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INDIGENOUS PEOPLES AND LAND TITLING IN CAMBODIA: A STUDY OF SIX VILLAGES

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ABSTRACT:
INDIGENOUS PEOPLES AND LAND TITLING IN CAMBODIA: A STUDY OF SIX VILLAGES

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Conflict over land is the leading issue facing Cambodia in the early 21st century. The conflict is especially intense in Cambodia's northwest, a resource-rich region home to most of the country's 455 indigenous communities.

Cambodia recognizes collective land ownership for indigenous peoples (IPs) – a core concept in the cultural identity of Cambodia's IPs – but the distribution of collective titles has been almost non-existent, with only three communities completing the process. Complicating matters, Cambodia instituted a new land titling program in June 2012 to expedite the issuance of titles to rural Cambodians. The program has no provision for issuing collective titles to IPs, but it is operating in indigenous areas nonetheless. This is concerning because under Cambodian law, IPs who accept private titles are no longer entitled to collective title.

This paper examines the ongoing land registration process in six indigenous villages in Cambodia's northeast, with a focus on the new titling program. We conclude that there are key indicators that can predict IPs' success or failure in obtaining a collective title. Those with the right markers are continuing toward their collective titles; those on the wrong side are struggling with external pressures on their land and misconceptions about the law.

KEY WORD LIST:
INDIGENOUS PEOPLES AND LAND TITLING IN CAMBODIA: A STUDY OF SIX VILLAGES

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INTRODUCTION

Conflict over land rights has emerged as the single most important issue facing Cambodia in the early 21st century. At least 2.1 million hectares of the country's land have been transferred to developers for commercial-scale agricultural investment in the form of economic land concessions (ELCs), affecting between 400,000 and 700,000 Cambodians since 2000 (LICADHO, 2012 and Titthara & Worrell, 2013). In recent years, ELCs have been the leading factor in the degradation of resources and in the loss of livelihood for Cambodia's rural communities, according to the United Nations Committee on Economic, Social and Cultural Rights (2009). The Committee also expressed deep concern about the culture of violence and impunity prevalent in the Cambodian government, resulting in the repression of land rights activists. This trend includes the implication of a biased judicial system in legitimizing forced evictions and politically motivated prosecution of human rights defenders.

At the same time, it is extremely doubtful whether ordinary Cambodians have benefited from land concessions. The UN Special Rapporteur on the Situation of Human Rights in Cambodia noted in 2012 that "the overwhelming conclusion drawn from petitions, letters, studies, peaceful protests, violent demonstrations, legal complaints, land-dispute statistics and my own direct observations is that land concessions are only benefiting a minority" (Subedi, 2012). The situation is so bad that the Special Rapporteur even questioned the impact of concessions on Cambodia's long term economic and political stability (Subedi, 2012).

Nowhere is the conflict more intense than in Cambodia's northwestern provinces, a resource-rich region that is also home to most of Cambodia's 455 indigenous communities.¹

Indigenous peoples (IP) in Cambodia face unique obstacles in securing their land rights, primarily because they lack political influence on the national level and adhere to cultural concepts of collective, rather than individual, ownership. Many also have limited ability to speak and read Khmer, the national language. Indeed, most are traditionally oral cultures, with no written language. Even disputes are handled orally, through face-to-face meetings, meaning Cambodia's indigenous peoples have trouble adapting to modern conflict resolution mechanisms (Esther Leemann, personal communication, Feb. 8, 2013).

¹ This is the number of villages, nationwide, which are home to at least some indigenous families. The figure is cited in a 2009 government circular, "Procedures and Methodology for Implementing National Policy on the Development and Identification of Indigenous Communities," but some believe the actual number of villages may be much higher.

Cambodian law has recognized the concept of collective ownership for indigenous peoples since 2001. But the dearth of indigenous political power means that there is a distinct lack of political will by authorities to steward IP through the long and tedious process of securing such ownership. Thus far, only three communities have completed the process and received collective titles (Woods & Naren, 2012b). Meanwhile, between 2002 and 2009 alone, more than 610,000 hectares of Cambodian land was granted to private companies via economic land concessions (ELCs) (LICADHO, 2012).

Complicating matters even further, Prime Minister Hun Sen instituted a new land titling program in June 2012 designed to expedite the process of issuing titles to Cambodians. The program exists outside of normal state institutions – the surveyors are primarily volunteer youths, recruited from the ruling party’s youth movements and dressed in military uniforms – and is funded privately by the Prime Minister and his political party. The scheme has no provision for issuing collective titles to indigenous peoples, but it is operating in indigenous areas nonetheless, issuing individual titles in many communities that are in the process of securing collective ownership rights. This is a major concern because under Cambodian law, indigenous people who accept private titles over their land lose their eligibility to hold a collective title with the rest of their community.

This paper examines the ongoing land registration process in six indigenous villages in Monduliri and Ratanakiri provinces (See Appendix 1 for more detailed information on each village), with a particular focus on the effects of the Prime Minister’s new land titling program.

The paper concludes that there are a handful of key factors that can predict indigenous communities’ success or failure in obtaining a collective title. Those with the right markers are slowly but steadily continuing toward their collective titles. Those on the wrong side of these markers are having a harder time, particularly in dealing with external pressures on their land and misinformation about the law. Many appear to have been tricked into accepting private titles, losing their rights to a collective title.

BACKGROUND

Cambodia’s Khmer Rouge regime abolished the concept of private property in 1975, which left the country’s land titling system a shambles when the government fell in 1979 (Cambodian Supreme National Economic Council, 2007). Records were destroyed, and few land titles exist from before this era. The situation was complicated by the death of an estimated two million people and the massive internal and external displacement of those who did survive. After the fall of the Khmer Rouge, many people simply settled where they could.

The re-establishment of a comprehensive legal framework for the registration of land ownership has been a long and meandering process, with the country operating under three separate legal regimes – one under Vietnamese rule from 1979-89, one under the State of Cambodia from 1989-1992, and one under the 1992 Land Law – before passage of the current Land Law in 2001 (Cambodian Supreme National Economic Council, 2007).

The 2001 Land Law is generally considered a solid legal framework, but systematic implementation has been a dismal failure, dogged by numerous inefficiencies. Although many foreign aid development programs in Cambodia have focused on developing governmental capacity to implement the law, the biggest problem with the law traces back to a lack of political will to ensure land security for ordinary citizens.

This lack of political will is closely linked to the ruling elite’s eagerness to profit financially from the chaotic state of land ownership via land grabbing, often under the cover of the banner of development. In some instances, land may simply be purchased piece by piece from individual owners – sales that are often accompanied by intimidation from local authorities and subterfuge.² In rural areas, however, the most prominent tool for land grabbing since 2001 has been ELCs, a program which allows the government to lease up to 10,000 hectares of state land – for up to 99 years – to private companies for industrial agriculture.

Though the development rationale may seem a compelling argument in favor of ELCs at first glance, it weakens upon closer inspection. Many of the companies receiving concessions have close ties – often family ties – to high-ranking members of the government. Transparency in the granting of ELCs is virtually non-existent, with many concessionaires operating behind a “veil of secrecy” (Subedi, 2012). ELCs-related corruption is rife and well documented: In 2012, Cambodia ranked 157th out of 176 countries in Transparency International’s annual survey of graft, and the UN noted in 2009 that corruption “continues to be widespread, including in the judiciary” (UN Committee on Economic, Social and

² Indeed, the US Agency for International Development noted in 2004 that “Politicians skillful at resisting and diverting the international development community are just as capable of controlling a largely rural population through demagoguery, false promises and intimidation. The raw power of the state, complemented by fear and the distribution of small gifts and favors at critical junctures, will continue to provide a veneer of political legitimacy. Under this cloak of legitimacy ... the rapacious exploitation of Cambodia’s economy will continue with unforeseen consequences for the country’s political and socioeconomic development.”

Cultural Rights, 2009). In addition, some concessions may never even be developed; they are used simply as fronts for logging luxury timber (DiCerto & Sokchea, 2012).³

The development rationale is further undermined when one considers how Cambodian citizens – the supposed beneficiaries of development – are treated when they are displaced by concessions. Legally-required compensation is rarely paid or is woefully inadequate. Armed military and police are often used in evictions. And community leaders who fight to assert their rights are intimidated, imprisoned and even killed (Subedi, Surya 2012).

Cambodia’s Indigenous Communities

Cambodia is home to an estimated 23 different indigenous ethnicities⁴. According to government, they live spread across 455 communities in 13 of Cambodia’s 24 provinces (Instruction 0974/09KA, 2009)⁵. According to the 2008 national census, indigenous peoples are estimated to number approximately 179,000, or about 1.34 per cent of the national population, though the real number may be much larger (Indigenous People NGO Network, 2010). The majority of indigenous communities are located in the rural provinces of Monduliri and Ratanakiri in Cambodia’s northeast, both of which still have majority indigenous populations (Indigenous People NGO Network, 2010).

There are significant cultural differences among the 23 ethnic groups, but they share a number of key traits that have potentially made them prime targets for land grabs.

First, many indigenous communities sit on land rich in natural resources. In the case of Ratanakiri and Monduliri this land has been difficult to access until recently. With the improvement of Cambodia’s infrastructure, the country’s “final frontiers” have been increasingly targeted for development in the last decade. Most indigenous land holds great potential for industrial agriculture, particularly for rubber, which thrives in the highly-prized red volcanic soils of the northeast. Some of the land granted as an ELC to large-scale agricultural projects is home to luxury timber, which can be logged – and sold – after clearance.

³ The government tacitly acknowledged this in 2012 when it threatened to seize land concessions that were not being developed.

⁴ The most populous of these include the Toum Poun, Kreung, Jarai and Bunong (AIPPF report, 2006).

⁵ The government’s reference to 13 provinces, however, is demonstrably wrong. Both the Cambodian Indigenous Youth Association (CIYA) and the Indigenous Rights Active Members (IRAM) have network members operating in 15 out of 24 Cambodian provinces. It is likely that the government’s other official figures underreport the population and distribution of indigenous peoples.

Second, due a number of factors – including a relatively small population, a traditional lack of participation in national politics, cultural differences and the inability of many to speak and read Khmer⁶ – Cambodia’s indigenous communities lack political strength at the national level.

Third, and perhaps most critically, all of Cambodia’s indigenous peoples abide by the concept of collective ownership of property. This includes not only individual dwellings, but also areas of crucial importance for the preservation of the IPs’ ancient belief system and social fabric, such as burial grounds, “spirit forests” where religious ceremonies are practiced, and farmland used for swidden agriculture – large swaths of which are left fallow for years due to social and spiritual taboos. (Daum, 2011 and Leemann & Nikles, 2013).

The concept of collective ownership is central to the identity of all indigenous peoples in Cambodia. Their beliefs, cultural systems, and ways of living are linked to the land. In a very real sense, land *is* culture for Cambodia’s indigenous peoples.

At the same time, this way of life is fundamentally different from – even diametrically opposed to – the mainstream Khmer economic system. There is a prevalent perception among Cambodian authorities and decision-makers in the capital that indigenous peoples “waste” precious land that could be used to further the country’s economic development.

COLLECTIVE OWNERSHIP AND THE LAW IN CAMBODIA

Article 26 of the Land Law explicitly recognizes the concept of collective ownership of land for indigenous communities in the form of communal land titles. Collective ownership covers residential land, agricultural land, land actually cultivated and land reserved for shifting cultivation. A separate provision in the Forestry Law of 2002, meanwhile, grants traditional use rights to local communities – indigenous or not – for collecting and using non-timber forest products and grazing livestock.

Critically, however, the Land Law does not provide a roadmap on exactly how indigenous collective titles are to be issued. The government did not provide further legal guidance on the issuance of such titles until 2009, with the Sub-Decree on Procedures of Registration of Land of Indigenous Communities. This lost time was critical: In the period between the implementation of the Land Law in 2001 and the issuance of

⁶ The adult literacy rates in Mondulkiri and Ratanakiri, Cambodia’s two indigenous-majority provinces, are 33 percent and 23 percent, respectively (AIPPF report, 2006).

the Sub-Decree in June 2009, more than 610,000 hectares of Cambodian land was granted to private companies via ELCs (LICADHO, 2012).

Making matters worse, the Sub-Decree did not allow indigenous communities to immediately establish control or ownership of their land. Rather, it established a lengthy process that involves three government Ministries. It begins with the community's formal identity determination as a "traditional culture" by the Ministry of Rural Development (MRD). After this certification is received, the community needs to apply for recognition as a "legal entity" with the Ministry of Interior. Finally, once registered as a legal entity, the indigenous community may file a request with the Ministry of Land Management, Urban Planning and Construction (MLMUPC) for the issuance of a collective title (Sub-Decree No. 83, 2009).

There are other problems with the Sub-Decree as well. Cemeteries and spirit forests are limited to a maximum size of seven hectares each, a limitation in conflict with the Land Law, which does not allow for arbitrary limitations on such land. The Sub-Decree also fails to provide interim tenure security for indigenous groups in the process of applying for collective titles. Though interim protective measures are mentioned in the Land Law, guidelines were only issued in 2011, in an inter-ministerial circular (Circular 001, 2011). And even then, the protections were lacking: tenure security is only guaranteed at the final stage of the process, when a group has actually applied for a collective title with MLMUPC.

The lack of tenure security is particularly problematic, given how long the process of registration generally takes. A total of 114 indigenous communities began the process of applying for a collective title, some years ago. But as of January 2013, only three of them have completed the process and received land titles (ILO & Danida, 2012)⁷.

Thus while Cambodian law arguably forms an adequate foundation for the right to collective ownership, it has taken far too long to build a framework for implementation. The building of this framework has also been done a piecemeal fashion, leaving gaping holes with each step. Many of these holes have yet to be repaired, and for some indigenous communities, it is starting to be too late.

⁷ The three successful villages were part of a pilot project with Danida (ILO & Danida, 2012). Fifty-seven of the 114 communities report that their land is affected ELCs, mining, illegal land sales and illegal logging.

Directive No. 01: A Competing Land Title Scheme With No Provisions for Collective Ownership

In May 2012, in response to growing criticism and unrest over land issues, Prime Minister Hun Sen issued Directive No. 01, which placed a moratorium on the issuance of all new ELCs⁸. The Directive also stated that communities affected by ELCs would be entitled to get their land back, though it did not state how this would happen.

The framework for distributing land through a nationwide land titling scheme was publicly announced by the Prime Minister on June 14, 2012 (Woods and Naren, 2013). This was followed by the issuance of Instruction 15 on July 4, 2012.⁹ This document raised considerable expectations among indigenous communities, since it contained explicit provisions that aimed to secure indigenous peoples' entitlement to collective title as integral part of the new campaign.

Under the titling campaign, over 2,000 volunteer youth have been trained, outfitted with military uniforms, and sent to the provinces – including those with significant indigenous populations – to measure land and process titles as quickly as possible. In theory, after the youths measure the land, the proposed boundaries are publicly posted, and potential claimants to the land are given 30 days to file an objection. If there are no objections, a title is awarded to the occupant according to the parameters sketched by the student-surveyors. Work began in July 2012 and is continuing as of the date of this paper. Thus far, an estimated 340,000 titles have been issued nationwide (Bopha, 2013 and Leemann, 2013).

As desirable as an expedited land titling process might seem, the legal foundations of Directive No. 01 are far from sound. The program bypasses the state institutions legally tasked with the duty to issue and record land titles – institutions which have been built with the help of millions of dollars in foreign aid. The Prime Minister and other members of his ruling Cambodian People's Party are paying for the program out of their own pockets – to the tune of US\$600,000 – and the Prime Minister's son is personally in charge of it (Bopha, 2013).

The program is also operating under the weight of heavy political pressure: Hun Sen himself publicly stated that the program would help Cambodians involved in land disputes by providing titles, but warned people not to turn to NGOs and political parties for help (Ratha, 2012).

⁸ Though at least 13 ELCs were awarded after the announcement of the moratorium, according to local rights group LICADHO (Thul, 2012).

⁹ Instruction 15 was styled as an instruction to “implement Directive No. 01,” and for the sake of brevity, the authors generally refer to the new land titling program as “Directive No. 1” in this paper.

Most importantly for indigenous peoples, though, it became soon obvious that Directive No. 01 does *not* allow for the issuance of collective land titles. Instruction 15, which allowed for the issuance of collective titles to indigenous peoples, was revised only days after it was issued by a second document, Instruction 20, which revoked the right to collective titling under the auspices of the new campaign. Instruction 20 states that the collective titling program was being suspended due to difficulties in identifying indigenous land, which would require “a protracted period of time and large budgetary expenses.”

Instruction 20 also explicitly added a provision allowing indigenous people to “opt out” of their communities if they wanted a private title. They simply needed to thumbprint a contract.

Directive No. 01: A Legitimate Choice or a Divide and Conquer Strategy?

An indigenous family’s decision to accept a private title for their residence land comes with a price: under Cambodian law, land cannot be simultaneously held under private and collective titles (Land Law, 2001, Woods & Naren, 2013, Sub-Decree No. 83, 2009). Thus, an indigenous family who accepts an individual land title for their property will be excluded from the community’s collective title – as will their land.

While the decision of a few families to take individual titles does not strip the rest of the community of its right to a collective title, it does have the effect of eroding the community’s population and solidarity. It also gives the family the right to sell what was once indigenous land to outsiders, often developers, which can put further pressure on those who remain in the collective arrangement.

While there may be circumstances where an indigenous family legitimately chooses a private title, the current political and legal environment is not conducive to independent, informed decision-making. Many have fought for years against a stubborn bureaucracy to register collective ownership rights – indeed, any ownership rights. Now, youth volunteers with only rudimentary training are arriving and offer a near-instant private title and the promised security that goes with it. The scenario must be tempting, and whether intentional or not, Directive No. 01 has great potential as a tool to further weaken and divide already disenfranchised indigenous communities.

DISCREPANCIES IN PERCEPTIONS OF DEVELOPMENT

Unfortunately, there is mounting evidence that the divide and conquer strategy is intentional. Despite a legal framework that ticks the major boxes of indigenous rights, Cambodian government officials have always been frank in their discomfort with the concept of collective property rights for indigenous peoples.

The signs are initially apparent in the 12 years of foot-dragging that has characterized the implementation of collective property rights. They are also clear in how the government consistently ignores the requirement to comply with the concept of “free, prior and informed consent” before beginning development projects. Environmental and social impact assessments are required by law for any projects, and public consultation is part and parcel of these assessments. But more often than not, indigenous communities first become aware of development projects in their areas when the companies involved start clearing land. Protests to local authorities often go unanswered. As one ethnic Toum Puon villager said, “Commune and district [authorities] do not care, if they give approval to the company, they are on the side of the company. They do not care much about us small people, we just live in the forest” (NGO Forum, 2012).

Conflicting Views of Development

Cambodia’s economic development plan is focused primarily on the growth of tourism, garment production, and industrial agriculture (Cambodian Supreme National Economic Council, 2007). Industrial agriculture, in particular, requires large swathes of fertile land to grow exportable cash crops such as sugar, rubber and cassava. Acquiring land suitable for more intensive land use naturally can maximize profits.

Indigenous peoples sit squarely outside of this paradigm, with traditional lifestyles that favor low-intensity swidden agriculture, crop rotation and the gathering of forest products. Their land has not traditionally been used for the production of cash crops on a major scale, and thus do not contribute to the government’s conventional view of the nation’s “development.”

To the contrary, indigenous peoples have long been acknowledged as the main protectors of the forests and its resources. It is in the culture of indigenous peoples to respect the land and its benefits, and to use land and resources in a sustainable manner. In this sense they are frequently portrayed as an *anti*-development force, as their traditional lifestyles require the conservation of natural resources. Cultural taboos have traditionally required that certain fields sit fallow, and gathering requires undeveloped forests. Still more land is dedicated to spirit forests and burial grounds, therefore also left “unused” in the government’s traditional view of development (Leemann & Nikles, 2013). And all of this is owned collectively, creating obstacles for developers who wish to acquire vast, uninterrupted plots through the purchase of smaller pieces of land.

Despite the low-intensity use of land by modern standards, land is of a “unique importance to [indigenous peoples’] way of life and identity” (ILO 2012). It is not part of indigenous traditional culture to run a shop or work for a company.

Government officials have been very frank about their views that indigenous peoples need to be “modernized,” even while they pay lip service to the concept of preserving indigenous cultures. The contempt goes back to the earliest days of the current government. An anthropologist who has extensively studied indigenous issues in Cambodia described a meeting with government officials in 1994 during which they told him “most of the Khmer Loeu (highlanders) are stupid, because they have no education and do not want to get any ... they are basically retarded and that it will be very difficult to lead them out of their lack of knowledge” (Bourdier, 2006).

In 2008, a deputy governor for Mondulakiri province said during an interview that the only way for local indigenous communities to prosper was for an outside company to enter the province, establish a business, and hire the community members as workers (Heinrich Böll Foundation 2012). He added that they could then earn a regular salary, and could use the money they earn to buy things.

Yet another revealing comment came from a Cambodian ruling party Senator in November 2012, when he criticized an opposition party Senator by calling him a “Bunong” (Mengleng, 2012). Bunong is the name of one Cambodia’s indigenous groups, but it is often used as synonym for “uneducated person” or “savage.” The usage is so engrained that the Senator initially denied that the word had anything to do with indigenous peoples.

The blunt contempt for indigenous peoples – and doubletalk about their rights – is not something limited to rogue officials in distant provinces. It goes straight to the top. During a visit to Ratanakiri province in December 2012, Prime Minister Hun Sen himself mocked a group of Jarai ethnic minority villagers who attempted to petition him about a land dispute in the province (Ratha 2012). The villagers asked that the government halt development in their area in order to preserve their culture.

“I was so angry,” Hun Sen was quoted as saying in response to hearing of the petition. “Do you want to have development or do you want to have the indigenous people collecting stuff in the forest?” (Ratha 2012).

Yet in the same speech, Hun Sen also pledged to protect indigenous land and culture.

Perhaps the clearest expression of the government's attitude toward preserving indigenous cultures – and the inherent conflict with development – was seen in a 2007 speech of Chan Sarun, the Minister of Agriculture, Forestry and Fisheries. He delivered the address at the National Seminar on Land Registration Policy and Land Use Rights of the Indigenous Communities in Phnom Penh.

Although the seminar concerned the rights of indigenous communities in Cambodia, Sarun's speech primarily focused on how to integrate indigenous peoples into the country's development goals. The first step in doing this, he said, was to introduce "agricultural technology" to indigenous communities so that they would "refrain ... from continuing traditional farming practice that ... severely degrade[s] the resources and the food security and nutrition for the indigenous people ..." (Sarun, 2007). In other words, he seemed to say, the only way of saving indigenous peoples' lifestyles is to destroy them.

He dismissed out of hand the idea that eliminating swidden agriculture would result in the loss of indigenous identities, calling such concerns "inappropriate." He asserted that development should "be tailored to technology for increasing ... production," and claimed that leaving indigenous peoples to continue their traditional farming methods would amount to cutting them off from globalization. (Sarun 2007).

The minister also offered his own prediction as to the "tendency" of indigenous peoples who were forced to choose between collective and private ownership, declaring that the choice "to live as private as ordinary Cambodians is more likely to happen." He supported his position by mentioning that Cambodians had already "experienced [a] collective regime," and obliquely compared the lifestyles of indigenous peoples to the "genocidal Pol Pot regime" (Sarun, 2007).

He ended his speech with a nod to the divide and conquer strategy already noted: Just moments after calling for an end to traditional agricultural methods, he noted that if the lifestyle of an indigenous group does not comply with the traditional rules and cultivation, then the group could not qualify as a community entitled to collective ownership.

It is hard to be clearer than that.

The Illusion of Development

The Cambodian government openly operates under the assumption that indigenous concerns are secondary to national development goals. But the rising tide of economic development in indigenous areas has so far not lifted all boats. To the contrary, many concession projects have been marked by deceit, exploitation, and complete disregard for the local population that is ostensibly benefiting from development. The UN Special Rapporteur for Human Rights in Cambodia noted in October 2012 that he “struggled to fully comprehend the benefits of many land concessions” at all (Subedi, 2012).

Initially, the transformation of collective lands into large-scale agricultural plantations does not produce a significant number of jobs or economic growth. Wage labor is not part of indigenous peoples’ traditional culture (ILO, 2012) and new employment and physical investment are often “well below expectations” (Subedi, 2012). “Moreover, there is no available evidence that revenue generated from land concessions has been used by the Government in concession areas for social and economic development” (Subedi, 2012). Meanwhile, the negative impacts of ELCs have been well documented¹⁰.

Second, the process of providing indigenous people with individual land titles does not guarantee that they will be given a fair deal. They are simply not bargaining on a level playing field. Offers of cash payments are not simply “take it or leave it” offers, but rather “take it *or else*,” particularly when developers are well-connected.

As one NGO worker in Ratanakiri noted, if communities feel slighted in a land deal and try to complain to the court, “the court threatens to imprison them” (Ratha, 2012).

CURRENT TRENDS AND DANGERS: SIX VILLAGES IN MONDULKIRI AND RATANAKIRI

The government’s intention to integrate indigenous communities into the mainstream culture and economy of Cambodia is quite clear, but the success of this strategy on the ground has by no means been uniform.

For this paper, the authors examined the current land tenure security situation in six indigenous villages in Ratanakiri and Mondulkiri. Data on the six villages was drawn from a Heinrich Böll Foundation-

¹⁰ According to Subedi (2012), they include: the destruction of the environment; the marginalization of existing communities; the undermining of efforts to preserve the culture, language and traditional agricultural practices of indigenous communities; encroachment on farm land and areas of cultural and spiritual significance; the loss of traditional livelihoods and the perpetuation of a gross income disparity; lack of access to clean water and sanitation; forced evictions; and militarization and violence in affected communities.

sponsored study conducted in 2012 by the NGO The Learning Institute (LI) and the indigenous network organization Cambodian Indigenous Youth Association (CIYA). Information from past studies and media reports was also used.

The Six Village Study

Sre Khtum, Pu Treng, La En, Ka Chak, Tien and Krala are a collection of six indigenous villages spread across a wide geographic range in Mondulkiri and Ratanakiri provinces (See Appendix 1 for more detailed information on each village). The villages are ethnically diverse, and their experience with the collective titling process has been equally diverse. All of these factors make the six villages a useful sample group for determining what has worked – and not worked – in securing land rights for indigenous peoples.

La En, Krala & Sre Khtum: Committed to a Collective Title

The cleanest and perhaps most positive experience has been in **La En**, an ethnic Toum Poun village in Ratanakiri with 101 families. The villagers of La En have worked with the NGO Development and Partnership in Action (DPA) since 2006 in a project focusing on community-based land use planning and sustainable natural resource management¹¹. After working closely with DPA for five years, La En became one of the first three indigenous communities in Cambodia – and still the only three – to receive a collective land title in December 2011, long before the launch of the new land titling campaign. The title covers 1,454 hectares of communal land. There are no infringements on the property, and Directive No. 01 surveyors have not come to the village.

One reason for its ultimate success is quite apparent from looking at the map (See Appendix 2): the village is many kilometers from any known ELCs or protected area. LI/CIYA researchers found that the lack of conflict over the community's boundaries paved the way for a collective land title.

Another key factor was that La En had a long standing and close working relationship with a strong, high-profile national development partner, DPA on best practices in communal land use planning, as well as access to timely, accurate information about the consequences of their decisions. They also had time to absorb and understand this information, without external pressures that come from land conflicts or expedited titling schemes. As will be seen from the experiences in other villages, all of these factors were critical in the success of obtaining a collective title.

¹¹ This project actually began *before* various government circulars in 2009 and 2011 ostensibly designed to facilitate the issuance of collective titles.

Krala, an ethnic Kreung village in Ratanakiri, bears many similarities to La En, though it has not yet received a collective title. The 160 families of Krala completed their IP identity determination with the Ministry of Rural Development in March 2010, but have yet to commence their legal entity registration with the Ministry of Interior to move further in the collective titling process. The village has received assistance from an NGO, a local group called Non Timber Forest Products (NTFP).

Krala villagers told LI/CIYA researchers unequivocally that they currently have “no land issues.” At least one reason for this is again apparent from looking at the map in Appendix 2. The community is located in a remote village some distance from any known concession or protected area. Another likely reason is that they already acquired considerable knowledge about their rights to collective title by having completed the first step of the multi-layered registration process with the assistance of a neutral and independent civil society partner. This, coupled with the absence of pressure from land grabbers, has given them time to understand the issues they face as they pursue a collective title. The LI/CIYA team observed that villagers were confident in expressing their concerns, had a clear identity and vision for their culture, and were in solidarity in pursuing a collective title.

The youth land surveying team has not arrived in Krala, and it is unclear whether they will. There have been land brokers attempting to buy land, but one community member notes that this is not a serious threat to their solidarity in seeking a collective title.

“Our people want to live as we always have,” he said. “There are a land brokers coming and seeking land in our community, but we always tell them that we have no land for sale. If they ask me for my land, I simply invite them jokingly to just take a basket full of soil for free from my fields.”

The previous two villages contrast well with the story of **Sre Khtum**, an ethnic Bunong village in Mondulkiri. The village of 138 families registered as a legal entity in June 2012, shortly before the new land titling campaign entered into full swing, and is now seeking a collective title totaling 2,284.5 hectares. The map in Appendix 3 shows clearly that Sre Khtum sits nearby a host of land concessions and the Snuol Wildlife Sanctuary. Most critically, the community’s land allegedly overlaps with 800 hectares of ELC land operated by the Sovann Reachsey Group.

Sre Khtum has experienced extensive pressure on all fronts, from an influx of land brokers to company intimidation, to finally the arrival of Directive No. 1 surveyors in late 2012. But the community has not

wavered significantly in its desire to pursue a collective title. After the surveyors arrived, only 12 families – most of them ethnic Khmer – accepted private land titles. The remaining families stay on track for a collective title.

The LI/CIYA study found, that the success markers for Sre Khtum village included support from a strong NGO – My Village (MVI), which has worked closely with the community – and a relatively good understanding among residents of the impact of private titles. Researchers also found that Sre Khtum’s relative proximity to the village of Andong Kralleng – a Bunong village that is one of the three communities nationwide that obtained a collective title – has had an extremely positive impact in terms of the community’s education on land issues. Information exchange has been extensive with the help of MVI, and Sre Khtum villagers regularly consult villagers from Andong Kralleng.

For the villagers of Sre Khtum, information has been power.

Pu Treng & Tien: From a Culture of Swidden to a Culture of Fear

Pu Treng is an ethnic Bunong village in Monduliri that remains on track for a collective title, but is also under severe pressure due to a land dispute with an ELC. The 133 families completed IP identity determination in 2012 – relatively late – and the remaining steps in their application for a collective title are being facilitated by DPA. They are not yet registered as a legal entity.

The problem for Pu Treng can once again be seen on the map in Appendix 3. It sits smack in the middle of two major concessions, one ELC and one mining concession. The ELC was granted to Wuzhishan L.S. Goup in 2005, and the mining concession was granted first to BHP Billiton in 2008, and then to Alumina Cambodia-Vietnam Co. Ltd., shortly after. The local partner for the Wuzhishan concession is the Pheapimex Group, a well-connected Cambodian firm with vast concession holdings on the order of hundreds of thousands of hectares nationwide. Pheapimex is owned by Choeng Sopheap, wife of ruling Cambodian People’s Party Senator Lao Meng Khin, which essentially means that the Pu Treng community is fighting a very difficult battle. These factors are markers for a potentially negative outcome in Pu Treng’s pursuit of a collective title.

As of the date of the LI/CIYA research, the volunteer land surveying team has not arrived in this village, but the impacts of the ELC conflict are vividly apparent. Perhaps the most obvious change is the abandonment of traditional swidden agriculture, a practice which requires relatively large swaths of land – some farmed and some left temporarily fallow.

“Swidden agriculture is one of the Bunong’s strongest identity markers” (Leeman & Nikles, 2013), and provides the underpinnings for virtually all aspects of their traditional culture. As a 60-year-old Bunong man explained:

[Our] identity is to do upland rice farming ... and to go everywhere, to have freedom. To go to the forest where we want, to fish and hunt where we want, to collect forest resources and we know the food from the forest and what we can eat and use from the forest. ... We used to be very free to go everywhere in our forest (Leemann & Nikles, 2013).

Bunong communities in Mondulkiri once typically cultivated two to three swidden fields at any given time, with each field used between three to six years. Families also typically had several plots of fallow land, which were temporarily abandoned for social and spiritual reasons. The typical fallow period once lasted about 10 years on average (Leemann & Nikles, 2013).

Now, however, fallow periods have all but disappeared. The reason is simple, as expressed in the words of a 54-year-old Bunong man from Mondulkiri: If a field is left fallow, “somebody else might take and use it” (Leemann & Nikles, 2013). “If we leave this land fallow,” he continued, “we waste that place. Because we already put a lot of energy in this field, to clear it and prepare it and if you abandon it again, you waste this energy.”

But there are significant positive markers for Pu Treng as well. First and foremost, they are being assisted by DPA, a strong NGO partner that has had past success in promoting IP rights and registering collective titles. DPA has facilitated engagement with Alumina, organizing meetings between company leaders and the communities affected by their mining concession. It remains to be seen whether strong NGO support can outweigh massive political clout, but the outcome in Pu Treng could be a harbinger of what is to come in other indigenous areas plagued by land disputes.

Tien is an ethnic Toum Poun village in Ratanakiri with 95 families which received its legal entity registration in 2009. They initially sought a community land title of 940 hectares with the help of the NGO Indigenous Community Support Organization (ICSO). The problem is that Tien sits near a large ELC granted to Veasna Investment Group, and some part of virtually all 95 families’ land overlaps with the ELC (see map, Appendix 2). The conflict has been particularly intense.

When the Directive No. 1 surveying team arrived in September 2012, three families of Khmer descent residing in the village accepted private titles and thumb-printed documents stating that they would leave the community¹². They said they did this because they were simply afraid of losing their land altogether. At the same time, the remaining 92 indigenous families became subject to what appears to be a campaign of misinformation by the surveying team, though it seems that none of them have yet accepted private titles.

LI/CIYA researchers found that many villagers were told by the Directive No. 01 surveyors that they would “lose everything” – including their right to a collective title – if they did not accept private individual titles. The villagers were also told by the surveyors, that if they accepted private titles for their residences, they would later be able to continue to pursue a collective title for the rest of the village land.

This, of course, is not true. Under Article 12 of the Sub-Decree on Procedures of Registration of Land of Indigenous Communities (2009), indigenous peoples must give up all privately owned land to be incorporated in collective ownership of the community land; they may not hold a private title and be part of the community’s collective titles simultaneously. Thus, they would only lose their right to a collective title *if* they accepted private titles.

Villagers also reported other frustrations with the surveying team: “they only measured [land] where there is a conflict with the company. We asked about the rest of land which we are preparing for the collective land title, but they said they ‘do not do that work.’ ”

As one villager told LI/CIYA researchers after the student volunteers arrived: “We are not sure what to do at moment. We are just doing whatever we can do with NGO or local authorities in order to secure our farm land.”

¹² These letters are theoretically required when the community has established itself as a “legal entity” as set forth by the 2009 Sub-Decree on Procedures of Registration of Land of Indigenous Communities (See also Instruction No. 20). The letters confirm that an individual or family intends to leave the entity. The legal effect of accepting a private land title *without* signing such a letter is not entirely clear, and will likely be a central issue in the battle for collective titling in the coming months. Many villagers who accepted private titles believe they are still members of the community, and they are trying to nullify their private titles on this basis. The authorities – and at least one rubber firm – appear to think that if all members of a community accept private titles, the entity is dissolved, regardless of whether the villagers have signed the letters.

The negative markers in Tien's story are thus apparent: community land sits in the middle of a land concession, they were not well informed, and they were worn down by land conflict.

Ka Chak: Private Titles Gain a Foothold

Ka Chak is an ethnic Jarai village in Ratanakiri where Directive No. 01 has made a significant impact, and possibly eliminated the possibility of a collective title for residents.

Village land overlaps with an ELC and a mining concession, operated by Chea Chanrith Development and Hoang Anh Ratanakiri Co., Ltd., respectively (see map, Appendix 2). The community started the first step of the three-layered collective titling process in March 2011. They have yet to receive their IP identity determination by the Ministry of Rural Development. The community is assisted by a local NGO, the Highlander Association.

When the Directive No. 01 surveyors arrived in 2012, at least 47 of the 127 families in the village accepted private titles (10 more are reported to be landless). It is not clear whether they signed letters expressing their intent to leave the community.

The stories from villagers in Ka Chak parallel those in Tien. Villagers were told that accepting a private title would not affect their chances of receiving a collective title, and that *refusing* a title might actually cause problems.

In fact, villagers told LI/CIYA researchers that they were told that the surveying team's job was to "take back disputed land from the ELCs" and put it back in the "community pot" so that it could be part of a larger tract that would be covered by a collective title. This, of course, is untrue. The villagers made decisions about the future of their community on the basis of incorrect information.

The markers for failure in Ka Chak's case are once again apparent: their land was under pressure from an ELC and a mining concession, they came late to the game of community registration, with only very recent assistance by an NGO, and they were forced into bad decisions by the rushed manner of the Directive No. 01 surveying teams. Ka Chak was easy prey.

Not Isolated Incidents: A Pattern Emerges

The deception from Directive No. 01 teams were not an isolated incidents limited to Tien and Ka Chak. Similar complaints have been recorded elsewhere, most notably in Mondulkiri's Busra district, home to seven Bunong villages which overlap with two ELCs.

Directive No. 01 surveyors there also told families that having an individual title would not hurt their chances of receiving a collective title in the future (Woods & Naren, 2012b). As one villager noted, "We were misinformed by the student volunteers who measured our land.... They told us that we should get private titles first, and that the government would issue communal titles [later] for rotation farmland and ancestral land" (Woods & Naren, 2013).

Meanwhile, some community members had their land registered without either the normal public announcement period or the 30-day comment period. In some villages, virtually all community members reported that they refused to sign letters of intent to leave the community; this in itself is an indication of confusion, since the law states that accepting a private title means giving up rights to collective title (Leemann, 2013; Sub-Decree No. 83, 2009; and ILO impact assessment 2012). In other villages, some people thumb-printed letters of intent to leave the community but the letters were in Khmer, and they said they could not read or understand them (Leemann, 2013).

Some were told by the volunteers that the collective land titling program had been halted¹³ or that they could not advance in the process without first holding a private title. They were essentially told they had to take the title, or they would receive nothing. Some community members were also under the impression that a "collective title" meant they would be placed in living arrangements similar to the Khmer Rouge era (Leemann, 2013).

Corruption and other legal irregularities were also documented. Community members claim that land titles were issued to people who did not live in Busra commune, but had bribed the student volunteers. Indeed, most community members admitted that they felt the need to ply the volunteers with gifts, food and cash (approximately US\$50 to each team member) if they were to have any hope of receiving a title (Leemann, 2013).

¹³ In support of this assertion, they reportedly pointed to language in Instruction 20 that stated collective land titling would be implemented "at a later date." (see Woods & Naren, 2013 and Instruction 20).

By November 2012, some 400 ethnic Bunong families in Busra had been awarded individual land titles under Directive No. 01 (Woods & Naren, 2012b). Clearly, most initially believed they were still eligible for collective titles.

Meanwhile, there seemed to be no confusion among the owners of rubber company Dak Lak, a concession that overlaps with some of the villagers' land. After the villagers in one village received their private titles, Dak Lak came to the conclusion that they were no longer a legal entity and the community had been dissolved. They then began bulldozing disputed land (Esther Leemann, personal communication, Feb. 8, 2013).

The residents of some villages in Bu Sra have since banded together and attempted to nullify their private titles, but it is unclear whether they will be successful.

CONCLUSION AND RECOMMENDATIONS

Cambodia's collective titling program for indigenous peoples is clearly in disarray. But this disarray is not entirely unintentional; in some cases is planned, calculated and systematic – preying on less organized and informed communities and exploiting their divisions. The most recent chapter in this sordid history is the abuse of Directive No. 01, which is being used in some communities as a tool to trick indigenous communities out of their rights to collective titles.

But an examination of the six villages in this study offers some hope for correcting the problems, if the requisite political will can be mustered. Although the clock is ticking, it is not too late to correct past mistakes and implement a system that preserves indigenous rights. The key to this is promoting communities' ability to make informed, autonomous decisions about land ownership, and supporting them in their path through the collective titling process.

The experiences in La En, Sre Khtum and perhaps Krala provide some markers for success and failure in the collective titling process. These markers suggest that the involvement of a well-trained and engaged civil society organization is a key component in increasing the capacity of villagers to make informed choices in their own best interests. The experiences elsewhere – particularly those areas where private titling has started under Directive No. 01 – prove the flipside of this point: The lack of competent, independent assistance for villagers leaves them susceptible to being confused and misinformed about the consequences of their choices.

The experiences in all six villages reveal that the lack of external pressure is also critical in fostering informed decision-making among indigenous communities. External pressure includes the existence of land conflicts, harassment from land brokers artificial time constraints imposed to force decisions and misinformation from authorities.

In sum, communities need more time, less pressure and better information in order to make decisions that are ultimately in their best interests. These conclusions guide us in making the following recommendations to the government to improve the collective titling process, which were formulated after consultation with members of Cambodia's indigenous community.

1. **Revise current regime on granting and management of concessions.** In line with the spirit of Directive 01, suspend the granting of ELCs, tourism and mining concessions, including all other large-scale development projects on the land of indigenous communities (regardless of whether they are formally registered) until the collective titling process under the 2001 Land Law has been completed. At the same time, review and, if required, revoke concessions that have been granted illegally or managed in breach of binding contractual obligations.
2. **Correct past mistakes.** Allow indigenous families who received individual private titles via Directive No. 01 to return them if they so desire, and to resume the process of seeking collective titles. It is clear that the process of distributing these titles was badly tainted by misinformation and intimidation.
3. **Guarantee interim tenure security** for indigenous communities immediately after they complete the first step of collective titling process – establishment as a legal entity. In this context, security is directly related to empowerment, i.e., the ability of indigenous communities to make informed, careful decisions about their land in their own best interests. Currently many indigenous communities feel that their land is under siege, and they are pressured to make quick decisions without proper information and reflection. Interim tenure security reduces this pressure and allows communities to make more carefully considered and independent decisions.
4. **Promote education.** As a corollary of Recommendation No. 3, the government should make improved efforts to educate indigenous communities on the actual

consequences of their decisions regarding their land. The government's efforts on this subject have been atrocious, and often, as demonstrated in this paper, amounts to *misinformation*. Civil society organizations should be invited by the authorities to participate in efforts that aim to empower communities to make their own decisions, rather than be excluded through threats and intimidation.

5. **The government must prioritize and scale up the issuance of collective titles**, and provide appropriate funding and staffing for the program. Communal land measurement and the issuance of titles should then happen as soon as possible. The indigenous land registration program has dragged on for long enough.

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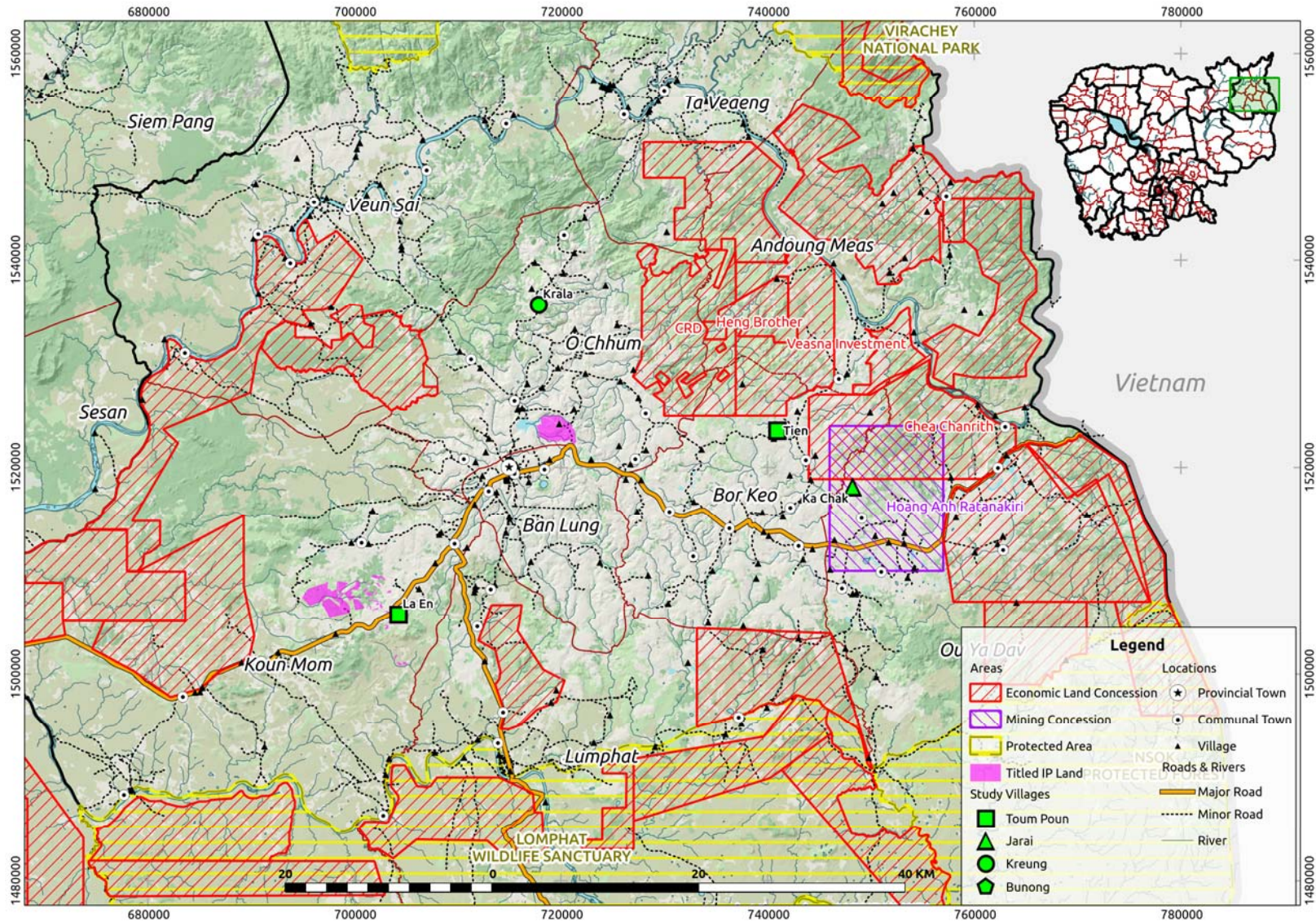
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Appendix 1: Table of Six Villages

<p>Pu Treng Village, Dak Dam Commune, O Raing District, Mondulkiri Province</p>	<p>Sre Khtum Village, Sre Khtum Commune, Keo Seima District, Mondulkiri Province</p>	<p>Tien Village, Ke Chong Commune, Bor Keo District, Ratanakiri Province</p>
<ul style="list-style-type: none"> - Indigenous group: Bunong - Number of families in community: 133 - Size of community land: unknown, land not yet demarcated - IP identity determination completed: 2012 - Communal land titling application facilitated by national NGO <i>Development and Partnership in Action (DPA)</i> - Community at time of reporting not yet affected by activities of land titling volunteers under Directive 01 - Major land issues: <ul style="list-style-type: none"> • Community involved in number of land conflicts with mining concessions and large-scale agricultural concessions/ELCs since 2005 (Wuzhishan L.S. Group, BHP Billiton, Alumina Cambodia-Vietnam Co., Ltd.) 	<ul style="list-style-type: none"> - Indigenous group: Bunong - Number of families in community: 138 - Size of community land: 2,284.5 ha (about 800 ha of community land is reported to overlap with agricultural concession areas) - Registration as legal entity completed: 2012 - Communal land titling application facilitated by national NGO <i>My Village (MVI)</i> - Community affected by activities of “land titling volunteers” under Directive 01 - Major land issues: <ul style="list-style-type: none"> • 12 families (encompassing 183 plots of residential and farmland withdrew from community and collective land titling process. “Volunteers” demarcated their land for individual titling • 102 families want to register for communal land titling • 24 families undecided about communal or individual titling 	<ul style="list-style-type: none"> - Indigenous group: Toum Poun - Number of families in community: 95 - Size of community land: 940 ha - Registration as legal entity completed: 2009 - Communal land titling application facilitated by national NGO <i>Indigenous Community Support Organization (ICSO)</i> - Community affected by “land titling volunteers” activities under Directive 01 - Major land issues: <ul style="list-style-type: none"> • All 95 families in conflict over land with large-scale agricultural concession/ELC (Veasna Investment) • Three families of Khmer descent thumb-printed documents stating that they would “leave the community” and opt for individual titling. They said that they were told that if they did not submit to individual titling “they would lose everything”

Ka Chak Village, Kak Commune, Bor Keo District, Ratanakiri Province	Krala Village, Poy Commune, O Chhum District, Ratanakiri Province	La En Village, Teun Commune, Koun Mom District, Ratanakiri Province
<ul style="list-style-type: none"> - Indigenous group: Jarai - Number of families in community: 127 - Size of community land: unknown, not yet demarcated - IP identity determination started in 2011, not completed yet - Communal land titling process facilitated by national NGO <i>Highlander Association (HA)</i> - Community affected by “titling volunteers” activities under Directive 01 - Major land issues: <ul style="list-style-type: none"> • Families in conflict over land with mining and large-scale agricultural concession/ELC (Hoang Anh Ratanakiri, Co., Ltd. and Chea Chanrith Development) • 47 families registered for individual land titling scheme under Directive 01, encompassing 88 parcels of land • 10 families in the community are landless 	<ul style="list-style-type: none"> - Indigenous group: Kreung - Number of families in community: 160 - Size of community land: unknown, not yet demarcated - IP identity determination completed: 2010 - Communal land titling process facilitated by national NGO <i>Non Timber Forest Products (NTFP)</i> - Community at time of reporting not yet affected by activities of “land titling volunteers” under Directive 01 - Major land issues: <ul style="list-style-type: none"> • None reported 	<ul style="list-style-type: none"> - Indigenous group: Toum Poun - Number of families in community: 101 - Size of community land: 1,454 ha - Communal land-titling process successfully completed, communal land title received in December 2011 - Communal land titling process facilitated by national NGO <i>Development and Partnership in Action (DPA)</i> - Major land issues: <ul style="list-style-type: none"> • None reported

Appendix 2: Ratanakiri Province



Appendix 3: Mondulkiri Province

