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Support to Indigenous People Project in Cambodia

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Development of a Sub-decree on Shifting Cultivation under Article 37 of the Forestry Law (2002), Cambodia

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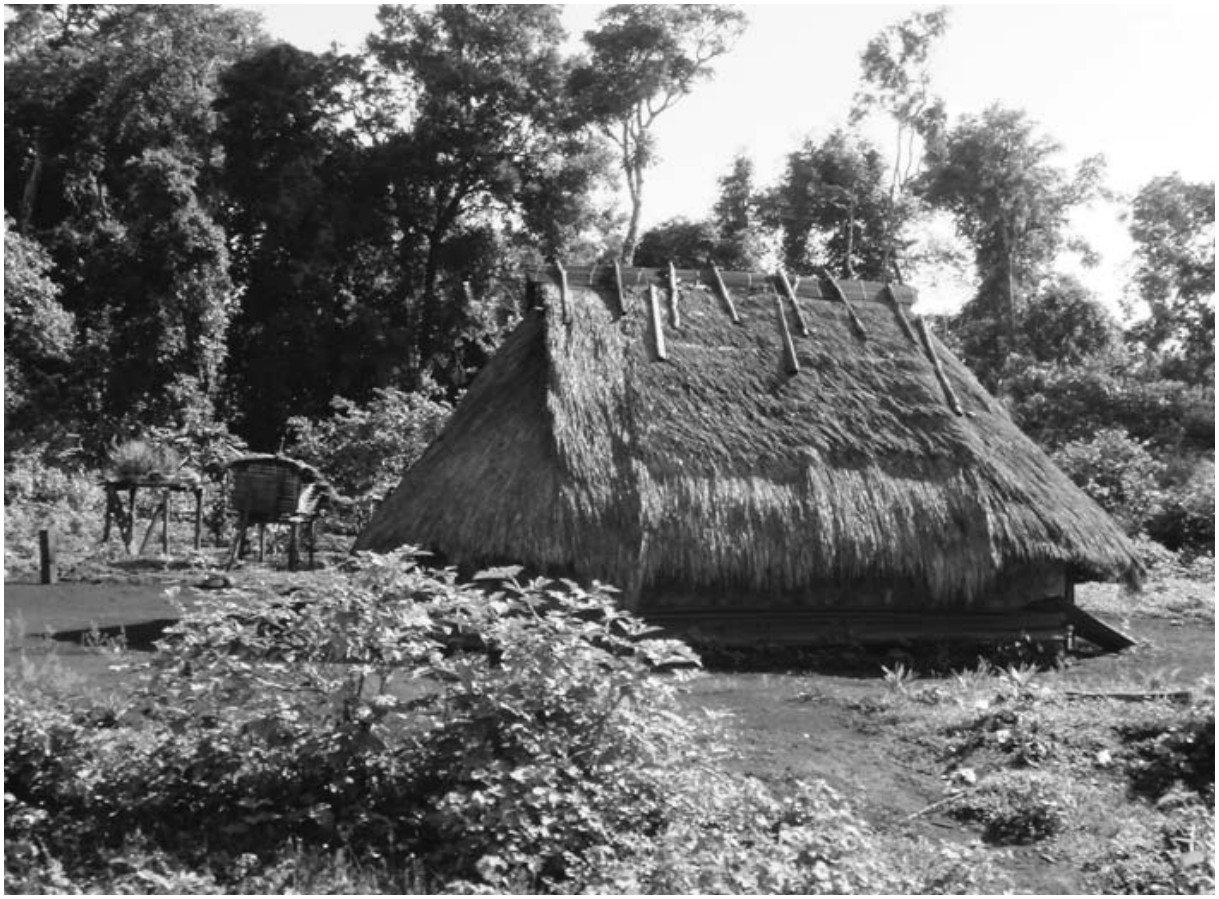

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Content

Abbreviations

CF	Community Forestry
CLP	Council for Land Policy
D&D	Decentralisation & Deconcentration (Framework)
FA	Forest Administration
ELC	Economic Land Concessions
IWGIA	International Work Group on Indigenous Affairs
LMAP	Land Management and Administration Project (WB/GTZ et al)
MAFF	Ministry of Agriculture, Forestry and Fishery
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MOE	Ministry of Environment
MOI	Ministry of Interior
NARLD	National Authority for the Resolution of Land Disputes
NTFP	Non-timber forest products
PFE	Permanent Forest Estate
PLUP	Participatory Land Use Planning
PFR	Permanent Forest Reserve
SLC	Social Land Concessions
SLM	State Land Mapping

1 Summary

The traditional management of immovable property by indigenous peoples is recognized in the 2001 Land Law. This Law represents a significant advance in the Cambodian context, as it recognizes the communal property rights of indigenous communities in Cambodia, laying the foundation for the registration of those rights. However, as a prerequisite for the implementation of these provisions, several legal measures still need to be taken in order to recognize indigenous communities as legal entities.

In addition, the Forestry Law (2002) is relevant to indigenous peoples in terms of user and tenure rights of communities. The Forestry Law stipulates the role of the State in ensuring the customary user rights of forest products and by-products for local communities. It also indicates (in Article 37) rules for shifting cultivation areas, which lie inside the Permanent Forest reserve (PFR) and calls for a special sub-decree to be drafted.

General challenges lie in the general negative perception of indigenous livelihood strategies and methods of land use. Indigenous peoples' own perception of land and property is not widely respected or recognised in practice by the law and policy implementing institutions. This is complicated by a number of direct economic interests in the lands of indigenous peoples, which are often rich in natural and mineral resources.

This paper addresses the legal and political context, as well as the potential contents of a sub decree on shifting cultivation by the Ministry of Agriculture, Forests and Fisheries (MAFF). This is as called for in Article 37 of the Forestry Law, 2002. Its main objective is to identify the methodology and substantial elements for the development of a sub-decree on shifting cultivation under Article 37 of the Forest Law (2002), through :

- A comparison of the legal provisions of direct relevance to indigenous peoples in the Forestry Law, and the Land Law of Cambodia, including reference to lower-level legislation and policies in place for their implementation, including the sub-decree on State land management, and the sub-decree on community forestry and possible contents of a shifting cultivation sub decree
- An assessment of the practical issues surrounding the implementation of the Forestry Law as it pertains to indigenous peoples.
- Recommendations including the proposal of key legal and methodological points for assuring the implementation in practice of Article 37 of the Forestry law.

While such a sub decree would apply universally, the purpose of this study is to examine the possibilities for such a piece of legislation as it might apply specifically to indigenous communities and associated existing legal provisions and processes for collective land titling, based on the provisions of the Land Law, 2001. Whereas for the authors of this study it is clear that such a sub-decree would apply to areas both inside and outside indigenous peoples' collective title covered in the Land Law - i.e., to areas that are specifically within the purview of the Forestry Law - overlaps and ambiguities in the law, as well as differing interpretations of the law, have rendered this uncertain. For example, the status of Permanent Forest Reserve as seen from the perspective of certain interpretations of the Forest Law, as opposed to the Land Law, is uncertain. In addition, there is a lack of clarity on the real

meaning of Article 37 of the Forestry Law. Furthermore, this law makes an implicit assumption at the time areas of Permanent Forest Reserve within the purview of the Forestry Law are demarcated, that indigenous peoples' collective titles will have already been demarcated. This is not the case, and thus there is also a risk if PFR is demarcated prior to indigenous lands, then those lands will loose out, although there is a possibility to relieve these lands of PRF status to allow for them to become part of the collective title.

This study intends to address some of these ambiguities, and uncertainties, attempting to see how such a sub-decree would apply in the case of indigenous communities in Cambodia.

The legal context of a future sub decree comprises the Forestry Law and its associated sub decrees on Forest Demarcation and Community Forest respectively. It also comprises the Land Law, the sub decree on State Land Management and the Prakas on State Land Mapping (SLM). A sub Decree on shifting cultivation issued by MAFF would - to be applicable - pertain to lands in which the FA has jurisdiction or an interest: For example, lands that are already gazetted as forest or lands that are yet to be demarcated as part of the Permanent Forest Estate.

This report addresses the call for sub decree on shifting cultivation in Article 37 of the Forestry Law, because of the urgency of its formulation as a precondition for registration of indigenous peoples' communal property that would include shifting cultivation areas. A sub decree on shifting cultivation mandated by the Forestry Law can address only the particular shifting cultivation that takes place on land that is classified as Permanent Forest Estate, i.e. State Public Land. Shifting cultivation areas that are not classified as State Public Land with the Forest Administration (FA) are of no concern to the sub decree.

Thus, this paper runs through different scenarios or situations where such a Sub Decree may be applicable. The scenarios are influenced by existing vegetation types (including crops), as the type of legal land classification largely depends on these factors, among others. This has a direct bearing on the applicability or non-applicability of various pieces of legislation concerning land and forests. The scenarios covered in this study also take into account possible political decisions by government that may serve to limit the number of acres (hectares) legally allowed for the practice of shifting cultivation land by number of households in a community.

As a sub decree in the Cambodian context does not contain detail operational procedures, it is finally recommended that this sub decree sets standard to ensure the modalities for the implementation of the collective land rights of indigenous communities. The consultative procedures to address this situation would be found in the process to register the land of indigenous communities in Cambodia, to be implemented by the Ministry of Land Management, Urban Planning and Construction (MLMUPC).

By mid 2007, the Forest Administration (FA) had established a Working Group to draft the sub-decree on shifting cultivation. The Terms of Reference for the Group read as if the sub-decree would primarily targets indigenous communities. Thus the timing of this study is key, as it will provide an essential reflection that can serve as an input to the deliberations of this Group.

2. What is shifting cultivation?

Shifting cultivation systems encompass a remarkably diverse range of land use practices developed and changed over time by farmers in various social, ecological, economic, and political settings. Shifting cultivation systems are generally productive, make efficient use of resources, and have supported large populations. It is recognized that shifting cultivation is key to the livelihoods of many ethnic, indigenous and tribal groups in the tropical and sub-tropical highlands of Asia and Africa as well as Latin America. It is also one of the most complex and multifaceted forms of traditional agroforestry practice in the world reflecting a robust traditional ecological knowledge. It has evolved as a traditional practice and is an institutionalized resource management mechanism ensuring ecological security and food security thus providing a social safety net for local communities.

The term shifting cultivation indicates a farming system that rotates its fields, letting most of the areas that form part of the system lie idle for regeneration of nutrients. Sustainability is ensured by co-opting natural processes and by letting the soil rest and regenerate. Shifting cultivation is also called swidden cultivation, or slash and burn cultivation referring to the techniques of clearing the land, cutting bush and trees, letting the debris dry for a couple of months and then burn so that the land is clear for sowing. Shifting cultivators do not cut all trees and bushes but leave numerous wild plants, which are known to provide sustenance. The ashes from the burning provide important nutrients to the soil.

Shifting cultivation is practiced all over the world by upland and forest peoples, who are often indigenous peoples. But often the valley population scorns the practice considering it "backwards". In Cambodia, the officers of the central government consider it a backwards mode of agriculture and are eager to modernize the indigenous peoples' way of agriculture. However, research has shown that a shifting cultivation system is based on deep ecological knowledge and attachment to the lands and that it is sustainable given a sufficiently large area. Shifting cultivation fallows with re-growth are often very important habitats for wildlife that like the semi-open spaces for grazing and studies in Thailand have proven the symbiosis between shifting cultivation and high biodiversity. Farmers in the forest have been battling the misconception of a nomadic slash and burn system that destroys the forest. Where forests are destroyed, the destruction is most often caused by outsiders, who enter the areas to log the forest, thus diminishing the area available for the rotational farming system of indigenous peoples.

In 2004 shifting cultivators of the Eastern Himalaya formulated the The Shillong *Declaration for Shifting Cultivation in the Eastern Himalayas*, Meghalaya, India, October 2004. It stated:

(a) That shifting cultivation must be recognized as an agricultural and an adaptive forest management practice which is based on scientific and sound ecological principles.

(b) That it is imperative to provide an enabling environment in order to address the urgent livelihood and ecological concerns arising out of rapid transformations driven by development and other externalities including market forces.

(c) That it is imperative to empower shifting cultivators as practitioners of rotational agro-forestry to become active participants in decision making and policy processes that impact them most.

(d) That it is essential to make existing research and extension services sensitive and relevant to the needs and challenges of Shifting Cultivation and Shifting Cultivators and simultaneously assimilate the traditional ecological knowledge of shifting cultivation into future research, development and extension processes.

(e) That it is necessary to recognize the traditional institutions and intellectual capital generated from traditional practices relating to shifting cultivation and ensure its protection in the legal and policy regime.

(f) That it is essential to provide interactive forums and environment for information access and sharing between multiple stakeholders at local, national, regional and global level.

(g) That it is imperative to acknowledge that women usually play the most critical role in shifting cultivation both at the activity and impact level and therefore any development intervention must be sensitive to this fact.

It calls for all policies to support decentralized, participatory, multi-stakeholder, interdisciplinary, eco-regional and adaptive management approaches that respect human and cultural diversity, gender equity, livelihood security and enhancement as well as environmental sustainability where both traditional and scientific information and knowledge are valued and built upon.

In Cambodia, shifting cultivation is practiced by a number of indigenous peoples. Currently, a legislative process is foreseen to address shifting cultivation in a general manner, in line with the provisions of the Land Law and Forestry Law of 2001 and 2002, respectively. Within this framework, however, it is also proposed that shifting cultivation, as practiced by indigenous peoples, is addressed. At a seminar[1] in February 2007 on Indigenous Peoples and Access to Land in Cambodia the UN Special Rapporteur highlighted that the loss of lands affected indigenous communities many-fold because land not only supports economic activities, but also represents their identity, culture and livelihoods. Furthermore the Special Rapporteur highlighted that the concept of development held by policy makers in Cambodia may actually be detrimental to the ways of life and wellbeing of indigenous peoples. Cambodia has ratified a number of international conventions that directly and indirectly the rights of indigenous peoples to their lands and landed occupation. These include the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111)and the International

[1] Co-hosted by the OHCHR, the ILO and the NGO Forum

Convention on the Elimination of Racial Discrimination (CERD).[2] The CERD in its General Recommendation XXIII on Indigenous Peoples calls on states parties to, among others, provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics.

[2] Cambodia is a signatory to a number of international conventions such as the International Convention on Economic, Social and Cultural Rights (ICESCR), International Convention on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on Biological Diversity. Cambodia, though, has not signed the ILO Convention 169.

3 Forests and Indigenous Peoples in Cambodia

Several procedural and legal matters need to be taken into account in looking at the question of indigenous peoples and forests in Cambodia. Furthermore, a number of distinct challenges remain for the securing of forest rights for indigenous communities. The following are some of these challenges.

3.1 Economic Land Concessions and the associated risks posed to indigenous communities

A great risk to indigenous communities' land rights has been the tendency to provide Economic Land Concessions (ELC) without any ground truthing as to whether they include and overlay indigenous communities' lands. ELC are mechanisms to grant private state land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation. These have had detrimental impact both on access to traditional lands for cultivation as well as access to NTFP. The land eligible for ELC must be registered and classified as state private land in accordance with the Sub decree on State Land Management and the Sub decree on Procedures for Establishing Cadastral Maps and Land Register or the Sub decree on Sporadic Registration. An environmental and social impact assessment must be completed with respect to the land use and a

[3] In 2005, a UN Special Representative for Human Rights in Cambodia, Peter Leuprecht called on Cambodia to cancel concessions on indigenous land saying it disregards the interests of indigenous people living there and violates both the law and human rights. He said that the Government and the company have disregarded the well-being, culture and livelihoods of the Phnong indigenous people who make up more than half the population of Mondulkiri province, and many breaches of the law and of human rights have been committed. He asked Government to cancel the agreement of August 2004 to provide an initial 10,000 hectares of state land to Wuzhishan L.S. Group for a pine tree plantation in Mondulkiri province, with a promise of a further 189,999 hectares. "As with other economic land concessions, no environmental or social impact assessments were carried out, and local populations and authorities were neither informed nor consulted," he said

development plan for economic land concession projects must be prepared. These safeguards are seldom carried out and basically concessions are given without consultation or information[3] . Provinces now have rights on their own to issue ELC below 1,000 ha.

Concessions have a major detrimental influence on indigenous communities' land holding. Under the Forestry Law (Article 15) concessionaires have to ensure that their operations do not interfere with customary user rights taking place on indigenous community land eligible to be registered with the State under the Land Law. This together with Article 2 of the Sub-Decree on Forest Concession Management is meant to protect and maintain the rights of access to those forest resources occurring in concession areas that are of economic, subsistence and spiritual values to local communities. These two articles are important and demonstrate the importance of the land use identification process that commune councils should undertake as part of their land use, natural resource management planning process prior to any allocation of concessions. The sub decree requires a permanent consultative communal committee to facilitate discussions on all issues involving concessions and local communities living in or near concession areas. This measure is thought necessary to protect the subsistence and religious rights of local communities. The sub-decree also lays the foundations for improved industry performance by establishing a competitive bidding process for future concession management and planning. These prescriptions are -as a rule - not carried out. Under present legal norms the provinces can independently issue economic concessions in their provinces below 1,000 ha. The German ambassador issued at the 9th Government-Donor Coordination Committee Meeting on 12th Feb. 2007 a joint donor statement on the Economic and Social Land Concessions (ELC and SLC) saying that it appears that public consultations, competitive bidding, environmental and social impact assessments and the registration of the land have not been done prior to concessions being granted[4].

3.2 Land Grabbing

Land grabbing is a separate chapter causing major land alienation for indigenous communities. It is illegal and therefore not dealt with here. Suffice to state that by March 2007, the Prime Minister set out to wage war against land grabbers, whom he identified as people in power[5]. This is a repeat of earlier warnings. In April 2002 Hun Sen warned that land grabbing could spark off a "peasant revolution", a warning he repeated in September 2005. In February 2006 Hun Sen created by decree a National Authority for the Resolution of Land Disputes (NARLD) and appointed a deputy prime minister and the second most powerful leader, Sok An, to head it. NARLD has not met with any success and now

[4] 9th Meeting of the Government-Donor Coordination Committee (GDCC) on 12 Feb. 2007. Joint donor statement on "Economic and Social Land Concessions" by H.E.Pius Fischer, Ambassador of Germany, Draft 26.01.07

[5] Since gaining his party's support in March 2007, Hun Sen's war on land grabbers has only subdued three persons. The first one is an army major colonel named Te Haing who has been arrested for encroaching on state land and cutting into forestry land to take about 1,567 hectares in Banteay Meanchey province. The second one is an army general named Chao Phirun who has been forced to hand over 200 hectares of land back to the government. However, no action has been taken against him. The third one is a tycoon named Tan Seng Hak who is a former advisor to CPP Chairman Chea Sim. Tan Seng Hak together with two members of his group have been arrested for falsifying documents regarding the 300-hectare of lands located on the outskirt of Phnom Penh. An NGO has listed 1,551 cases between 1991 and 2004, affecting nearly 160,300 families or almost seven per cent of the population. Another NGO recorded 335 cases in 2005 and 450 in 2006 in which victims had to seek assistance. Land grabbing may diminish for a while but then quickly persist (http://ki-media.blogspot.com/2007/04/cambodian-land-grab-exploits-poor-and.html). No land grabbers of indigenous peoples' land have been apprehended.

seems to be have been superseded by Hun Sen's direct responsibility . the above mechanisms and events set the political framework for dealing with outside forces that impact on the shifting cultivation areas of indigenous communities.by law and sub decrees civil society appears protected but the sub decree on State Land Management and a sub decree on ELC are not implemented.

4. Legal, Policy and Institutional framework for shifting cultivation issues

In order to fully understand the current situation as regards the legal framework concerning shifting cultivation by indigenous peoples in Cambodia, it is necessary to outline the various legal, policy and institutional mechanisms, and the consistencies and even some incompatibilities between these instruments and mechanisms, in order to further examine the issue of cultivation, and the possible, eventual content of a sub-decree on this issue, mandated by Article 37 of the Forestry Law , 2002.

The legal and policy documents cited above do not all specifically mention shifting cultivation but they set a framework for an ensuing land classification that is of concern to shifting cultivation.

4.1 The legal context

There is often in Cambodia a discussion of which laws are the strongest and overrule other laws and decrees. The incremental approach to law-making makes it difficult to determine what is actually going to happen. In view of many people the most recent laws always take precedence over previous laws meaning the Forestry Law of 2002 should be 'stronger' than the Land Law, 2001. There are a number of legal instruments it is essential to bear in mind when considering the issue of shifting cultivation, as it pertains to indigenous peoples.
The legal context of the present inquiry comprises the following documents:

- Land Law, 2001;
- Forestry Law, 2002;
- Interim Paper on Strategy of Land Policy Framework, 2002;
- Sub-decree on Community Forestry, 2003;
- Sub decree 53 on Procedure, Establishment, Classification and Registration of Permanent Forest Estate, 2005;
- Sub-decree on State Land Management, October 2005;
- Prakas on Guideline on Community Forestry, December 2006;
- Prakas on Identification and Mapping of State Land and State Land Classification, March 2006; and
- Decision (December 2006) to put the text on Criteria for State Land Classification as an Annex of the Prakas No. 42 DNS.BK dated 10 March 2006 on State Land Identification, Mapping and Classification.

Irrespective of which law is the strongest, it is the MLMUPC, which registers all land in Cambodia, including the land falling under the mandate of the Forestry Administration (FA), and the Land Law provides the major definition of how land is to be legally defined in Cambodia. It determines the ownership and territorial jurisdictions of the institutions responsible for the resources that are contained on the land. The Land Law is also of particular relevance as it contains specific articles concerning the collective rights to land of indigenous peoples, stating that collective title for these communities should be considered on a par in terms of legal value with that of individual title. This is a key concept in the guarantee of the rights of indigenous peoples.

4.1.1. Land Law, 2001

The significant elements of the Land Law for the purposes of this discussion are three-fold:

1. Definition of state public property;

2. Definition of state private property; and
3. Definition of indigenous property under the collective ownership category, and rights accorded to indigenous communities under collective ownership.

State lands

In order to understand the provisions of the laws of relevance to the issue of shifting cultivation and indigenous peoples, as highlighted below, it is first essential to understand the basis principles of land classification in Cambodia. These are governed by the Land Law. The State is the owner of all land that is not legally privately or collectively owned or possessed under the Land Law. Article 3 of the Sub-decree on State Land Management states "… the state is the owner of all land that is not legally privately or collectively owned or possessed under the Land Law, 2001." There two kinds of State Land: State Public Land and State Private Land.

State Public Land includes all land owned by the state under the management of a ministry or national institution as well as land entrusted to a public legal person or public establishment recognized by law as a public legal person. State Public Land is defined in detail as property having a natural origin such as forests, lakes and seashores, property developed for the general public such as ports and railways, property made available for the public in its natural state such as roads, tracks, gardens and public parks, property allocated for rendering public service, natural reserves protected by law, archaeological and historical sites, royal properties and other land having public interest.

State Private Land is all the land that is neither state public land nor legally privately or collectively owned or possessed under the Land Law, 2001. Most State Private Land would ideally be converted to Social Land Concessions or to Economic Land Concessions or to Indigenous Communities' collective title. Main structural impediment to actually classifying land as State Private Land is the RGC's backlogue in actually mapping and classifying State Land, in particular in the remote corners of Ratanakiri and Mondulkiri provinces.

Collective land ownership of indigenous communities: Chapter 3 of the Land Law addresses the fundamental land rights issues of indigenous communities, including:

- Defining for the purposes of this law who are considered to be indigenous communities;
- Defining a right of indigenous peoples to manage their communities and immovable property in accordance with their customs and traditions;
- Right to ownership of:
  - Land where communities have established their traditional residences;
  - Land where communities carry out their traditional agriculture;
  - Immovable property as collective ownership. Collective ownership is accorded the same legal status as private ownership.
- Prohibition of the disposal of any part of the collective ownership that is state public property

However, the provisions in this section of the Land Law are unclear. On the one hand, it indicates that rights to collective ownership include all of the rights and protections as are enjoyed by private owners, whilst on the other hand referring to elements of the collective ownership that are State Public property, which is not entirely commensurate with the idea that collective title should be afforded the same legal protection as individual title. Thus, and although this is not specific in the

Law itself, we are lead to assume that collective ownership will be the result of the conversion of state public or private land into collectively titled land (with the same "rights and protections of ownership as are enjoyed by private owners"). However, further complications then arise in this analysis insofar as State Private Land can be converted to private or collective title by the RGC without problems but the State Public Land cannot. State Public Land may comprise forest as well as schools, hospitals and administrative institutions. As the Land Law is not specific on the precise nature of the State Public Land in Article 27, there is room for the RGC to adapt in various ways to local circumstances.

Article 26 of the Land Law endorses the collective title to include "all of the rights and protections of ownership as are enjoyed by private owners" while Article 27 states that the community "does not have the right to dispose of any collective ownership that is State public property to any person or group" implying an encumbrance that would be noted in the registration certificate and this is implying different types of State Public property to be registered in the collective ownership. The *draft Policy on Registration and Use Rights to Land of Indigenous Communities*, recently passed by the OBSES[6] of Cambodia in August 2007 and almost ready for sending to the plenary session of the Council of Ministers for adoption, interprets that a maximum of seven (07) ha of spirit and burial forest land are to be registered in the collective ownership of indigenous community and these 2 types of land are meant to be state public property. This read with the most complicated area with regard to translation of the law into practice in the context of types and sizes of state public property to be registered in the collective ownership.

4.1.2. The Forestry Law

The Forestry Law (2002) is relevant to indigenous peoples in terms of user and tenure rights of communities. The Forestry Law stipulates the role of the State in ensuring the customary user rights of forest products and by-products for local communities. It also indicates (in Article 37) rules for shifting cultivation areas, which lie inside the Permanent Forest reserve (PFR) and calls for a special sub-decree to be drafted. In order for the forestry legislation to be implemented in a way that recognises Indigenous Peoples' rights in shifting cultivation areas inside a PFR, the drafting of additional implementing legislation (a sub-decree) is also required as mandated by Article 37.

The Forestry Law 2002 does not refer to the Land Law 2001 in its preamble 'having seen', but the FA sub decree 53 on Forest Land Establishment, Classification and Registration, April 2005 does mention 'having seen' the Land Law. However, this sub-decree makes no reference to the National Land Register or to MLMUPC and it has very limited consultative measures included.

Back in 2002 when the Forestry Law was drafted, even though it does not refer to the Land Law, it included a number of articles that can be read as assumptions that the collective land titling mandated by the Land Law was already underway. Its Articles 7 (3) and 11 call for the demarcation of the forest estate to be carried out with community involvement.

[6] Economic, Social and Cultural Observation Unit, at the office of the Councils of Ministers

In Article 11, a reference is made to a *concern for the 'community land ownership' for which FA will coordinate with MLMUPC*. In Khmer language the relevant phrase reads as *the ownership of the 'original ethnic minority/indigenous peoples'*. It states

> *"MAFF shall classify and set boundaries for all forests within the Permanent Forest Estate. In carrying out this action, MAFF shall coordinate with local communities, concerned authorities, and the Ministry of Land Management and Urban Planning* ***in order to register the community land title*** *and develop the national land use map."*

Article 16 of the Forestry Law uses the Khmer word 'original ethnic minority/indigenous peoples'. This indicates that the Forestry Law of 2002 assumed that the collective title provided as a right in the Land Law of 2001 would have been put in effect prior to or concurrent with the establishment of the PFR[7] . This has not been the case.

Permanent Forest Reserve

Forests are State Public Property held by the State in public trust. Forests make up the largest bulk of state property in Cambodia. The Forestry Law, 2002, is the major legal instrument for the forestry sector managing the PFR within Cambodia. The Permanent Forest Estate (PFE) includes the Permanent Forest Reserve (PFR) and private forests. The PFR is comprised of Production Forest, Protection Forest and Conversion Forest. The FA is responsible for the Permanent Forest Reserve (PFR) and the Ministry of Environment (MOE) is responsible for Protected Areas such as National Parks and Biosphere Reserves. The Protected Areas under the jurisdiction of MOE are not included within the PFR. The MOE has prepared its own draft Prakas for Protected Area Community, Nov. 2005 that establishes the institutional modalities for communities that are located inside an MOE Protected Area. The major issues arising out of the Forestry Law are those linked to its interface with the Land Law. The definition of forest is not precise and this leads to difficulties when it comes to actual delineation and demarcation of the PFE. It has been clearly recommended in earlier studies and reviews[8] that registration of collective title would be an important step prior to any demarcation of the PFR.

If the PFR demarcation precedes the Land Law's communal registration it is likely that indigenous peoples will have their access to future lands for swidden agriculture confined by the PFR and the Forestry Law, but as the FA still by 2007 has limited funds to undertake forest demarcation, the 'risk' that forests are demarcated and registered as PFR with MLMUPC is limited. However, it has announced its intention to use satellite imagery from 2002 as a means to identify the PFR. This may risk that areas that were under fallow in 2002, may be mistakenly identified as PFR, and not areas falling within the shifting cultivation areas of indigenous communities. This is discussed further below.

Turning to shifting cultivation areas, forested land that is or will be demarcated as PFR may include shifting cultivation areas, and these will therefore be included in the State Public Land unless the PFR lands are converted to state private land using articles 10.3 and 12 of the Forestry Law to convert the forest to Non-PFR.

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7 Issues pertaining to the PFR as well as an explanation of what it is in accordance with the law, are contained under the next heading, below.

8 Hobley, Mary, Formal Legal and Informal Framework for Forestry in Cambodia, Chapter 10 of the *Independent Forest Sector Review* 2004

Land mapping and fallow areas

Much land in Cambodia, including the forest, is not yet mapped and classified, and the FA is eager to demarcate its forest estate but lacks funds. As explained above, during the demarcation, the FA will use its sub decree 53 as well as the 2002 satellite imagery to show what was 'forested' in 2002. Using the 2002 maps as a basis may cause significant problems for indigenous communities whose shifting cultivation lands were under regrowth in 2002, as these will not show up on the maps as land in use. Solutions to this will need to be worked out at provincial level where any district and provincial working group on site will be able to see that the area is part of a system of rotational farming and therefore not eligible for State Public Land classification.

Community forestry agreements outside the collective title

If, however, the shifting cultivation areas make up extraordinarily large tracts, they may be seen by officials as unfeasible large to place within a collective title. Again, this is something that will require discussion at the provincial levels, but if this is the case, the communities in question may still have access to these under a renewable community forestry agreement of 15 years' duration. This is of course to be seen as a last resort, as such agreements are very limited in time, and it is never guaranteed that the agreement will be renewed. Articles 41 - 42 of the Forestry Law give the minister of MAFF authority to allocate areas of the PFR as community forest.

The details of the community forestry arrangements are spelled out in a Sub decree on Community Forestry, 2003 and in the Prakas on Guidelines on Community Forestry, December 2006 where a number of procedures are described. Is still unclear whether and how much of indigenous communities' traditional lands would need to come under a community forestry agreement and what such an agreement would imply. Article 42 of the Forestry Law sees a community forest as a means to ensure traditional user rights of local communities. But the Community Forestry sub decree that came a year later and other later documents see a community forest primarily as a commercial plantation established on degraded land, - so there is a major difference between the two concepts of a community forest. Article 45 of the Forestry Law recognizes the religious and/or spirit forest of a community, living within or near a forest such as a protection forest of the PFR serving religious, cultural or conservation purposes. Article 45 states that it is prohibited to harvest any spirit trees, thus they may be specially marked and shall be identified in a Community Forestry Management Plan. This article 45 implies that some of the land under traditional use may fall under a community forestry agreement within the collective title. In the draft CLP Policy on Registration and Use Rights to Land of Indigenous Communities, December 2006, the spirit and burial forests are mentioned as areas with a ceiling of 5 ha maximum respectively, but the Policy does not imply the need for a CF agreement for these sacred spots. Only article 45 of the Forestry Law does.

Non-timber forest products (NTFP) areas

In addition to shifting cultivation, the indigenous communities use the forest to collect non-timber forest products (NTFP). These NTFP are catered in Chapter 9 of the Forestry Law. It deals with traditional community use, management and private rights. Article 40 states that for communities living within or near the PFR without registration of collective title will have their traditional user rights recognized for the purpose of customary, religious and subsistence use. This traditional user right

shall not require a permit and it includes collection and use of dead wood, wild fruit, products from bee hive or comb, resin, and other NTFPs; the harvest of timber to build houses, stables for animals, fences and to make agricultural instruments; the grass cutting or unleashing livestock to graze within the forest; the use of other timber products and/or NTFPs for traditional family use; and the ability to barter or sell NTFPs to a third party without the permit where the amount is consistent with traditional community practice. It is prohibited for a local community to transfer any of these traditional user rights to a third party, even with mutual agreement or under contract. In the provinces of Mondulkiri and Ratanakiri the collection of resin from the forest is a major source of income to the communities.

4.1.3. Other instruments

The MLMUPC *Sub decree on State Land Management*, 2005 does mention 'having seen' the Forest Law, but the MLMUPC *Prakas on State Land Identification, Mapping and Classification*, March 2006 issued under this Subdecree does not mention the Forestry Law. It is assumed, though, that FA would participate in State Land Mapping (SLM) to map the forest estate although the Sub Decree and Prakas on State Land Mapping from September 2005/March 2006 make no reference to the *Forest Estate Demarcation Sub Decree* 53 from March 2005.

4.2 The policy context

The policy context referred to in this report is the *draft National Policy for Indigenous Peoples' Development*[9] and the CLP draft Policy on Registration and *Use Rights to Land of Indigenous Communities in Cambodia*[10]. The latter document purports that registration of indigenous communities' land cannot take place until four supporting legal norms are in place. These are as follows:

- A subdecree on shifting cultivation to be prepared by the MAFF;
- A "Legal norm necessary for registration of collective land of indigenous peoples to complement existing procedures on sporadic or systematic registration" - to be developed by MLMUPC
- By-laws for the recognition of indigenous communities as legal entities; and
- A policy of the RGC in respect of the development of indigenous peoples.

The CLP *draft Policy on Registration and Use Rights to Land of Indigenous Communities in Cambodia of August 2007 as the outcome of the OBSES purports that there needs to be another sub-decree which is a complementary to the existing procedures for systematic and sporadic registration of land. This draft also describes the possible contents of the sub-decree which will be signed by the Prime Minister if adopted. This new draft deleted all the above mentioned legal norms said to be in place before the registration of indigenous land takes place*.

However, this document also departs from a number of the norms established by law, policy and interpretation, rendering the process of the establishment of land title for indigenous peoples more cumbersome than it had previously been foreseen. Some critics have also pointed out that this policy

[9] Considered by Council of Ministers, April 2007

[10] December 2006

is not actually a legal requirement for the establishment of land title for indigenous peoples, and that the limits it imposes on land areas of indigenous peoples are incommensurate with the concept of legal protection of the traditions and customs of indigenous peoples, as outlined in the Land Law. The draft Policy on Registration and Use Rights of Indigenous Communities to Land (Dec. 2006)[11] lists shifting cultivation areas of indigenous communities as State Private Land said by the draft itself to be eligible for conversion into collective title, whilst it sees the communities' sites of burial and spirit forests as State Public Land and delimits the areas with a ceiling of 5 ha and 2 ha respectively. This proposed limit on the surface area of these particular sections of community ownership has been subject to substantial criticism. This ceiling is not based on a definite knowledge of how much forest indigenous communities actually use for burial and for spirit worship, and the ceiling is at odds with legislation in, for instance, the Philippines where 'ancestral domains' include ancestral lands, forests, pasture, residential and agricultural lands, hunting grounds, worship areas, and lands no longer occupied exclusively by indigenous cultural communities but to which they have had traditional access including inland waters, coastal areas and natural resources therein. In Cambodia, however, there appears to be a lack of understanding of the needs and rights of indigenous peoples that has constituted a basis for the decision to limit these areas. From a forest protection and ecological perspective, it is no doubt realized that burial and spirit forests would be some of the best protected forest areas of Cambodia.

The latest norm-setting paper on land classification was published in December 2006 as a *Decision (December 2006) to put the text on Criteria for State Land Classification as an Annex of the Prakas No. 42 DNS.BK dated 10 March 2006.* In this, the FA for forest classification merely quotes earlier legal documents and gives no technical definition. It is nevertheless often verbally quoted by FA that is will use the satellite imagery of forest cover 2002 endorsed by FAO as the basis for demarcation of the forest estate. This may mean that land, which was old fallow in 2002 but presently cultivated by indigenous communities may be classified as part of the Permanent Forest Estate.

4.3 Implementation and institutional mechanisms

The Government institutions responsible for various legal and policy processes directly concerning the issue of shifting cultivation by indigenous communities are:

- The Ministry of Land Management, Urban Planning and Construction (MLMUPC);
- The Forest Administration (FA) of the Ministry of Agriculture and Forestry (MAFF); and
- The Ministry of Interior (MOI).

There is no hierarchy between the MLMUPC and MAFF. Each has their own laws defining the process for demarcation of lands with no priority attached to which process should be followed first: clarification of lands under the Land Law or clarification of 'forest' lands under the Forestry Law.

When eventually State Land Mapping (SLM) starts in an area, the groundwork will be carried out by district and provincial working groups under supervision of the Provincial State Land Management Committee Article 24 of the *sub decree on State Land Management* puts the Head of Forest Cantonment at provincial level as 'member' of the Provincial State Land Management Committee and

[11] This Policy was passed by the Council of Land Policy on 25th April 2007 and passed by the Council of Ministers on 23 August 2007. In the next step the draft will be submitted for inter-ministerial meeting prior to the plenary session of the Council of Ministers for approval. It is judged that the adopted Policy does not differ much from the December 2006 draft version.

the Head of Provincial Land Management Department as 'permanent member' and governor as chief. This committee is intended to lead the district working groups that demarcate the land (article 25 of the sub decree). The FA would need to interact with the MLMUPC. It needs the MLMUPC that hosts the cadastre and national register to register its lands.

SLM in an area that is forested will pay attention to the claims made by the FA representative in the working group to have an area classified as part of the Permanent Forest Estate. Or alternatively with budget available, the FA will go ahead on its own in selected sites to demarcate land using the Forest Estate Demarcation Sub Decree 53.

The conclusion to be drawn from the various legal papers is that the FA would like to carry out most of its demarcation as a special and self-contained authority. The FA considers its forest estate to be of a special nature and it will take sole responsibility mapping it. The recently prepared FA project document with Danida support to demarcate its Permanent Forest Estate in selected sites will not embed this process of demarcation in any State Land Mapping process. The two processes of SLM and Forest Demarcation mandate different bodies to lead the process (in one, Forestry Administration staff, in the other a Provincial State Land Mapping Committee), they call on different intermediate conflict resolution bodies (a National Forest Estate Committee in one, the Council of Land Policy in the other), and they call for a disparate number of mandated steps (the Forest Estate Demarcation Sub Decree runs into six pages in English translation, the State Land Management Sub Decree and Prakas run into more than thirty pages).

Coordination of FA work and other line agency work at provincial level has experienced difficulties as the FA is not (yet) fully incorporated into the evolving 'unified administration system' under the Decentralisation and Deconcentration (D&D) process. Thus, the FA officers at provincial level presently do not belong to the provincial administration but to their own cantonment and they do not refer to the provincial governor as do the other line departments. This has made inter-agency coordination at provincial level difficult and it has reduced the potential for harmonizing extension services with, for instance, the Department of Agricultural Extension.

The following sections discuss the possible contents and impact of a sub-decree on shifting cultivation on demarcation of areas for indigenous communities' collective ownership.

5. Scenarios to be addressed by a Shifting Cultivation Sub-decree

5.1 Background

The draft MLMUPC/CLP *Policy on Registration and Use Rights of Indigenous Communities to Land* (December 2006) from the MLMUPC calls for several legal norms to be in place before communities can be given a collective land certificate. One of the preconditions is, as noted, the passing of a sub decree on shifting cultivation and noted that this sub decree should be drafted by the MAFF. ***This would obviously be concerned with shifting cultivation on state public land that is part of the PFR otherwise the FA would have no authority to become engaged, as shifting cultivation within the collective title would otherwise not bring the Forestry Law into play.***

This requirement somehow does not tally with section 5 of the draft Policy, which categorizes shifting cultivation areas including fallows as state private lands. This begs the following questions:

- Which are the shifting cultivation areas on state public land that the MAFF sub decree will cover?
- Will it be all the shifting cultivation areas that are about a ceiling set by family possibly introduced by the government in 2007?

The hear-say on a possible ceiling may be linked to a political wish to put indigenous communities and other poor people on the same footing, meaning a mandated 5 ha/family as in Social Land Concessions (SLC). Such ceiling would obviously work against a traditional shifting cultivation system that has three-fourths of the land under fallow. But where the communities have turned all traditional shifting cultivation areas into privately-claimed cash crops of cashew or rubber, a ceiling within the collective title may be warranted for environmental objectives. Detailed analysis at provincial level is necessary.

It is to some extent the emergence of this draft Policy that has rendered the matter of shifting cultivation more confused, as it makes a direct link between the sub-decree on shifting cultivation under the Forestry Law, PFR and community forestry agreements, and indigenous communities' collective ownership under the Land Law. The lack of progress on the demarcation of indigenous communities' lands has further added to the confusion.

5.2 Interpretation of Article 37 of the Forestry Law

One of the remaining challenges in the elaboration of a sub-decree on shifting cultivation as it may apply to indigenous communities is the establishment of a clearer understanding of the intention of Article 37 of the Forestry Law. This should constitute one of the first tasks of the working group established by FA on development of the sub decree. It is probable that the understanding in 2000-2002 when the Forestry Law was written differs from the interpretation by others in 2007, and thus far, official interpretations have not been forthcoming. Secondly, there are several versions of the translation into English.

- The above-mentioned CLP draft Policy on Indigenous Communities Land Registration quotes the version with the English translation that appears in version 1 below. This version is without a full stop between two important sentences which causes it to be read as if shifting cultivation areas inside a PFR must come under a community forestry agreement.

- Version 2 is the one in use by LMAP/GTZ. Here a full stop is found between the pertinent two sentences. This avoids a reading where the second sentence qualifies the first sentence and we no longer need to think that shifting cultivation must come under a community forestry agreement.
- In version 3 we find the translation by the ILO National Coordinator on indigenous issues, which also uses a full stop. But this version includes a phrase 'this local area', where 'this' refers back to the former sentence and implies the need for a community forestry agreement for shifting cultivation areas.
- In version 4 we find a translation provided by the FA in April 2007. In the FA version, the sentences are divided by full stops and there is line spacing. It no longer says that shifting cultivation must come under a community forestry agreement, but it says that FA controls shifting cultivation that takes place in a community forest.

Despite interviews various officials and other stakeholders in this area, no suggestions were forth-coming on the objectives and the contents of the future sub decree on shifting cultivation, so this section of the report on scenarios is built on analysis of existing material and no new information is included - as there is none except the formation of a working group to prepare the decree. Therefore, below we examine the options through possible scenarios, but first render the diverging translations of article 37 as they have appeared.

Various translations of Article 37 of the Forestry Law:

1: "For those local communities that traditionally practice slash and burn agriculture, such practice shall be permitted to continue on community land registered with the State ***where*** *the division level of the Forest Administration authorizes the activity as part of a community forest management plan. Unless otherwise stated in this Law, all other slash and burn, practices are prohibited within natural intact forest in the Permanent Forest Reserve. The forest reserved for slash and burn practice shall be identified by sub-decree."*

2: "Local communities that traditionally practice shifting cultivation may conduct such practices on land property of indigenous community which registered with the state. The divisions of the Forestry Administration shall be authorized to manage and control the shifting cultivation activity that is a part of the community forest management plan. Shifting cultivation practices are prohibited in natural intact forest in the Permanent Forest Reserves. Forestlands reserved for shifting cultivation shall be identified by Anu-Kret."

3: "Local community that practices shifting cultivation following traditional manner may conduct such practice on indigenous community land (ownership) that is already registered with the state. The Forestry Administration Division of ***this (local) area*** *shall give permission for the management and control of such activity that is a part of that community forestry management plan. The practice of shifting cultivation shall be prohibited within the intact natural forest inside the boundary of permanent forest reserves. Forest land reserved for shifting cultivation shall be determined by a sub-decree (Anukret)."*

4: "Local communities that traditionally practice shifting cultivation may conduct such practices on land property of indigenous community registered with the state.

The division level of the Forest Administration shall be authorized to manage and control the shifting cultivation activity that is part of a community forestry management plan.

Shifting cultivation practices are prohibited in natural intact forest in the Permanent Forest Reserve."

Forest reserved for shifting cultivation shall be determined by Anu-kret."

The conclusion from the FA version is that Article 37 contains four different pieces of information put together in one Article:

- Local/indigenous communities can practice shifting cultivation on the collective lands (already) registered with the state (under collective title). (This reading would fit the assumptions in article 11 of the Forestry Law that assumes this registration to have taken place already). This 'registration with the State' would imply a collective title to have been issued already. The land thus registered may have been converted into collective ownership from what was previously State Private and State Public Land subsumed under collective title. The article does not delve on the land classification but it may refer to the fact that State Public Land, i.e. PFR, is eligible to form part of the collective title (with an encumbrance) and that this is acceptable ('may conduct such practices'). The article does not pass any injunction on shifting cultivation in areas outside the purview of the Forestry Law.
- Where shifting cultivation takes place inside a community forest as part of the management plan the FA shall have authority to control it
- There will be an injunction against shifting cultivation in "natural intact forest" of the PFR; and
- A sub decree on forests reserved shifting cultivation shall be issued.

Three of these four elements are discussed below:

5.2.1. Areas within the collective title, under different crop-covers and uses

The situation where shifting cultivation areas as traditional agricultural sites will be included in the collective title without any FA claims on the same land may be found in the Forestry Law itself. In accordance with Article 11,

> *"MAFF shall classify and set boundaries for all forests within the Permanent Forest Estate. In carrying out this action, MAFF shall coordinate with local communities, concerned authorities, and the Ministry of Land Management and Urban Planning* ***in order to register the community land*** *title and develop the national land use map."*

By implication it means that FA assigns itself a role in the registration of communal ownership, in particular where it touches upon the PFR - or land which may become PFR in the future. Presumably it will assist in establishing borders between state public land (forest) and state private land (indigenous communities' land claims for collective title). Where no forest demarcation as yet has taken place the FA will participate in the provincial SLM that precedes the demarcation of the collective title. During the SLM the 'forest land' of interest to both the FA and the indigenous communities are:

I. the present shifting cultivation areas including fallows;
II. the old fallows in reserve;
III. the burial and spirit forests; other areas based on factual situation and
IV. the larger forest ranges from which the communities collect NTFP.

The rights to NTFP (IV) are already specified in Chapter 9 of the Forestry Law, and these rights in NTFP would not fall under the collective title and they would be difficult to demarcate. It is primarily the issuance of ELC that impact very negatively on indigenous communities' rights in NTFP.

The **spirit and burial forests (III)** make up good natural forest, which the FA wants to preserve and classify as protection forest. These patches of Protection Forest were given a ceiling in the draft *Policy*[12] *on Registration and Use Rights of Indigenous Communities to Land*, namely that spiritual forest land should not exceed seven hectares and burial ground forest land (cemetery) should not exceed seven hectares. These areas are designated as State Public Land in the Policy. As State Public Land, presumably PFR, they will form part of the collective title subject to the limitations of article 26 of the Land Law. Being subsumed into the collective title may mean that these patches of sacred forests will not come under any separate leasehold agreement with FA such as community forestry although the Forestry Law, article 45 calls for such arrangement. However, the ceiling has been broadly criticized, as not conforming with the traditions of indigenous communities, and thus with the spirit of the Land Law.

Article 45 of the Forestry Law recognizes the religious and/or spirit forest of a community as a protection forest serving religious, cultural or conservation purposes and the article calls for the areas to be identified in a Community Forestry Management Plan. The Sub decree on Community Forestry, 2003, article 3 recommends the establishment of a community forest that is suitable for "areas where local community is using in a customary way for their livelihood, belief and religion". So it is implied that land under traditional use such as burial and spirit forest may fall under a community forestry agreement rather than the collective title. However article 37 of the Forestry Law and articles 25, 26 of the Land Law are read with the assumption that large part of community forestry is subsumed under the collective ownership so that indigenous communities are still able to practice their traditional agriculture especially shifting cultivation. IN this sense, the FA would need to provide permission for the local community to enjoy traditional livelihood with respect for their needs and priorities. These Articles combined, appear to recognize traditional boundary of indigenous community lands. These implications have not been debated among stakeholders yet.

Theoretically, it may feasible to see these areas under CF agreement but the government's main goals of the CF are different. In the interviews with indigenous communities in 2004, an IWGIA consultant reported:

> "When asked to identify the communally-owned areas, the both communities commonly identified forests as areas which provide resources to the entire community and are thus the best examples of collectively-managed areas."

[12] The draft of August 2007

Article 27 of the Forestry Law tells the reader that the natural intact forest which makes up PFR is included in the collective land ownership for indigenous communities. This Article of the Forestry Law is a clarification of article 26 of the 2001 Land Law describing State Public Property in the collective ownership that the community will not be authorized to dispose of including spirit forest and cemetery (burial forest). Reading these two articles of the 2 laws it could be interpreted that the concept to land and territory of indigenous peoples is legally recognized.

The interpretation may thus be that the sub-decree on shifting (nomadic) cultivation is intended to determine the area within the collective land already registered with the state as stipulated in Article 37 of the forestry law.

Not all forest areas were considered manageable by the indigenous community: old fallows and secondary growth forests were exceptions and were regarded as cultivation areas previously utilized by community members. Specific sections of the forest which had cultural and spiritual significance and areas which provided resources for the whole village were defined as part of the communal property of the community."[13] So while theoretically, forests can be considered community common property, operationally, it is not feasible to include spirit and burial forest under a CF agreement as the institutional framework for CF management with group membership, committees, ballot boxes, and silvi-cultural management plans is totally against the spirit of indigenous collective management of spirit and burial forest.

The draft Policy on Registration and Use Rights to Land of Indigenous Communities does not specify the management arrangements for spirit and burial forest but it makes decision to subsume these into the collective title and therefore not to have a separate CF Agreement. The two pieces of norm-setting documents are not in agreement. As no collective titling has taken place yet, it is now known how the MLMUPC and the FA will deal with the burial and spirit forests when it comes to actual implementation. The legal framework for the burial and spirit forests is unclear, either part of collective title or separate as part of a CF agreement, but it is highly recommended to opt for having these sacred patches included in the collective title as it is in line with purposes of the Land Law and Forestry Law.

The ***old fallows (II)*** kept in reserve form part of the farming system that is based on shifting cultivation. Some old fallows are 10 years old, some are 30 years old and date back to pre-Khmer Rouge (1975-1979) times when the community was forced to move only later to return to its old surroundings and establishing a claim on past landholdings. Altogether, the shifting cultivation system with large tracts of land under fallow would require much more than 5 ha per family, although in any given year less than 5 ha would be cultivated. Many old fallows could look like production forest to the FA even though they would contain tree stumps as evidence of former swidden, or domestic fruit trees of mango or jackfruit indicating that it once was part of a shifting cultivation cycle. The fruit trees and the history of the site are known facts to the community would include these lands to be part of the traditionally cultivated lands and therefore part of collective title but still with some private or privileged claims attached. These old fallow lands may look like forest on the 2002 maps that the FA will use as criteria to determine what makes up PFR and what does not. However, if the spirit and letter of the Land Law are to be adhered to, there is also a legal requirement to respect the right of indigenous communities to own lands where they carry out traditional agriculture, including reserved lands necessary for shifting cultivation (Article 25).

[13] De Vera, David E. 2005 *Indigenous Community Institutions: Communal Titling for Indigenous People in Cambodia, Section* E. Findings

Young cashew trees planted in rice swidden. Forest in background kept as reserve for new swidden for the same household of several nuclear families. Based on satellite imagery from 2002 the FA may mistakenly deem the land to be part of the PRF rather than old swidden.

The same forest contains old mango trees confirming partly that the land was once cultivated and partly the claim to the land by the family that planted the mango years back in time.

As mention, a hear-say suggests that the CLP when finally passing Young The Policy on Registration and Use Rights to Land of Indigenous Communities may include a ceiling on various kinds of land use and allot 5 ha per family only. However, legally, and in accordance with the Land Law, the

> *"measurement and demarcation of boundaries of immovable properties of indigenous communities [is to be] determined according to the factual situation as asserted by the communities, in agreement with their neighbors".*

It is thus highly likely that the terms of the draft Policy contradict the terms of the Land Law on this matter as in many, if not most cases, the corresponding land areas used by indigenous peoples are larger than the foreseen ceiling. However, as the letter and spirit of the Law do indicate that demarcation should be undertaken in line with the factual situation as asserted by the communities themselves, and that, as indicated before, the spirit of this law is to protect to some extent the customs and traditions of indigenous communities, which would include land use method.

If this is the case, the classification of land as shifting cultivation land or not becomes critical.

If cultivated as part of a shifting cultivation system, 5 ha are not enough. But large tracts of so-called shifting cultivation land are now under transformation into cash crop plantations and as the nature of the resource changes from use value (rice to be eaten) to exchange value (cashew to be sold), so does the system of rights within the collectively managed community lands.

If eventually the FA does decide to classify old swiddens that now have forest cover as PFR, in particular if these make up surplus land above a potential ceiling, and if prior to the demarcation of PFR, the collective lands of indigenous communities have not been determined, one option would be to go for a community forestry (CF) agreement for the same land. This means the land would be part of a common property without any particular household's privilege in the land unless shifting cultivation as a land use is agreed to form part of the community forest management plan with rights to shifting cultivation for all members. As said, the third sentence of Article 37 of the Forestry Law allows for shifting cultivation in the PFR-based community forests if the FA controls it, but the institutional mechanisms would be complicated (see 4.3 below). A shifting cultivation field would be in the possession of an individual, while a community forest would belong to the community as a whole. Having private privileges within a community forest would need to allow all group members to have shifting cultivation fields inside or identify another way to share the benefits of joint land use rights.

As conclusion it can be said that the existing, presently cultivated, ***shifting cultivation areas (I)*** would fall into what the CLP classifies as state private land and go directly into the collective title without any encumbrance unless it is above a potential ceiling. The distinction between I and II may be difficult and in both cases the collective title would need to allow for the internal partitioning of the common property into privately held cashew nut plantations. Further discussion may emerge as to whether the cashew plantations are part or not part of a shifting cultivation system as the trees are permanent. Seeing cash cropping as a modernizing trend has meant that some government officers with little political will to support collective titling now question whether they communities really qualify under the Land Law as indigenous communities practicing traditional agriculture. It will be up to the actual SLM working team to classify the land of cashew prior to issuing collective land title.

5.2.2. Where shifting cultivation takes place inside a community forest

Indirectly, article 37 of the Forestry Law allows for shifting cultivation inside a Community Forest if the FA controls it. Article 11 of the Sub Decree on Community Forestry Management, 2003, states that user rights of community forestry members include (among five bullet points):

> *"community forestry (members) may continue to practice traditional swidden agriculture during specific periods of time as determined in the Community Forest Management Plan, as authorized in Article 37 of the Forestry Law."*

This reads as if the FA will take over areas of existing shifting cultivation ("may continue to use") and demarcate them as forest whereupon the FA can enter into a CF agreement and prepare a management plan with the community for the same land. Shifting cultivation land use would then form part of the management plan. The *Guidelines for Community Forestry*, December 2006, put the control in the hands of FA from the start.

The question that arises on reading this provision, is whether all legal access to forest areas of PFR that are not state private land, or burial and spirit forests, must fall under a *community forestry agreement?*[14]

Will semi-forested areas that are part of a cycle of shifting cultivation need a separate contract with FA outside the collective title which is a secure right on a par with that of a private person? The community forestry leasehold is of limited but renewable 15-years duration, and the FA is in control. This would clearly be of considerable concern for indigenous communities, as such a leasehold agreement is for a limited (yet renewable period) of 15 years. Furthermore, this seems to be in direct contradiction to the terms of the Land Law, which clearly states that the collective ownership enjoys the same rights as private title. If the FA during SLM wishes to classify shifting cultivation areas as PFR it seemingly only can do so for shifting cultivation areas that are above a ceiling yet to be established. The draft December 2006 CLP Policy on Indigenous Land Registration indicates that land eligible for collective title includes state private lands and that these state private lands encompass shifting cultivation areas, so these are out of the reach of the FA. However, there is no mention of the inclusion of State Private land in the collective title in the relevant section of the Land Law. If, though, there is a ceiling on land within the collective title per family of max 5 ha it means that fallow land that are part of the system of shifting cultivation may fall outside or it may look like forest in the 2002 satellite imagery. Cutting down on size of land holding/family circumvents the inclusion of 'reserved lands' into the collective title by the Land Law, which clearly combines the recognition of areas reserves for shifting cultivation, and already under cultivation, with the concept of respect for the traditional customary manner of land management of indigenous communities. As indicated before, this is not commensurate with the idea of such a low ceiling.

In this situation, two very different legal frameworks for the overall traditional indigenous lands emerge. The Land Law clearly states in Article 25 that the *collective title is on a par with the title of a private person (and not made up of bits and pieces) and that it will cover lands presently cultivated as well as those reserved for the future for shifting cultivation.* However, the Community Forestry

[14] .....

Sub-decree, 2003, requires a 'CF Management Plan' prepared, and at the same time it instructs (in Article 12) that the harvest of forest products for selling or bartering shall not be allowed within the first 5 years of approval of the Community Forest Management Plan, and that payment is needed of any required royalties or premiums on forest products and Non-timber Forest Products (NTFP) as prescribed in Article 55 of Forestry Law.

Without any official comments ensuing on this matter, it appears to be the intention that the sub-decree on shifting cultivation will establish CF agreements for all shifting cultivation areas that for some reason or another cannot be made part of the collective title. These are possible 'surplus' holdings if a ceiling is introduced or fallow lands that are to be demarcated as forest based on 2002 satellite imagery. It is unclear to what extent this will affect the lands that may otherwise be considered as falling under collective ownership.

Community forestry establishment is a highly bureaucratic activity that includes the setting up of a CF Management Committee by ballot box election. The committee must have bylaws and action plans, and there must be rules of membership, CF Regulations, CF Agreement with FA, and a CF Management Plan. The procedures are very unwieldy, and the Guidelines of December 2006 with annexes providing templates make up almost 40 pages. Any plot of shifting cultivation would have a private owner of the standing crops and this right would therefore need to form part of the management plan, the bylaws (that the committee cannot take the land away), and the agreement. And that would be really cumbersome to draft and route through the bureaucratic system. And a private owner would not need or want a CF management committee to tell him what to do on his swidden land.

Therefore, it can be concluded that the bylaws of the CF would in no way be comparable to the bylaws of the incorporated community making it eligible as legal entity for collective title. A number of other internal problems will emerge for shifting cultivation to be under a CF agreement as some upland fields would have perennial crops of cashew while others are part of a fallow system rotational farming of upland rice. Individual claims cannot easily be addressed under the CF agreement. No doubt the ultimate goal of the government is to stop shifting cultivation inside a community forest and turn the plot into a commercial tree plantation. The article 11 of the Sub decree on Community Forestry implies that the shifting cultivation inside a CF is to be considered of limited duration whereupon the area will be used as a community forest with commercial silvicultural tree crops.

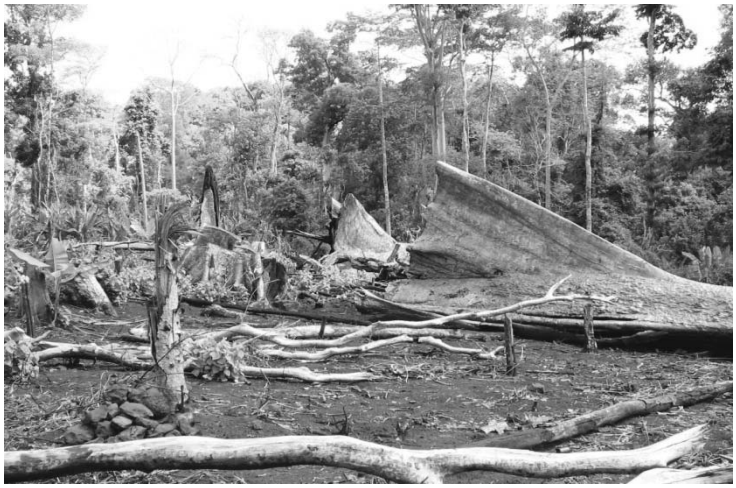
If in the worst case scenario the foreseen ceilings, are implemented, alongside with the proposals for community forestry agreements, communities may still benefit from pooling the remaining traditional lands under a community forestry agreement at the same time as the demarcation for collective title takes place. This means that these options must be known to the communities. There is no public government decision yet on size or ceiling of collective land holding by community, household or family yet.

Indigenous communities that in 2007 may see the community land set aside for collective title crumbling in size due to potential new imposed ceilings on land per family and perhaps nothing reserved for future generations. ***This is neither in conformity with the Land Law, nor with the concept of land and territories of indigenous peoples.***

5.2.3. Injunction against shifting cultivation in natural intact forest of the PFR

Article 37 of the Forestry Law carries one clear statement: an injunction against shifting cultivation in natural intact forest that is part of the PFR. But what is also clear in the applicable legislation, is that natural intact forest can be part of the collective ownership. This creates a contradiction.

This injunction is clearly for environmental and biodiversity conservation objectives, at least on paper as many areas of 'intact natural forest' has been given away as economic land concessions. This kind of shifting cultivation would be the one designated in Khmer as 'boe nae jor', which carries the connotation of a nomadic kind of shifting cultivation opening up new forest with large trees. The shifting cultivation term used in the Land Law is different and connotes a rotational farming system. Furthermore, the uncertainty surrounding which areas of land may actually be eventually be identified as natural intact forest remains and there remains the possibility that areas that were actually fallow lands within a shifting cultivation system may be mistakenly identified as intact forest simply due to the time at which satellite imagery was taken of these areas.



Swidden fields are found in areas, which would have been natural intact forest some years back. However, due to the RGC's concessions and local deals Vietnamese logging companies have been among those who came first and they cut down the forest for its valuable species. Only afterwards did the indigenous communities move in to make swiddens in the same land.
Some cash crops are not perennials. Soya beans are grown to fetch a market price. Soya beans not being perennial no permanent claim is established by planting soya beans. The land is cultivated by a villager from one of the pilot villages and it is unknown whether this land can be included in the collective title or the FA says that it should revert to forest. It borders a hill of spirit forest.

For environmental and biodiversity protection purposes the injunction in the Forestry Law may make sense but it needs to be highlighted that it is not the villagers that destroy natural intact forest but the logging companies, which receive economic concessions from the government covering large tracts of natural forest. As long as these concessions do not stop the implicit environmental objectives of the Forestry Law will not be met. And the FA, even where its staff wants to protect the forest, suffers from lack of staff and cannot cover large areas of land. There are no rangers in the field and no forest protection units except near conservation forests and protected areas.

6. The possible contents of the Sub decree on Shifting Cultivation

In July 2007 a working group was set up under the head of the community forestry office of the FA. By September 2007 no news had emerged from this group. Whether the presence or absence of the sub-decree influences the uptake of the MLMUPC work on collective land registration of the incorporated communities is not known. Legal experts assess that it may not really matter as it will not prevent the separate preparation by MLMUPC of the Sub-decree on Indigenous Communities' Land Registration.[15]

If and when published, the contents of the Sub-decree on Shifting Cultivation will refer back to Article 37 of the Forestry Law and to the Sub-decree on Community Forestry and should also refer, where to the Articles 23 to 28 of the Land Law to the extent that the sub-decree will affect indigenous communities and their collective ownership. The Land Law mentions shifting cultivation in Chapter 3, Part 2 Article 25. This Article highlights the need to include and reserve sufficient land for shifting cultivation in the collective title. The Land Law does not put shifting cultivation into a procedural framework but sees it as part of a 'traditional agricultural mode' to be respected when carried out by indigenous peoples. *The Land Law does not set a limit on size of area to be subsumed under collective title and it does not indicate whether the area is assumed to be State Private or State Public Land prior to being subsumed under collective title*. The actual demarcation will refer to the State Land Management Sub decree plus associated *prakas* which set procedures for state land mapping defining State Public and State Private Land.

The Forestry Sub Decree 53 sets out the procedures for the demarcation of the Forest Estate by the FA as a stand-along activity outside of the SLM process. This sub decree does not mention the potential of shifting cultivation fields or fallows inside the forest to be gazetted, nor does it mention the possibility of spirit and burial forests.

In order to address some of the remaining uncertainties hanging over the process of developing a sub-decree on shifting cultivation, the following questions need to be addressed. These are taken one-by-one below:

1. ***For whom is the sub-decree intended?***
2. ***Which scenarios would the sub-decree cover in terms of land areas under different classifications, and which procedures are applicable?***
3. ***What would be the specific applicability of the sub-decree for indigenous peoples?***

6.1 For whom is the sub-decree intended?

Many communities that are non-indigenous operate a system of rotational farming where swidden fields are complementary to irrigated paddy fields. Many of these find themselves in forested areas while other migrant laborers penetrate forest lands that are not demarcated by FA and convert these into farm land. A 10 km long stretch of land along the road to Mondulkiri shows a 500 m deep belt of fully cleared land that was an original natural forest on both sides of the roads. This has been carried out by in-migrants in search of land. The FA has not stopped them. Most migrants try to establish orchards of perennial cashew or rubber. Still it is clearing of the natural forest.

[15] The MLMUPC sub decree on IP Land was heralded already in *Interim Paper on Strategy of Land Policy Framework* of 2002 and has been quoted ever since as a major policy marker, despite the fact that the Land Law does not ask for such sub-decree

In the eyes of government officers shifting cultivation (using the Khmer term for 'nomadic slash and burn') is primarily associated with indigenous communities and considered a "backward" mode of agriculture of low productivity. In fact, no one has defined shifting cultivation technically and, as noted, the Land Law and the Forestry Law use two different terms with different connotations (rotational farming versus nomadic slash and burn). This means when - in real life -work is to be carried out delineating boundaries, there is flexibility on one hand and haphazardness and possible domination on the other. The sub decree will need to define what is meant by shifting cultivation. As described above most indigenous communities practice a mix of privately claimed perennial cash crops and rotational swidden rice plots that are distributed each year through a village consensus, cultivated and left fallow as a common pool resource for natural regeneration of soil fertility.

The sub-decree on shifting cultivation called for in Article 37 of the Forestry Law is not linked to indigenous communities directly in the text of the Article. Rather, it is intended to be of general applicability, addressing all possible shifting cultivation areas. However, the terms of reference for the Working Group on developing this sub-decree implies that the intention is to target indigenous communities, and thus also implies that it should be linked directly to a concomitant demarcation of the indigenous communities' collective ownership.

The Forestry Law acknowledges the shifting cultivation areas that legitimately have been included in the collective title of indigenous communities (Article 11 and 37 first para), but in Article 37, it also asserts its control over shifting cultivation that is carried out inside any community forest and it prohibits shifting cultivation in natural intact forest. If the terms of the Land Law are applied as it is understood by the authors of this study, this means that within the collective title, shifting cultivation will be subject to the exigencies of the Land Law, and traditional methods of indigenous communities should be duly recognized. According to this understanding, any sub-decree on shifting cultivation should apply only to areas outside the collective title over which the FA asserts its authority. However, the understanding among officials at the national level is not as clear-cut.

Therefore, sub-decree would need to address the different legal and real-life situations under which shifting cultivation is found and it would need to define shifting cultivation based on the original meaning of the word: shifting or rotating the lands in order to crop and leave the land for years to regenerate soil fertility. This is the system that Land Law has in mind when in Article 25 it stipulates that 'reserved' lands (fallows) are to be included in the collective title. There have been rapid changes in land use since 2000 when the Land Law and Forestry Law were formulated, but there are no figures on existing land use and cropping patterns in, for instance, Ratanakiri and Mondulkiri that would show how much land is under traditional shifting cultivation practice and how much has been converted to perennial cash cropping. The formal procedures suggested below are for areas that still feature the traditional systems of shifting cultivation.

6.2 Which scenarios would the sub-decree cover in terms of land areas under different classifications, and which procedures are applicable?

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1. ***Where land is not yet mapped and classified as State Public or State Private land. This means also the PFR is not yet demarcated.***

This is the situation of most land in Ratanakiri and Mondulkiri provinces where shifting cultivation takes place. How the classification will be carried out in the field is uncertain and makes the succession of the stages in the registration process complex. If the FA wishes to gazette certain areas to become part of the Permanent Forest Estate (Protection, Production and Conversion Forest) separate from an SLM process the FA will use sub decree 53 of 2005[16]. This sub decree does not deal with shifting cultivation and does not provide any procedures for how to deal with a situation where the lands to be gazetted include a rotational farming system. The sub decree 53 does not mention indigenous communities' collective title although it does refer to the Land Law in the preamble among the laws "that have been seen".

In comparison, Article 11 of the Forestry Law calls for the FA to pay attention to existing collective titles. Only one Article (10.4) in sub decree 53 indicates a need to "facilitate and consult with local authorities, local communities or concerned entities in order to expedite the process of classifying permanent forest reserve in each province and municipality". Article 4 allows for complaints within 90 days to a National Committee set up under MAFF chairmanship.

Sub decree 53 is very constrained in its approach to participatory forest delineation. A sub decree on shifting cultivation must therefore specify the consultation process necessary to establish a just legal regime. And in conformity with the Land Law, decisions on demarcation should also be subject to consultation, and the use of lands as asserted by indigenous communities themselves.

The above mentioned new Danida supported project with FA on forest demarcation is meant to create lessons learnt and implement a more participatory approach. The sub decree on shifting cultivation would probably in this situation call for the land either to be set aside for future collective titling, or if the FA decides that the indigenous communities use more land than it thinks permissible politically it may classify the land as PFR and ask the communities to stop the cultivation or suggest to the communities that the area can form part of a community forest. This would clearly not be in line with the Land Law.

2. Where shifting cultivation takes place in lands already forming part of the PFR

These lands may be relieved of PRF status and converted in order to form part of the collective title.

One example of this is the third indigenous community's pilot site in Monkulkiri set up for the study on how to go about collective land registration. This community of Andong Kraleung is located inside a FA Protection Forest where FA through a seconded officer

[16] Forest Demarcation *Sub decree or Sub decree on procedures for establishment, classification and registration of Permanent Forest Estate*, 2005

[16] The project is called *Demarcating Cambodia's Forest Estate - Developing the Demarcation Process in Kampot, Kratie, Mondulkiri and Preah Vihear Provinces*, 2007. This means that it will address also a province with a high density of indigenous communities (Mondulkiri). The project document calls for a higher degree of consultation than the sub decree 53 provides for. Mondulkiri will come under the WB funding and the Bank will apply its own Safeguard Policies.

paid by WCS has been instrumental in delineating the shifting cultivation area (2000 ha) inside the forest. It is now ready for registration as the community is already a legal entity in the eyes of MOI. As the actual registration with the MLMUPC has not yet been carried out for the three pilots it is not yet known how the lands under Andong Kraleung shifting cultivation will be classified. It is assumed that the forest will be converted so that there is no encumbrance on the collective title. But this is yet to be seen.

3. The situation where shifting cultivation opens up new intact natural forest.

This is a forest offense and would not be allowed as already stated in the Forestry Law.

4. Situations where irrespective of land classification shifting cultivation areas of a particular community make up an area which exceeds a total of 5 ha per household.

The draft *Policy (Dec 2006) on Registration and Use Rights to Land of Indigenous Communities in Cambodia* foresees a delimitation of relevant areas with a 5 ha ceiling. This situation would pertain to a situation of actual land registration, both individual and collective. In this situation the sub decree on shifting cultivation may call for the excess land to be given up by the community. For indigenous communities this would clearly not be in line with the Land Law's provision of land to be kept in reserve and it would be at variance with existing practices in the pilot site of Andong Kraleung under the government's project to study how to go about collective titling. Andong Kraleung has set aside 2000 ha for its future collective title. The village clearly plans to keep a large chunk of land in reserve (as allowed by the Land Law) for future generations. As seen in the draft Policy on indigenous communities' collective land registration a ceiling was set on spirit and burial forest acreage. However, the authors of this study maintain that in order to respect the spirit and letter of the Land Law as it pertains to indigenous communities, this proposed ceiling is not advisable, and other ways should be developed to address this matter.

5. Shifting cultivation may occur in areas already designated as community forests.

This situation would be a result of setting up community forests in existing shifting cultivation areas where the lands are deemed in excess of what is politically acceptable at a given point in time. It can also comprise shifting cultivation undertaken in newly established community forests where trees are still small and scattered allowing for rice, soya beans or maize crops in between.[18] This is the situation which article 37 of the Forestry Law addresses by indicating that the FA is in control of such land in the same way it has the ultimate control of the community forest outside the collective ownership through the leasehold arrangement. The sub decree on shifting cultivation will stipulate a maximum number of years that such cultivation is permissible in a community forest. This limitation would thus apply to community forest outside the scope of the collective title. However, Article 37 also connotes the coverage of shifting cultivation inside the collective land ownership that already registered with the State, which would presumable be subject to the rules of the collective ownership. Community forest is foreseen by the legislators to be subsumed under the collective land title but under the control of the foreseen sub-decree under this article.

[18] *Prakas on Guidelines for Community Forestry* published in December 2006,

6. Where shifting cultivation areas are found inside Economic Land Concessions (ELC).

Here the sub decree on ELC stipulates the concerns for the local communities. The sub decree on shifting cultivation may or may not address this situation.

6.3 What would be the specific applicability of the sub-decree for indigenous communities?

A final recipe for how to deal with areas of shifting cultivation claimed by indigenous communities cannot be known until the government puts the actual demarcation in motion, i.e. endorses the provincial and district working groups to go ahead with collective titling. Once the procedures are to be tried out in practice, there will be new lessons, in particular as lessons from the pilot community legal entities begin to emerge and their areas of shifting cultivation vary in size.

The options for ensuring that the sub-decree on shifting cultivation not only applies rules of general applicability, but actually responds to the specific situation, needs, and already existing rights under national legislation are as follows:

- That the sub-decree specifically addresses the difference between shifting cultivation in its more destructive form, and shifting cultivation as practices by indigenous communities in Cambodia. This would also necessitate taking into account specific legal provisions for community ownership according to the Land Law. Within the context of a sub-decree on shifting cultivation, this would of course address areas outside the collective title.
- That the MAFF/FA can decide on a Prakas linked to the Shifting Cultivation Sub decree that specifically relates to indigenous communities and to the Land Law's provisions for collective title. In a Prakas and its associated Guidelines it would be easier to define operational procedures for how to go about it, how to define shifting cultivation in the specific case of indigenous communities, and how to assess the amount of land to which these communities have a right - preferably on a case-by-case basis, but maintaining the principle of respect for their traditional methods of land management and their customs. whether there is a ceiling or not for the amount of land, and how to address changes in land use from 2002 satellite imagery showing forest to present 2007-2008 land use. As the sub-decree is slow in emerging, the associated prakas and guidelines may not be ready until 2010, but in the meantime it is hoped that the lessons learned from the registration of indigenous communities as legal entities, and other lessons from land demarcation processes will be able to inform the process.

The process for actually delineating shifting cultivation areas as part of the collective title should in fact form part of the envisaged Sub decree on Registration of Indigenous Communities' Rights to Land to be issued. This is the subject of a separate process, and legal framework insofar as it would address areas within, as opposed to without the collective ownership.[19]

[19] The situation on the ground differs a lot among the communities. Although the official demarcation of land for collective title for the three pilots has not yet taken place, Participatory Land Use Maps do exist and the pilot of La Eun Kren knows how much land it will claim, which is around 900 ha including residential and other lands. As this area is limited due to claims by neighboring communities there is no room for any FA land demarcation here except if FA wishes to classify and claim burial and spirit forests inside the 900 ha. For the other pilot in Ratanakiri province, the La En community, the situation is different as the village anticipates up to several thousand hectares as its potential collective title. It has no neighbors claiming lands. The pilot village in Mondulkiri located inside existing FA demarcated protection forest expects 2000 ha in its collective title. Each of the three villages has around 100 households/families so at some point the issue of distributional justice may be raised. As land is coveted there is bound to be close attention from central government officials as to how much land the indigenous communities can claim and there is, as said, the potential political decision to put a ceiling like for SLC of 5 ha without understanding the bio-physical requirements of a much larger area for a well functioning shifting cultivation system.

The 'risk' that certain shifting cultivation areas fall under community forestry agreement or are left out of the collective title deviates from the intention of the Land Law but since the Land Law is not precise it is open to political interpretation at any given time. It will be politics rather than sub decrees that decide the finer details of the outcome.

As a concluding remark it should be noted that a sub decree on shifting cultivation is a tool in the RGC's land administration and it can be a tool in poverty reduction as well, when access to land is ensured through secure land tenure that is not amenable to alienation. As an input to community-based collective ownership of lands is a means to stop the land grabbing. Communal tenure has the potential to strengthen the community-based institutions that make decisions on land and natural resources, including agriculture. Security of tenure exerts strong influence on how land and resources are used and environmental protection and biodiversity conservation may be ensured at low cost to the government. Privatization of communal lands, tenure insecurities, and the expansion of agribusiness and mining concessions give rise to an intense demand on natural resources and cause environmental degradation and impinge on access for food and livelihood. The capacity and social capital needed to withstand the outside pressures will be strengthened if the collective land titles are issued in the way the Land Laws sees it. Without secure land tenure, the poor cannot generate wealth from nature.

Bibliography

Land Law 2001

Forestry Law 2002

Interim Paper on Strategy of Land Policy Framework, 2002

Sub-decree on Community Forestry, 2003

Sub-decree on State Land Management, 2005

Sub-decree on Procedure, Establishment, Classification and Registration of Permanent Forest Estate, 2005

Sub-decree on Community Fisheries Management, 2005

Guidelines and Prakas on Community Forestry, December 2006

Prakas *Identification and Mapping of State Land and State Land Classification, March 2006*

Decision to put the text on criteria for state land classification as an annex of the Prakas No 42DNS.BK dated10. March, 2006 on State Land Identification, Mapping and Classification, MLMUPC,No. 52 DNS.SR, Date: 25 December 2006

Commune/Sangkat Land Use Planning Folder Document #6?Illustrated Summary Guidelines for Proposed Revised CDP/CIP Planning Cycle? Power Point Presentation, 22 December 2006 Draft Guidelines

Evans, T. and Phet Phaktra, 2005. *Participatory Land Use Planning in a Conservation Area - The experience of WCS and FA in Modulkiri*. WCS

Hobley, Mary, Formal Legal and Informal Framework for Forestry in Cambodia, Chapter 10 of the *Independent Forest Sector Review* 2004

Independent Forest Sector Review, 2004

Levinson, J., 2002 *An Examination of the Community Fisheries Sub-Decree in Cambodia: Changes and Developments during the Drafting Process*. Bangkok, Thailand: NACA-STREAM, 26 pages

Gilmour,D.A., Nguyen Van San, and Xiong Tsechalicha, 2000, Rehabilitation of Degraded Forest Ecosystems in Cambodia, Lao PDR, Thailand and Vietnam, IUCN, WWF and GTZ

McKenney, Bruce; Yim Chea, Prom Tola and Tom Evans, *Focusing on Cambodia's High Value Forests: Livelihoods and Management*, Special Report 3, November 2004

Ty Sokhun, Sokh Heng and Lao Sethaphal; 2005 *Institutional Arrangements for Community Forestry in Cambodia*