

DRAFT REPORT

**INDIGENOUS KNOWLEDGE ON BIODIVERSITY IN CAMBODIA: THE
NATIONAL LAWS AND POLICIES FORMULATION RELATED TO
INTERNATIONAL INSTRUMENTS**

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PART I

INTRODUCTION

1. Identification and cultural practices

Indigenous peoples in Cambodia are living dispersedly in Cambodia living in among 15 provinces are Ratanakiri, Monduliri, Kratie, Kampong Cham, Stung Treng, Kampong Thom, Preah Vihear, Kampong Speu, Pursat, Battambang, Banteay Meanchey, Siem Reap, Udor Meanchey, Koh Kong, and Preah Sihanuk,. The most of indigenous groups are found in the Northeastern Provinces of Cambodia (Ratanakiri, Monduliri, Kratie and Stung Treng)¹. The indigenous peoples are approximately 1% of total population².

Indigenous peoples' livelihoods are based animal husbandry and rotational (shifting) cultivation and they are living in strong unity. Apart from rice cultivation, they collect non-timber forest products from natural forest (chopping rattan and plucking vine, tapping resin, picking cardamom, searching for quintessence of Kreusna tree), and weaving which are the main source of their family's income. Their customary law and practices have been respected including taboo³ to certain animal and tree, secret areas and cemetery sites. They also know how to talk to wind, tree and water spirit for blessing good health and high yielding crops.

Indigenous leaders presented their territory; spirituality and identity in Asia Regional Conference⁴ traditional leaders govern community included conflict-resolution, making collective decision and divided land use. Land and resources as collective and individual manage in own plots. Social obligations assist each other during planning, harvesting, spiritual ceremonies and shortage of food.

Indigenous peoples have critical value and knowledge to land and natural resources, which has strong links with biodiversity and environmental issues and indigenous knowledge backbone to indigenous identity⁵. Indigenous peoples legitimize the important of land, where associated with the residential land, sacred forest and cemetery, rotational and paddy field, preservation land, grassland and community forest.

Further, indigenous peoples' identity have been practiced for centuries including practicing rotational farming and conducting spiritual ceremonies in the process of rotational farming system, manage and use land collectively, restrict to certain forest, mountain, big tree, worship for appealing a good yield and healthy as well as having on language, arts and craft skills. The everyday practices were transferred knowledge and experiences to young generation.

2. Status of Biodiversity in Cambodia

Biogeographically, Cambodia is a tropical country dominated by lowlands along the Mekong River and Tonlé Sap Lake, where agriculture is concentrated, one coastal zone in the Southwestern, and other three mountain regions in the Southwest, North and Northeast. Knowledge at the species levels for plants and animals of Cambodia remains very limited. According to a MAFF's decision (*PRAKAS*) on classification and list of wildlife species dated 25th January 2007, indicated three categories: endangered species, rare species, and common species. Among the three groups of species are 10 mammals and 6 birds are groups of endangered species; 27 mammals, 45 birds, 4 reptiles are groups of rare species; and 46 mammals, 481 birds, 82 reptiles are groups of common species. Based on www.biodiv.org, 16 February 2010, quoted from IUCN Redlist shown that 39

¹ Draft report on Indigenous Peoples' Issues in Cambodia, January 2010

² National Policy on the Development of Indigenous Peoples, 2009

³ Taboo has been practiced monkey, wild chicken, python, wild bamboo etc.

⁴ Asia Regional Conference on Indigenous Peoples and Communal Land, 14 to 16 February 2007.

⁵ Jannie Lasimbang, Protection of indigenous rights to land: international and regional experiences, presented in Asian regional Conference, 14 to 16 February 2007.

mammals, 36 birds, 15 reptiles, 38 plant species are listed as critically endangered, endangered, vulnerable, near-threatened or data deficient.

2.1. Pressure and Threat on Biodiversity

- **Genetic erosion:** Based on the 4th National Report to the Convention on Biological Diversity (no date) shown that people displacement leaving behind their crops and thus unable to preserve the old varieties that they used to possess earlier, changes in agricultural system, increasing use of agricultural chemicals, pesticides, and herbicides are potential cause for loss of genetic resources. Recent introduction of new modern varieties also cause threat to danger of replacing the remaining native landrace diversity of rice and other crops. The same consequences are occurred in Mondulkiri as shown in a study report, January 2009, page 8-9, on Land Suitability Evaluation for Sustainable Agriculture Development in Pichreada, Mondulkiri.
- **Habitat loss:** The pressures causing habitat loss in both terrestrial and aquatic environments include the demand for increased agricultural lands, fuel wood and non-timber forest products. Recent road and irrigation infrastructure development and rehabilitation not only cause fragmentation to the original habitats but also open for more access to other destructive activities. The increased access to areas has subsequent spread of land claims and wildlife trade networks from the local to international level and as a result enhanced wildlife hunting.
- **Unsustainable harvesting:** Whilst anthropogenic activities such as selective logging, clearing forestland and non-timber forest product (NTFP) collection have multiple effects, hunting supersedes, and wildlife trade, all these in posing the most intense and immediate threat, particularly to mammals. It is expected that over fishing and illegal fishing along rivers and natural stream are occurring in some fisheries activities, however this is very difficult to substantiate.
- **Change in hydrological regime:** Change in land use and infrastructure development, particularly on the Mekong and its tributaries pose potential severe threat to the hydrological regime of the Mekong and Tonle Sap systems. This happened at Srè Pok River in Mondulkiri and Ratanakiri province. Fish production is potentially under strong influence from such change and development as fish migration is particularly triggered by not only the size and duration of flood, but also the timing of pulse flood. The contentious issues now are related to the fact that a series of hydropower projects on both mainstream of the Mekong and its tributaries are planned to go ahead in the Mekong and Srè Pok in Cambodia. The NGO Forum on Cambodia, April 2006, also indicated that Extreme problems have been reported since mid 1996, as a result of hydropower dams located on the Sesan River in Vietnam, which flows through Ratanakiri and Stung Treng provinces in the north-east of Cambodia. The dams have resulted in deaths from flooding, erratic river levels, worsened water quality, increased health problems, a severe decline in fisheries and riverside biodiversity, and continues to threaten the livelihoods and lives of the people who depend on the river.
- **Pollution:** In the Northeast, beginning as early 1996, members of more than 10 indigenous groups in Ratanakiri, Mondulkiri and Stung Treng provinces have experiences devastating including river water dirty (muddy brown), river bank collapse, fishing pools were filled into by sand, and bacterial in in Sesan and Srepok River, which hydropower project is being built and operated on the rivers upstream in Vietnam and Lao PRD⁶. There are now proposed additional savant large dams are being studies on the Northeaster Rivers inside Cambodia. A lot of small scale mining exploitation in Mondulkiri province is part of no

⁶ Water Dirty Report was sent to Cambodian Mekong Committee, dated 27 December , 2009.

waste management and at the end of pollution flow down Mekong River. These will be strong affecting to both animals and human.

- **Alien species:** At present, there has been studied by Birdlife International and documented the cases of detrimental effects of alien invasive species in Cambodia. However, a number of known aggressive invaders are reported to present in Cambodia. There are also many activities in agriculture, forestry, fisheries, horticulture, and rural development that involve intentional introduction of alien species. These have been seen in Eastern Plain Landscape of the Northeastern provinces of Cambodia (Ratanakiri, Mondulkiri, Kratie and Stung Treng).
- **Climate Change:** Through field discussion of wetland alliance project of WWF-Cambodia⁷, it noted that Cambodia is lowlands and particularly wetlands any rise in sea level that is an effect of potential climate change would significantly affect the freshwater fishery. John E. WWF, 2009, page 4, also state similar to this case. If sea level changes affect the salinity of the Mekong and Tonle Sap, it will also directly impact on the fish species diversity, as many freshwater fish are sensitive to salt water. The coastal zone would also be negatively impacted, as increasing water level would lead to considerable habitat loss in the short term.

2.2. Development Impacts on Way of Live of Indigenous Peoples

Indigenous knowledge and ways of life on biodiversity is under threats. It has a market value placed upon it⁸, while converted into both the economic commodity and political agenda for aggressive development⁹. In fact, RGC have turned the pristine upland areas into the Triangle Development of Cambodia, Lao PRD, and Vietnam. This development projects implemented infrastructure development (road, hydropower, agro-industry and other constructions) gradually happened in the national and regional development plans¹⁰. At present, there are three main problems affecting indigenous communities are:

- Economic Land Concession (ELC) and mining are still big pressures and threads to the existing protected areas and established communities even there is being economic crisis in the world. Land conflict happens between ELC Companies and communities caused by ELC zoning with poor participatory evaluation study.
- Migration from lowland provinces is also happening. They exactly forced indigenous people through several means leaving their location or farm lands. The indigenous more or less must leave their farms or habitat to find out other replacement. Besides the existing rotated farms of indigenous peoples, it areas are recently cover by Ministry of Environment and Forestry Administration (Ministry of Agriculture, Forestry and Fishery).
- Economic influence in the region forced indigenous peoples changing their behaviors in order to compete with market requirements. *Example:* Several indigenous people tried selling their land parcels by exchanging nice motorbikes, vehicles, jewelry, and other requirements.
- Flow of lowland people's culture into highland areas. They are still maintaining their cultural respects but some are gradually changing. It is found by the ways of (i) indigenous families, who are living close towns, follow Khmer wedding culture; (ii) they changed their identity such as house style, clothes, language, and belief (religion).

Newly, provincial governor's office has issued an official letter dated 4th January 2010 with No. 001 *ProKor/MKR* to cancel invalidated 50 ELC companies. Those companies will be called for

⁷ Phath & Kamnap, WWF, 2nd-6th March 2009

⁸ Roy Ellen ... Indigenous knowledge of the rainforest: perception, extraction and conservation. University of Kent at Canterbury

⁹ This term is used by UN Human Rights Rapporture,.....

¹⁰ Through power point presentation by Ministry of Commerce during Round Table Meeting on Exchanging Experiences in Developing Landlocked Remote Areas of Cambodia, Lao, Vietnam and India on 20th January 2009 at Phnom Penh

reapplication (register again) at Central Government for claim back the ELC. There are worries by all development partners are that the 50 ELC companies will come again for their development purpose inside same areas. The land conflict will be happened between indigenous communities and companies, especially the uses of products and non-timber forest products.

PART II

REVIEW OF EXISTING LAWS AND POLICIES

1. Relevant Laws for Indigenous Peoples

1.1. Constitution of the Kingdom of Cambodia

Cambodian strategically made own history requires special measure to ensure protection of human rights after 1991 Paris Peace Accords, which formally ended the Cambodian conflict. The Agreement provided for the incorporation of a declaration of human rights in the Cambodian Constitution. The Constitution of the Kingdom of Cambodia contains a declaration of fundamental rights, including the rights to life, freedom of movement, freedom of religion, assembly and association including political parties and trade unions, protection from arbitrary deprivation of property or deprivation of private property without just compensation, and freedom from racial, ethnic, religious or sexual discrimination.

There are a number of legal instruments it is essential to bear in mind when considering the issue of community development, as it pertains to indigenous peoples. The legal context of the present inquiry comprises of the following documents: 1). Constitution of the Kingdom of Cambodia, 1993; 2). Land Law, 2001; 3). Forest Law, 2002; 4). Natural Protected Area Law 2008; 5). Law on Tourism 2009; 6). Law on Commune/Sangkat, 2002; 7). Law on Mineral Resource Management and Exploitation, 2001.

Cambodian Constitution is the highest hierarchy of laws and policies, which provided and respected the rights of Cambodian citizens. There is no special provision in the Constitution of the Kingdom of Cambodia for indigenous peoples¹¹. It is clearly indicated Article 32 of the Constitution states that "*Khmer citizens shall be equal before the laws and shall enjoy the same rights, freedom and duties, regardless of their race, color, sex, language, beliefs, religions, political tendencies, birth origin, social status, resources and any position*".

Article 31 states that Cambodia shall recognize and respect UN Rights covenants. Cambodia is a signatory to a number of international instruments that protect the rights of indigenous people including practices specific culture and self-determination of livelihoods and governance. It also crucial contributed with the Convention on Biological Diversity (1992), which recognizes the roles of indigenous peoples in protecting biodiversity.

Article 59 states that, "The State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological systems, mines, energy, petrol and gas, rocks, and sand, gems, forest and forestial products, wildlife, fish and aquatic resources."

¹¹ In this report, government (particularly the Department of Ethnic Minorities Development), NGO and indigenous peoples representatives agreed to the use of the term "indigenous peoples". Some documents still use the term "ethnic minorities" and are left as it is when the document is quoted but this term is not used as it is often confusing when used in the context of Ratanakiri and Mondulhiri where they represent the majority in these provinces (67% and 71%).

Article 44 stated, “Everyone, individually or collectively, shall have the rights to own property. Only citizens and legal entities of Khmer nationality shall the right to own land. Legal private ownership shall be placed under the protection of the law. Expropriation of property shall be done only in the public interest as provided for by law and shall be compensated in advance appropriately and fairly.

1.2. National Policy on the Development of Indigenous Peoples (NPDIP)

The indigenous communities and the civil society are long-last waiting the Government of Cambodian issued on 24 April, 2009 *NPDIP*. This policy could be seen as complement to the laws/policies of land, forest, environment, and international instruments. It concentrates on 10 development sectors including culture, education and vocational training, health, environment, land, agriculture and water resources, infrastructure, justice, tourism, and industry, mine and energy.

The NPDIP in chapter 2 provided important protection and recognition of indigenous peoples. There are key elements to enforce into practices on CBD:

- The foundation of indigenous peoples’ knowledge is based on their traditions and customs in terms of forest and land use, farming activities and the healthcare system have been studied, strengthened and incorporated into the development programme.
- Indigenous peoples’ communities shall be entitled to access any information regarding the culture, the technology, the economy and the politics on various matters relating to their interests and shall be entitled to access any information relating to their living conditions with equity and stability. Indigenous peoples shall be entitled to express their opinions and share their personal experiences with the Royal Government, citizens and other individuals from various countries.
- Indigenous peoples shall participate in the protection of, and undertake to maintain, the natural and socio-cultural environments. Any rights and communications regarding share responsibilities shall be protected by the laws and various standard legal documents in order to ensure and encourage the use, management and maintenance of environment and natural resources for indigenous peoples.
- Development projects in the living areas of indigenous peoples can function only if there have been and environmental and social impact assessment and publicity to relevant indigenous peoples’ communities in advance in order for those people to have an opportunity to provide input about their needs.
- Indigenous peoples studies on biodiversity and the sustainable use of forests in the living communities of indigenous peoples, in which the participation form indigenous peoples is also required.
- Indigenous people who have previously been living in the natural protection zones and other natural resources conservation zones shall be entitled to use these natural resources in a customary manner according to the laws and various standard legal documents currently in force.
- Communities shall participate in land use planning in order to ensure effective land use. The provincial rural development committee, relevant authorities occupying the State’s lands, the commune council and the village development committee shall examine the land uses and help create measures in order to ensure the sustainable uses of natural resources.
- Laws and standard legal documents for the protection of rights as collective ownerships and the implementation of land use plans shall be completely disseminated via easy-to-

understand methods and in a manner that all members of the indigenous peoples' communities can understand.

Furthermore, the NPDIP is lined with a number of national policies to complement the utilization and management of land, forest and other natural resources. There are several principles and guidelines including 1). Guideline for Establishing Community Forestry, 2006; 2). Guideline for Community Protected Area 2006; 3). Guideline and Manual for Commune Land Use Planning, 2009; 4). Guideline and Manual for Commune Development Planning Process, 2007; 5). Draft Procedures of Registration of Land of Indigenous Communities, 2008; 6). Guideline and manual for establishing indigenous communities in Cambodia; and 7). Decision on Identification and Mapping of State Land and State Land Classification, March 2006.

There are formulated the sub-decrees and royal decrees concerning natural resources management and biodiversity conservation that they are mostly found advantage to indigenous peoples development: a). Interim Paper on Strategy of Land Policy Framework 2002; b). Sub-decree on Community Forestry 2003; c). Sub-decree on Procedure, Establishment, Classification and Registration of Permanent Forest Estate 2005; d). Sub-decree on State Land Management, October 2005; e). Sub-decree on Procedure of Commune Land Use Planning Process, April 2009.

2. Convention on Conservation of Biological Diversity (CBD)

RGC has been a member of the CBD in 1995. The convention has been declared for implementation as well as national law, which is being effective in Cambodia through a Royal Decree with No. 0606/012 dated 16th June 2006 on the declaration for using law on the approval of an agreement to allow RGC to be a member in convention of conservation for biological diversity.

The CBD aims to have participatory measurement implementation on biodiversity conservation and sustainable biodiversity use management. It is to ensure to contribute the international standard of CBD, while the RGC has endorsed a number of national laws on:

- Environment Protection and Natural Resources Management dated 24th December 1996. The law aimed to protect and conserve the natural resource and evaluate all environmental impacts including biodiversity conservation. In Article 2 and 3 of this law provides for the formulation of a National and Regional Environmental Plan for protection and sustainable natural resources management. In Article 6 is required Environmental Impact Assessment (EIA), which is conducted for any projects and its procedure needed to be determined by a sub-degree. In the process for EIA is allowed for participation of the public in protecting and managing natural resources.
- Forest Law, dated 31st August 2002, defines the framework for management, harvesting, use, development and reservation of the forests in Cambodia. The purpose of this law is to ensure the sustainable management of forests for their social, economic and environmental benefits, including conservation of biological diversity and cultural heritage. The law is administered by Forestry Administration. In Article 2, ensure traditional user rights of timber products and non-timber forest products for local community. Article 4, is remarkable in its recognition of full participation in all government decisions that have the potential impact on concerned communities, livelihoods of local community and forest resources. Article 48 (in chapter 10 on conservation of wildlife) of the Forest Law stated that all kinds of wildlife species in the Kingdom of Cambodia are State property and the component of forest resources, including all species of animals, birds, reptiles, amphibians, insects, other invertebrates, and their eggs or offspring. Such wildlife species are under the management, research and conservation of the Forestry Administration, except for fish and animal that breeds in water. Wildlife specimens are dead wildlife, including the whole body, internal or external organs, the skeleton and processing

products, and shall be under the management jurisdiction of the Forestry Administration. All wildlife shall be divided into the following three categories: 1)- Endangered species; 2)- Rare species; and 3)- Common species. The Ministry of Agriculture, Forestry and Fisheries through the proposal of the Forestry Administration, shall issue a Prakas to determine the criteria for each category and establish a separate list for endangered and rare species, which may vary between regions in Cambodia, with consultation with Ministry of Environment.

- Fishery Law, dated 21st May 2006, aims to ensure fisheries and fishery resource management, enhance aquaculture development, the management of production and processing, and to promote the livelihoods of people in local communities for the social economic and environmental benefits, including sustainability of the conservation of biodiversity and natural culture heritages in Cambodia. The law is administered by Fishery Administration.
- Law on Mineral Resource Management and Exploitation dated 13th July 2001 has purpose of this law is to determine the management and exploitation of mineral resources, the manipulation of mines and all activities relating to the mining operation in Cambodia save for the mining operation of petroleum and gas which shall be under a separate law. The law is under implementation of the Ministry of Industry, Mines and Energy. The Mining Law is strong confidentiality restrictions, stating that all application forms, reports, plans and notices are confidential until the termination of the licensees or approval of the license holder to release them. Information related to environmental and social issues can be released to the public, but only at discretion of the Minister of MIM.
- Land Law, dated 20th July 2001, has the objective to determine the regime of ownership for immovable properties in the Cambodia for the purpose of guaranteeing the rights of ownership and other rights related to immovable property, according to the provisions of the 1993 Constitution of the Kingdom of Cambodia. The Land Law mandates that indigenous communities be recognized as legal entities prior to receive collective title. The sub-decree on registration of land states that legal entity is required before that community may lodge an application. Also, it shall obtain legal recognition as community is under the Ministry of Interior's jurisdiction. It needed also legal framework for this process for defining the indigenous peoples' identity to become legality, which is under mandate of Ministry of Rural Development. The sub-decree of procedures of registration of land of indigenous communities in Article 4 provision for land is to be registered as collective title for indigenous community includes:
 - Residential land or land which is reserved for building residences;
 - Traditional agricultural land, actual cultivated land, farm land and reserved land necessary for shifting cultivation recognized by administration authorities and neighbors;
 - Spiritual forest land can have one or more places for each community, with the total land size not more than seven (07) hectares; and
 - Forest land of cemetery can have one or many places for each community, with the total land size not more than (07) hectares.
- Protected Areas Law dated 15th February 2008. Similar to the forest law, this law defines the framework of management, conservation and development of protected areas. The objectives of this law are to ensure the management, conservation of biodiversity, and sustainable use of natural resources in protected areas. Article 7 (in chapter 3 on establishment and modification of protected areas) of the Protected Area Law states about 7 categorized protected areas: National Park, Wildlife sanctuary, protected landscape, multiple use area, Ramsar site¹²,

¹² Protect the resources in wetlands which are of international interest and of ecological or biological importance, especially for serving as habitats for water birds that are threatened and sharply declined in number, and as habitats for migrating water birds

biosphere reserve, natural heritage site, and Marine Park. All the stated protected areas are being instructed to be defined by a sub-decree (to be signed by Prime Minister of Cambodia). Before the law endorsed by national assembly, Cambodian King approved on a Royal Decree dated 1st November 1993 by establishing 4 main protected areas in Cambodia. Those are: National Parks, Wildlife Sanctuaries, Protected Landscapes, and Multi Use Areas. Furthermore, the Protected Area Law in article No. 11 of chapter “Zoning” stated that each protected area shall be divided into four (4) management zoning systems (annex 1). Issuing land title or permission to use land in these zones shall have prior agreement from the Ministry of Environment in accordance with the Land Law. These zones are found in the Protected Area Law: core zone, conservation zone, sustainable use zone, and community zone. The zoning is not found in forest law but it has been suggested to prepare the zoning through protected forest management plan.

3. International Instruments on Indigenous Peoples Rights

3.1. ILO Conventions

RGC has ratified discrimination in respect of employment and occupation, ILO convention 111. It associated with the access to vocational training, employment and occupation, which gathered the non-timber forest products and utilise forest products in sustainable manner by indigenous communities, including practices of shifting cultivation. The indigenous peoples’ practices are associated with land and forest occupation, where secured for their shelter, livelihoods, culture, identity and biodiversity conservation. Kirsten study 2008 expressed that shifting cultivation needed to be claimed as their ancestral domain and to be registered as communal land title in order to against with granting ELC. The ancestral domain was thus lost, it affected to their opportunity for employment and occupation and traditional practices.

The ILO Convention No. 169 is a legally binding international instrument open to ratification, which deals specifically with the rights of indigenous and tribal peoples. It is found that, today, it has been ratified by 20 countries only. Cambodia is not a member among the ratified countries¹³. Once it ratifies the Convention, a country has one year to align legislation, policies and programs to the Convention before it becomes legally binding. Through Indigenous and Tribal Peoples identified by ILO (www.ilo.org) dated 8th February 2010 indicated that the Convention does not define who are indigenous and tribal peoples. It indicates very similar cultural respect, belief, society organization even they are using different languages. In Cambodia, the Royal Government of Cambodia recognized indigenous peoples with their appropriate identities such as: (i) Traditional life styles; (ii) Culture and way of life different from the other segments of the national population, (e.g. in their ways of making a living, language, customs, etc); (iii) Own social organization and political institutions; and (iv) Living in long historical continuity in a certain area (for centuries). Before 1970s, the indigenous peoples were popular called highlanders (*Khmer Leu*). They were living in remote areas and their livings were separately from majority Khmer.

Convention No. 107 is no longer open for ratification, it is still in force for 17 countries¹⁴ a number of which have significant populations of indigenous peoples, and remains a useful instrument in these cases as it covers many areas that are key for indigenous peoples. Convention No. 107 is a broad development instrument, covering a wide range of issues such as land; recruitment and conditions of employment; vocational training, handicrafts and rural industries; social security and health; and education and means of communication. Particularly the provisions of Convention No. 107 with regards to land, territories and resources have a wide coverage and are similar to those of Convention No. 169.

¹³ Source: ILOLEX - 8. 2. 2010 of ILO Convention No. 169 (www.ilo.org) , 8th February 2010

¹⁴ ILO Convention 107, www.ilo.org, 8th February 2010.

ILO 169: Article 16, paragraph 1). Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy. 2). Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned. 3). Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. 4). When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees. 5. Persons thus relocated shall be fully compensated for any resulting loss or injury. To be complemented, the Ministry of Rural Development formulated a National Policy on the Development of Indigenous Peoples in Cambodia which has been issued through council of ministers plenary on 24th April 2009.

PART III

REVIEW OF IMPLEMENTATION

1. National Programme Promotion on Biodiversity

1.1. Cambodia Millennium Development Goals

The RGC is committed to take action to strengthen sustainable environmental protection and management of the country's forest resources based on three important pillars¹⁵:

- Sustainable forest management: with strict monitoring of forest exploitation and forest management that ensures adequate forest reserves for domestic consumption, protection against droughts and floods as well as wetlands that serve as fish sanctuaries;
- Protection of natural resources, biodiversity and endangered species;
- Promote and develop Community Forestry that is sound, transparent and locally managed.

The Cambodian Millennium Development Goal 7 has set benchmarks for achievement environmental sustainability for 2015 related to forest resources: (1) Maintain national forest cover at 60% of the total land area; (2) Maintain 23 protected areas covering 3.3 million hectares; (3) Maintain 6 new forest-protected areas equal to 1.35 million hectares; (4) Increase the number of forest rangers to 1.200 in protected areas and 500 in forest-protected areas; and (5) Reduce fuel wood dependency to 52%.

1.2. National Biodiversity Strategy Action Plan

The Cambodian National Biodiversity Strategy and Action Plan, April 2002, identified “equitable economic prosperity and improved quality of life through sustainable use, protection and management of biological resources”. The Strategy provides a framework for action at all levels to enhance Cambodia's ability to ensure the productivity, diversity and integrity of natural systems

¹⁵ TWG Forestry & Environment for CDC Forum, 2007

and, as a result, the ability as a nation to reduce poverty and improve the quality of life of all Cambodians. The main strategic goals include:

- Maintaining biological diversity and productivity of ecological systems by protecting the various species of living organisms in their natural and manmade environments, especially forests, aquatic ecosystems, wetlands and agricultural land;
- Managing human activities and utilizing biological resources in a way that preserves for the long term the basic natural resources, which are necessary for human livelihood and development;
- Ensuring that the benefits coming from the sustainable use of biological resources contribute to poverty reduction and improve quality of life for all Cambodians. Priority actions adopted by the government can be grouped in three broad categories: (a) actions promoting awareness and capacity building of government staff and local communities for biodiversity conservation and sustainable use of biological resources; (b) actions promoting the implementation of community-based natural resource management; and (c) actions aimed at clarifying ministerial jurisdictions, reducing responsibility overlap and promoting inter-ministerial coordination and collaboration in a sustainable development perspective.

The Ministry of Environment has prepared 3 priority action plans 2009-2013 related to environmental management in Cambodia among the other 6 priority action plans¹⁶: (1) finalized the Environment Strategic Plans 2009-2013 and official declaration for application since 15th July 2009; (2) preparing draft 2nd National Environment Plans 2010-2014. The strategic plans will be finalized end of 2010; (3) preparing environment strategic plans and the data has been provided the Ministry of Planning for updating National Strategic Development Plans 2009-2013.

In addition, the Draft National Programme developed by Forestry Administration on the six implementation program, July 2009, concentrated on: (1) Forest demarcation, classification and registration program; (2) Forest resource management and conservation program; (3) Forest law enforcement and governance program; (4) Community forestry program; (5) Capacity and research development program; and (5) Sustainable forest financing program. The program adapts to Climate Change identifies measures required to adapt to the effects from potential climate change in four sectors including the water resource and agriculture, coastal zone and human health.

2. Policies and Programs are being implemented

2.1. Indigenous Community Land Registration

The inter-ministerial committee of Ministry of Rural Development, Ministry of Interior and Ministry of Land Management, Urban Planning and Construction initiated to develop draft sub-decree on “Procedures of Registration of Land of Indigenous Communities in Cambodia” with 14 articles of the 5 chapters, which will be issued by Prime Minister of Cambodia. The 5 chapters are concentrated on: general provision, Land which is to be registered as collective title of indigenous community, procedures of registration of land of indigenous communities, condition for receiving land when a member wishes to leave or to join the community and dissolving a community, and final provision.

The purposes of this Sub-Decree are to determine principles, procedures, and mechanisms for the registration of land of indigenous communities as collective title. The registration of land of indigenous communities has the purpose to provide legal land tenure, ensure and protect the community ownership and land tenure security by keeping the identity, culture, custom and

¹⁶ Conference of the Ministry of Environment, 10-11 February 2010

tradition of each indigenous community. The draft is working parallel to pilot projects on the indigenous community land registration in Ratanakiri and Mondulakiri provinces.

It is long waiting to sub-decree approved and enforced by the MLMUPC, while ILO project in Cambodia has went a head to support indigenous community legal entity and process of identification of indigenous peoples. This project is funded by DANIDA for period of 2005-2007 and 2008 to 2010. ILO have coordinated with the MoI and MRD and national and international organizations (NTFP, DPA, HA, ICSO, in Ratanakiri and MIVI, DPA, Vigilance, WCS in Mondulakiri). There were 6 indigenous communities have registered as legal entity by the MoI: 1). Andong Kralleng, Phnong community in Mondulakiri, 2). O'Rana, Phnong community in Mondulakiri, 3). Kati, Phnong community in Mondulakiri, 4). Srei Ktum, Phnong community, in Mondulakiri, 5). La'En, Tampuong community in Ratanakiri, and 6). La'Eun Kren, Tampuong community in Ratanakiri. They are now awaiting title from the MLMUPC.

2.2. Commune Land Use Planning

Prior 2006, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) initiated a pilot program on Participatory Land Use Planning (PLUP) at some provinces in Northeastern provinces and coastal zone provinces. The PLUP was implemented by Provincial Rural Development Committee with technical support by Department of Land Management through fund support by Seila Program¹⁷. The PLUP program seems not succeed at commune level but it is still implemented by a number of non-government organizations.

Since 2007, the Government of Cambodia changed the PLUP strategy through the Council of Ministers of Cambodia issued another additional sub-decree on Procedures of Commune/Sangkat Land Use Planning (CLUP) dated 5th May 2009. The MLMUPC is implementing agency. To be effective implementation of the CLUP process, the MLMUPC formulated an implementation manual on Commune Land Use Planning to Support Commune Development Plan and Commune Investment Program.

The CLUP manual has its objectives are to provided details information on how to work out, in order to fully synchronize with CDP/CIP. The CLUP manual aims to support commune councils in planning and set up future land use options. The CLUP is more broadly identifying land use planning at commune level. All kinds of land use plans are integrated into the CLUP. *For example:* The PLUP process is really required to encourage all indigenous communities developing their PLUP in their communities and the results can be integrated into the CLUP. This has been piloted at Mondulakiri province.

The CLUP Manual comprises of 8 tasks:

1. Preparation,
2. Verification and update development objectives,
3. Finalization of support maps,
4. Assist in commune investment program project design, (v) Prepare draft commune land use plan,
5. Support at district integration workshop,
6. Map finalization for commune investment program, and
7. Monitoring and evaluation commune land use plan.

In task no. 4 stated clearly about opening for participation of indigenous peoples in CLUP process, especially when making a list of "priority projects" and drawing the corresponding draft project

¹⁷ Government programs administered by Seila Task Force, chaired by Ministry of Finance and Economy from 2000-2006

map. It is instructed that the Commune Planning and Budgeting Committee should respect the following safeguard areas: indigenous people's areas, areas of cultural/spiritual heritage, and areas that are the result of resettlement. This task also defines that as a general rule, no commune projects should be planned in social safeguard areas unless they come equipped with a special safeguard plan to manage the social or cultural resources.

2.3. Commune Development Planning and Commune Investment Programme

The National Committee for Democratic Development (NCDD) for Natural Resources Management developed a guideline on selection of commune projects related to commune natural resources management, October, 2009. This guideline has introduced options of the NRM development components:

- Biodiversity conservation – community forestry/fishery, community boundary demarcation, tree nursery, bird conservation, wildlife conservation.
- Livelihoods management – non-timber forest products (collecting resin, honey, rattan and herbs).
- Law enforcement – law promotion through training, community meeting and workshop.

This project is one of Cambodian government reform toward the decentralization to manage natural resources at the local level and its to ensure the participation of the local community/indigenous community. The indigenous communities have opportunity to predicate in the step of CDP/CIP or annual review, which allowed proposing problems, causes and solution and priorities activities. *For example:* the indigenous community in the Northeastern provinces of Cambodia, especially Ratanakiri and Monduliri provinces. Their most opportunities are found that they can raise their related to biodiversity conservation plans and natural resource management plans to be integrated into the annual CIP process¹⁸.

2.4. National Community Forest Programme

The community Forest programme (CF) has been piloting implemented since mid-1990s by the MAFF/FA and funded by national and international organizations. This pilot project has been considerable potential in Cambodia to protect the forests and enhance their productivity and capacity to support rural livelihoods.

The community Forest Sub-decree and the Community Forest Regulations (Prakas) have been approved on December 2nd, 2003. In 21st, July 2006 this project became the national CF programme, which administered by the Forest Administration (FA). It aimed to arrange for official recognition of community forest initiatives. Also, it is to assist the CF communities to improve the management of forest resources and ensure greater benefits from such management for all members of the communities. Since 2007, the National Community Forest Programme was initially funded by the CONCERN Worldwide, CFI, Danida/DFID, FAO, IDRC, JICA, LWF, Oxfam GB, RECOFTC, WCS and WWF.

There are 421 sites of CF were established nation-wide, covering 396,270 hectares until November, 2009. These numbers of CF benefited to 79,924 families, covering 80 Districts, 194 commune and 717 villages in Cambodia. In addition, MAFF has approved 126 potential CF, covering 145,036 hectares in Siem Reap, Oddar Meanchey, Banteay Meanchey, Kampong Thom, Kampong Chhnang, and Koh Kong. There are 94 CF areas covering 113,544 hectares with signed CF Agreements between FA Cantonment and CF Management Committees. 12 CFs in Oddar Meanchey covering 60,477 hectares are being developed as the first pilot project on marketing carbon in Cambodia¹⁹.

¹⁸ Matrix of commune investment programs of Monduliri province, 2009

¹⁹ National Workshop on Community Forest Development in Cambodia, 2010

This NCFP are facing challenges as following:

- Slow approval on issue of agreement from MAFF
- Overlapping boundary between forest community and economic land/forest concession
- Illegal logging and forest encroachment
- Lack of technical in non-timber forest products processing
- Lack of market for community forest products
- Not clear identifying on tax of non-timber forestry products
- Limited cooperation form local authorities
- Limited technical knowledge and resources for operation the NCFP.

The National Community Forestry Programme Coordination Committed composed of the FA, local and international organizations will organise the National Workshop on “Community Forestry Development in Cambodia” on March 2010. It aims to review roles and responsibilities of CF in managing, using and developing. It also identifies common problems, challenges and defines strategic direction.

3. Collaborative Management of Protected Areas in the Cambodia

There are several study of report indicated different categories of forest among the 2 Forest types²⁰ found in 2006 in Cambodia (forest and non-forest) comprising of 4 categories: ever green forest, semi evergreen forest, deciduous forest, and other forest. Regarding a statistic of Cambodian forest cover in 1970 shown 9 different categories of forest types: evergreen, semi-evergreen, dwarf evergreen, deciduous, coniferous, bamboo, flooded forest, mangrove, and rear mangrove forest. Another report²¹ found 7 categories are evergreen forest, semi-evergreen, deciduous, bamboo, wood shrub-land evergreen, wood shrub-land dry, and other forest.

Cambodia consists of 2 management systems under umbrella of the 2 different Ministries:

- Ministry of Environment covers Natural Protected Areas established by Royal Decree on Establishment and Identification Natural Protected Areas dated 01 November 1993. There are main 4 designations of protected areas: National Parks, Wildlife Sanctuary, Protected Landscapes, and Multiple Use Areas. There are 23 different sub titles of the protected areas detailing with different locations among the main 4 designations of protected areas. The total protected areas equal to 3,402,700 hectares (referred to Royal Decree 1st November 1993).
- Beside the Natural Protected Areas, Ministry of Agriculture, Forestry and Fishery which has Forestry Administration as Secretariat is managing and covering Protected Forest for Biodiversity Conservation. Up to 2002, the Forestry Administration established 9 protected forest areas. The total protected forest areas for natural resource protection and biodiversity conservation equal to 1,346,224 hectares (referred to 9 sub-decrees and decisions).

3.1. Community Protected Areas

Currently, there are many criteria to establish communities for one purpose of NRM's communities and livelihoods improvement for indigenous peoples in Cambodia. The establishment community protected areas or community forest, community fishery, community indigenous peoples are accordance with official guidelines and manual which are instructed by different technical ministries such as Ministry of Environment, Ministry of Agriculture, Forestry and Fishery, Ministry of Interior.

²⁰ Japan-Asia REDD Seminar, March 2008

²¹ Mr. Long Ratanakoma, REDD Activities in Cambodia, May 2009

End of 2009, National Assembly endorsed law on tourism stated about ecotourism development. The law needs a specific instruction from the Ministry of Tourism in order to formulate guideline and manual for forming community or group ecotourism in consistency with other laws. Until now, the ministry has drafted guidelines for establishing community ecotourism inside these areas. The community protected areas development is in line with the Cambodian government's policy and strategy to alleviate poverty and promote nature conservation and shows there is significant political will in Cambodia to enforce new protected area laws endorsed in 2008.

All kinds of communities established at indigenous areas are to develop land use planning inside the community territories. The results of community land use planning are to be integrated into commune land use planning. Currently, there is no report indicating quantity of established communities in Cambodia. The quantity of community is sustainable management and how many are felling. The worry is that even the communities are officially recognized by government but they are still weak to mobilize fund sources support and they lack capacity to manage their sustainable community (sustainable financing in community).

The following are government agencies which are being responsible for supporting technical services and legally approving communities:

- **Ministry of Environment** will cover and approve the proposed community protected areas that mostly established inside areas where recognized by Royal Decree dated 01 November 1993. For example: through proposition of local authorities on community protected areas, the Ministry of Environment officially recognized 13 new establishment of Community Protected Area's have been officially approved for the *Phnom Samkos* Wildlife Sanctuary in Cambodia's Cardamom Mountains²² and other 3 community protected areas in Phnom Prich Wildlife Sanctuary in Eastern Plains Landscape of Cambodia.
- **Ministry of Agriculture, Forestry and Fishery** is responsible for: 1). Approving to establishing community forestry and/or community protected forest. The Forestry Administration provides technical support for establishing processes. The community forestry is to establish outside protected forest and Community Protected Forest is allowed to establish inside protected forest but not in core zones; 2). Approving to establishing community fishery. The Fishery Administration provides technical support to establish the processes. The indigenous peoples can request to establish community fishery in wetland areas in both inside protected forest/areas and outside.
- **Ministry of Interior** with collaboration of Ministry of Rural Development and Ministry of Land Management, Urban Planning and Construction are supporting indigenous peoples to establish community indigenous and registration of land of community indigenous communities. These communities are piloting in Ratanakiri and Mondulkiri provinces.

3.1. Biodiversity Conservation Programme Implementation

The RGC established legal protected areas in purpose of biodiversity conservation, protect existing genetic resources in natural forest, and natural resource management. The protected areas are covering by two ministries, Ministry of Environment (MOE) and Ministry of Agriculture, Forestry and Fishery (MAFF). The protected areas covered by MOE are: Natural Parks, Wildlife Sanctuary, Landscape Protected Areas, and Multiple Use Areas. The protected areas covered by MAFF which comprises of Forestry Administration as secretariat are Protected Forest, Biodiversity Conservation Area, and all forest cover outside protected areas.

²² www.fauna-flora.org, 27 Nov 2008

Laws, Sub-Decrees and Royal Decrees on zoning for biodiversity conservation and protected areas have been endorsed after residents of indigenous groups. The indigenous groups are living in the most protected areas for long stories (centuries). In evidences, 5 protected areas in Monduliri province have been established from and beyond 1993 issued by Royal Decrees and Sub-Decrees (*Lomphat Wildlife Sanctuary, Monduliri Protected Forest, Namlyr Wildlife Sanctuary, Seima Protected Forest, Snuol Wildlife Sanctuary*). It is explored that there are 15 among 21 communes with 57 villages (among 90 villages) are located inside corridors and around the protected areas²³.

Conservation and livelihoods are paralleled plan options. According to the situation, the relevant government agencies can not carry out single conservation criteria or procedures. This needs participatory conservation. It means all biodiversity conservation stakeholders from all layers are to participate and pay attention to conserve the areas through several technical ways such as establishing community forestry, community indigenous peoples, livelihoods groups (e.g. NTFP products), ecotourism services and/or community commercial forest. To be complementary effective conservation and sustainable livelihoods improvement, law enforcement and environmental education are being performed.

3.2. Agro-Biodiversity Conservation

The Ministry of Agriculture, Forestry and Fishery (MAFF) established 2 places for tree species farm in Cambodia: 1). MAFF issued a decision (*PRAKAS*) with No. 484 dated 5th December 2001 on Farm Trees Generation for luxury wood (*Neang Nuon*) with total areas of 125 hectares located in Pa Hal Commune, Tbèng Meanchey District, Preah Vihear Province. 2). The Ministry issued another decision with No. 102 dated 26th March 2002 on establishing farm for tree seed species in a forest concession of KOLEXIM's enterprise with total areas of 117 hectares located in commune of Turing, Sandan District, Kampong Thom Province.

Beside the 2 wild tree seed farms, the Royal Government of Cambodia established a number of protected forest areas issued by Prime Minister of Cambodia. The protected forest areas aim to protect and conserve plants and wild animal species especially endangered animal, maintain natural based as animal habitat and breeding, and biodiversity conservation. The protected forest areas are:

- Protected Forest for regarding economic development requirements of Monduliri province, the Royal Government of Cambodia issued another Sub-Decree with No. 206 dated 28th December 2007 in order to cut off some part of Monduliri protected forest area with amount of 56,467 hectares. The current remaining forest area for Monduliri Protected Forest is 372,971 hectares.
- Protected Forest and Biodiversity Conservation of Keo Seima in Monduliri and Kratie Provinces (called Seima Protected Forest). The Seima Protected Forest comprises of forest areas with a total number of 292,690 hectares issued by Sub-Decree with No. 143 dated 2nd September 2009. The prior 2009, the forest area called Seima Biodiversity Conservation Area issued by MAFF's decision.
- A Protected Forest for conservation of genetic resources, plants, and animals in Preah Vihear province (called Preah Vihear Protected Forest) which comprises of total forest areas of 190,027 hectares issued by Sub-Decree with No. 76 dated on 30th July 2002.
- Another Protected Forest for conservation of wetland areas at central of Cardamom Mountain and biodiversity laid out Kok Kong, Pursat and Kampong Speu provinces. The protected forest comprises of total forest areas of 401,313 hectares issued by Sub-Decree with No. 77 dated on 30th July 2002.

²³ WWF: Information on Biodiversity Corridor Conservation Initiative (BCI) Sites in Cambodia, January 2010

- The Forestry Administration has regularly planned to collect the selective tree seeds to supply for the 2 seed farms in Preah Vihear and Kampong Thom. The 2 seed farms have main roles and responsibilities to grow the wild tree species for supplementary annual National Plantation Day led by Cambodian King.

PART IV

GAPS BETWEEN IMPLEMENTATION AND PROVISION OF LEGAL FRAMEWORK

Many indigenous communities and groups are at a critical juncture with regard to land and natural resource management issues. Cambodia has policies and regulations that provide for recognition and protection of the rights of indigenous peoples to their lands. There is a unique opportunity to prevent and reverse the process of land alienation and impoverishment of indigenous communities. It is imperative that the challenges are taken up to avoid the worst possible consequences.

Cambodia has several concerned biological diversity management laws, national policies, and national strategic development plans. These legal contexts are always integrated on measurement to protected natural resources and biodiversity conservation including indigenous people's/communities' development. *The reality, there are some gaps of the legal contexts and implementation:*

- Technical Working Group for Forest and Environment acknowledged that Forest Cover Change in Cambodia 2002-2006²⁴. The forest cover declined during the period 2002-2006 from 61% to 59% of the total land area. Thus, Cambodia's forest cover fell slightly below the CMDG target of 60%; and the 2% decline in forest cover represents an estimated loss of 373.510 hectares of forest. The most significant loss of forests occurred in the north-west of the country (notably Bantey Meanchey, Bat Dambong, Siem Reap, Odar Meanchey and Pailin Provinces). In addition, the land concessions in the North and Northeastern and illegal logging of luxury wood were not included in this report yet.
- Forest Law (2002) is provided a meaningful for the sustainable management of forest and biological diversity and cultural heritage. It allowed the local community or indigenous community in terms of user and tenure rights of communities. It provides authority the State agencies, Forest Administration (FA), to ensure the customary user rights of forest products and by-products for local community. FA shall set up rules for shifting cultivation areas, while lie inside Permanent Forest Reserve and call for a special sub-decree to be drafted.
- The Forest Law acknowledged the sifting cultivation areas that legitimately have been included in the collective title of indigenous communities (Article 11 and 37), but in Article 37, it also assert its control over shifting cultivation that is carried out inside any community forest and it prohibits shifting cultivation in natural intact forest. Any sub-decree on shifting cultivation should apply 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-cut²⁵.
- The indigenous peoples and the government agencies have different perception and argument to protect the environment and biodiversity protection purpose. The local communities/indigenous peoples living in the protected areas/forest management areas were treated as sense as destroying forest. The local community/indigenous community are concerning on illegal logging and companies received economic concession (land, forest, hydropower and mining),

²⁴ Report of Cambodian Development Cooperation Forum held on 19 to 20 June 2007

²⁵ *Id.*, p 30

while it caused the biodiversity fragile, pollution and water contamination. It also concerns that FA and Ranger cannot stop illegal logging and protect the forest, while they have not enough staff and financial resources to cover large areas of forest, particularly outside conservation forests and protected areas.

- As forest are considered to be publicly owned by the State, this has allowed the Government to convert these land into state private land and this has greatly facilitated the ease of granting economic land concessions and promoting other forms of development in areas traditionally managed by indigenous communities, with little consultation, for instance, there were only in Mondulkiri granted the land concession to 52 private business.
- One key example of disenfranchisement of indigenous people from forest they traditionally owned is Prey Land Forest. It is covering at least 200,000 hectares, where is dry evergreen forest of its kind in the Indochina Peninsula. It is classified as state public land and Kui people for the region have been subjected to an array of land alienation and encroachments, including illegal logging, and wildlife trade, commercial plantations, hydropower investment and a proliferation of mineral activities and exploitation concession²⁶.
- The Protected Areas and National Park, for instance Virachey National Park located in the Northeastern most tip of the country. This park, the first to be created in Cambodia, 1993, resulted in the displacement of the Broa indigenous people without due process and adequate compensation. Consequently the protected areas status of the park alone has played a role in preventing its protection – as, in the absence of indigenous people’s stewardship, monitoring and management, clearing along the border of Vietnam became rampant and much of the forest have been degraded or granted for mineral concession.
- It is also important to note that lands are being excised form “Protected Areas” to be converted into agro-industrial concessions. During 2009, a number of sub-decrees transferred the Protected Area to state private land and on to agro-investment. There are severely affected indigenous communities.
 - Sub-Decree No. 206 dated 28th December 2007 in order to cut off some part of Mondulkiri protected forest area with amount of 56,467 hectares.
 - Sub-decree No. 48 dated 30th March, 2009 transferring 9,985 hectares of O’Ral Wildlife Sanctuary to HLH Agriculture for a term of 70 years for investment development of the agro-industrial sector.
 - Sub-decree N. 120 dated 4th August, 2009 transferring 5,000 hectares located in Boundary of Snoul Wildlife Sanctuary in Keo Seyma District of Mondulkiri for investment and development relating to the rubber crops plantations sector, agro-industrial crops and agricultural crops.
- Beside the Mining Law is strongly closed information in the process for feasibility study and exploration, while its regulations were unparalleled the Forest and Environment Laws stated that to promote public participation and access to information. MoE encourages public participation in environment protection and natural resources management. It is to be set out in sub-decree.
- The favorable regulations for indigenous communities in the 2001 Land, Forest and Natural Resources Management and Law, the lack of implementation and enforcement has left indigenous peoples vulnerable to commercial and state interests, increasingly attracted to exploiting the economic potential of the forests and fertile upland areas, traditionally used and

²⁶ NGO Form and Indigenous People NGO Network the rights of indigenous peoples in Cambodia, 2010.

managed by indigenous communities. Alienation of indigenous land rights as a result of illegal land transactions has been plaguing many of the indigenous communities in the country, especially those in the Northeast²⁷. Therefore, the political will and the State and the business Elites' interests were undermined the holistic approaches the ruling of laws.

- In protected areas, community forest management and national parks were strongly restricted for practicing shifting cultivation and hunting. At the same time, the government agencies promoted the livelihood alternative by equipping cash crops and modern agricultural techniques in order to generate more foods and income, for instance, fruit tree, cashew, corn, been etc. This promotion has been introduced over the indigenous communities in Cambodia. They thus adopted the fixed farming and community boundaries (limited size and location), where mainstreaming into the non-IP society.

Challenges for mechanisms and engagement

- Mechanism of the implementation of the legal context and monitoring system at sub-national levels (from provincial down village levels). For example: biodiversity conservation affected by economic development without participatory impact assessment, especially in Mondulkiri and Ratanakiri provinces;
- EIA have rarely conducted and allowed the indigenous communities involvement in the process for granting the land concession, hydropower dam development, and mining concession etc. Ironically, the indigenous peoples and their cattle were prohibited to access to the granted concession areas, if they resisted to entering that will be fined, shoot and arrested²⁸. It is led to lack of transparency and accountability for access information and participation.
- Laws and policies dissemination through public promotion and broadcasting at remote areas are still weak. The laws and policies will not be able to be applied by local people as well as indigenous peoples unless increasing poverty and illiteracy at remote areas.
- There is no indigenous leaders/representatives were allowed to participate in the Technical Group on Forest and Environment. There are very limited the political platform to engage in the policy formation and consultation, as several policies and sub-degree mentioned in above. There have no many indigenous people aware of RGC implemented the Convention on Conservation of Biological Diversity and National Biodiversity Strategic Action Plan.
- Participation and engagement space have undermined indigenous leaders, while the environment for public participation and consultation were discouraged the traditional leaders to participate and express their way of life, due to language, terminology (for climate change, biodiversity, development millennium goal...) venue environment, and hierarchical arrangement. Sometimes, they have invited to participate, but they are fear and/or hesitate to express and criticize to the Ruling Government.
- Indigenous peoples have well understand their cultural value practices and protection of biodiversity, while they needed to understanding legal context, which is beyond their capacity and customary practices, the National Policies, Laws and programmes of CRG.

²⁷ Indigenous Peoples in Cambodia by NGO Forum on Cambodia, April 2006

²⁸ Losing Ground Report 2009.

PART V

POLICY IMPLICATION AND RECOMMENDATION

In the light of the abovementioned issues, challenges and threats, the indigenous people are facing their traditional knowledge and customary practices on biodiversity conservation. Their practices are associated with the land, natural resources and customary law, which are foreseen with the provision of national legal framework and international instruments. The indigenous leaders, the Government, civil society organizations and UN agencies act together promoting the special protection of indigenous knowledge on biodiversity conservation and rights to exercise their traditional knowledge.

CBD and environment conservation could be seen a high interested in the agenda of government and indigenous organizations, but they might use different terms and reasons to engage with. The government focuses on the protected areas, wildlife sanctuary and community forest, community fisheries, while the indigenous communities are interested to land tenure rights and recognition IP rights. The indigenous knowledge and biodiversity is entry point for engagement with the government at local and national levels to enforce on law/policies and development of Laws/sub-decree includes protection of land rights. There are scenarios to be addressed the threats on indigenous knowledge on biodiversity:

- *Appealing for the government giving value-added to address on biodiversity and legitimacy indigenous knowledge on biodiversity in Cambodia:*
 - Ensure the sub-decree on shifting cultivation must be recognised and adaptive forest management practices, which is provided by the Forest Law.
 - Ensure the sub-decree state clearly the indigenous people are recognized their traditional knowledge and practices the forest management, at least in sense of ownership of guardian forest and co-management.
 - Ensure the participation and consultation in EIA process of indigenous peoples are respected with complying the rights of free prior and informed consent any development projects.
 - The protected areas are consistent with the UN CBD and encouraged the indigenous peoples involved in protection of biodiversity.
 - Ensure the sub-decree on procedure of registration of communal title is in line with the UN CBD, ILO convention and indigenous peoples' rights.
 - Provide opportunity to indigenous leaders in the technical working groups in order to give input to policy/law and national strategic development plan and Cambodian Millennium Development Goal on biodiversity.
 - Indigenous peoples shall promote understanding on CBD and other legal framework, which simply with the local language and terminology.
- *Enforcement on national laws/policies and international instruments to be implemented:*
 - Lobbying with the Government Cambodian and development partners (SIDA, CIDA, WB, ADB, IFAD, EU...) to respond the needs on biodiversity and protection of indigenous knowledge.

- Lobbying with the Government to enforce on mechanism of monitoring and evaluation the natural resources management and protection, particularly to minimize the affected the indigenous community.
 - Promote the indigenous knowledge and skills monitoring on biodiversity, social and environmental impacts, which record of the village history and current changes.
 - Indigenous leaders continue to lobby with UN agencies to enforce UN instruments, particularly CBD to be addressed and practiced.
 - Indigenous leaders build constructive engagement with the Government through interact with the national and international organizations such WWF, WCS, NGO Forum to give input to the NSDP, CMDG and National Biodiversity Strategic Action Plan and participated in the process of implementation.
 - Indigenous leaders and NGOs/IOs engaged with FA and working group for Community Forest Development in Cambodia²⁹.
 - Indigenous leaders with the national and UN agency (ILO) convincing with champion Ministries (MoI, MRD and MLMCUP) for communal land title registration, at least to recognize the legal entity of indigenous communities, while waiting for the sub-decree of registration of indigenous community land.
- *Action together for claiming indigenous people rights and revitalize the indigenous knowledge on biodiversity and representation:*
 - Organizing the indigenous communities for claiming their rights on land use planning approach and claiming their legitimacy as legal entity and indigenous identification processes as mechanism to protect the rights on shifting cultivation and multi-crops plantation.
 - Building tin the existing Network in Cambodian including IRAM, CPN and IPNN, particularly strategic working group in specific target areas (example: Prey Lang Network). It aims at the collect evidence or survey on biodiversity issues by community leaders and youth together. This baseline information widely shared with the networks and present to the government agencies and stakeholders.
 - Building capacity on CBD and natural resources rights through learning from each other – inter-people exchange, regional training. Advocacy and monitoring skills on biodiversity issues shall equip within the indigenous peoples’ organisation, writing and using critiques of national reports (environmental process) and indigenous peoples and human rights in country report.
 - Mentoring the community leaders and youth to lobby with the commune council and give input into the Commune Investment Plan (CIP). The community leaders and youth shall regularly provide updated biodiversity issues through the commune meeting.
 - Exercising indigenous peoples’ voices and rights through the coordination and international advocacy. It is provided information support on biodiversity issues to the indigenous representatives to join the regional preparatory meeting, selection and coordination of

²⁹ National Workshop on Community Forest Development in Cambodia will be organized by FA and OGB in March 2010.

indigenous representative to international meetings and prepare position papers for Asian Government Meeting and UN.

- Strengthening the indigenous peoples' organization, particularly the IRAM and IPNN to engage with the policy-makers, national assembly and high ranging government officials to influence on policy change toward on respect the indigenous knowledge on CBD.

Annex 1: The Biodiversity Conservation

The biodiversity conservation zones are defined by a decision of the Ministry of Environment issued 25th August 2006 to be established four zones which are also stated in Protected Area Law endorsed early 2008. These protected areas stated both the mentioned ministry's decision and protected area law endorsed by National Assembly are administered by the Ministry of Environment. The four zones are identified as following statement:

- **Core zone:** Management area(s) of high conservation values containing threatened and critically endangered species, and fragile ecosystems. Access to the zone is prohibited except the Nature Conservation and Protection Administration's officials and researchers who, with prior permission from the Ministry of Environment, conduct nature and scientific studies for the purpose of preservation and protection of biological resources and natural environment with the exception of national security and defense sectors.
- **Conservation zone:** Management area(s) of high conservation values containing natural resources, ecosystems, watershed areas, and natural landscape located adjacent to the core zone. Access to the zone is allowed only with prior consent of the Nature Conservation and Protection Administration at the area with the exception of national security and defense sectors. Small-scale community uses of non-timber forest products (NTFPs) to support local ethnic minorities' livelihood may be allowed under strict control, provided that they do not present serious adverse impacts on biodiversity within the zone.
- **Sustainable use zone:** Management area(s) of high economic values for national economic development and management, and conservation of the protected area(s) itself thus contributing to the local community, and indigenous ethnic minorities' livelihood improvement. After consulting with relevant ministries and institutions, local authorities, and local communities in accordance with relevant laws and procedures, the Royal Government of Cambodia may permit development and investment activities in this zone in accordance with the request from the Ministry of Environment.
- **Community zone:** Management area(s) for socio-economic development of the local communities and indigenous ethnic minorities and may contain existing residential lands, paddy field and field garden or swidden (*Chamkar*).

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