

**Non Timber Forestry Products  
NTPP**

**Report  
Assessment of Legal Entity**

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## **List of Abbreviations**

<b>CLT</b>	Communal land Tittle
<b>ELC</b>	Economic Land Concession
<b>FGD</b>	Focused Group Discussion
<b>HA</b>	High Landers Association
<b>ICCO</b>	
<b>ICSO</b>	Indigenous Community Support Organization
<b>IP</b>	Indigenous People
<b>MOI</b>	Ministry of Interior
<b>MRD</b>	Ministry of Rural Development
<b>NGO</b>	Non-governmental Organization
<b>NTPP</b>	Non Timber Products

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## Executive Summary

This report presents the results of an assessment study on Community Legal Entity, based in Ratanakiri Province. The study was supported by NTFP with financial contribution from ICCO. The study intends to have an in-depth understanding about the current practice of community legal entity, capture the views of all key stakeholders on the approach and process of CLT, and gather key lesson learned that can be shared to others. It should be noted that, this study intends to build a strong representation of the community legal entity program across the province. In this case, methods for selection of communities were organized randomly amongst villages that are not only based in the target areas of NTFP, but also including villages that are currently supported by partner organizations in Rattanakiri.

Generally, over the past decades, lives of indigenous have undergone dramatic changes - socio politically and economically. These changes have provoked both positive and negative impacts on the current efforts to legal entity. The invasion of land privatization and free market economy has been widely accepted as alien to IP land tenure and culture.

A number of previous studies show some key constraints and major setback in the process of community legal entity/CLT implementation. A study carried out by NGO partnered with Trocaire done in 2012 criticized the support to CLT as too technical and more process oriented, rather than to be based on community led approach and less aware on the need to build community social capital and resiliency. Furthermore, a study carried by Star Kampuchea in 2015 also revealed the processes of CLT as time consuming, complicated, and high cost, which hinder many communities from obtaining the CLT. These issues become even more appearance, when funding to NGOs in Cambodia has also been more competitive and dried out. In some cases, NGOs have to put the process of CLT on hold, after funding cut by donors.

The efforts to support CLT have also been further suffered by the 2012's government initiative on land registration known as Directive 01. A study done by NGO forum in 2015 described the

this campaign as to interrupt or spoil the CLT, as it attracted or tricked some communities to apply for private land ownership rather than to support IP to obtain their CLT.

At the local community, the program intends to build the capacity of community, not only for them to engage actively in the legal entity process but they should also understand in-depth about why legal entity is needed and how the processes are carried out. As it was revealed by the study, this capacity building efforts has produced some fruitful result, which are varied from community to community. For example, in villages where people have placed their high interest on the CLT, most people are well aware about their role and able to engaged actively in the whole CLT process. However, as this assessment shows, there were only 2 out of the total villages selected for this study, where people were able to describe in depth about the CLT process and understand the pro and con in taking CLT. In these villages, people collective actions to protect their land and community forest has been reported as effective and better organized.

Community Leadership has also been crucial in community legal entity process. Through support from NGOs, in each village, the committee responsible for CLT has been formed through community election, and they are responsible for providing the overall management and facilitation support to CLT as well as to take full ownership of the project. Through capacity building support, members of the committee has expressed strong confidence in their leadership role and appears to be knowledgeable about the CLT and its overall processes. Furthermore, their roles have been well informed to the local government and accepted by the local constituency, thus any matters of concerns linking to CLT are always referred to them.

Amid of these positive achievements, however, some key barriers to effective implementation of the community legal entity were also identified. Many members of the committees involved in the interviews have expressed some fundamental concerns over the fact that, people in their community seem to be more divided now, between their interest in the CLT and private land ownership. This division has been driven by the rapid change in the community's socio economy, where private land ownership becomes increasingly popular in the IP territories. Furthermore, as was argued by members of the CLT committee *"it is hard for us to maintain people's interested in the CTL, as the commune councils have also been in favor of private land ownership"*. This division of interest has affected to the level of participation amongst people in the villages, where in some villages, the number of people engage in CLT discussion has been dramatically decrease.

While the process of legal entity has still been continued and the number of villages registration for IP identity has been increased throughout the province, some perceived threats have also been identified and might affect the future attempts for successful implementation of the legal entity. For instance, although in some villages, people have already moved into the legal entity process, their future success still relies substantially on the functioning of the village committees, responsible for CLT. The decreasing in number of active members in the CLT committee was also reported and seen it as potential concerns, when only about half of the members of CLT are still fully functioning, while the rest are either not interested in their job or never show up at the village meeting.

Furthermore, while the total cost for CLT process has been difficult to be verified, all parties involved in supporting the community legal entity have agreed in principle that, the program has been highly expensive and it is a time consuming process where the community have to wait for 10 to 12 years for the whole process to be completed. In this case, as was agreed by community and government officials involved in the interviews, it is essential for alternative solution to be found, to ensure for less cost and more speedy process.

The future interest in the communal land legal entity also depends mainly on the support from the local authority -commune council and village chief. Their roles are treated as crucial, not only in supporting the process of CLT but also have the authority in law reinforcement and support local development plan. However, as this study identified, most commune council leaders involved in this study have express openly that, they are in favor of private ownership versus CTL. As result, In this case, the community has lost their ground support from local constituency, and the CLT committees can only receive a marginal support from their local commune councils while undertaking the CLT process.

It was also learned that, deforestation, land grabbing and land sells have still been existed, even in the villages where official certificates for CLT have already been granted. It was believed that, the lack of strong law reinforcement, the rapid deterioration of timber following large scale forest clearance carried out by the concession companies and the commercial farming practices have posted more threats on the community forest and land and as result, land and forest encroachment done either by outsiders or by locals have been widely reported from almost all villages selected for this study.

To overcome the issues above, some key recommendations can be put forward here as alternative solutions and must be done through collective efforts amongst IP NGOS and donors, to advocate for:

1. "A National Development Strategy for IP to be formulated as road map for IP development, which can be used by NGOs"; and the CLT should be included in the plan. This can be done through collective action amongst NGOs and donors, to advocate the Ministry of Rural Development to take up this role.
2. In order to formulate the "National Strategic Planning for IP Development" as proposed in 1 above, it is essential for a government task force - National Committee for IP Development" be formed, and responsible for drafting the strategic planning document, before it can be endorsed by the government.
3. There is also a need to organize a large scale campaign, where representatives from IP communities can sign their petition, requesting the government to endorse a policy on One Window Service for CLT application, that can used for speeding up the legal entity process.
4. As NGO funding becomes more competitive and scarce, it is recommended for IP NGOs to work closely with MRD, to seek for a way in which the program of legal entity

registration and application can be placed under the umbrella of MRD, rather than to remain under the initiative and support from NGOs.

5. To ensure that, the legal entity as a mean to an end, in the IP empowerment process, it is recommended for the program of legal entity to be designed beyond the registration, but should also include the plan for livelihood improvement, which is essential for helping the community to have strong resiliency amid of changes.

## I. Background

In Cambodia, indigenous people represents about 2% of the total population and they are living in more than 450 villages across the country, mostly within the areas of dense enriched forest, good soil fertility and abandoned natural resources. Over the past decades, the IP territories have been targeted by the government as place where it should be better developed and accessible. In this case, the areas have been invaded by large scale expansion of land granted for economic concession, at the expense of IP forest, land and natural resources. Larger areas of land and forest have been cleared for plantation. The issue has been further exacerbated by the arrival of new migrants, mostly non-indigenous from other provinces, into the province, and thus it makes IP land become more attractive to both ELC companies and new migrants as non-indigenous. At the time of this study, although there is no confirmed that can be made available to the research team, anecdotal evidences show that, the number of Khmer migrants in the IP villages has been increased significantly over the past decades. In some villages visited by this study, about 50% of the community is non-indigenous.

A rapid change has also existed in the IP's socio economic and cultural status. Following the government policy on ELC, a large scale of deforestation were carried out, land grabs which led to land conflicts had been increased across the IP areas and, as result, people demonstrations, to protect their land and natural resources had been escalated. The lack of IP development strategy and planning<sup>1</sup> has contributed more negative impacts on IP, where land loses; deforestation and degradation of natural resources become issues of concerned.

By 2001 the governments land law was indorsed, gave way for IP to access communal land rights known and Communal Land Title (CLT). The article 23 land law also defines indigenous community as one whose members manifest ethnic, social, cultural and economic unity; practice a traditional lifestyle; and cultivate lands under customary rules of collective use<sup>2</sup>. By 2009, a clear guidance policy was issued with the Sub-decree No. 83 *where Procedure of*

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<sup>1</sup> Based on discussions with a government official from Ministry of Rural development, the government has adopted the IP land law, but there still be no specific strategy for IP development.

<sup>2</sup> 2001 land law, article 23,

*Registration of Land of Indigenous Communities and the Circular of the Ministry of Rural Development on the Procedures and Methods of Implementing National Policy on the Development and Identification of an Indigenous Community*<sup>3</sup>.

Sub-decree No.83 provides the framework by which indigenous communities can acquire collective title. There are 3 stages<sup>4</sup>:

Stage 1: The Ministry of Rural Development issues a letter of recognition that the community is an indigenous community. (As of February 2017, 119 communities had achieved this). Amongst these, 68 villages in Rattanakiri have been granted as IP identity, where another 4 more villages have just put in their application)<sup>5</sup>

Stage 2: The Ministry of Interior registers the community as a legal entity. (102 communities have achieved this).

Stage 3: The Ministry of Land Management, Urban Planning and Construction surveys the land and ultimately issues titles. (54 communities have made application at this stage; 14 have been granted land titles).Amongst these, only 5 villages have been granted in Rattanakiri).

To gain communal land title, the process requires that the community have bylaws and internal regulations governing land use and management.

## **II. The Purpose of the Study**

To conduct the assessment of good practice mapping of IP legal entities at the above project target villages.

## **III. Key Questions to be explored by this Study**

The following are key questions designed for this study

1. How the current approaches and process of legal entity has been carried out? Assessing particularly for the level people led process? Capacity building? and people participation?
2. What are the perceptions of parties involved in the legal entity process, while IP land holders has been rapidly driven by the commercial farming practices and the limited access to natural resources, due to economic land concession?
3. What are the key challenges in the process that could implicate future attempts for effective support to legal entity in communal land titling?

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<sup>3</sup> Sub-decree No. 83 Procedure of Registration of Land of Indigenous Communities.

<sup>4</sup> Most up date report in 2017 by Open Development

<sup>5</sup> An official list provided by the Provincial Rural Development , Rattanakiri, at the time of this study (2017)

4. What are the key lessons learned that have been generated by the practices of legal entity process and approaches up to date?
5. How future best practice can be built in the legal entity process, amid of the contextual changes in the IP's livelihood and land uses?

#### IV. **Rattanakiri Map** (will check if map with CLT location can be found)

### V. Methodology

The following methods were used, to obtain data and information required by this assessment:

1. **Literature Review:** The literature review was carried out mainly by the consultants, and was used as basis for consultant to gain an in-depth understanding about the nature of the project, then, use it as basis for formulating questionnaires to collect information. Documents that will be included in this reviews are:

- The Project documents
- The IP land law and policy on Communal land Registration
- The Field reports
- Minute meetings amongst IP communities involved in the registration. etc.....
- Any documents as made available by NTFP

2. **Semi – Structured Interviews:** Both individuals and Focused Groups Interviews was used by the consultancy team. The key informants/ stakeholders who included in this interviews were:

#### **A. The NTFP office**

- NTFP management responsible for IP legal entities
- NTFP Program staff responsible for the legal entities project
- NTFP Field staff working directly on the legal entities project

#### **B. At the Community Level**

- Members of IP community who are active engaged in the legal entities registration,
- Member of IP community, who are not engaged in the legal registration process
- Village Committee responsible for legal entities registration



- Local commune council, where legal entities has been proceeding

### **C. Government Institutions**

#### **1) At the provincial level**

- Government official from the Provincial Cabinet responsible for the application of the legal entity.
- Government official from the provincial office of Land Management, responsible in IP legal entity,
- Government official from the provincial office of Rural development, responsible in IP legal entity,

#### **2) At the National Level**

- Government officials from Ministry of Rural Development, responsible for IP legal entity
- Government officials from Ministry of Land Management, responsible for IP legal entity
- Government officials from Ministry of Interior, responsible for IP legal entity

The questionnaires used for this assessment was developed by the consultant team, in close consultation with NTFP program staff. (see annex 2)

**Informal discussions:** Informal discussions were carried out by the study team, with any key respondents who were available in the village during the field study. It can be argued that, the informal discussions with whoever available in the villages, including youth, men women and traditional leaders, who could also help the study team to verify or cross checking any information received from the semi-structure interviews.

**Observation:** The observation is also treated as an essential part of this assessment process, where the study team can keep good records of what they see, hear and experiences during their field study. The findings through observation could also provide the study team with firsthand information, necessary for supporting the quality of the assessment report.

### **3. Consultation workshop**

A provincial consultation workshop, with all key stakeholders will be organized, at the end of the field work, where draft of key finding will be presented to the audience. This consultation workshop remains to be part of the evaluation process, where more inputs and recommendations from participants can be integrated into the report. The consultation workshop was organized on 28<sup>th</sup> April 2017, in Phnom Penh.

### **4. Sample Selection**

The selection of the studied areas was done based on close consultation with NTFP management and program staff. However, to ensure strong representation of the key findings, approach to random selection was used; and, as result, at least 20% of the target areas was randomly chosen for this study.

The following table is a list of villages that are randomly selected for this study:

No	Village Name	Commune	Remarks
1	Laern Kren	O Chum	
2	Laern Chong	O chum	
3	Satuok	Poy	
4	KanChhoeun	Poy	
	Kam	Laork	
5	Laork	Laork	
6	Rock	Kok Lak	

## **VI. Constraints and Limitations**

This research study was carried out as schedule and most of the groups and key informants were actively participated in the discussions. However, as experienced by the study team, some limitations were also existed and can worth to share here. People’s gathering for interviews, some time, was difficult, as most people in the villages were away in their farm. Furthermore, since lives of indigenous have now been transformed rapidly from traditional into the commercial farming approach, people become busy in their farm for whole year around and IP seasonal calendar for farming has no longer been practiced.

It was also experienced that, in some villages, the people gathering for interviews was difficult, due to the lack of support from community leaders who express no interest in the discussion about CLT. This issue was further exacerbated by the fact that, most members of commune council involved in this study shown more interest in the private land title rather than the CLT, and therefore, it could affect their active participation in the study. The study team also recognized language as another barrier to communicate during the interviews and it could undermine the capacity of the study team to engage effectively with people in the community, where local language was commonly used.

However, to minimize the negative impacts arising from these limitations and constraints, the study team had allowed for time flexibility, where the team some time has to stay until late evening, in order to meet the people for interviews. In some villages, extra arrangement has to made, where the team can return to the village on the following day, to meet people for interviews. This can only be done through interventions from the commune chiefs and village leaders. To deal with language barrier, the study team had to work with a team of local staff provided by NTFP, who are able to speak local languages, and, get them to translate when necessary.

## **VII. Key Findings**

### **A) Previous Study and Policy Constraints**

A number of previous studies show some key constraints and major setback in the process of community legal entity/CLT implementation. A study carried out by NGO partnered with Trocaire done in 2012 criticized the support to CLT as too technical and more process oriented, rather than to be based on community led process and less aware on the need to build community social capital and livelihood improvement.

A study done by Star Kampuchea in 2015 also revealed the processes of CLT as time consuming, complicated, and high cost, which hinder many communities from obtaining the CLT . These issues become even more appearance, when funding to NGOs in Cambodia has also been more competitive and dry out. In some cases, NGOs have to put the process of CLT on hold, after funding cut by donors.

The efforts to support CLT have also been further suffered by the 2012's government initiative on land registration known as Directive 01. A study done by NGO forum in 2015 described the this campaign as to interrupt or spoil the CLT, as it attracted or tricked some communities to apply for private land ownership rather than to support IP to obtain their CLT. The push for private ownership within the IP was aggravated over the period of this government campaign where only private ownership was explained and people were only convinced to take this path.

## **B) General Trends**

Over the past decades, lives of indigenous have undergone a dramatic change – socially, politically and economically. These changes provoke both positive and negative impacts on the approach and process of legal entity. The privatization and free market economy have been widely recognized as alien to IP culture and their farming practices. The rotation farming which is known as IP culture of cultivation has now been no longer existed. Small land holding and commercial farming productivities require IP farmers to clear the whole farm land for commercial purposes and, thus left no land reserved for rotation.

The issues above have been further exacerbated by the current efforts done by the government policy on Economic Land concession (ELC), where large areas of land within the IP territories have been granted to ELC companies<sup>6</sup>. In this case, the new model of commercial farming has been introduced and it becomes a strong driving force for IP to change their traditional farming practice to plantation and cash crop farming. Cashew nuts, beans, cassava, rubber are the most common agricultural products found in IP farming today. Rice cultivation, which was known as the main stable food for IP has now been less attractive and, in many places visited by this study, people complain that their land appears no longer suitable for rice cultivation, due to the abrupt change in the land scape and environmental degradation.

The current expansion of ELC has also led to a wide spread destruction to both state and community forests. Non-timber products have no longer been abandoned for IP communities.

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<sup>6</sup> To obtain the real figure on land granted for ELC has been difficult due the lack of transparency and accountability from the government. However, it is estimated that, between 60 to 70% of cultivation arable land has now been granted to ELC.

In this case, compete for resource uses has been intensified, and, this has been further stretched and place more pressure on IP livelihood, as many Khmer and business people have now moved and live in the areas. Although there no data available at the time of this study, anecdotal evidences show that, the proportion of IP in Rattanakiri has been less in number compared to the Khmer who have moved into areas searching for land and business opportunities.

The current development trends as indicate above have posed more questions on the capacity of IP to build their resiliency. As this study shows, IP appears to be more divided between their interest in CLT and Private land ownership. The latter has been more attractive and seen as better option for many IP. 4 out of the five commune leaders had expressed strong support to the private land ownership versus CLT<sup>7</sup>. They admitted that, cases of land selling and buying have been commonly organized in almost all villages, even within the communities that CLT has been granted, but mostly it has been carried out as internal arrangement<sup>8</sup>. Many people involved in the interviews have expressed that, the living conditions of some IP families will be further deteriorating, due to the losses of the surrounding natural resources and the case of land sell is expected to increase, especially amongst the IP poorest of the poor.

Based on the current trends and changes, therefore, as this study shows, the community has now been more divided in their interest of CLT or private land ownership. As the CLT committees said *“we observe that, the number of people who participate in village meetings on CLT has been less and less, as more of them become interested in private land title”*. Complains were also raised by the communities where the official CTL has been granted regarding the fact that, they found the people in the non-registered villages are able to access more financial loan from the MFI, than what they could possibly get, just because of they (people in the non-registered villages) have private owned land certificate as deposit.

The study also identified that, the emerging farming practice based for commercial purposes has also been challenged by the lack of market and become an issues of concerned for IP livelihood and food security. Furthermore, the lack of basic data on the current community socio economic conditions has also been viewed as another potential barrier to assess the level of impacts on family’s socio economic conditions, especially between the village of CLT and the non CLT.

The study team attempted to analyze the level of impacts on IP livelihood, in both the CLT and the non CLT villages, as result of the CLT ownership. However, there was no data made available, for example, with the size of total land in the villages, how much land each family has owned as well as the number of families, households, youth, boy, girl etc...Indeed, the lack of these basic data, does not only limits the capacity of the study team to understand the implications of the CLT, but it also could provoke more questions on how development can be

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<sup>7</sup> As was learned by this study, these local authorities have now been directly involved and engaged in land buying and selling in the village.

<sup>8</sup> Some few cases of outsiders come and buy land, through local person in the villages, but this still be an hidden business deals.

planned within the context of IP, when there is basic socio economic data. Discussion with government high ranking official from Ministry of Rural Development revealed that “there is no National Strategic Planning has yet been formulated by the government for IP, at least up until the time of this study.

### **C) Leadership**

Leadership development plays an important role in the community legal entity process. Per each village, a committee responsible for CLT has been formed through community election. The role of this local mechanism is to provide the overall management, facilitation in the whole process of CLT, and to a larger extent, they should take full ownership of the registration process.

As was identified by this study, each CLT committee involved in the interviews has expressed strong confidence in their leadership role and appears to be highly knowledgeable about the CLT and its overall process. Furthermore, their roles have been well informed to the local government and thus all CLT matters of concerns are always referred to them.

Amid of the fact that, almost all the committees are still active, it was observed that, only less than half of the total members in each committee, who were elected in the first place, still be functioning<sup>9</sup>. At the same time, there has been no record of either replacement or rotation was made yet, although they have stayed in the position more than 10 years.

Furthermore, many CLT committees involved in the interviews have expressed much concern over the fact that, people in their communities seem to be more divided now between the CLT and private land ownership. The contextual changes in the community socio economic conditions and farming practices described in the section above were argued as the core driving forces that make people become increasingly interested in the private land ownership, rather than the CLP. Furthermore, as they argued *“it is hard for us to retain people to be interested in CTL, as the local government, especially the commune councils have often been in favor of private land ownership”*. This division of interest has generated more negative impacts on the level of participation in the CLT process. The problem has been further exacerbated by the prolonged process in the CLT and the continuity in land losses and deforestation.

The members of CLT committee also admitted that, cases of selling and buying land have been organized in both, the village that have already been granted as CLT and in the villages that are undergone the process of registration. More concerns were also raised by all committees involved in the study over the future interest amongst youth population in the CLT. They explained that, now many of these youth are better educated and their lives have been accustomed to the modern living and, therefore, in the future they might change their mind and decide to shift their interest from CLT to private land ownership. It should also be noted that, currently, there has been no youth are working as the CLT committees, although attempts were

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<sup>9</sup> Amongst 7 to 9 members in the CLT committee, only 2 to 4 people shown up in the meeting and the rest was inactive for along while.

made to include youth in the election, but very few have expressed interest and some decided to quit soon after they were elected.

#### **D) Capacity Building:**

The program intends to build the capacity of community, not only for them to engage actively in the legal entity process but they should also be capable to understand about the importance of the legal entity, and how the processes are carried out. As was identified by this study, this capacity building efforts has been identified as varied from community to community. For example, in villages where people have placed their high interest on the CLT, most people are well aware about the importance of their role and they engaged actively in the whole process of CLT. However, based on this assessment, only 2 out of the total villages selected for this study, where people were able to describe in depth about the CLT process and understand the pro and con in taking CLT. In these villages, people collective actions to protect their land and community forest has been reported as effective and better organized.

The study also attempted to capture the level of understanding amongst villagers and learn their views about the approaches and processes of the legal entity as well as to hear their experience and how do they perceived the CLT up to date. This search was carried out amongst people in the villages where legal status have already been granted and amongst the communities that have undergone the registration process. As result, it was revealed that, all people involved in the interviews argued the process of CLT registration as very time consuming process as it takes more **than 10 years** before the certificate can be issued. Furthermore, they asserted that, due to the lack of strong law reinforcement, their community forests remain seriously under threats and selling or buying land still be continued.

Field visit to village where the preliminary mapping has just began, people tried to make a map that covers the whole areas they are traditionally using, including the residential land, rotating farming and other ancestor forest. While this is a step in the process, anecdotal evidences show that, based on the law on CLT, the community land that were determined by the law would always been much smaller, compared to the preliminary map done by the community. In this case, as was identified through this study, this experience has not yet been shared or learned by people in the new villages yet, and, in this respect, people appear to have a strong hope that they would get all land they wanted, as shown in the preliminary mapping and expressed anger, when asked about what happen if they could get what they wanted. In Kok Lak, for example, people said that they would not tolerate with the authority, if they could not get the land as indicated in their the preliminary mapping.

It was also identified that, in Kok Lak, although the CLT process was highly attractive to people in the village, FGD interview shows that, their knowledge on CLT and the level of understanding about the land law was somehow still quite limited. Up until the time of this study, there was no effort yet put in place, where people exchange visit could be organized, to learn from each other or to exchange their experiences.

It was also interesting to learn that, in some villages, the matters and information regarding the CLT is still mainly centralized within the hands on the committees. As was explained by the committee members *“in our community, we found it difficult to call for people meeting, to discuss about CLT, when many people become more interested in private land tile”*. Furthermore, we have also received little support from the commune councilors, who most of them are in favor of private land ownership.

#### **E) People’s Participation**

The level of people participation has been noted as the main indicators in the CLT process. The CLT process cannot be accepted as legal, if a majority of people in the village were not able to participate and decide. As was learned by this study, the level of people participation in the CLT process has always been high in the villages where the official land certificate has already been granted, especially during the period of registration. However, it was claimed that, the level of people participation have been observed as gradually decreased or low, after they received the certificate.

Furthermore, as was shared early, in some villages people become more divided between CLT and private land ownership, and thus, the level of people participation in the CLT has been reported as low and more difficult to be organized. It was also reported that, the level of people participation in village meetings has been reported as low due to the fact that, the commercial farming requires them to spend most of their time in the farm, and thus has little space for them to join village meeting.

#### **F) Perceived Threats**

While the process of legal entity has still been continued and the number of villages registration for IP identity has been increased throughout the province, some perceived threats have still been identified and thus, it might affect the future implementation of the community legal entity. For instance, although in some villages, people have already moved into the legal entity process, their future success still relies substantially on the functioning of the village committees, responsible for CLT. The decreasing in number of active members in the committee can be argued as a potential concern, when only about half the member of CLT are still fully functioning, while the rest are either not interested in their job or never show up at the village meeting. It was also learned that, the level of functioning amongst the member of committees has also been influenced by the personal views of local authority especially, the commune council who are favored of private land ownership.

A strong surge of negative feeling were also expressed toward CLT, particularly by people in the CLT villages who argued that, their access to financial loan from MFI or from the banks to invest in their farming has been more difficult, compared to villages where private land ownership have been granted. In this case, more families in the CLT begin to perceive private land ownership as their future alternative and thus, they are no longer active in the CLT process. As some people involved in the interviews said *“As the CLT process takes too long time, it would be*

*better if we should have our land to be registered under private ownership, so we can loan the money easily”<sup>10</sup>.*

A common concern was also raised by the CLT community regarding the current level of engagement among young people, who are now better educated and many of them have lived in the city. As was explained by the elders, these youth have limited access to knowledge on CLT and most of them could not take part in the CLT process. Some attempts were made in some villages, to include youth as members of the CLT committees. However, all was failed as these youth had left the village, seeking for job elsewhere. It was believed that, this phenomenon could change the head and heart of young people who might prefer private land ownership and thus they could see only private land ownership as their future alternative.

At the same time, as was commonly reported over the period of this study, the cases of deforestation, land grabbing and land sells have still been carried out, even in the villages where official certificates for CLT have already been granted.

The lack of strong law reinforcement, the rapid deterioration of timber following large scale forest clearance carried out by the concession companies and the newly farming practices for commercial purposes, have posted more threats on the community forest and land and as result, land and forest encroachment done either by outsiders or by locals have been widely report from almost all villages selected for this study. It was also reported that, these encroachments have even been carried out in the spirit forests and its surrounding areas.

### **G) Structural Issues**

The process and future sustainability of the community legal entity rely substantially on the level of support and collaboration from all relevant institutions, including NGOs and the government, both at the national and sub-national levels. However, as it has been identified by this study, some structural issues were found and can be considered as the key challenges in the CLT.

It is no doubt to argue that, NGOs have played an important role in supporting the process of CLT, including financial and technical inputs. While the total cost for the whole CLT process has been difficult to be verified, it is estimated that NGOs, perhaps, spent at least 40,000 dollars per community, for the whole process. At the same time, interviews with government officials reveals that, each Ministry involved in the CLT also spends about 20.000 dollar (Ministry of Rural development and Ministry of Interior) whereas Ministry of land management has double up spending (US\$40,000) when they come to the final GPS mapping. These estimated costs indicate that, the cost for CLT is highly expensive and it is a time consuming process where the community have to wait for 10 to 12 years for the whole process to be completed. In this case, as was agreed by community and government officials involved in the interviews that, some alternative solutions need to be found, to ensure for less cost and more speedy process.

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<sup>10</sup> This same expression was heard frequently from almost all villages visited by the study team



Furthermore, as was learned by this study, while decision on CLT has to be made by the community, the whole process of CLT are still mainly led, supported and managed by NGOs, while the government play role only as supported mechanism and technical inputs . This issue, somehow, poses another question on the long-term sustainability of CLT, especially in time when funding to NGOs has now been more competitive and drying out.

The future interest in the community legal entity depends mainly on the support from the local authority, such as commune councilors and village chiefs. Their roles are treated as crucial, not only in the process of CLT but also in law reinforcement and local development planning. However, it was identified that, most commune council leaders involved in this study have express openly that, they are in favor of private ownership versus CTL. In this respect, the community has lost their ground support from their local constituency, and the CLT committees can only receive a marginal support from their local commune councils while undertaking the CLT process.

Furthermore, under the current rapid changes in community socio economic and political context, some more merging questions have also been raised in regard to the future efforts for the legal entity, whether the IP would be able to maintain their strong resiliency while waiting for the legal entity process to be completed. This issue can be further exacerbated by the neoliberalism model of land ownership based on the privatization that has been brought in by the Khmer as new arrivals<sup>11</sup>.

Interviews with government officials also revealed that, the government has endorsed a policy to support IP rights and IP land law. However, up to date, there has been no government strategic planning has been formulated specifically for IP. Ministry of Rural Development (PRD) is the only one government institution that has a department for Indigenous. They have over 20 staff, but none of them is indigenous. Furthermore, based on discussion with official from the MRD, the government has limited resources and, thus there has been no development plan yet has been developed for IP. This resource constraint expressed by the government, somehow, can also be seen as a major obstacle to CLT, as it can affect to the demand for speeding up the process in the government bureaucracy. It is impossible to speed up the process if the government had no money to support.

The absent of government development strategy for IP appears to have some negative impacts on the current efforts to build long-term sustainability for the community legal entity, especially in the pre-registration, during and in the post registration period. In most cases, supports to the community legal entry has been focused mainly on the technical aspects where IP can only be assisted to complete the registration process, but exclude the capacity building for social and political empowerment towards strong resiliency.

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<sup>11</sup> Until 1990s, Rattanakiri was treated as IP populated areas, where a majority of the population was indigenous. However, at presence, the number of IP has been outnumbered by the Khmer majority who have moved into areas for business and other economic reasons.

## VIII. Lessons Learned and future considerations

Based on the key findings, the study has captured some key lesson learned that can be worth to share here:

- The study revealed greater concern over the current level of effectiveness and efficiency in the CLT approach and process and how sustainability can be ensured. The high costs paid by all parties involved and especially with the uncertainty of NGOs funding can posed a question whether some alternative approaches and solutions should be explored, to either minimize the costs or speeding up the process. If not, and based on the findings of this study, the efforts to support the CTL might be ended up by the loss of confidence of IP in the CLT and all community resources might be gone even before people can get their communal land title granted.
- The findings also reveal more facts that, the current efforts to CLT has been mainly led and initiated by NGOs and thus, little sense of people led process can be found or felt by local people. In this context, while common agreement shows that, the process should be led by the community, it is also essential to consider the role of the government institution, especially MRD in taking ownership role of CLT, while NGOs can act as supportive mechanism or filling up the gaps. As it was found by this study, the government still perceives NGOs as leading source for CLT and therefore, there is no sign yet that government will take up this role.
- The government strategy for IP development can be argued as the best road map that can be used as guidance for IP development activities, including the community legal entity. It will provide better instruction to the local government on how to support the legal entity process and other development actions done by NGOs. At the time being, it is learned that, some NGOS activities to support legal entity has been perceived by the local government as alien to their authority. As in some cases, NGO meetings have been banned by the local authority.
- Beside the technical support to the community legal entity, the study also recognize the needs for building people's strong resiliency, so that people can live and adapt more effectively with current socio economic changes, which are rapid and unpredictable. This support to community resiliency can include, for example, 1) to help the CLT communities to access financial capital, either through subsidiary support from financial institutions or via self-help support scheme, to invest in their commercial farming and other needs; 2) to build the capacity of community in land use planning and provide further technical support to community food security as partway to strong community resiliency. Such support can include, the capacity of community to protect their land, how to use the land productively for sustainable livelihood.
- Anecdotal evidences show that, the approach to legal entity has been perceived mainly by NGOs as the end to IP's community livelihood, rather to see it as the means toward an end. As result, the current supports to CLT appear to have put much emphasis only on the legal entity process, but ignore the need to build the community resiliency amid of

rapid socio economic changes. This intervention, somehow, could jeopardize the community's interest and participation unless strategy to build community resiliency can also be include as basis for building long-term sustainability in the IP context.

## **IX. Conclusions and Recommendations**

Generally, the study has recognized the importance role of NGOs and other relevant agencies in supporting the IP communities to obtain the legal entity/CLT. The approach provides IP with their legal status to protect their land, forest and natural resources that are essential for supporting community livelihood, cultural identity and community's resiliency, amid of rapid change. However, some greater concerns were identified by this study. The whole process of the legal entity, for example, remains virtually be led and supported by NGOs. The CLT process has been perceived by the community as it is too long to wait, while the community has been rapidly invaded by the privatization and open economy. More division has been reported between people who wanted to proceed CLT and those who need private land ownership. The latter have been provoked by the local authority, especially the local commune council, whose most of them are in favor of private ownership.

Furthermore, the high cost paid by all relevant institutions – NGOs and government ministries, and the prolonged process used in the CLT have posed more serious question on whether the legal entity still can be continued, while NGOs funding become more competitive or drying out. At the same time, the community has been under pressure to change their farming from traditional practice to commercial purposes, where privatization of land becomes more attractive to them. The followings are basic recommendations that are proposed by this study as alternative solutions, not only for dealing with the current issues found by this report, but it also helps to improve the future implementation of the legal entity process and approach.

### **A. Collective Advocacy**

To minimize the cost and speeding the process of the legal entity, it requires more collective efforts amongst relevant institutions to ensure that, all IP communities are able to receive the CLT, before all resources are gone or the loss of people's interest in CLT.

1. The national development strategy for IP can be argued as the most important documents that can help to provide road map for IP development, which can be used by NGOs and incorporated into the plan for CLT. In this case, it is recommended for collective actions amongst NGOs to be developed or organized, to advocate the government, to formulate a strategic planning for IP, where CTL can also be part of the development planning. This recommendation was warmly welcome by government official from the Department of IP, Ministry of Rural development, but arguing that, such effort might need more support from NGOs and donors. At this initial stage, it is suggested for IP NGOs to take a leading role in

mobilizing collective actions and support, then, use it as basis for negotiation/advocacy with MRD.

2. Furthermore, as was recommended by government officials MRD, in order to formulate the strategic planning for IP development, it is essential for a government body to be formed as “National Committee for IP Development” that is responsible for drafting the strategic planning document, before it can be endorsed by the government. It should be noted, at the time of this study, the government has used the rectangular strategy as basis for development plan. However, this document does not genuinely responding to the situational context of IP.
3. The prolonged process in the CLT as raised by this report has been argued as the major obstacle to the future success for the community legal entity. In this case, through recommendation No 2 above, it is recommended for a large scale campaign, to be organized, where representatives from IP communities can sign their petition, requesting the government to endorse a policy on One Window Service for CLT application. This one window service can be helpful in speeding up the process, so that more communities can be granted, before it is too late.
4. Amid of NGO funding become more competitive, particularly toward IP development, it is recommended for IP NGOs to work closely with MRD, to explore way in which, the Legal entity registration and application can be shifted from NGOs to MRD, under the umbrella of Department of IP.
5. To ensure that, the legal entity can be used a mean to an end in the IP empowerment process, it is recommended for the program of legal entity to look beyond the registration, but should also include the plan for livelihood improvement, which is essential for helping to community to have strong resiliency amid of changes.

#### **B. Review the current role of Community leaders**

6. There is a need for the review of current functioning of CLT committees, and if it is necessary, the rotation of new members through community election is recommended, to replace those who have already quitted and to make sure that, CLT remain the center of their interest and commitment.
7. Based on the current practice, the number of members of the CLT committee is ranged between 7 to 9 people, but only 2 to 3 people are still active, while the rest are no longer working. In this case, it is suggested for the review of the size of the elected members in the committee, and, perhaps, as this study suggests, the composition of the number of committee should be reduced to a smaller size – between 2 to 3 persons or 3 to 5 persons, instead of 7-9 or 11 people.
8. It was observed some low interest in their works amongst the members of the CLT committee, especially in the villages where the CLT has already been granted, particularly after the registration was completed. Some of them expressed the fact that, their mandate was finished so nothing more they should do. To deal with this

issue, it is recommended for a review of the mandatory role of the CLT committee and adjusting it based on the current needs of the community.

**C. Capacity Building to community**

9. Based on the main findings of this study, it is recommended for a new curriculum for community capacity development to be formulated, by not only focusing on the technical process and land law, but they should also be well equipped by in-depth reflection on the current changes in IP economy, culture and natural resources that could link to the need for CLT. Furthermore, in the capacity building process, they should be empowered to understand the advantages and disadvantages, between the CLT and private ownership, so that they can decide based on their wisdom, rather than being manipulated by outsiders. Action Learning and reflection and exchange experiences are suggested as the basic tools for capacity development, rather than to follow the conventional in-class training.

**D. Community Exchange Support**

10. There is a need to promote exchange support and capacity development between the IP communities that are interested in CLT, so that they can learn from each other and share their experiences , as well as to understand about the implication of CLT versus private land title, before they can make their own decision.

**E. Support Community to build Village socio economic Data**

11. The basic community's socio economic data has been treated as an important tool for community development and planning. The study shows no such data was made available in the IP communities. In this case, it is strongly recommended for NGOs to work closely with the commune council or other appropriate local government, to assist the community to build their own basic socio economic data, that can be used for both administrative and development purposes.

**F. Encourage Youth to be Board**

12. Youth play a crucial role in the future protection of the community resources under the CLT. As this this study suggests, youth must be encouraged or empowered to participate in the leadership of CLT.

## **X. Annex**

### **Annex 1: The Terms of Reference**



#### **ToR of Consultant for the Legal Entity Assessment**

**Title of project:** Land and Economic Security for IPs (LESIP)

##### **1. Background:**

Non-Timber Forest Products is a local NGO founded in 1996 and based in Ratanakiri Province, NE Cambodia. NTFP was registered with the Ministry of Interior of the Royal Government of Kingdom of Cambodia in March 2007.

NTFP has been operating in Ratanakiri province for 20 years, working at some 42 communities, helping indigenous people to secure their rights to access to their land and natural resources, which is the vital mainstay of their daily subsistence, including collection ntfps and from the cashew nut orchards. Many NGOs in Cambodia are supporting the indigenous communities to have their land registered, so as to protect their land from land sale and land encroachment from powerful elite groups. But the process to register their land as communal land titling is still considerably slow. Thus far, only more than a hundred of IP's land received legal entity status, and only more than 10 IP communities had their land registered in countrywide. In 2015, five indigenous communities at NTFP's target villages were having their land registered. It could be said the result is quite significant as no any NGOs in Ratanakiri accomplished that numbers.

A period of project starting from November 01, 2016 to October 31, 2019, under fund support of ICCO who have worked together with NTFP to design a project to continue from previous project of 2013-2015. The project is called Land and Economic Security for IPs (LESIP) in Ratanakiri Province. This project is initiated by involving different actors to implement project's activities at the local levels and national level.

##### **2. Project Goal:**

Promote IP's livelihood through improvement of IPs' rights, cashew production and economic development.

##### **Project Objective:**

**Specific Objective 1:** Strengthen IP legal entities for effective use of community land

**Target Areas:** 20 legal entity villages of 2 districts (Ochum & Veurn Sai) in Ratanakiri Province.

**Beneficiaries:** Direct: CLT's committee: 100 (15-25 females)

### **3. Objective of Partner's Selection:**

The selected consultant will be responsible to conduct the assessment of good practice mapping of IP legal entities at the above project target villages.

**Expected Output :** One need assessment and good practice mapping of IP legal entities.

### **4. Responsibilities and Tasks of Partners:**

The consultant will collaborate with NTFP's project staff and NGOs in Ratanakiri to:

- Conduct need assessment and good practice mapping of IP legal entities and land registered communities in Ratanakiri.
- Organize provincial workshop for sharing the result of assessment and future plan.
- Manual or training curriculum will be developed for support IP legal entities on effectively use of community land.

### **5. Qualification required:**

- The consultant must have long extensive experiences about research in terms of social issues and community development, particularly on indigenous communities.
- The consultant understands the IP's culture, and context including national policies regarding the indigenous people.
- The consultant must have experiences and knowledge about indigenous land registration.
- The consultant has to have in-deep analysis skill and knowledge about long term strategy in relation with IP's natural resource management, especially about IP's land registration.
- The consultant has experiences or skill to develop training curriculum
- The selected consultant will have to develop a detailed ToR, including detailed implementation plan for submitting to NTFP.

### **Additional Information:**

The applicants have to submit CV to NTFP email addresses.

**famntfp@ntfp-cambodia.org**

**admin@ntfp-cambodia.org**

- Only the shortlist candidates will be contacted for further interview.
- The CV's applications will not be returned.

Deadline: 28th February 2017



## **Annex 2: Key Questionnaires for Legal Entity Assessment**

1. What kinds of development activities that have existed in your village today?
2. Can you name all NGOs working in your village? A list of development activities per each NGO?
3. Can you list all NGOs involved in legal entity/CLT in your village?
4. Do you know how many steps are there in the process of legal entity and CLT, from the start to the end? how do you know them?
5. What steps are you in now?
6. Can you share your experiences, in each process up to date?
  - Were you cleared about the each process?
  - Who involved? people participation?
  - Was the process easy to be understood by you and your people in the village?
  - How much time used? too long? too short?
7. What were the positive and key challenges you have observed, while under taking the legal entity process? How did you resolve these key challenges? How do you feel in general about the whole process? Which process do you think as the most difficult for you and your people? Why?
8. What are your views on the current community efforts to protect you land/nd natural resources? From the within the village? from outside?
  - Effective?
  - Threats?
  - Who involved ??
  - How do you interact with the threats? and what were the results?
9. What are your suggestions, to make the legal entity process more helpful and effectives?

