and earning money, yet protesting against the company. Rather than empathizing with the community’s precarious situation, the community allege the local authorities disrespect their identity and culture as Pu Nong, concluding, *“The discrimination, it affects our community identity.”*

4.3 The Companies

While the RGC alone grants ELCs and CLTs, the actions of the companies can also hinder the CLT process. Companies in Cambodia often collude with the authorities to allow them to operate ELCs whilst circumventing requirements. For instance, in Kbal Romeas village, a commune council member explained to the Project team how Siv Guek Investment Co. Ltd was granted an ELC in 2006 after colluding with the local authorities; the company had the local authorities rubber stamp environmental and social impact assessment maps so they would pass inspection further up within the government. Companies also attempt to remove support for the indigenous communities by the local authorities through bribery. They 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

⁸⁷ An environmental activist and co-founder of Mother Nature, Alex has tirelessly worked to support the local community to protect the Areng Valley from illegal logging and the proposed hydropower dam. He was deported from Cambodia in February 2015 after the RGC refused to renew his visa.

demarcate what was once their traditional lands. The obstruction of demarcation of indigenous land has been evidenced in Chork Cha village:

Case Study: Chork Cha village⁸⁸

CLT Status: Gained formal identity recognition in 2010; registered as a legal entity in November 2013; applied for a CLT in December 2014.



Indigenous Bunong elder in Chork Cha village

Photo credit: CCHR

In the remote and densely forested north eastern province of Mondulakiri, the indigenous Bunong residents of Chork Cha village in Keo Sima District say that their land, livelihoods and culture are under threat from an ELC held by Binh Phouc Kratie Rubber 1 Company Limited⁸⁹ ("Bin Phouc 1"). In October 2011, Bin Phouc 1, a subsidiary of the majority Vietnamese-Government owned Vietnam Rubber Group, was granted an ELC in the area covering 8,890 hectares, 5,100 hectares of which they are permitted to use to cultivate rubber. The ELC encroaches upon community land, and in late 2013, Binh Phouc 1 began clearing community land in Chork Cha village, including sacred burial land, despite attempts by local people to prevent this. A number of villagers have been arrested throughout the dispute for their involvement in protests, and Bin Phouc 1 has filed lawsuits against villagers who have taken part in protests, accusing them of damaging company property. The villagers have lodged numerous complaints with various institutions, yet the case remains unresolved. In March 2015, the company and armed forces destroyed shelters on the community's land, burning down over 130 shelters.

In addition, the villagers allege that Bin Phouc 1 is complicit in illegal logging within its concession, which has led to an inability to demarcate their land. The deputy of the commune council raised the issue of illegal logging as an obstruction to them obtaining the CLT: *"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."* This is a major obstacle for communities and an

⁸⁸ For more information on this case, see: CCHR, 'Mondulakiri – Indigenous Bunong Villagers say that Land Clearance by Rubber Plantation Threatens their Livelihoods and Traditional Way of Life' (Land Activist Profile) <http://bit.ly/1OWBit8>

⁸⁹ Also known as 'Bin Phouc 1', 'Benh Hoeurk Kratie Rubber 1 Company Limited', and simply 'Binh Phouc'

immediate threat to their identity, as a community representative in Chork Cha village lamented: *“Unless we have our lands, we cannot be recognized, then how can we say we are Bunong anymore?”* A representative from the Forestry Administration, a government agency under the Ministry of Agriculture Forestry and Fisheries, tasked with managing forests and forest resources, commented on illegal logging in Chork Cha village and the seeming lack of political will to tackle the issue: *“[In the past] the government for example was vocal about illegal logging and there were crackdowns to try and suppress the illegal loggers. But now the government is quiet. So illegal logging is happening almost everywhere.”*

The community has completed the early stages of the CLT process, gaining formal recognition as an indigenous community in May 2010, and registering as a legal entity in November 2013. In December 2014 the community applied to the MLMUPC for a CLT. Meanwhile, ongoing land clearance by the company and illegal logging throughout the area threatens to destroy much of the remaining land before the community is able to complete the process.

It is clear that Bin Phouc 1 has not only violated the indigenous community’s rights in the above case, but has also decreased the ability of the community to demarcate their land, thus obstructing the CLT process. Such actions indicate a failure to take necessary measures to avoid violations of human rights, contrary to obligations under the UN Guiding Principles on Business and Human Rights.⁹⁰

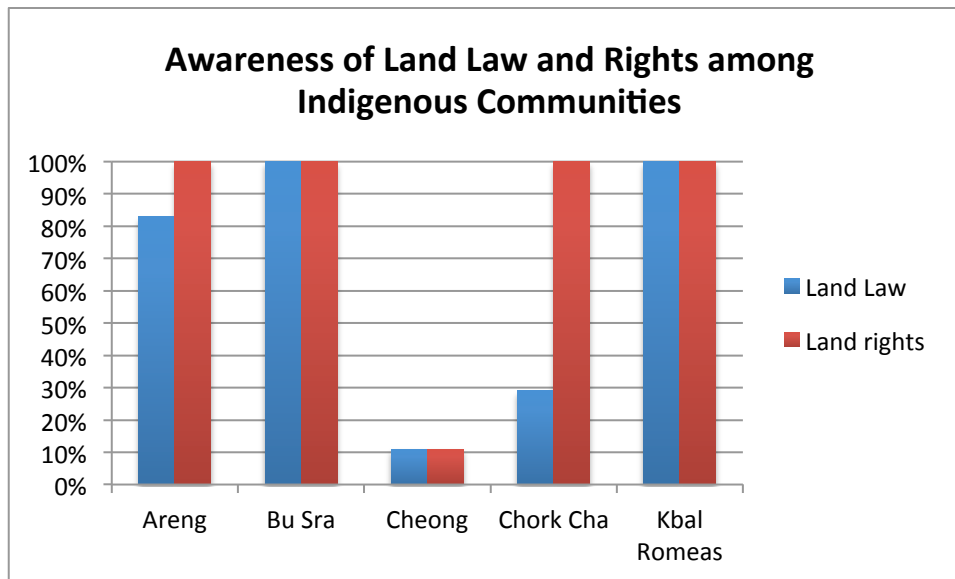
4.4 The Communities

Internal factors within the communities themselves can also act as obstacles to the CLT process. Strong, empowered and united communities are more likely to be able to demand their rights and protect their communal lands. In contrast, a lack of knowledge, confidence, and unity, can all contribute to a loss of land and thus inability to obtain the CLT, as has been demonstrated in Cheong village. This section outlines potential weaknesses within indigenous communities, and provides suggestions, based on the research, as to how these weaknesses can be overcome.

4.4.1 Lack of knowledge of rights

In addition to the community members revealing a lack of knowledge of the complexities of the CLT process, more generally the research made clear that not all of the community members are aware of their legal rights to the land.

⁹⁰ OHCHR, ‘Guiding Principles on Business and Human Rights’ (2011) <http://bit.ly/18WbEUy>



Overall, there was a level of some understanding among the communities of the Land Law (62%) and of land rights (77%). Nonetheless, it must be reiterated that those community members included in the research, the community representatives, are the members of the community most likely to have knowledge in this area. As such, this level of understanding is not representative of the communities as a whole. Moreover, it is also important to highlight that the lowest overall knowledge of the Land Law and land rights among the indigenous communities was in Cheong village, where the community has effectively lost their land and as such, their ability to obtain a CLT:

Case Study: Loss of Indigenous Bunong Community Land in Cheong Village

CLT Status: Ineligible for a CLT as no communal lands left to register



The little remaining land in Cheong village

Photo credit: CCHR

The Bunong indigenous people have enjoyed living on their land, situated in what is now known as Cheong village in Khsem commune, Snoul district, Kratie province, since the time of their ancestors. However a number of land grabs perpetrated in recent years and the inability of the community to

protect its land have left the community with very little land of their own. The community revealed powerful and well-connected individuals, including a deputy police inspector (known to the community as Mao) and a high-ranking officer, HE Leng Orn, have perpetrated such land grabs. The community has filed a number of complaints to the authorities, however they have yet to receive intervention on their case. Further, community members have faced judicial harassment and arrest in response to their efforts.

Several newcomers have also since come to settle on the land, and some indigenous families have sold their individual plots, effectively leaving them landless. Moreover, the land has been subject to extensive illegal logging. As a result of the land grabs, individual sales and illegal logging, the community have lost their spirit land, their burial land and land reserved for rotation agriculture.

The community wants their indigenous identity to be formally recognized, and for the RGC to grant them PLTs, as they have no communal land left for which to register under a CLT. As a community representative observed: *"There is no life anymore for the indigenous people... everything is lost."*

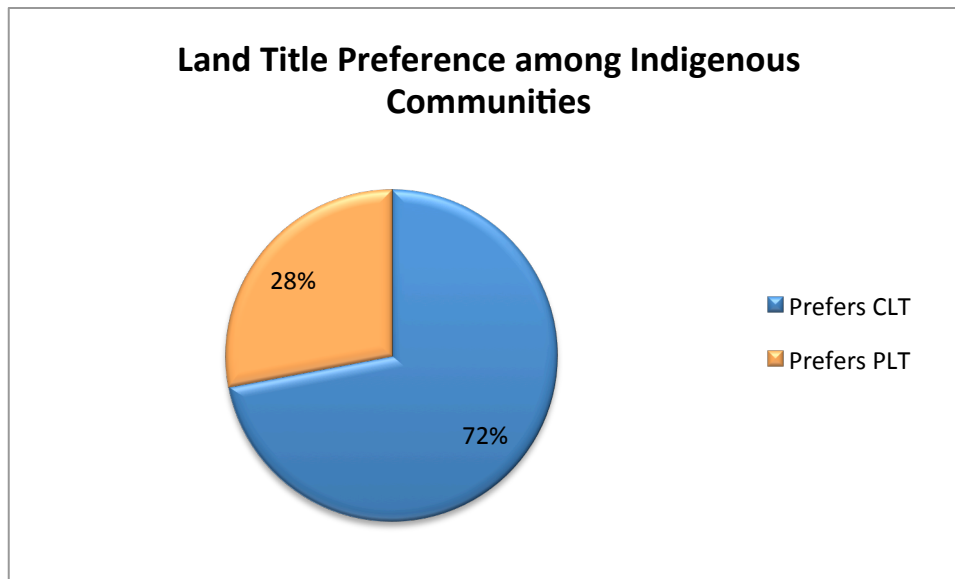
It is notable that Cheong village has faced greater exposure to outsiders seeking land than in the other case studies, due to its proximity to the National Road No. 7 and the main town in Snoul district. However, while it is impossible to say definitively, it is likely that if the community were better informed of their land rights, they would have been better equipped to advocate for those rights and defend their land. This theory is evidenced by community members in Kbal Romeas village, who attributed their ability to defend their land to their knowledge of land rights, which they had obtained through CSO trainings. As such, further trainings and dissemination of information about land rights would ensure that indigenous communities are better equipped to protect their land.

4.4.2 Lack of confidence

A lack of confidence also presents a challenge to communities attempting to obtain CLTs. Confidence is imperative to carry out vigorous advocacy strategies during the registration process, resist ongoing harassment from authorities, and to prevent land grabs and intimidation by companies. Community confidence can be difficult to maintain throughout long periods of struggle. Representatives from WCS and Mother Nature suggested that in order to better assist indigenous communities with the CLT process, CSOs should visit the communities regularly, as not only does this help to increase their knowledge of their land rights and the CLT process, which in itself is empowering, but it also provides communities that have been struggling to protect their land with a much needed boost in confidence. The WCS representative explained, *"we cannot visit often as we work in over 20 villages, so they lose confidence as they feel there is no strong attention to their situation from the NGOs, so they lose their commitment. NGOs should increase cooperation and visit them frequently."*

4.4.3 Lack of unity

While the majority of the indigenous community members expressed their preference for the CLT over the PLT, the research did reveal a lack of unity among some of the communities, which has the potential to hinder the CLT process.



Only in Cheong village did the community representatives all state their desire for PLTs, however they went on to explain that they have no communal lands left to register under a CLT, and thus have no choice but to try to obtain PLTs to prevent the little land they have left from being grabbed. There was unanimous agreement that if there were lands and forest left for them, they would want a CLT to protect their lands and consequently their identity. A lack of cohesion among the community in Cheong village was identified as a major reason for the inability of the community to defend their land from land grabs and newcomers. According to the community representative, some community members went against the advice of their leader, who urged them not to sell their land in order to maintain their identity. Instead, the community members sold their plots to newcomers to ease financial woes, contributing to the overall loss of community land.

Aside from Cheong village, in Chork Cha village one community representative professed his desire for a PLT, explaining that he would be able to use the title to obtain a loan from the bank. Again, it is important to note that the majority of community members who participated in the interviews are representatives committed to protecting their community land, and therefore their commitment to securing CLTs may not necessarily reflect the desires of every individual within their respective communities. For example, In Areng Valley, all community representatives included in the research expressed their desire for a CLT, however they acknowledged that in one of the eight affected villages – Prolay village – there are community members who want PLTs. However, the community representatives confirmed the majority of the community remains committed to obtaining the CLT, stating: *“If we get the CLT everything, our identity and culture, can continue, and no companies or powerful men can steal our land.”*

A lack of unity, or an uncertainty over which type of land registration community members prefer can significantly contribute to delays within the process. According to the MLMUPC, they have observed that during the land registration phase of the process, some community members have decided they no longer wish to be part of the claim for the CLT, and instead would rather a PLT. This delays the process, as the MLMUPC then have to return to the community and re-evaluate the land, which takes time and resources.

In addition, although a family’s decision to accept a PLT does not deprive the remainder of the community of its right to obtain a CLT, it does have the effect of diminishing the community’s population and solidarity. In addition, those with PLTs are permitted to sell what was formerly

indigenous land to outsiders, which has the potential to add further burden to the rest of the community who remain committed to preserving collective land.⁹¹

There are undoubtedly benefits for those indigenous families who legitimately accept PLTs – they offer them immediate protection of their land, and allow the owner to use it as collateral for bank loans (in contrast to the CLT which by law cannot be used for this purpose). However, indigenous families often decide to accept PLTs under pressure from the local authorities or youth volunteers, 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. In the face of this coercion it is notable that PLTs can be incorporated into CLTs; Sub-Decree 83 does allow for indigenous peoples in possession of PLTs to relinquish their privately owned land to be incorporated into community ownership.⁹² However, this is a difficult and complicated process that very much depends on the commitment of the competent authorities. To incorporate a piece of land into indigenous community land, the community representative must request the Cadastral Administration for subsequent registration of all changes.⁹³ Considering that lack of assistance from authorities is often a barrier to initial CLT registration, subsequent reincorporation of PLTs seems optimistic at best.

In addition, a loss of faith in the RGC to ensure protection of their land rights has led to indigenous community members to seek short-term solutions - for example, accepting PLTs so they can sell them to overcome financial difficulties - rather than following indigenous traditions.⁹⁴ Once community members have sold their land, they are unable to re-join their respective indigenous communities. This has become a reality for many indigenous families in Bu Sra commune, who have since attempted to re-join the rest of the community in obtaining a CLT. However, the community states they are unwilling to receive these members back into the community as per their internal rules.

While increased knowledge and increased confidence will certainly bolster the ability of communities to defend their rights, the many pressures on indigenous communities mean that community cohesion is perhaps equally as important. This is true to the extent that in Cheong village a community representative requested that NGOs *“please conduct training on how to improve community solidarity.”*

4.5 NGOs and Development Partners

It is clear that indigenous communities need external assistance to register their communal land given the multiple challenges they face under the existing CLT process. However, while NGOs and other organizations that work to support communal land titling for indigenous communities undoubtedly have good intentions, they have the potential to cause unintended obstacles and even do disservice to those they are meant to be assisting. The CSOs that were interviewed as part of this research were able to shed further light on this. A major issue that was revealed was competition, rather than cooperation among organizations. As a representative from ADHOC candidly acknowledged: *“We always criticize the government’s weakness but we rarely criticize ourselves, the*

⁹¹ *Ibid*

⁹² Sub-Decree 83, Article 13

⁹³ *Ibid*, Article 14

⁹⁴ NGO Forum on Cambodia, ‘Indigenous Peoples in Cambodia’ (April 2006) <http://bit.ly/21tZ1rr>

gap of civil society... One of the main obstacles is the gap in the cooperation between CSOs.” A representative from CLEC corroborated the lack of cooperation as problematic: “I have observed that organizations compete with each other, for example, they say “this is my project,” - they are not in solidarity and do not cooperate well to push for the registration process for the CLT.” This lack of cooperation was particularly highlighted by NGOs working in Bu Sra commune, where the community has yet to receive a CLT although there are several organizations working on the case:

Case Study: Indigenous Pu Nong in Bu Sra commune⁹⁵ and NGO Cooperation

CLT Status: Received formal identity recognition in 2011; registered as a legal entity in May 2012. Submitted application for the CLT in 2012, but have yet to receive a response.

The Pu Nong community in Bu Sra commune commune, Pech Chreada District, say that rubber plantations owned by the Socfin-KCD Company (“Socfin-KCD”) have encroached on land that they depend on for their survival, affecting 788 families. A large majority of the affected population are indigenous Pu Nong people, who have a strong connection to the land, which they have lived on for generations.

Socfin-KCD, along with Varanasi and Sethikula companies, operates two ELCs in Bu Sra commune commune. As of 2012, the ELCs totaled 6,978 hectares, of which rubber had been planted on 4,062 hectares. Socfin-KCD began clearing land for the plantation in April 2008, before comprehensive Environmental and Social Impact Assessments had been completed or compensation packages had been finalized. Despite lodging numerous complaints and staging on-going protests, Socfin-KCD continues to clear the land and has destroyed cultivated farmland, land reserved for rotational agriculture, traditional burial sites and spirit forests, with serious negative impacts on local villagers’ economic and spiritual life. So far, compensation that has been offered to the villagers is considered grossly inadequate.



Rubber plantation in Bu Sra commune owned by Socfin-KCD

Photo credit: CCHR

⁹⁵ For more information on this case, see: CCHR, ‘Bu Sra commune, Mondulkiri’ (Land Activist Profile) (Date?)
<http://bit.ly/1Q5PldR>

In addition to the pressures faced by the community from the Socfin-KCD plantations, a nearby SLC (believed to have been established in 2010 or 2011) on the outskirts of Las Meh village, is also causing considerable tension; the SLC has encroached on burial sites, spirit forests, land for rotational agriculture and residential land, displacing nearly 100 indigenous families, in addition to creating an influx of newcomers into the area.

The indigenous community in Bu Sra commune has been engaged in the CLT process for many years now, and a number of CSOs have been assisting them in this process. In 2011, the local community received formal recognition of their identity by the MRD, and in May 2012, the MOI registered them as a legal entity. In 2012, they submitted their application to register with the MLMUPC. As of yet, they are still waiting for a response. The fact that the SLC encroaches upon land that the community had demarcated for their CLT is, as identified by the community, a major obstacle to the CLT process. However, better cooperation between CSOs working on this case would greatly benefit the community in this process. The community claims that at the beginning of this process the organizations supporting them *“were very active”* but more recently they have become *“not so active.”* The community still needs help with completing their primary map.

ADHOC cited the need for NGOs in Bu Sra commune to *“conduct meetings together and divide responsibilities.”* According to CLEC, such cooperation can be easily achieved: *“Organizations should conduct meetings together to seek resolutions and to divide responsibilities – for example, which organization should assist the ID recognition process etc.? Which organizations have specialists to do the mapping? Which organization can provide legal assistance?”* He added further, *“We should have a joint budget between organizations so we can process the registration together.”* As was identified previously, the high costs involved in the registration process can be burdensome for organizations assisting indigenous communities. By cooperating with each other, organizations can overcome such financial restraints, thereby ensuring that assistance to indigenous communities is not suddenly halted when funds dry up.

The affected community members want the RGC to cancel the SLC and ensure the ELCs do not encroach on their land. In addition, they request that NGOs: *“accelerate the process for the registration of the CLT, otherwise there will be no more land left for us to protect anymore.”*

The lack of cooperation between organizations was also remarked upon by the indigenous communities – in Kbal Romeas village, the community appealed for greater cooperation between organizations assisting them, stating: *“We want organizations to cooperate with each other, come to the village to support us with our advocacy, and the registration process. If organizations come together, maybe they can influence the registration process and move it forward.”* It is important for organizations to remember that even when a case seems well supported by a large number of NGOs and development partners, there is always space for better coordination and support.

5. Regional Lessons

The impact of land grabs on the traditions and cultures of indigenous communities in Cambodia is devastating and often irreversible. When indigenous communities can no longer rely on their land and traditional activities to sustain themselves, they have few options but to engage in wage labor to survive. For example, in Cheong village, where most of the land has disappeared, many community members now have little choice but to work for newcomers and illegal loggers. Similarly in Chork Cha village and Bu Sra commune, due to the loss of land some indigenous community members have had to accept jobs with the companies involved in the land disputes. Not only does wage labor represent a breakdown in indigenous peoples' traditional culture, due to a lack of education indigenous peoples are often confined to jobs in the informal economy. This leaves them particularly vulnerable to a host of further human rights abuses. Moreover, as their identity is so closely tied to the land, loss of land ultimately leads to a loss of identity among indigenous peoples. As one community representative from Kbal Romeas village said: *"If we move to the [relocation site] we will lose our land and they will give us PLTs. This is not our culture. If we lose everything our identity will disappear, we will not be Pu Nong anymore, we will become Khmer people."*

Many countries around the world, including some in the South Asian region, have begun to implement measures to mitigate such impacts and protect indigenous peoples' rights. Cambodia can draw upon experiences of countries in the region that have taken steps to ensure the protection of indigenous peoples. For example, the Philippines is one of the few countries, and the first in Asia, to establish a comprehensive legal system for the protection of indigenous land rights, acknowledging their historical marginalization and providing access to mechanisms for redress:

Case Study: The Philippines and the Indigenous Peoples' Rights Act

It is estimated that between 10% and 20% of the Philippines' population of approximately 102.9 million are indigenous.⁹⁶ Generally inhabiting geographically isolated, but resource rich areas, the Philippines' indigenous communities are continuously vulnerable to land grabbing and development projects that violate their human rights.

Colonized by both the United States and Spain, the passage of various colonial era laws in the Philippines has had deleterious impacts on the indigenous population and their land.⁹⁷ In the post-colonial period, while the Filipino government introduced laws that recognized the rights of indigenous peoples to the land they occupy, it also introduced laws to the contrary. The introduction of Republic Act 8370, also known as the Indigenous Peoples' Rights Act ("IPRA") in 1997, widely considered a landmark law, recognized communal land tenure of indigenous peoples as a legitimate right. The IPRA includes provisions focusing on four core principles: the right to cultural identity; the right to self-governance and empowerment; the right to social justice and human rights; and the right to ancestral domains and lands.

The IPRA has been lauded for the protections it affords to indigenous people,⁹⁸ and includes measures providing for the State's recognition of native titles, as well as a statutory prohibition on

⁹⁶ IWGIA, 'The Indigenous World 2015: Philippines' (2015) <http://bit.ly/1RltbTA>

⁹⁷ ADB, 'Land and Cultural Survival: The Communal Land Rights of Indigenous Peoples in Asia' (2009) <http://bit.ly/1OX5QLg>

⁹⁸ IWGIA, 'The Indigenous World 2015: Philippines' (2015) <http://bit.ly/1RltbTA>

the development of indigenous land by the State or outside entity without the informed consent of the affected community. Furthermore, the IPRA also mandated the creation of the National Commission for the Indigenous Peoples (the “NCIP”), which is tasked with overseeing the implementation of the IPRA, and protecting and promoting the interests and well-being of indigenous peoples with due regard to their culture and belief systems.

In 2007, the World Bank conducted a detailed study⁹⁹ reviewing the successes and failures of the IPRA. The main criticism focused on the poor implementation of the IPRA, which was largely attributed to the IPRA’s lack of compatibility with other laws, and organizational challenges such as the lack of capacity of the NCIP and other statutory bodies to adequately fulfill their role. On the other hand, the World Bank considered the institutional and legal framework of the IPRA to be adequate and in conformity with accepted universal standards. Within the first ten years since its passage, 57 certificates of ancestral domain title covering nearly a fifth of the estimated total of six million hectares of ancestral domain had been issued under the IPRA benefitting 300,000 families, in addition to 172 certificates of ancestral land titles covering 4,838 hectares.¹⁰⁰

In spite of its flaws, one cannot discount the framework the IPRA provides, and the potential it has to protect the rights of indigenous communities. Even if the law’s efficacy is hampered by poor implementation, it does not necessary follow that this would be a problem in other countries if a similar law were passed. Indeed, the sheer number of indigenous people among the Philippines’ population is likely to be a factor for the IPRA’s poor implementation – there are approximately 12 million indigenous peoples from more than 100 ethnic groups residing with the country. Ultimately, the IPRA represents the Filipino governments’ desire to promote diversity within the country, and can be seen as a comprehensive and robust instrument in the protection of indigenous land rights. The IPRA represented a key milestone in Asia in becoming one of the first pieces of legislation to specifically provide for a comprehensive system for the protection of indigenous land rights.

Although the IPRA has encountered challenges due, in part, to the vast indigenous population in the Philippines, in Cambodia the proportion of indigenous people in the overall population is much lower – estimated at one to two percent,¹⁰¹ around a tenth of the figure in the Philippines. Thus, the administrative burden of implementing such a law in Cambodia would be considerably less. Therefore, the example of the IPRA and the bundle of protections it prescribes in the form of land rights for indigenous communities can still be seen as useful blueprint for Cambodia to follow.

Nepal provides a further example from the region where the State has committed to improving indigenous rights, by becoming the first country in South Asia to ratify ILO Convention No. 169 on Indigenous and Tribal Peoples (“ILO 169”):

⁹⁹ World Bank Group, ‘The Indigenous Peoples Rights Act: Legal and Institutional Frameworks, Implementation and Challenges’ (June 2007) <http://bit.ly/1HYJ5r8>

¹⁰⁰ Rorie R. Rajardo, ‘Still strangers in their own land’, Philippine Center for Investigative Journalism, (Report) (July 2007) <http://bit.ly/1GvNUBJ>

¹⁰¹ IWGIA, ‘Indigenous peoples in Cambodia’ (2015) <http://bit.ly/1Qj4FsT>

Case Study: Nepal and ILO Convention No. 169 on Indigenous and Tribal Peoples

According to the latest nationwide census in 2011, indigenous communities comprise around 36% of Nepal's 26.5 million population, and can be separated into 59 legally-recognized distinct groups.¹⁰² In September 2007, Nepal became the first country in South Asia to ratify ILO 169, thus becoming legally bound to enacting policy to ensure the protection of indigenous peoples and their lands.

Nepal's indigenous communities warmly welcomed the ratification of the ILO 169; however, its implementation has been stymied by the lack of understanding by both indigenous and non-indigenous people of some of its key components.¹⁰³ Nevertheless, recent efforts on improving both the understanding and implementation of ILO 169's core tenets have been led by the UN-Indigenous Peoples' Partnership ("UNIPP") – a UN initiative with a core purpose of promoting progress in indigenous peoples' rights and their involvement in decision-making. Taking into consideration views from a range of key stakeholders, including indigenous communities, in collaboration with the Nepalese government, UNIPP and ILO developed a "Frequently asked Questions" booklet on ILO 169, and translated into Nepalese the ILO Handbook on Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169).¹⁰⁴ These tools were widely disseminated throughout 2015, and it is hoped that subsequently there will be an improvement in ILO 169's implementation in Nepal.

Notwithstanding the various issues with implementation, Nepal's ratification of ILO 169 was a landmark event, signalling the country's commitment to the recognition and advancement of indigenous rights. One hopes that in time, implementation of ILO 169 will improve and its core principles become entrenched within Nepalese domestic law. By ratifying ILO 169, an important milestone was achieved and a vital framework laid for the legal protection of indigenous rights.

While Nepal's implementation of ILO 169 is not without its flaws, Nepal has set an important example to fellow Asian countries where indigenous peoples are also experiencing violations of rights and insecurity of land tenure. Although Cambodia voted for UNDRIP, if Cambodia were truly committed to protecting the land of indigenous peoples, it would follow Nepal's lead and ratify ILO 169. If the RGC looks to benefit from the experiences and lessons to be drawn from the Philippines and Nepal, in addition to other countries across the globe where measures have been taken to protect indigenous rights, it may be able to begin more effectively protecting Cambodian indigenous communities and their lands.

¹⁰² IWGIA, 'Indigenous peoples in Nepal' (2015) <http://bit.ly/1McCjZB>

¹⁰³ UNIPP, 'UNIPP Success Stories: Cooperating to promote & protect indigenous peoples' rights' (May 2014) <http://bit.ly/1lHQfpP>

¹⁰⁴ UN Permanent Forum on Indigenous Issues, 'Update on ILO activities concerning indigenous peoples', Fourteenth session, New York, 20 April to 01 May 2015 <http://bit.ly/1NrZHUT>

6. Conclusion and Recommendations

As the research has revealed, there are numerous obstacles facing indigenous communities who wish to register their communal lands under a CLT. Such challenges arise due to the complex and lengthy nature of the CLT process, a lack of political will, and the actions of the various stakeholders involved, including the local authorities and companies, and even among CSOs working to assist the indigenous communities and the communities themselves. Whilst all stakeholders must prioritize the protection of indigenous peoples' rights and support the CLT process, ultimately the onus lies with the RGC to protect indigenous land rights and ensure communities are able to register their land in a timely manner. Yet, the RGC continues to display a marked lack of political will to safeguard indigenous peoples' lands, clearly evidenced by the small number of CLTs that have thus far been awarded. In the absence of formal protection provided by land titles and inadequate interim protective measures, time is of the essence as indigenous land is fast disappearing, threatening the very existence of Cambodia's indigenous population.

Yet, in spite of the seemingly insurmountable obstacles facing them, indigenous communities continue to go to great lengths in order to protect their lands. For example, the community in Kbal Romeas village recounted to the Project team: *"Almost everyday, if we hear about illegal logging or bulldozing in this area, 40-50 of us go immediately to stop it."* With limited resources and support, it is unlikely that indigenous communities will be able to effectively sustain such protests endlessly whilst sustaining their livelihoods. However, the indigenous communities involved in the research were eager to emphasize their commitment to continuing to safeguard their land – as one community resolutely declared: *"We remain strong to protect our land from being grabbed and we will struggle to protect it until we die."*

Moreover, obtaining a CLT does not guarantee an end to land rights violations – there have been reports that indigenous communities that have received CLTs still suffer encroachment of community land from land grabbing and illegal logging due to a lack of law enforcement from the authorities. In addition, concerns have been expressed in relation to the political implications of the legislation surrounding CLTs – as in order to be recognized by the MRD as an indigenous community, the community must prove their 'indigeneity' and traditional way of life, which has the potential to *"box people into certain positions that could actually limit their opportunities to change in ways that might advantage themselves."*¹⁰⁵

Nevertheless, CLTs do offer Cambodia's indigenous communities a level of protection in that they formalize their land rights and serve as a means of defense if land disputes do arise. Greater land tenure security and the preservation of customs, traditions and natural resources are positive impacts felt by indigenous communities who have received CLTs. Thus, the importance of CLTs for indigenous communities in protecting their land rights and their very existence as indigenous peoples cannot be overstated.

¹⁰⁵ Ian Baird, "Indigenous Peoples' and land: Comparing communal land titling and its implications in Cambodia and Laos" *Asia Pacific Viewpoint*, Vol. 54, No. 3 (December 2013)

With this in mind, CCHR wishes to make the following recommendations to stakeholders, based on the research presented in this Report:

6.1 Royal Government of Cambodia

- Ratify the ILO Convention No. 169 on Indigenous and Tribal Peoples as part of its commitment to protecting indigenous peoples' rights;
- Amend the existing policy on the use and registration of indigenous community land by removing any sentence or article whose meaning: determines that indigenous community land is State property; or provides limitations to the size of burial ground and spirit forest that can be registered under the CLT;
- Strengthen the capacity of government at all levels to ensure proper law enforcement;
- Increase awareness of both CLTs and PLTs so indigenous peoples can make independent and informed decisions as to which legal protection they will seek for their lands;
- Disseminate information on the CLT process so communities are clearly aware of how to register for collective land;
- Allocate a national budget for collective land registration at each stage of the CLT process and strengthen the capacity of those institutions involved;
- 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, and do not exclude land agreed for investment prior to the measures coming into effect;
- Prioritize the demarcation of indigenous peoples lands under NGO observation and with the cooperation of the communities;
- Review and revoke the contracts with companies who have broken the law in obtaining land from indigenous communities;
- Take measures to immediately halt illegal logging occurring within indigenous community lands, and the rest of the country;
- Put an end to forcibly pressuring indigenous peoples into accepting PLTs, and bring to justice the perpetrators of such actions; and
- Cease intimidation and harassment of indigenous community activists who advocate for the protection of their land rights.

6.2 Companies

- Adhere to both Cambodian and international legislation in all operations, and ensure compliance with requirements under ILO Convention No. 169 and UNDRIP such as free, prior and informed consent;
- In accordance with Cambodian law, ensure proper environmental and social impact assessments are carried out prior to beginning operations;
- Commit to a human rights policy which protects indigenous rights and is in line with the UN Guiding Principles on Business and Human Rights, as well as ensure all staff are provided with training on such a policy;
- Avoid causing or contributing to adverse human rights impacts throughout operations, by meaningfully involving indigenous communities in every phase of proposed projects,

including design, evaluation of potential impacts, and implementation, and ensuring transparency throughout; and

- Address and remedy such impacts when they occur through the establishment of operational-level grievance mechanisms, which recognize indigenous governance and customary laws.

6.3 CSOs and Development Partners

- Improve cooperation with other organizations working to assist the same indigenous communities, dividing responsibilities and combining financial resources, thus ensuring the communities receive the best possible support;
- Provide technical and practical support to relevant State institutions to strengthen capacity to enable those institutions to better support indigenous communities in the CLT process;
- In particular, assist communities with demarcation and creating primary maps;
- Ensure cooperation in advocacy efforts with an aim to accelerate the CLT process;
- Provide capacity strengthening programs for indigenous communities on the land law, land rights, available land dispute mechanisms, the CLT process, and advocacy techniques, to increase knowledge and confidence;
- Ensure beneficiaries of trainings include community members other than community representatives;
- Visit indigenous communities regularly to maintain community moral and confidence; and
- Facilitate and support networking between indigenous communities to strengthen solidarity.

6.4 Communities

- Strengthen community cohesion by hosting regular meetings between community members, encouraging younger generations to participate in community activities, engaging with village chiefs and the commune council, and networking with other indigenous communities;
- Encourage and support those community members that are facing difficulties or pressure from external sources;
- Ensure community members who wish to accept PLTs are aware of the consequences of leaving the community, but are treated with respect;
- Encourage community members other than community representatives to attend CSO trainings; and
- Ensure community members that attend CSO trainings disseminate knowledge obtained to the rest of the community members to increase overall awareness of rights among the community.

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