

A Decade of Communal Land Titling in Cambodia: Achievements and Ways Forward

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To cite this article: Thol, D. & Oeur, I. (2019) A Decade of Communal Land Titling in Cambodia: Achievements and Ways Forwards. *Cambodia Journal of Basic and Applied Research (CJBAR)*, 1(2), 98–106.

សារគន្លឹះ:

- ✓ គេទទួលស្គាល់ជាទូទៅថា មានក្រុមជនជាតិដើមភាគតិចចំនួន ២៤ ក្រុម នៅកម្ពុជា។ ក្រុមទាំងនេះ ភាគច្រើន មានរស់នៅរាប់ជំនាន់មកហើយ ក្នុងខេត្តភាគឦសាននៃប្រទេសកម្ពុជា ដូចជា ខេត្តរតនគិរី មណ្ឌលគិរី ស្ទឹងត្រែង ក្រចេះ ព្រះវិហារ ហើយក៏មាននៅតំបន់ដទៃទៀតនៃប្រទេសកម្ពុជាដែរ។ សិទ្ធិជនជាតិដើមនៅកម្ពុជា ជាពិសេស សិទ្ធិទទួលបានធនធានដីធ្លី ត្រូវបានទទួលស្គាល់ជាផ្លូវការ នៅក្នុងច្បាប់ភូមិបាល ២០០១ (មាត្រា ២៣ ដល់ ២៨)។ លើសពីនេះទៀត អនុក្រឹត្យលេខ ៨៣ (២០០៩) ស្តីពី “នីតិវិធីនៃការចុះបញ្ជីដីសមូហភាព” ដែលស្របទៅនឹងច្បាប់ព្រៃឈើ (២០០២) និងច្បាប់ស្តីពីតំបន់ការពារធម្មជាតិ (២០០៩) បង្ហាញនូវគោលការណ៍ណែនាំលម្អិតស្តីពីវិធីដែលជនជាតិដើមអាចចុះបញ្ជីដីសមូហភាពបាន។
- ✓ ក្នុងអំឡុងដើមទសវត្សរ៍២០១០ គម្រោងផ្តល់ប័ណ្ណកម្មសិទ្ធិដីសមូហភាព ត្រូវបានធ្វើការសាកល្បងនៅក្នុងសហគមន៍ជនជាតិដើមភាគតិចចំនួនពីរ ក្នុងខេត្តរតនគិរី និងមួយទៀតនៅខេត្តមណ្ឌលគិរី ដោយមានជំនួយពីទីភ្នាក់ងារសហប្រតិបត្តិការបច្ចេកទេសអាស៊ីម៉ង់ (GTZ) និងទីភ្នាក់ងារអភិវឌ្ឍន៍អន្តរជាតិដាណីដា (Danida)។ សហគមន៍ទាំងពីរនោះបានទទួលប័ណ្ណកម្មសិទ្ធិដីសមូហភាព (CLTs) ក្នុងរយៈពេលចន្លោះពីឆ្នាំ២០១១ និង ២០១៣។ ចាប់តាំងពីឆ្នាំ២០១៣ រាជរដ្ឋាភិបាលកម្ពុជាបានគាំទ្រហិរញ្ញវត្ថុ សម្រាប់ចុះបញ្ជីដីកម្មសិទ្ធិសមូហភាពសម្រាប់ជនជាតិដើមភាគតិច តាមរយៈក្រសួងរៀបចំដែនដី នគរូបនីយកម្ម និងសំណង់ (MLMUPC)។ គិតមកត្រឹមខែធ្នូ ឆ្នាំ២០១៩ ក្រសួងរៀបចំដែនដី នគរូបនីយកម្ម និងសំណង់ បានទទួលពាក្យស្នើសុំពីសហគមន៍ជនជាតិដើមភាគតិចចំនួន៦៨ សម្រាប់ចុះបញ្ជីប័ណ្ណកម្មសិទ្ធិដីសមូហភាព។ ក្នុងចំណោមសហគមន៍ជនជាតិដើមភាគតិចដែលបានដាក់ពាក្យស្នើសុំទាំងនេះ មាន៣០សហគមន៍ដែលបានទទួលប័ណ្ណកម្មសិទ្ធិដីសមូហភាពរួចហើយ ។
- ✓ បន្ទាប់ពីអនុវត្តការចុះបញ្ជីដីសមូហភាពជនជាតិដើមភាគតិច ជិតមួយទសវត្សមកនេះ ប្រទេសកម្ពុជាធ្វើបានល្អប្រសើរ បើធៀបជាមួយប្រទេសផ្សេងទៀតនៅតំបន់អាស៊ីអាគ្នេយ៍ ទាក់ទងនឹងការទទួលស្គាល់សិទ្ធិ

របស់ជនជាតិដើមភាគតិចក្នុងការកាន់កាប់និងប្រើប្រាស់ធនធានដីធ្លី។ ប៉ុន្តែទោះយ៉ាងណាក្តី ដំណើរការ ចុះបញ្ជីកម្មសិទ្ធិដីសមូហភាព ចាំបាច់ត្រូវរកសម្រួលឱ្យកាន់តែមានភាពងាយស្រួល ដើម្បីកាត់បន្ថយរយៈ ពេលនៃការចេញប័ណ្ណកម្មសិទ្ធិ។ រីឯការងារបច្ចេកទេសដែលពាក់ព័ន្ធការរៀបចំផែនទីបឋម តែងតែមាន ការយឺតយ៉ាវចំពោះការសម្រេចចិត្តលើការកំណត់បែងចែកដីដែលស្ថិតក្នុងតំបន់ការពារ ទៅឱ្យសហគមន៍ ជនជាតិដើមភាគតិច។

Key Messages

- ✓ It is widely acknowledged that there are 24 indigenous groups (IPs) in Cambodia. These groups are concentrated in north eastern provinces of Ratanakiri, Mondulkiri, Stung Treng, Kratie and Preah Vihear, where they have lived for many generations. They are also present elsewhere in the country. IPs’ rights in Cambodia, particularly rights to land resources have been legally recognized in the Land Law 2001 (Article 23 to 28). Further, Sub-decree No. 83 (2009) on the ‘Procedure of Communal Land Title Registration’, aligned with the Forestry Law (2002), and the Protected Area Law (2009) provides detailed guidelines on how Indigenous Peoples may register communal land.
- ✓ During the early 2010s, a communal land titling project was piloted in two Indigenous communities in Ratanakiri and another in Mondulkiri province, with the assistance of the German Technical Cooperation Agency (GTZ) and Danish International Development Agency (Danida). These communities obtained communal land titles (CLTs) over a period between 2011 and 2013. Since 2013, the Royal Government of Cambodia has financially supported the CLTs through the Ministry of Land Management, Urban Planning, and Construction (MLMUPC). By December 2019, the MLMUPC had received 68 applications for the registration of communal land titles by different Indigenous communities. Of these applicants, 30 had received CLTs.
- ✓ After almost a decade of implementing CLTs registration project, Cambodia has performed relatively well within the Southeast Asian context in terms of recognizing the rights of Indigenous people to land resources. However, the land titling process needs to be simplified, if the time taken to issue CLTs is to be reduced. Technical challenges related to the preliminary mapping process often delay decisions about the allocation of land within protected areas to Indigenous communities.

Keywords: commune land titling, land resources, Indigenous groups, Cambodia

Background

Indigenous Peoples (IPs) have lived in Cambodia for many generations. There are 455 villages comprised primarily of IPs spread across 15 provinces in the northeast and northwest of the country. However, the Indigenous population is concentrated in provinces in the northeast such as Ratanakiri, Mondulkiri, Kratie, Stung Treng, Preah Vihear, and Kampong Thom. For instance, in Ratanakiri, around 50% of the provincial population of 185,000 people is indigenous.

This proportion is even higher in Monduliri, where indigenous communities represent about 80% of the provincial population of 73,000 people. The most populous indigenous groups found in these provinces include the *Pou Nong, Jarai, Tumpoun, Kreung, and Kouy*. International work group for indigenous affairs (2019) suggests IPs represent 2-3% of the population of Cambodia, or around 400,000 individuals (IWGIA, 2019) as of now the Cambodia Census preliminary report in 2019 does not indicate the IPs disaggregated data. In the past, many IPs in the northeast of Cambodia have practiced shifting cultivation and the collection of non-timber forest products as one of the livelihood strategies. However, in the late 2000s, a transition began to sedentary agriculture, focused on crops such as cashew, strategically chosen on the basis of land availability and market demand (Sovathana, 2004). This has been driven by external pressures affecting land tenure, such as the provision of economic land concessions, in-migration from other parts of the country, and illegal land sales. In response, some indigenous communities, such as *La En, La En Kraen, Andong Kraloeng* have applied for communal land title (CLT) registration as part of the pilot.

The Royal Government of Cambodia (RGC) has enabled Indigenous communities to register collective ownership of land resources through CLTs as part of the national strategy to recognize indigenous rights to land. Because of the vulnerability of IPs, the RGC has focused on setting up appropriate regulatory measures to enforce the protection of the rights of IPs to land (Land Law 2001; Cambodia 2018, Cambodia Sub-decree 83, 2009, Cambodia Policy, 2009). This approach is intended to significantly contribute to the sustainability of the CLTs. IPs have registered collective ownership of land in their communities with the intention of securing tenure over the majority of their traditional areas, enabling long-standing communal management practices to continue. By December 2019, 30 indigenous communities had successfully registered CLTs (MLMUPC Annual Report, 2019).

Within Southeast Asia, only the RGC and the Philippines have fully acknowledged indigenous rights to land resources (FAO & MRLG, 2019). In contrast, Thailand, Lao PDR, Vietnam, and Myanmar do not legally recognize CLTs registrations for indigenous communities (Wittayapal & Baird, 2018; FAO & MRLG, 2019). Notwithstanding this, the scope and characteristics of the process available to indigenous communities to register and manage communal land in Cambodia and the Philippines differ (Ling & Scurrah, 2017). For instance, in Cambodia, the

government delegates the right to manage and control land resources to specific indigenous communities; whereas in the Philippines, the government registers land for Indigenous communities in the form of large ancestral lots (Anderson, 2011).

The CLT registration process adopted in Cambodia is enabled through the Land Law (2001). This law officially recognizes the rights of IPs to traditional natural resources through collective ownership. Articles 23 to 28 legally define IPs, communities, and land management practices; outlining the conditions of registering traditional lands with a CLTs. Sub-decree No. 83 on the Procedure of Community Land Title Registration (2009) provides detailed guidelines on IPs may register their communal land. Article 6 of this Sub-decree defines the types of land eligible for CLTs. This includes State private land for residential and agricultural purposes, as well as State public land for spiritual forests, burial grounds, and shifting cultivation. The same Sub-decree also defines the rights of indigenous communities on other State land, such as forests inside the protected area. In this case, Article 7 states that the indigenous communities may still harvest forest products and access to water resources upon entering into a legal contract to follow the rules and regulations of the institution with the mandate over these State resources.

Sub-decree No. 83 outlines three major steps indigenous communities must follow to obtain an official CLT. First, they are required to obtain certification from the Ministry of Rural Development (MoRD) regarding the identity of the members of the community. Following this, the community must take their application to the Ministry of Interior (Mol) to apply to form as a legal entity. Next, the indigenous communities must compile a list of required documents and apply to the Ministry of Land Management, Urban Planning, and Construction (MLMUPC) through the Provincial Department and Cadastre. However, in practice, there is an additional stage between the second to the third step, which has been termed Step 2.5 (UN OHCHR, 2019). This step requires indigenous communities to develop a preliminary map to support the applications. Many Non-governmental Organization (NGOs) working with indigenous communities have described this step as difficult to comply with due to the absence of any mandated government agencies to be responsible for this area.

Besides the Land Law (2001) and Sub-decree No. 83, there are other legal mechanisms that support indigenous communities to access rights to natural resources. For instance, the National Policy on the Development of Indigenous People (2009) outlines a target to strengthen

the land tenure of indigenous communities as a means of livelihood improvement. Furthermore, the Forestry Law (2002) also recognizes the right of indigenous people to forest resource and the practices of shifting cultivation (MRLG, 2019). More recently, the Protected Area Law (2009) recognizes the right of forest-dependent IPs to participate in the preparation and implementation of protected areas (MLRG, 2019).

This policy brief explores what has been achieved, as well as the challenges experienced in implementing the CLTs registration in Cambodia between 2010 and 2019. In summarizing the challenges faced by IPs in registering the communal land, we also offer ways forward by which the CLT registration process may operate more smoothly.

Methodology

This policy brief was informed by two sources of data. The first was the existing literature on CLTs in the region generally, and Cambodia in particular. This included journal articles, conference proceedings, as well as reports from NGOs and government agencies. The second was the results from intensive fieldwork conducted by researchers in Ratanakiri, Mondulakiri, and Stung Treng, where the IPs have registered CLT claims over the past five years. The authors conducted key informant interviews with the Director and Deputy Director of Land Administration Sub-Sector Program (LASSP), the Directors and Deputy Directors of the relevant Provincial Departments of Land Management, Urban Planning, Construction (PDLMUPC) and the Cadastre in each province.

Findings and Results

The achievements of the communal land titling pilot (2010-2019)

One decade of implementing the communal land titling has seen undeniable progress in terms of CLTs being granted to indigenous communities in Cambodia. As of 2019, the MLMUPC had received 68 applications to register CLTs from five different provinces, namely Mondulakiri, Ratanakiri, Kratie, Stung Treng and Kampong Thom. Table 1 outlines the number of indigenous communities who had applied for CLTs in each province over this period. Ratanakiri had the highest number of Indigenous communities apply (35 CLTs), followed by Mondulakiri (20 CLTs), Kratie (6 CLTs), Stung Treng (5 CLTs), and Kampong Thom (2 CLTs).

Table 1. Applications for the registration of CLTs in Cambodia (2010-2019).

Province	Applied	Approved	% of approval
Ratanakiri	35	17	48.6
Mondulkiri	20	7	35.0
Kratie	6	4	66.7
Stung Treng	5	2	40.0
Kampong Thom	2	0	0.0
Total	68	30	44.1

Source: MLMUPC, 2019

Of the 68 indigenous communities that applied to the MLMUPC, 30 have already granted CLTs. In Ratanakiri, a relatively large number of indigenous communities were able to register CLTs as a high proportion in relative to other provinces and the land in question is not located within any protected areas or wildlife sanctuaries. In other provinces, 7, 4, and 2 CLTs were registered in Mondulkiri, Kratie, and Stung Treng, respectively, confirmed by an issuance ceremony in each community, presided over by high ranking officials from the MLMUPC. Based on these results, Cambodia can claim more significant progress in terms of registering CLTs for indigenous communities, compared to neighboring countries, such as Thailand, Lao PDR, and Vietnam, where only a few indigenous communities have realized these outcomes (Chusak & Ian, 2018; FAO & MRLG, 2019).

The challenges of commune land titling process (2010-2019)

Despite these achievements, 25 other applications were deemed unable to proceed (MLMUPC, 2019). In these cases, the process of registering CLTs has been impacted by internal disagreement within indigenous communities, a misunderstanding of the registration process, boundary conflicts with neighboring villages, and claims to land that overlap with protected forests, wildlife sanctuaries, conservation corridors, or mining operations. Of all these challenges, the major factor hindering the process of applications for CLTs registration was found to be internal disagreement among members of each indigenous community. For instance, a minority *Kuoy* community in Anlong Chrey commune, Stung Treng province has not been able to move forward when almost half of the 86 families who applied for the CLT registration later expressed

disagreement upon the PDLMUPC in Stung Treng arrived in the village to measure the land in 2017. They refused to co-operate further with the process citing that they wished to have private, individual ownership, rather than a CLTs. This continues to hinder the process, which will not be finalized, while this disagreement persists.

Recently, there has been an increased tendency amongst indigenous communities wanting to withdraw from the registration process, following the submission of applications for CLTs. The examples of this growing trend are reflected in the experience of *Peak, Tang Kamal*, and *La Ak* communities in Ratanakiri Province, and Bos Thom and Srae Preang communities in Preah Vihear Province, that have withdrawn from the registration process in order to seek access to private land tenures. This situation requires a considered response by the MLMUPC with respect to the approaches they may consider when assisting indigenous communities and various other stakeholders working with IPs to register CLTs.

Policy Implications

There has been undeniable achievement in the land management sector over the past decade on indigenous land tenure. Of the 68 applications for CLTs received by the MLMUPC as of 2019, 30 indigenous communities have successfully received CLTs while some others could not proceed. This was found to be due to internal problems such as low awareness of procedures for registering CLTs, boundary conflicts with neighboring villages, a failure to meet the complex requirements of producing a preliminary map, and an increased tendency for communities to later exclude themselves from CLTs registration after submitting an application. Therefore, it is recommended that:

- The CLTs registration process needs to be simplified, especially with regards to the preliminary mapping requirement. Previously, local NGOs have worked with IPs to lead the development of a preliminary map due to complaints about related technical issues. Many NGOs have used a manual produced with the technical support of the German Technical Cooperation Agency (GIZ) to guide the preliminary mapping process. However, this manual is not well aligned with the requirements of Sub-decree No. 83, especially with respect to the definition of village boundaries. The production of a village map, using manual's definition, often creates significant conflict with neighboring villages due to the concern over losing

access to land. All relevant stakeholders should sit together and develop an appropriate approach for simplifying the preliminary mapping process through formal guidance on the sporadic land title registration process that is used for CLTs.

- There is a need to improve collaboration between responsible state agencies and relevant stakeholders working on CLTs registration. Poor communication could hinder the process and wasted resources.
- Greater infrastructure and livelihood support should be made available for indigenous communities that have been able to register CLTs. This will act as an incentive for IPs to maintain the titles and discourage the potential illegal sales of communal land in the future.
- It is crucial for on-going legal education to be provided to community committees, as the membership of these groups is often subject to change. Members need to be equipped with the knowledge of how to protect CLTs from encroachment, as well as information to about how best to protect communal land resources.

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