



វេទិកាសម្រាប់កម្មវិធីសង្គមស៊ីវិល កម្ពុជា
The NGO Forum on Cambodia

Synthesis of Key Comments and Recommendations on Draft Agricultural Land Law (6th Version: 15th October 2016)

Prepared by The NGO Forum on Cambodia
in cooperation with
MRLG, DCA, Oxfam, Caritas, HEKS, STAR Kampuchea, Sre Khmer, UNOHCHR,
and ActionAid.

For dialogue with
H.E. Ty Sokun, Secretary of State and Director Technical Working Group on
Agriculture and Water, Ministry of Agriculture, Forestry and Fisheries (MAFF),
Phnom Penh, Cambodia.

on 26th April 2017

Introduction

NGO Forum on Cambodia (NGO Forum), in cooperation with the Ministry of Agriculture, Forests and Fisheries (MAFF, or the Ministry), organized a national consultation workshop on 19-20 December 2016 on the sixth version of the draft Cambodian Agricultural Land Law. The workshop provided a platform for farmers, civil society organizations (CSOs), the private sector, and other concerned stakeholders to make inputs into the process of drafting the law. In addition to inputs at the workshop, various written analyses of the draft law have been made.¹ NGO Forum in cooperation with partners synthesized all workshop inputs and written analyses, highlighting the recommendations they contained. We then selected only the most important recommendations for inclusion in this document and for presentation to MAFF. Those key recommendations are the five suggested amendments to the draft law that appear below, also a suggested alternative process for adopting the law, which also appears below. (Also, below are questions we wanted to ask MAFF.) We proceeded in this way believing it essential to be strategic about what to request of MAFF. We then presented all of this to H.E. Ty Sokun on 26 April 2017. We are not yet aware of what may have resulted from our presentation.

While we here and in the presentation to H.E. Ty Sokun expressed our concerns and suggestions for amendments, we also acknowledge that there is a great deal already in the draft that we welcome, for example its strong measures for preserving productive agricultural land.

Below we divide our recommendations and questions in three sections: 1) suggested amendments to the current draft law; 2) an alternative process for adopting the draft; and 3) questions on some important points.

Where we propose new wording for articles, the wording is **in blue**. Where we suggest eliminating wording, the wording is **in red**.

Section 1: Suggested Amendments

1. Change the draft's basic approach from one of imposing rules and penalties to one of providing assistance, advice and incentives

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.^{2, 3} 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 could lead to greater productivity and income.

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's treatment of ADAs. 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.⁴ The entire relationship between farmers and the Ministry in that draft in making and operating an ADA would be cooperative.

None of this is in the current draft⁵. Instead it seems ADAs will be initiated at the commune/sangkat level in the making of commune/sangkat agricultural development plans that will involve "participation/inputs from all local stakeholders".⁶ Otherwise all of the respect for farmers' wishes in founding and operating ADAs, and for building on and utilizing farmers' existing practices in creating ADAs⁷, is gone. It would seem that ADAs would simply be made and farmers would be obligated to join them, and farmers would then be severely penalized for not following the ADAs' rules.⁸

Regarding possible amendments to the Ministry's draft, we suggest significantly revising in order to make the draft's basic overall approach similar to the approach taken to ADAs in the 2011 draft. We also suggest a major overhaul in the section on penalties and enforcement to delete many penalties, especially for things like failing to follow MAFF orders on what crops to grow, for leaving parcels of five ha and larger fallow for more than three years, and so on.

2. Provide land for family farmers from cancelled economic land concessions (ELCs)

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 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.

Glossary item 18 states ADAs are to be "used by smallholder families farmers for family agricultural production". Articles 43-44 involve subnational levels making sure ADAs are included in commune/sangkat development plans. SLC subdecree 19 (2003) article 5 already authorizes communes/sangkats to initiate SLCs, so articles 43-44 and this SLC subdecree article 5 fit together well.

Based on the above, we suggest the following amendments:

Article 42 lists the types of lands on which ADAs may be created. It has four sub-articles that list particular types. We suggest adding a 5th:

"Unused agricultural lands that were formerly parts of concession agreements."

We also suggest the draft say that distributions can either be by SLCs or by direct donations. This could involve the following amendment of article 42:

(2) An agricultural development area may be established under a collection of agricultural land, from the following sources: ... 2. Private land, collective land, [land donated to the landless and land poor by the State](#), or social concession land;"

2001 Land Law article 83 could be the legal basis for the donation.⁹ This was the legal basis for the donations in the Prime Minister's Directive 01 program.

In addition 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. We suggest this:

[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.](#)

3. Strengthen provisions that protect poor occupants of lands inside ELC

We suggest amending article 45 as follows:

Article 45. 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 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 long 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.

4. Regulations involving indigenous peoples' communities

Indigenous communities are already facing a great amount of government regulation. There already exist many legal provisions and programs concerning classification¹⁰, registration,¹¹ reservation¹² and management¹³ of indigenous communities' lands. Their culture, education levels etc. make it difficult for them to deal with all this. We suggest amending the draft law to remove all types of new classification, registration, and regulation in general concerning indigenous communities.

This would mean in articles 37 and 38 removing the provisions for classifying, under this law, reserved land, in article 38 removing the provision for registration under this law, and deleting article 40 that calls for a prakas on management of the lands of indigenous communities. This would mean amending article 30.2 by eliminating the following that is in red: "Implement the registration of agricultural land use for **common/collective agricultural land which have been established, occupied and used under agricultural community**, agricultural development areas and lease;" (If the intent of the wording in red isn't to cover indigenous communities, then we suggest stating that.) We believe this would in addition mean specifying that the section on ADAs does not pertain to lands of indigenous communities. This would also mean adding at the end of article 35, which severely penalizes leaving parcels of more than five hectares idle for more than three years, a line something like this: "The provisions of this article do not pertain to the Traditional Agricultural Land of Indigenous communities."

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 blue:

Article 39. 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.**

5. Ban the reclassification of state public land for private development use

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, we suggest amending article 85 of the draft law as we write below:

Article 85. 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. State land, which is transferred for the purpose of this Article, shall 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. **Such transfers and reclassifications shall not, however, involve land originally classified or in any other way designated as state public land under the Land Law, or under any 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 land in order for the agreements and projects to be legally possible.**

Section 2: Alternative Process – Policy, Plan, Law

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.

There is therefore a great difference of opinion between the Ministry and farmers, as well as NGOs, regarding the draft law. In light of this, we suggest it would be helpful if all important issues involved with improving the productivity, profitability, sustainability and the prevention of harm by Cambodian farming be discussed together—from credit to irrigation to land management—before adopting a law on agricultural land.

Draft law article 11 calls for adopting a National Policy on Agricultural Land Estate. Article 12 calls for adopting an Agricultural Land Estate Management and Use Strategic Plan, in accordance with the policy. We suggest first adopting the **policy, then the plan, then the law**. Such an approach might accomplish what we propose above.

There is precedent for what we suggest here. To prepare what became the 2001 Land Law, first, in about 1998, the “National Land Titling Policy for Cambodia” was written by H.E. Lim Voan. At the time he was Director of the Land Titles Department within the Council of Ministers. This policy called for a new land law as well as cadastral subdecrees. Next, in May 2001, came the “Statement of the Royal

Government on Land Policy”. This also called for enactment of a land law. Next, in September 2001, came the Land Law.

Section 3: Questions Concerning Significant Points

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 to register all parcels that are first registered by the Ministry of Land Management, Urban Planning and Construction (MLMUPC) that are shown on MLMUPC registration documents as agricultural.¹⁴ 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”¹⁵ as well as “Agricultural Land Resource”¹⁶, 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.¹⁷ Why? Are the lands holding farmers’ houses not any kind of agricultural land? If so, why?

Conclusion

The draft law contains some good points, but we, overall, find that it too strictly limits the freedom of farmers to control their farmlands. Therefore, we have asked MAFF, among other things, that the draft’s basic approach be changed from one of imposing rules and penalties to one of providing assistance, advice and incentives for farmers. In this regard, we do not see the urgency for adopting the current draft, that will invite controversy when implemented. As an alternative, we suggested the Ministry consider first adopting a National Policy on Agricultural Land Estate (called for in article 11) and then an Agricultural Land Estate Management and Use Strategic Plan (called for in article 12), and then this law. Should the Ministry go ahead with this draft law, we strongly urged that our proposed recommendations and questions be addressed and reflected in the next draft.

NGO Forum and all Civil Society Organizations (CSOs) that are taking part in this engagement with the Ministry have very much appreciated the Ministry’s willingness to engage with us, and to consider our questions and suggestions. We hope the Ministry has found our input useful.

We also wish to say that we don’t speak for ourselves alone, but also for the many CSOs that belong to NGO Forum and that have taken part in engaging with MAFF, and for the many family farmers we have consulted on this draft law. We believe that to honestly represent what many of these people have said, it was necessary for us to take the positions that we have taken in this document. We consider these the minimum amount of change that we would like to see in the draft law in order for us to continue to engage, and to support this draft law and to recommend that others support it.

¹ In particular, a legal review was conducted with the assistance of Mr. George Cooper, an independent senior legal expert experienced in land policies.

² 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.”

³ 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.”

⁴ Article 15.

⁵ From an international source, it appears that there are striking similarities of the present draft with Kosovo’s 2005 Law on Agricultural Land

⁶ Article 44.

⁷ Article 17.

⁸ Article 4.1: “Owner or user of agricultural land is **obliged** to use the agricultural land in the manner suiting natural characteristics of land, while not lowering its value and using appropriate agro - technical measures. 4.2. If the owner or user of agricultural land does not utilize the land in accordance with paragraph 1 of this law he shall try to ensure its utilization through leasing the land, or any other manner, in compliance with provisions on granting immovable property on use.” 39.1. “The inspector is authorized and has the duty to inspect: ... b) That agricultural land is being cultivated and used in accordance with provisions of this law and may order undertaking of measures for eliminating verified irregularities.” Article 39.2 says the inspector shall issue a decision if he/she finds irregularities, and if the landowner does not stop the irregularities then he/she shall be taken to court.

11.4. “Use of agricultural land from 10.5 (a) and (b) may not be changed and it may not be used for non-agricultural purposes, if for there is no spatial plan, respectively municipal development plan issued which sets other use to land in question.” (10.5. “In the spatial plans, by value of its utilization and its prolificacy, the agricultural land is defined as: a) class 1-4 is defined only as agricultural land, respectively forestland, b) class 5 and 6 is defined as agricultural land, forestland and exceptionally as land for other purposes, c) class 7 and 8 is defined as agricultural land which may be used also for other purposes, as required.”)

14.1. "All natural and legal persons shall pay compensation for change of use of agricultural land into the land for non-agricultural purpose, unless the law provides otherwise." 16.1. Beside payment of compensation from article 14.1. of this law, prior starting the work on agricultural land, investor is obliged to remove and preserve the potentially fertile topsoil for re-cultivation needs or to raise the capability of less fertile or non-fertile land for agricultural production. 16.2. Division and preservation of fertile topsoil potentially fertile, removed prior construction of industrial facility and other buildings shall be used according to instruction of competent body for agriculture in conformity with the unique methodology for raising the capability of less fertile or non-fertile land for agricultural production."

⁹ 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."

¹⁰ When MLMUPC starts the process of registering indigenous community land, the current practice is to, by subdecree, **reclassify** from state public land to state private land all land that MLMUPC will register.

¹¹ 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.

¹² 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.)

¹³ 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.)

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.)

¹⁴ 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."

¹⁵ Glossary item 8.

¹⁶ Glossary item 11.

¹⁷ Glossary item 19.