



FOREST TENURE POLICIES IN CAMBODIA: STATUS, GAPS AND WAY FORWARD

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KEY MESSAGES

- Existing forest policies and regulations have addressed the issue of forest land tenure to a certain extent by recognizing the rights of legitimate holders of forests and forest land but there remain major policy gaps on specific areas such as legal allocation, recognition and transfer of rights, responses to livelihoods, access to justice and resolution of tenure disputes.
 - In order to address these gaps, the government will have to amend key legislations such as the Forest Law 2002, National Forest Policy 2002, National Policy on Indigenous People 2009, Protected Areas Law 2008, Land Law 2001 and Community Forestry Guidelines 2006.
- For example, community forestry (CF) guidelines provide a legal technical framework to transfer forest tenure rights to communities but the process of acquiring rights remains relatively slow.
- Strong forest tenure policies and regulations are key factors for ensuring benefits from forests and forest land but it is equally important to have strong institutional capacity and sufficient resources (human and financial) to put policy into practice.

BACKGROUND AND RATIONALE

Improving the livelihoods and income of forest-dependent communities is important in the contexts of poverty reduction efforts, food security and sustainable development. In this regard, many countries in Asia have initiated forest tenure reform programmes. However, the outcomes of such effort are mixed and potential benefits for rural people are not fully realized. Restrictive and weak regulatory frameworks, tenure insecurity and insufficient institutional capacity are key factors that inhibit the impacts of forest tenure reform (Gilmour 2016; RRI 2014; Larson and Dahal 2012; Yasmi et al. 2010).



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FAO initiated a regional programme on **Strengthening Forest Tenure for Sustaining Livelihoods and Generating Income** in Cambodia, Nepal and Viet Nam in 2014. The main objective was to strengthen regulatory frameworks and the institutional capacity of these countries for forest tenure to ensure better income and livelihoods for forest-dependent communities. Key activities include, among others:

- National-level assessment of the status, progress and gaps on forest tenure policies and institutional capacity.
- Multi-stakeholder policy dialogues to formulate national action plans to address forest tenure and institutional capacity gaps.
- Targeted capacity development through training of trainers and exchange learning with China to learn best practices.

This brief presents key results of the forest tenure policy assessment based on a review of 29 policies and regulations, two multi-stakeholder national policy dialogues and consultation with key government officials, civil society groups and development organizations. Key policy documents reviewed were: the Forestry Law, the Policy on the Registration and Rights to Use of Land of Indigenous Communities, the National Strategic Development Programme, the Sub-decree on Community Forestry, the Land Law, the Law on Protected Areas and so forth.

The policy assessment framework was developed based on principles stipulated in the Voluntary Guidelines for Responsible Governance of Tenure (VGGT). The assessment follows four steps as shown in Figure 1 and assesses eight thematic areas and 26 subthemes (see Table 1). Policy dialogues held in 2015 and 2016 brought together some 70 key stakeholders to review the results.

REGULATORY FRAMEWORK MAPPING
Policies, Laws, Legislation, Acts, Guidelines, and Strategies

WHAT EXISTS?
Key elements regarding forest tenure and its security, scope, duration, clarity, and ownership distribution

WHAT IS MISSING?
Missing elements to ensure strong and secure tenure with balanced distribution of ownership

WHAT NEEDS TO CHANGE?
Recommendations to address missing elements and tenure policy gaps

Figure 1:
Assessment framework

FORESTS AND FORESTRY IN CAMBODIA

The total forest area of Cambodia is 9.45 million hectares (FAO 2015), covering 53 percent of the country's total territory. Forest land has been gradually declining over the last two decades for multiple reasons, mainly as a result of land conversion and expansion of agriculture. Forest management is under the jurisdiction of the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of Environment. In early 2016, re-organization was proposed with a new Ministry of Environment and Natural Resources focusing on conservation and the MAFF on investment. The MAFF

continues to oversee Economic Land Concessions (ELCs) it had issued but also takes responsibility for concessions inside protected areas that the Environment Ministry had previously overseen. Concomitantly the Environment Ministry takes control of certain protected forests that had been managed under the MAFF.

A Sub-decree was issued in April 2016 transferring control of 73 ELCs from the Environment Ministry to the MAFF (Cambodia Daily 2016). There is an existing policy and legislative framework for forestry sector development in

Cambodia. The key framework includes the Forestry Law 2002, the Law on Protected Areas 2008 and the Guidelines on Community Forestry 2006. Similarly, the National Policy on Development of Indigenous People, Policy on the Registration and Right to Use of Land of Indigenous Communities and the Sub-decree on the Procedure of Registration of Land of Indigenous Communities are equally relevant. In addition, there are other supporting frameworks, *inter alia*, the Rectangular Strategy and the National Sustainable Development Programme. The development of the country's Environmental Code will provide a framework and foundation for improved land-use management systems, environmental degradation, etc. The National Environment Strategy and Action Plan is also being updated and a co-management policy is being developed. Cambodia is committed to international conventions and standards such as the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the United Nations

Convention to Combat Desertification, the Ramsar Convention on Wetlands of International Importance, the Convention for the Protection of World Cultural and Natural Heritage, ILO Convention No. 169, the International Tropical Timber Agreement, the VGGT and so forth.



THE STATUS OF FOREST TENURE POLICIES IN CAMBODIA

Table 1 has eight themes and uses the Likert scale (0-4).¹ It describes what elements of forest tenure are or are not addressed in the policies.

Table 1: Forest land tenure policy assessment result

THEMES AND SUBTHEMES		SCORE
1	Legal recognition and respect of rights	2.0
1.1	Recognition of a broad spectrum of existing forest tenure rights and rights holders and their duties by the regulatory frameworks (for both statutory and customary tenure).	2.0
1.2	Recognition and respect of legitimate tenure rights holders and their rights in terms of providing a bundle of rights involving access, use, management, exclusion and alienation.	2.0
1.3	A system of formal recording of legitimate tenure rights holders and their rights is in place.	2.0
1.4	Tenure rights are well secured with regard to duration, scope, clarity, level of restriction and protection from arbitrary withdrawal or breaching.	2.0
2	Legal allocation and transfer of tenure rights and duties	1.0
2.1	There is a clear and explicit mechanism to allocate and transfer forest tenure rights and duties from the state to other actors.	1.0
2.2	Rights holders receive fair compensation and advance information to get consent if the rights are to be eliminated.	1.0
2.3	Assured security of the transferred rights from the state to non-state actors.	1.0

THEMES AND SUBTHEMES		SCORE
3	Access to justice and resolution of tenure disputes	2.0
3.1	Measures and mechanisms are in place for the resolution of tenure disputes.	2.0
3.2	Effective and accessible means and provisions to access judicial authorities or other approaches to resolve disputes over tenure rights.	2.0
3.3	Strategies to prevent tenure disputes from arising and escalating to violent conflict.	2.0
4	Gender and equity, pro-poor focus and inclusiveness	2.0
4.1	Gender sensitivity that ensures equal tenure rights for men and women, indigenous and other marginalized groups over access to and use of forest land and related resources.	2.0
4.2	There is a special mechanism that supports and encourages the roles of the poor and marginalized.	2.0
4.3	Provisions that ensure inclusiveness and the participation of all stakeholders in forestry.	2.0
4.4	Legitimate tenure holders receive equitable benefits from forests and forest land.	2.0
5	Role and accountability of state and non-state actors including business enterprises	2.0
5.1	Clearly defined roles and accountability of the state and non-state actors, including business enterprises, in respecting human rights and the rights of legitimate tenure holders.	2.0
5.2	The state ensures the protection of the rights of legitimate rights holders against any rights abuses by private business enterprises.	2.0
5.3	Fair and transparent processes to allocate investment for any forest-based enterprises.	2.0
6	Responses to climate change and emergencies	3.0
6.1	Strategies and mechanisms are in place to address climate change impacts and emergencies.	3.0
6.2	Legal instruments and mechanisms exist to address REDD+, carbon emissions and climate change.	3.0
6.3	Provisions where the state addresses tenure issues in the context of disaster prevention and preparedness.	3.0
7	Sustainable forest management (SFM) and administration of tenure	2.0
7.1	The principles of SFM and administration of tenure are well recognized by policies and laws.	2.0
7.2	Legal instruments that confirm the principles of SFM by considering the extent of forest resources, biodiversity, forest health, functions and the legal policy framework as criteria to define SFM are in place.	2.0
7.3	There is a system that records tenure rights, valuation, taxation and planning.	2.0
8	Responses to the livelihoods of forest-dependent communities	1.0
8.1	Approaches and strategies are in place to support the livelihoods of forest-dependent communities and indigenous people.	1.0
8.2	Poor and marginalized forest-dependent communities have access and rights to the use and sale of forest products, sharing of benefits, value adding and reduced poverty from the forests and forest land they have been managing.	1.0
8.3	Both environmental and economic functions of the forests are equally emphasized.	1.0
<p>¹ 0 = not addressed at all; 1 = partially addressed; 2 = moderately addressed; 3 = mostly addressed; 4 = fully addressed.</p>		

The results show that existing laws and regulations address forest tenure differently. However, none of them address forest tenure fully as none of the eight themes score four. Responses to climate change and emergencies (theme 6) scored the highest (3). The Rectangular Strategy for Growth Employment, Equity, and Efficiency; National Strategic Development Plan 2006-2010; National REDD+ Strategy; National Action Plan on Disaster Risk Reduction; and Sub-decree 30 ANKR.BK dated 9 April 2002 on community-based disaster management are some of the policies to respond to climate change and emergencies. Despite having policies in place, implementation is poor for multiple reasons but mainly because of weak institutional capacity, lack of commitment and limited or no resources. This raises a major question on the effectiveness of policy implementation.

The assessment also identified policy gaps and shortcomings in the current policies and regulations, some of which are related to implementation. Current policies are relatively weak in providing access to justice and resolution of tenure disputes (theme 3) and only score 2. Directive 001 in 2012 and the National Authority for Reduction of Land Disputes in 2006 are in place but the effectiveness of these policies is questionable as disputes between community and economic land concessionaires are still a major issue in Cambodia. Weak and unclear regulatory frameworks, lack of criteria and definitions to differentiate forest land from agricultural land result in conflicts. Similarly, current policies are unable to fully recognize and respect the tenure rights of legitimate holders. For example, Sub-decree 83 of the Land Law that addresses indigenous community titles is too cumbersome as communities have to obtain recognition of identity and legal entity and then file a collective land registration request with the Ministry of Land Management. The duration of tenure rights over forest land given to communities is only for 15 years which is too short to realize tangible benefits

from the forests and there is no guarantee of further extension after the expiry of tenure. Articles 37 and 11 of the Forestry Law on community forestry management lack clarity about the role of state and non-state actors including business enterprises in strengthening forest tenure and respecting rights. Article 9 of the Forestry Law cites SFM but its principles are largely ignored in implementation. At present, there is no system that ensures records of tenure rights, valuation, taxation and planning. There is inadequate emphasis on increasing the productivity of forest land because policies and legal instruments to provide a basis for designing a comprehensive land-use plan are absent. This can be addressed by the current efforts to draft an Environmental Code. Both the Forestry Law 2002 and Community Forestry Guidelines 2006 lack legal frameworks to support forest-based community enterprises and the livelihoods of local people.

Overall, the tenure policy assessment results indicate that there is more weakness than strength in current policies and legislation in Cambodia in terms of strengthening tenure for forest-dependent communities and individual households. The weak areas need to be strengthened through amendment of current policies and legislation or promulgation of new policies.



CONCLUSION AND POLICY RECOMMENDATIONS

There is clearly a set of gaps in Cambodian forest tenure policy. Legal and policy frameworks address forest tenure but there are major areas to be improved, such as legal allocation and transfer of tenure rights, responses to the livelihoods of forest-dependent communities, legal recognition and respect of rights, defining the roles and accountability of state and non-state actors, defining SFM principles and mainstreaming gender and inclusiveness in tenure. Legitimate rights holders should have access to judicial authorities to protect their rights.

Improvement can be accomplished by revising existing forest and land policies such as the Forestry Law 2002, Land Law and Community Forestry Guidelines 2006 and identifying policy gaps. The formulation of new policies and regulations for specific areas is inevitable while addressing these gaps, e.g. on benefit-sharing mechanisms, providing rights to communities and indigenous people, resolving tenure disputes and so forth.

While policies and regulations are preconditions for rural communities to benefit, they need to be implemented effectively to ensure better impacts on income and livelihoods. In order to do so there is a need to develop policy capacity at all levels and secure sufficient resources. In this context, Cambodia needs to strengthen existing institutional capacity and manage necessary human and financial resources to advance forest tenure and support the livelihoods of forest-dependent communities.

The most important strategy is to establish strong collaboration and cooperation among stakeholders to ensure collective implementation of action plans. Sharing resources and mutual complementation should ensure that the proposed action plans are implemented effectively on the ground. Also, there should be a strong commitment from the key actors directly involved in strengthening forest land tenure in Cambodia.

The assessment provides pragmatic strategic action plans and approaches to move forward in addressing current policy and capacity gaps. These action plans were endorsed by key stakeholders during national policy



dialogues held in Siem Reap in 2015 and 2016. Key recommended actions include:

- Create a Sub-decree and ministerial proclamation by the Law on Protected Areas and review and enforce the Sub-decree on ELCs and environmental impact assessment to ensure consistency with existing laws including the Forestry Law, Law on Protected Areas etc.
- In order to increase entrepreneurship there is a need to develop the zonation and management of mangrove forest in coastal areas and align with the newly emerging concept of 'blue carbon' in order to ensure sustainable financing for mangrove forest management in the long term.
- To avoid overlapping claims and tenure confusion, the MAFF should accelerate the process of land-use mapping at the national level in collaboration with other ministries to ensure a one tenure map of the country acceptable to all stakeholders.
- For recognition of the rights of legitimate tenure holders there should be a legal provision that prosecutes authorities who sell or participate in the alienation of indigenous land; similarly, local authorities (commune and district) should be accountable for not protecting demarcated lands covered by community titling.
- In order to transfer forest tenure rights from the state to communities enabling policies in favour of expanding communal titles (for forest land) for non-indigenous peoples should be devised as well. This would include Khmer communities that live in or near forests.
- To improve the livelihoods of forest-dependent communities, there is a need for enabling policies and capacity to strengthen small- and medium-sized forest-based enterprises (SMEs) such as non-wood forest product processing, and value addition in timbers. Also consider the gender dimension in SMEs by providing incentives to women.
- For the recognition and expansion of community tenure and traditional rights, there should be supportive policies and guidelines in place to simplify the process of CF legalization and accelerate the review of guidelines on CF and community-protected areas.
- Scale up agroforestry nationwide with strong market linkages to demonstrate the benefits and income enhancement of local communities.

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