

Summary of comments on the 6 Draft of Agricultural Land Law

1. General Comments

Chapter	Article	Original Content of the Law	Suggest for revision	Reason
3	11	A National Policy on Agricultural Land Estate shall be gone through participatory consultative process by all relevant stakeholders and shall be developed on the basis of results of agricultural land estate database, potentials and needs in the framework of land use for national socio-economic development vision and agricultural development scope.	We suggest first adopting the policy, then the plan, then the law. Such an approach might accomplish what we propose above.	The farmers we have consulted and the farmers' organizations that have commented on the draft fear and oppose it. This is because of all of its controls, requirements, penalties and law enforcement. They see it as hurting them, not helping them. They see a number of issues not involved with the management of agricultural lands as more urgent. These include issues that the Government itself could do something about. For example the Government making cheap credit available, the Government buying surplus crops, intervening to protect family farmers when their tenure security is threatened by powerful people, building more irrigation systems, providing more land to family farmers, and providing more and better technical advice and assistance to family farmers.
3	12	The Ministry in charge of agriculture shall study, develop, and propose a national strategic plan for management and use of agricultural land estate in accordance with the National Policy on Agricultural Land Estate under coordination and in comprehensive consultations with relevant ministries, institutions, competent authorities, and all national and sub-national stakeholders.		
5	30 page 12 (English version)	3. Implement the registration of agricultural land use for common/collective agricultural land which have been established, occupied and used under agricultural community, agricultural	3. Implement the registration of agricultural land use for agricultural development areas and lease;	We believe this would in addition mean specifying that the section on ADAs does not pertain to lands of indigenous communities.

		development areas and lease;		
5	35 page 13 (English version)	The government is entitled to make decision to allow the ministry in charge of agriculture to take actions on idle agricultural land for public interest temporary use under agricultural production purpose for the period of one year up until when the land owners file a new request to use their agricultural land under agricultural production purpose.	The government is entitled to make decision to allow the ministry in charge of agriculture to take actions on idle agricultural land for public interest temporary use under agricultural production purpose for the period of one year up until when the land owners file a new request to use their agricultural land under agricultural production purpose. The provisions of this article do not pertain to the Traditional Agricultural Land of Indigenous communities.	We believe this would in addition mean specifying that the section on ADAs does not pertain to lands of indigenous communities.
5	37 page 13 (English version)	The State shall ensure indigenous communities' rights to traditional agricultural land use under provisions and procedures under this Law and existing laws. The practice of shifting cultivation by indigenous communities shall	Suggestion to remove the provisions for classification, reserved agriculture land concerning indigenous communities in this article 37.	Indigenous communities are already facing a great amount of government regulation. Their culture, education levels etc. makes it difficult for them to deal with this. There already exist many legal provisions and programs concerning classification ¹ , registration, ² reservation ³ and management ⁴ of indigenous

¹ When MLMUPC starts the process of registering indigenous community land, the current practice is to, by sub-decree, **reclassify** from state public land to state private land all land that MLMUPC will register.

² Subdecree 83 (2009) on Procedures of Registration of Lands of Indigenous Communities provides for the **registration** of five categories of indigenous communal lands. These categories include all of a community's agricultural lands. That subdecree is now being implemented. Note that the Ministry of Environment (MOE) is now drafting the Environment and Natural Resources Code of Cambodia that contains provisions for some kind of MOE-issued communal titles.

³ 2001 Land Law Article 25 states that "The lands of indigenous communities include not only lands actually cultivated but also includes **reserved** necessary for the shifting of cultivation ...". The 2009 subdecree on the Procedures for Registration of Land of Indigenous Communities says in Article 4 that "**Reserved** land necessary for shifting cultivation or **reserved** land for rotation agriculture or swidden farm land refers to land used previously by indigenous community as rice field or farm for traditional shifting cultivation." Subdecree article 6 provides for titling these lands. (Bold added.)

⁴ 2001 Land Law article 23 says "An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use. Prior to their legal status being determined under a law on communities, the groups actually existing at present **shall continue to manage their community and immovable property according to their traditional customs** and shall be subject to the provisions of this law." (Bold added.)

		be recognized under this Law as land use for agricultural purposes, which is arranged and classified as reserved agricultural land of agricultural land estate for traditional agriculture of the indigenous communities.		communities' lands. We suggest amending the draft law to remove all types of new classification, registration, and regulation in general concerning indigenous communities.
5	38 page 13 (English version)	<p>The Ministry in charge of agriculture shall collaborate / coordinate with the Ministry of Land Management, Urbanization, and Construction, sub-national administration, and indigenous communities to determine and classify reserved agricultural land for traditional agriculture of the indigenous communities.</p> <p>Indigenous communities shall not be encouraged to expand the scope of shifting cultivation practice outside the reserved agricultural land areas which have been classified and registered as agricultural land under provisions</p>	Suggestion to remove the provisions for classification, reserved agriculture land and concerning indigenous communities in this article 38.	

POLICY ON REGISTRATION OF AND RIGHT TO USE LANDS OF INDIGENOUS COMMUNITIES IN CAMBODIA, Council of Ministers, April 24, 2009 states in pages 4-5: "In order to ensure the exercise of rights and **land management** of the indigenous communities as stipulated by law, each community should have its own **internal rule on the use of land** that was registered as a community ownership. The internal rule shall state in detail rights over different types of land, the disposal of the community's property in case the community is dissolved and shall be in compliance with the community's statute. The internal rule must be in line with land use planning and be kept at the Commune/Sangkat Council as well as copied to relevant institutions. The territorial authorities, especially commune councils and relevant institutions, that have entered into agreement with a community should monitor the management and the use of the indigenous community land in relation to forest land, natural protected areas, mines areas and development in other areas etc. in order to ensure the use of natural resources in a productive and sustainable manner and in compliance with the law." Internal rules have now been adopted by more than 100 indigenous communities. (Bold added.)

		<p>and procedures under this Law.</p> <p>The people who migrate shall not have the privilege as indigenous people and shall not have the rights to use agricultural land for traditional shifting cultivation practice, as other indigenous communities.</p>		
5	39 page 13 (English version)	In order to ensure sustainable use of traditional agricultural land of the indigenous communities, the Ministry in charge of agriculture shall endeavor to implement the following programs:	In order to ensure sustainable use of traditional agricultural land of the indigenous communities, the Ministry in charge of agriculture shall endeavor to implement the following programs. All such programs constitute advice only, which indigenous communities are free to follow or not. The advice will include not only what the Ministry believes the indigenous communities should do, but also what they should not do.	Article 39 provides for a variety of technical assistance to indigenous communities. This assistance might be welcome by if it is simply offered to them, if it is not something they must follow. For this reason we suggest amending this article by adding the following wording in yellow.
5	40 page 14 (English version)	Management of indigenous communities' traditional agricultural land shall be defined by a Prakas of the ministry in charge of agriculture.	Suggestion to delete this article 40	Please refer to the above reason concerning indigenous.
5	42 page 14 (English version)	2. Private land, collective land, or social concession land;	2. Private land, collective land, land donated to the landless and land poor by the State , or social concession land; 5. Unused agricultural lands that were formerly parts of concession agreements.	We suggest the Ministry amend the Agricultural Development Areas (ADAs) portion of the draft law to allow for distribution to the poor of cancelled/cut out ELC land. We believe ADAs might be a logical vehicle for such distributions. Article

				<p>42(2) provides that an ADA may be established using social land concession (SLC) land. What we're proposing would expand this point to include former ELC land that is distributed in order to create SLCs.</p> <p>2001 Land Law article 83 could be the legal basis for the donation.⁵ This was the legal basis for the donations in the Prime Minister's Directive 01 program.</p>
5	42 page 14 (English version)	No original article content	<p>Social land concessions, and land donations to the poor, made in order to make agricultural development areas on former concession land, may involve creating projects that include housing, infrastructure, training and other forms of assistance. They may also include projects in which the land recipients already have homes nearby, and already have farming equipment and ability, and only lack sufficient land.</p>	<p>We suggest drafting a new article that would take into account the possibility of there being large numbers of land-poor farmers already living near former ELC land. Such people might only need land, and might not need all of the other things that often go into creating SLCs: houses, infrastructure, farming skills training etc.</p>
5	45 page 15 (English version)	Agricultural land under concession agreement refers to state land granted by the government as concession in the form of Economic Land Concession (ELC) agreement or other forms of	<p>The government shall ensure that agricultural land use under concession agreement is not involved in conflict of interest with local communities. Part of the way government will ensure this is by</p>	<p>To strengthen provision that protect poor occupants of lands inside ELC.</p>

⁵ 2001 Land Law Article 83: "The State may only donate immovable property to natural persons and for social reasons in order to allow them to reside or carry out subsistence farming. The value of the immovable property donated must be limited in relation with the purpose sought and not allow scope for speculation, or disproportionate enrichment taking into account the social level of the beneficiary."

		<p>concession agreement for a long-term use within the framework of investment of agricultural production, agro-industrial investment projects, or other development projects within the purpose of agricultural production.</p> <p>The government shall ensure that agricultural land use under concession agreement is not involved in conflict of interest with local communities.</p>	<p>cutting out from concession areas all lands that have been occupied by family farmers for at least one year before the concession is granted, or have been occupied by indigenous communities. These lands shall be cut out before the concession agreement is signed. If an agreement has already been signed, then the agreement and relevant law shall be examined to determine whether it is legal that such lands now be cut out. When the concession area is registered by the Ministry of Land Management, Urban Planning and Construction, the lands cut out for family farmers and indigenous communities will also be registered.</p>	
7	85 page 26 (English version)	<p>The Royal Government shall have the rights to transfer state land, regardless of jurisdiction of any ministries or institutions they may be under, into agricultural land estate for the purpose of agricultural production development via concession agreement or long-term agricultural development projects in compliance with provisions in this Law and existing relevant regulations.</p> <p>State land, which is transferred for the purpose of this Article, shall</p>	<p>Such transfers and reclassifications shall not involve land originally classified or in any other way designated as state public land under the Land Law, or under other relevant legal provisions. In general, concession agreements or other long-term agricultural development projects shall not be allowed on land that must be reclassified, or in any other way changed, from state public in order for the agreements and projects to be legally possible.</p>	<p>Tenure insecurity is a serious issue for indigenous communities. Farmers organizations that have commented on the draft law have raised it as well. A related subject is the use of state public land for ELCs and for other large-scale private development. The relationship has to do with indigenous communities' traditional lands often being state public lands. Many non-indigenous peoples also gather NTFPs in forests, which usually are state public. To better protect the tenure security of indigenous communities and the ability of all people to gather NTFPs in forests.</p>

		have its original classification reversed into agricultural land estate classification under the jurisdiction of management of the Minister in charge of agriculture and shall get registered as agricultural land for use in accordance with provisions under this Law.		
10	From article 95 to 102 page 28 to 30 (English version)		<p>Suggestion to change the draft's basic approach from one of imposing rules and penalties <u>to one of providing assistance, advice and incentives.</u></p> <p>We suggest a major overhaul in the section on penalties and enforcement to delete many penalties, especially for things like deciding what crops to grow, for leaving land fallow, and so on.</p>	All of the small farmers we've consulted or who have commented on the draft have expressed strong opposition to many of the rules and penalties it imposes. ^{6,7} In this regard we especially take note of Chapter X on Agricultural Land Agents and Law Enforcement. The farmers would much prefer an approach based on the Ministry providing technical advice, education and positive incentives, all of which would lead to greater productivity and income.

⁶ For example, concerning Agricultural Development Areas, see article 109: "Three (3) written warnings, each for a six-month period, requiring to rectify agricultural operation and acceptance of instruction from the competent unit in charge of agricultural land resource affairs shall be issued before natural person or legal entity, agricultural land owner or users classified under this law for family agricultural production in agricultural development areas or under lease, who commits any of the following acts:

1. Use agricultural land in such a way that is contrary to the agricultural production purpose;
2. Fail to implement sustainable agricultural operation and directive on conservation of agricultural land, as required by this law.
3. Fail to take action to implement directive of unit in charge of agricultural land estate affair, required to improve or restore agricultural land to its original conditions.
4. Grow types of crops in contrary to the priority of agricultural soil quality classification for potential crop types;
5. Grow types of crops in contrary to the types required to grow on reserved agricultural land for special agro-ecosystem or for other functions or in contrary to classification of land productivity of crop types;
6. Lease agricultural land along Cambodia's border to natural person or legal entity of a foreign nationality of bordering countries which share border with Cambodia."

⁷ Article 35.- "In addition to existing relevant provisions, a natural person or a legal entity, an owner who occupies and uses agricultural land of more than 5 (five) hectares shall not have rights to leave the land idle or to freeze the land without agricultural production practices for more than 3 years, starting from date of the ownership certificate. Agricultural land owners who leave the land idle or without agricultural production practices as stipulated in paragraph 1 of this article shall be fined in accordance with penalty provision in this law. The government is entitled to make decision to allow the ministry in charge of agriculture to take actions on idle agricultural land for public interest temporary use under agricultural production purpose for the period of one year up until when the land owners file a new request to use their agricultural land under agricultural production purpose."

				<p>The Ministry's approach in the 30 October 2011 draft to creation of Agricultural Development Areas (ADAs) is a case in point. It's an example of what farmers would probably prefer, as well as of what would probably make for more harmonious relations between the Ministry and farmers in ADAs than would the current draft. In the 2011 draft, the Ministry would explain to farmers the "benefits" of an ADA and "what inputs will be provided by the" Ministry. The Ministry would then move forward but only if "a substantial majority of the" farmers "clearly indicate" they want an ADA.⁸ The entire relationship between farmers and the Ministry in that draft in making and operating an ADA would be cooperative.</p>
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2. Request for more explanations

1. We struggle a bit to understand the relationships between "Agricultural Land Estate" (ALE), "Agricultural Production Areas" (APAs), lands that will be classified, and lands that will be registered. It appears that ALE is the most basic concept. It seems to concern absolutely every kind of agricultural land. APAs are then created out of the ALE. All of the APAs, and all of the ALE not in APAs, are then classified. Then registration takes place. Registration seems to cover all of the ALE. Please correct us if any of this is not accurate.
2. Is the intent in registering agricultural land that it only be for very large parcels or areas, for example Agricultural Development Areas (ADAs) and ELCs? If so, we suggest deleting or rewriting article 30.2. This is because 30.2 appears to call for the Ministry registering all parcels first registered by the Ministry of Land Management, Urban Planning and Construction (MLMUPC) that are shown on

⁸ Article 15.

MLMUPC registration documents as agricultural.⁹ We apologize if we misunderstand 30.2. If we do misunderstand, may we suggest a rewording that makes clearer what is intended.

3. Is it the Ministry's vision, over time, that most family farmers be grouped into ADAs? Why was the approach to creating ADAs contained in the 30 October 2011 draft dropped in favor of the current approach? The 2011 draft gave farmers the power to decide whether they wanted an ADA. The entire approach in that draft was highly cooperative between the Ministry and farmers. None of this appears in the current draft.
4. Will land consolidation take place in ADAs or anywhere else? If so, would it be on a completely voluntary basis only?
5. Article 37 contains the term "**reserved** agricultural land of agricultural land estate for traditional agriculture of the indigenous communities." Article 38 speaks of Indigenous Communities having "**reserved** agricultural land areas which have been classified and registered as agricultural land under provisions and procedures under this Law." 2001 Land Law article 25 says "The lands of indigenous communities include not only lands actually cultivated but also includes **reserved** necessary for the shifting of cultivation which is required by the agricultural methods they currently practice and which are recognized by the administrative authorities." (Bold added.) Article 4 of Subdecree 83 (2009) on Procedures for Registering the Lands of Indigenous Communities says "**Reserved** land necessary for shifting cultivation or reserved land for rotation agriculture or swidden farm land" refers to land used previously by indigenous community as rice field or farm for traditional shifting cultivation." Do the references in draft articles 37 and 38 refer to exactly the same lands referred to in Land Law article 25 and subdecree 83 article 4?
6. Why is there "Agricultural Land"¹⁰ as well as "Agricultural Land Resource"¹¹, each with its own definition that is quite like, but not completely like, the other?
7. Why does "Agricultural Land" include "structures or infrastructure serving agriculture" whereas "Agricultural Land Resource" does not?
8. "Agriculture Infrastructure" involves all kinds of buildings, ponds etc., but not farmers' houses.¹² Why? Are the lands holding farmers' houses not any kind of agricultural land? If so, why?

⁹ Article 30.2: "Implement the registration of agricultural land use based on local data on types of land use which have been registered under the land law;"

¹⁰ Glossary item 8.

¹¹ Glossary item 11.

¹² Glossary item 19.

3. Conclusion