

***KINGDOM OF CAMBODIA***

***LAND ALLOCATION FOR SOCIAL AND ECONOMIC DEVELOPMENT PROJECT III  
(LASED III)***

***INDIGENOUS PEOPLES PLANNING FRAMEWORK  
(IPPF)***

***Annex 2 to Environmental and Social Management Framework (ESMF)***

**DRAFT**

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## ABBREVIATIONS USED IN THE TEXT

|        |                                                                                   |
|--------|-----------------------------------------------------------------------------------|
| AWPB   | Annual Work-Plan and Budget                                                       |
| CF     | Community Forestry                                                                |
| CFD    | Community Fund for Development                                                    |
| CHPF   | Cultural Heritage Protection Framework                                            |
| CIPL   | Conserve Indigenous Peoples Language                                              |
| CoM    | Council of Ministers                                                              |
| CPA    | Community Protected Area                                                          |
| CSG    | Community Support Group                                                           |
| CSO    | Civil Society Organization                                                        |
| DP     | Development Partners                                                              |
| DPA    | Development and Partnership in Action                                             |
| EA     | Executive Agency                                                                  |
| ESMF   | Environmental and Social Management Framework                                     |
| ESF    | Environmental and Social Framework                                                |
| ESS    | Environmental and Social Safeguard                                                |
| ESS1   | Assessment and Management of Environmental and Social Risks and Impacts           |
| ESS5   | Land Acquisition, Restrictions on Land Use and Involuntary Resettlement.          |
| ESS7   | Indigenous Peoples                                                                |
| ESS8   | Cultural Heritage Protection Framework                                            |
| ESS10  | Stakeholder Engagement and Information Disclosure                                 |
| FPIC   | Free Prior and Informed Consent                                                   |
| GDA    | General Directorate of Agriculture                                                |
| GIZ    | Gesellschaft für Internationale Zusammenarbeit                                    |
| HA     | Highlanders Association                                                           |
| IA     | Implementing Agency                                                               |
| IC     | Indigenous Community                                                              |
| ICLT   | Indigenous Community Land Title                                                   |
| ICSO   | Indigenous Community Support Organization                                         |
| ICT    | Information Communication Technology                                              |
| ICCPR  | International Covenant on Civil and Political Rights                              |
| ICESCR | International Covenant on Economic, Social and Cultural Rights                    |
| ICERD  | International Convention on the Elimination of all Forms of Racial Discrimination |
| IDA    | International Development Association                                             |
| IP     | Indigenous Peoples                                                                |
| IPM    | Interim Protective Measures (for proposed ICLT area after application)            |
| IPO    | Indigenous Peoples Organization                                                   |
| IPP    | Indigenous Peoples Plan                                                           |
| IPCC   | Indigenous Peoples Community Committee                                            |

|          |                                                                                       |
|----------|---------------------------------------------------------------------------------------|
| IPPF     | Indigenous Peoples Planning Framework                                                 |
| IPM      | Interim Protection Measure                                                            |
| IRC-WG   | Inter-Ministerial Resettlement Committee's Working Group                              |
| MAFF     | Ministry of Agriculture, Forestry and Fisheries                                       |
| LASED    | Land Allocation for Social and Economic Development                                   |
| MLMUPC   | Ministry of Land Management, Urban Planning, and Construction                         |
| M&E      | Monitoring and Evaluation                                                             |
| MIS      | Management Information System                                                         |
| MoE      | Ministry of Environment                                                               |
| MoI      | Ministry of Interior                                                                  |
| MRD      | Ministry of Rural Development                                                         |
| NGO      | Non-Governmental Organizations                                                        |
| NTFP     | Non-Timber Forest Products                                                            |
| O&M      | Operation and Maintenance                                                             |
| PAD      | Project Appraisal Document                                                            |
| PAL      | Protected Areas Law                                                                   |
| PDI      | Provincial Department of Information                                                  |
| PIB      | Project Information Brochure                                                          |
| PIM      | Project Implementation Manual                                                         |
| PDO      | Project Development Objective                                                         |
| PDLMUPCC | Provincial Department of Land Management, Urban Planning, Construction, and Cadastral |
| PMT      | Project Management Team                                                               |
| PT       | Project Team                                                                          |
| RCS      | Replacement Cost Study                                                                |
| RGC      | Royal Government of Cambodia                                                          |
| RPF      | Resettlement Policy Framework                                                         |
| SIA      | Social Impact Assessment                                                              |
| SLC      | Social Land Concession                                                                |
| TLR      | Target Land Recipient                                                                 |
| UNDRIP   | United Nations Declaration on the Rights of Indigenous Peoples                        |
| WB       | World Bank                                                                            |

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## TERMS AND DEFINITIONS

**Collective ownership:** Areas of land that are jointly owned by a community of a group of Indigenous Peoples. Within such collectively owned areas, the plots used by individuals or households are not their private property, and the community does not have the right to dispose of any immovable property that is under their collective ownership and which is State public property to any person or group.

**Community Committee** is a local management body that members of an entire indigenous community have selected to solve community problems, including resolution of disputes within the communities outside the jurisdiction of the court. Under the ICLT process, a Community Committee is formed at Phase 2, Step 3, and at the same time community by-laws are adopted. The by-law are internal rules that serve to ensure equitable use and management of collectively owned land and to resolve internal disputes. They also serve to preserve the identity, culture, and traditions of an indigenous community, as well as good customs regarding the sustainable use and management of land as well as of natural resources.

**Consultation** is a process that (i) begins early in the project preparation stage and is carried out at different stages of the project and land acquisition cycle; (ii) provides timely disclosure of relevant and adequate information in Khmer language (and in case of ICLTs in the language of the beneficiary indigenous community) that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion with due regard to cultural norms ; and (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups.

**Free, Prior, and Informed Consent (FPIC):** Where Indigenous Peoples are affected by a World Bank supported project, the World Bank requires that the Borrower obtains the Free, Prior and Informed Consent by the affected Indigenous Peoples regarding the project design, implementation arrangements and expected outcomes related to risks and impacts.<sup>1</sup> There is no universally accepted definition of FPIC. It does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples explicitly disagree. Consent refers to the collective support of affected Indigenous Peoples communities for the project activities that affect them, reached through a culturally appropriate process.

**Indigenous Peoples:** According to the World Bank's Environment and Social Framework, the term 'Indigenous Peoples' is used in a generic sense to refer exclusively to a distinct social and cultural group possessing all the following characteristics in varying degrees:

- (a) Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others; and
- (b) Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas; and
- (c) Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture, and
- (d) A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

The Land Law (2001) defines an indigenous community as “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

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<sup>1</sup> FPIC is required when a Bank-financed project have: (a) adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation; (b) cause relocation of Indigenous Peoples from land and natural resources subject to traditional ownership or under customary use or occupation; or (c) have significant impacts on Indigenous Peoples cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected Indigenous Peoples.

practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.” For all practical purposes, the characteristics of Indigenous People in the Land Law closely resemble and overlap with the four criteria used by ESS7 to define an indigenous people, although the Land Law gives primacy to customary and collective land tenure, which is the second criteria for IPs in ESS7.

**Indigenous Community Land Title (ICLT)** is based on the recognition by the Royal Government of Cambodia of the right of indigenous peoples’ communities to register collective ownership over their lands, as described in Sub-Decree No. 83 on the Procedures of Registration of Lands of Indigenous Communities (2009), which defines the procedures, types of land, and state agencies involved with communal land titling. An indigenous communal land titling (ICLT) manual<sup>2</sup> from December 2018 and prepared by the Cambodia Office of the High Commissioner for Human Rights guides the titling process. The main objectives of the ICLT process are to preserve and protect the customs, traditions and natural resources of IPCs, improve land use and management in a sustainable manner, enhance livelihood development, and reduce or eliminate land conflicts.

**Interim Protection Measures (IPM):** A letter to freeze all buying, selling and transferring of the land rights of the area of land that was requested to be registered as the indigenous collective land title (ICLT). This document is of particular importance as it forbids all forms of land transactions in the area, protecting it against any encroachment until the community has received the official title for their land, and since it is the first official document providing some tenure security to the IPC. Under the ICLT process, the IPM is issued at Phase 3, Step 3.

**Sketch map and preliminary map for ICLT:** The ‘sketch map’ is a hand-drawn map showing the village boundaries and types of land use therein, without specifying the size of the area under claim or its exact position. During the ICLT process it is developed into a digital ‘preliminary map’, and both the sketch map and the preliminary map are developed at Phase 2.5, Step 1.

**State Land** is part of the State’s property and comprises State Public Land and State Private Land. State Public Land comprises (i) any property that is specially developed for general use, and (ii) any property that is made available, either in its natural state or post-development, for public use. State Public Land becomes State Private Land when it no longer has public interest use, and State Private Land may then be alienable and may be provided for social purposes (such as Social Concessions, or parts of Indigenous Community Land Title areas).

**Social Land Concessions (SLCs)** feature an orderly process of land allocation to poor people along with infrastructure development, other social services, and technical assistance to enhance the production capacities of beneficiary populations and the sustainability of their livelihoods. A legal framework for the operationalization of Social Land Concessions was established in 2003 through adoption of Sub-Decree 19 of the Land Law (2001), which defines criteria and procedures for granting SLCs.

**Sub-Project** is the aggregate activities involved in preparing and implementing a SLC or ICLT process in a specific location along with the associated infrastructure and agriculture/livelihood support, as well as the preparation and implementation of any required environmental or social safeguard instruments.

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<sup>2</sup> Manual on Indigenous Communities Identification; Legal Entity Registration; and Communal land registration process in Cambodia (published in December 2018).



## **EXECUTIVE SUMMARY**

The Ministry of Land Management, Urban Planning and Construction (MLMUPC) has led and prepared the Indigenous Peoples Planning Framework (IPPF) for Land Allocation for Social and Economic Development Project III (LASED III), with the support from international and national consultants. The project is partnered with MAFF as an Implementing Agency (IA) \. The IPPF applies to all investments financed by the World Bank (WB) Group for technical and/or financial support for LASED III. The project targets areas where Indigenous Peoples are present or have a collective attachment to both proposed Social Land Concession (SLC) and Indigenous Community Land Titling (ICLT) areas, as determined in the Environmental and Social Management Framework (ESMF). The IPPF meets the standard of the World Bank's Environment and Social Framework (ESF).

### **Project Description Summary**

LASED III would follow a two-pronged approach, (i) consolidating through complementary support the current activities of the SLC program under LASED II and expanding it into new SLC sites within the same provinces; and (ii) implementing an adapted approach to land titling for communities of indigenous peoples in new project provinces. The Project comprises five components including (1) Selection and Development Planning of SLCs and ICLT; (2) Community Infrastructure Development; (3) Agriculture and Livelihood Development; (4) Project Management, Coordination and M&E; and (5) Contingent Emergency Response.

The project covers all provinces except Phnom Penh, and the selection of project areas depends on relevant demand and opportunities for developments of SLC and ICLT. The locations of SLC and ICLT will be demand-led, responding to requests initiated by Commune Councils (for SLC) and ICs with legal entities, subject to approval by relevant government bodies, on a first-come, first-served basis. The project would support about 45 ICs, and also the poor people who will eventually benefit from the SLC scheme. The entire project expects to benefit approximately 15,000 rural households.

### **Relevant Legal Instruments for IPPF**

Under the national laws and policies, especially Sub-Decree 83, international instruments, and in following the ESS7 of the World Bank, the IPPF centers its primary focus on indigenous communities or indigenous people who reside in the territory of the Kingdom of Cambodia. The members of indigenous communities manifest ethnic, social, cultural, and economic unity, practice a traditional lifestyle, and cultivate the lands in their possession according to customary rules of collective use. In comparison with the national laws and policies, ESS7 covers a broader range of social groups such as the Lao and Cham ethnic groups; hence IPPF will cover these groups in SLC sites, but not as eligibility criteria for inclusion as ICLT sites due to non-coverage under the Land law (2001). ESS7 and IPPF also cover IPs in SLC areas, and IPs who are not members of the ICLT community. The IPPF must be fully operational by utilizing the combination of other instruments, including Environmental and Social Management Framework (ESMF), Stakeholder Engagement Plan (SEP), Cultural Heritage Planning Framework (CHPF), and Resettlement Policy Framework (RPF).

### **Communal Land Registration and Development Support**

Considering the idea of inclusive processes in ICLT, the project would apply a transparent, consultative approach to ensure all relevant stakeholders freely adhere to practices in compliance with legal regulations and agree with ESF requirements. Sub-decree 83 on the procedure of communal land title registration defines three phases for IPs to gain collective land titles (1) the Ministry of Rural Development (MRD) recognizes a particular group of people as an indigenous community (IC); (2) the Ministry of Interior (MOI) determines that the IC can be registered as a legal entity; and (3) communal land registration takes place

under MLMUPC. During phase 3.1, which ICs already completed Phase 2.5 in submitting the application to MLMUPC marks the start of the support by LASED III towards the ultimate communal registration.

In addition to supporting the ICs aspiring for ICLTs, the project also supports the livelihood of indigenous peoples in both the communities that are undertaking the land titling process, and in those that have already registered and obtained their title. It is vital to grasp a good understanding of the opportunities and risks that indigenous peoples face in the context of the project. This IPPF is based on an assessment of the existing ICLT system. However, at the start of LASED III implementation, it is necessary to undertake a more detailed assessment of experiences, opportunities, and risks, as well as of the design and implementation features of the ICLTs that had already been supported by the government. In addition, the current ICLT system and procedures (legal and institutional) needs to be further assessed to identify areas for simplification and/or efficiency gains and to ensure LASED III design and implementation arrangements comply with ESS7. Based on this assessment the IPPF will be updated during project implementation in agreement with the World Bank (this is reflected in the Environmental and Social Commitment Plan). Arrangements for meaningful consultation with communities that result in Free, Prior, and Informed Consent (FPIC) regarding project activities have been introduced, as have social and cultural profiles of ICLT communities that can inform Indigenous Peoples Plans at the sub-project level.

### **Risks, Mitigation Measures, FPIC, and Grievance Redress Mechanism**

There are many potential risks identified. Among them, is concern regarding the loss of IP control over their traditional lands and related natural resources, the overlapping of their traditional communal land areas with the protected areas, the increasing necessity of road access to markets, the potential exclusion of elderly, youth and women from consultation and equitable access to project benefits including the use of the reserve land in ICLT area, the potential effects of SLC projects on culturally significant sites, and the potential encroachment on ICLT land both before and after titling. Dialogue about migration into areas with indigenous communities with relevant government agencies avoid overlapping sections, investments in infrastructure for better access, assurance to include the excluded in the process, the discussions about the traditional rules in land management to ensure equity, and the following of CHPF for the protection of cultural sites.

Despite the measures to address risks and strengthen the consultation with and involvement of ICs in the preparation and implementation of sub-projects, there could still be issues that would emerge during project implementation that would require revision and updating of the approaches described in this IPPF. That might especially be the case regarding the ICLT process and the land measurement during Phase 3 of the ICLT process. Likewise, the infrastructure and livelihood development activities may inevitably have adverse impacts in one form or another on some IPs, even when a participatory process has been adopted for the screening, social impact assessment, and developing of the indigenous peoples' plan (IPP). To ensure that the IPs within sub-project areas as well as those in adjacent communities are properly informed and consulted, the project will require that the FPIC instrument and processes will be applied. Also, if IPs are adversely affected, they can submit complaints at different levels under the project's Grievance Redress Mechanism (as described in the SEP). A local facilitator would accompany the complainants to help them address any barriers, such as language, that they might encounter under the Grievance Redress Mechanism.

## **1. Purpose and Structure of the IPPF**

1. This Indigenous Peoples Planning Framework (IPPF) has been prepared by the Ministry of Land Management, Urban Planning, and Construction (MLMUPC) for the third phase of the Land Allocation for Social and Economic Development Project (LASED III) supported by World Bank (WB). The project is partnered with the Ministry of Agriculture, Forestry and Fishery (MAFF) as an Implementing Agency (IA). Preparation of the IPPF has been supported by national and international consultants. As in the first two phases of the project, LASED III will continue to support Commune level Social Land Concessions (SLCs) and associated development activities. In addition, this third phase of the project will also support a different process for Indigenous Community Land Titling (ICLT) to provide titling and associated development activities for communities of indigenous peoples. In the context of both the SLC and ICLT processes, this IPPF is intended to address two related purposes, namely (a) that the involved indigenous communities (IC) will be engaged in meaningful consultation requiring Free, Prior and Informed Consent (FPIC) so that they receive culturally appropriate and sustainable development benefits, and (b) so that the consultation will also serve to identify potentially adverse impacts along with the means to mitigate these where avoidance is not possible. The IPPF applies to all investments financed by the World Bank (WB) Group for technical and/or financial support for LASED III. The IPPF meets the standard of the World Bank's Environment and Social Framework (ESF).

2. Under this IPPF both the access to project benefits and the avoidance and management of adverse impacts are based on the relevant laws of the Kingdom of Cambodia and the requirements of the World Bank's Environmental and Social Framework (ESF) and in particular its Environmental and Social Standards ESS1, ESS7, ESS8, and ESS10. The identification and management of potentially adverse impacts associated with land acquisition and resettlement under both the SLC and ICLT processes are described in the Resettlement Policy Framework for LASED III.

3. The IPPF describes the LASED III project, the relevant Cambodian and international legal frameworks regarding Indigenous Peoples, the measures to fill gaps between Cambodian laws and the World Bank Environmental and Social Standards, the lessons learned by the Cambodian government regarding implementation of ICLT, the approach to ICLT under LASED III, the associated risks and mitigation measures, the framework and implementation arrangements for consultation and the Free, Prior, and Informed Consent of indigenous communities, and the requirements for Social Impact Assessments to inform sub-project level Indigenous Peoples Plans.

4. The LASED III Financing Agreement will refer to this IPPF cleared by the World Bank and agreed with the Royal Government of Cambodia (RGC) as the applicable instrument for preparation of Indigenous Peoples Plans (IPP) for specific sub-projects involving indigenous communities. Such IPPs will be prepared in close consultation with stakeholders and the World Bank, and their implementation will not commence until the IPP has been finalized and approved by the World Bank.

## **2. The LASED III Project**

### **2.1. Project Development Objectives**

5. The project development objective is to provide access to land tenure security, agriculture and social services, and selected infrastructure to small farmers and communities in the project areas..

### **2.2. Project Level Indicators**

6. The fulfillment of the PDO will be measured through the PDO indicators and the immediate results indicators according to the results framework of the Project Appraisal Documents (PAD): (a) tenure security

provided to beneficiary farmers and indigenous community groups through SLC and ICLT programs. and infrastructure and service provision in the project areas including portable water, basic health and education services. Sustainable, agriculture-based livelihood development for individuals and groups in the project communities, which will eventually have resulted in poverty reduction and the increase of income of project beneficiaries. This is considered to be successful on the premise that other enabling factors are taken into account including agriculture extension services, adoption of new technology, and market interactions for better access to productive assets as well as livelihood resilience.

## 2.3. Project Components

7. LASED III would follow a two-pronged approach, (i) consolidating through complementary activities the current SLC program under LASED II and expanding it into new SLC sites within the same provinces; and (ii) implementing an adapted approach into communities of indigenous peoples in new project provinces. The project would build on the successful and well-established procedures under LASED and LASED II for implementing SLC activities, but adapt them to indigenous peoples' communities in the form of an Indigenous Community Land Titling process.

8. **Component 1: Selection and Development Planning of Social Land Concessions (SLC) and Indigenous Communal Land Titling (ICLT).** LASED III would support applications for SLC, and ICLT or development support to ICs, on a first-come, first-served basis. For ICLT and development assistance to ICs, the ICs themselves would have to come forward and ask for help. For ICLT, the project would provide support throughout the steps necessary to complete the registration process. This includes ICs whose land registration applications have already been successfully received by provincial land departments but that the land registration has not yet started, and also for those who have legal recognition from MOI but have not yet created and gathered all necessary documents to be able to file land registration applications. For ICs which have already completed the ICLT process from the start of the project, development assistance would be provided, namely through infrastructure and service support. Planning activities in ICs would be supported by experienced national and local technical assistance, employed by the project.

9. **Component 2: Community Infrastructure Development.** The project would support the communities through the provision of productive/economic and social community infrastructure investments such as rural roads, side drains, culverts, drifts, water supply and sanitation facilities, small-scale irrigation systems, school buildings, teachers' houses, health posts and community centers, among others. The key investments would be for transport connectivity as that would cover wider areas beyond those that are targeted for specific sub-projects. In addition, the support for clean water supply and sanitation at residential areas, and climate change resilient and sustainable small-scale irrigation schemes will also be important. The infrastructure development will be taken into account the level of resilience against climate change and energy efficiency where appropriate.

10. **Component 3: Agriculture and Livelihood Development.** This component would support the settlement process of beneficiary households, the building of socio-economic capital (producer groups/cooperatives), and the development of climate-change resilient and market demand-driven agricultural production systems. The component would include support for (i) settling-in assistance<sup>3</sup> to newly-installed land recipients and land preparation assistance for a first cover crop and/or planting of seedlings for tree crops; (ii) implementation of an agricultural services strategy focusing on climate-smart agriculture techniques (but implementation would depend on the interests of the communities); (iii) establishment and/or strengthening of farmers organizations for production and marketing activities and of other community interest groups; and (iv) provision of a Community Fund for Development (CFD). These

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<sup>3</sup> Basic household supplies, some shelter materials, food for work, and small materials and equipment related agriculture farming (to be details in the PIM)

activities require strong national and international technical assistance in close collaboration with MAFF, other implementation agencies (IAs) and provincial departments.

11. **Component 4: Project Management, Coordination and M&E.** This component would ensure the timely and transparent financial management system, flow of funds, procurement, auditing, and reporting. This support for the team including the Project Management Team (PMT), Project Teams (PTs), operational costs and multi-sector coordination technical, fiduciary (procurement and financial management), and social and environmental safeguards at the central and decentralized levels; institutional and technical capacity building for project implementation at all levels; M&E and information systems; (d) baseline, midterm, and final project evaluations and impact assessments; and (e) communications strategy and project results dissemination.

12. **Component 5: Contingent Emergency Response.** The contingent emergency response component, with a provisional zero allocation, would allow for the reallocation of financing to provide an immediate response to an eligible crisis or emergency. An Emergency Response Manual (ERM) will be developed for this component. The results framework would be revised taking into account relevant indicators pertaining to emergency activities.

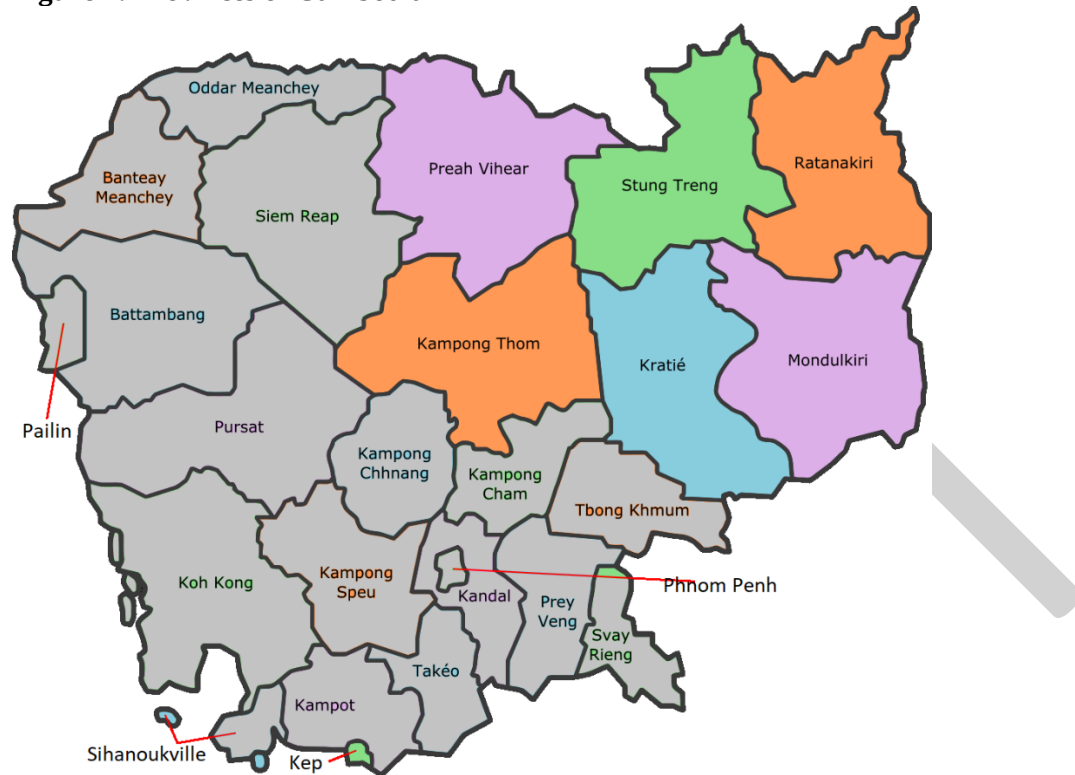
## 2.4. Project Beneficiaries and Locations

13. **Geographical targeting:** LASED III will be a national project and, in principle, can operate in any Province, excluding the capital, Phnom Penh, depending on relevant demand and opportunities for developments of SLC and ICLT. However, current (and likely final) agreement with authorities limits the project's coverage to the 14 provinces that would host about 71 sites and IP communities. The locations of SLC and ICLT will be demand-led, responding to requests originating from Commune Councils (for SLC) and ICs, subject to approval by relevant government bodies, on a first-come, first-served basis. However, at least in the early stages of the project, activities are likely to be concentrated in specific provinces:

- (a) Provinces with existing SLC sites: these are Kampong Chhnang, Kampong Speu, Kampong Thom, Kratie, and Tbong Khmom;
- (b) Provinces with a large number of ICs: primarily, these are Ratanakiri, Mondulakiri, Stung Treng and Preah Vihear (as well as Kratie which is a LASED II Province);
- (c) Provinces with land available for new SLC. Potentially, these could be any Province in Cambodia. However, the Provinces with most available land resources are those in the northeast of the country, particularly Kampong Thom, Kratie, and Preah Vihear.

14. **Beneficiary targeting:** The approach to deliver LASED III to SLCs and Indigenous Community Land Titling (ICLT) is "demand-driven," i.e., the selection of both SLCs and ICLTs is based on requests from communes or ICs, rather than pre-determined by the project. This ensures that the project responds to the specific needs and circumstances of communities and ICs, and that beneficiaries will have more ownership of project supported activities. Within this framework, the project would support: (i) about 15 ICs to carry out their respective ICLT processes; (ii) about 30 ICs, that have completed their titling processes, with development activities; (iii) about 12 new SLC sites within currently covered and new provinces with land allocation and development activities; and (iv) 14 SLC sites currently covered by LASED II that will be supported with limited, discrete and complementary activities such as small-scale irrigation and agriculture support services, and access tracks across SLC sites. The project's Environmental and Social Management Framework will include necessary guidance to ensure that during project implementation the assistance provided to all the selected sites and communities would be in accordance with the law and with ESF requirements. Direct LASED III beneficiaries would approximate 15,000 rural households. Benefits from improved infrastructure availability and usage would accrue to a broader population, beyond the targeted households in the project areas.

**Figure 1: Provinces of Cambodia**



### **3. Legal and Regulatory Framework Relating to Indigenous Peoples**

15. **The Cambodian Constitution (1993)** acknowledges the importance of having a multi-cultural society and guarantees all Khmer citizens the same rights regardless of their color, race, language, and religious beliefs. As shown in article 31 of the constitution, every Khmer citizen shall be treated equally before the law, enjoy the same rights, freedom, and duties. Also, article 41 of the constitution ensures the right of all Khmer citizens to private and collective property ownership.

16. **The Cambodian Land Law (2001)** reveals that Cambodia is an outstanding country in Southeast Asia in that it has formally recognized indigenous people and their rights over their natural resources in the national law. The land law gives recognition of the right of indigenous peoples to their traditional lands, culture, and traditions. The land law recognizes the importance of natural resources, especially land for indigenous people and specifies their rights to land, and acknowledges the social, cultural, spiritual, and economic values of the land of indigenous peoples. Most importantly, articles 25 and 26 of the Land Law states the provision of right over indigenous land in the form of collective ownership, while article 28 states that there are no other external agencies that should have the right to control private or collective properties of indigenous peoples. These rights are reaffirmed in the National Land Policy or White Paper which was officially rectified in August 2015.

17. Article 23 has a **definition of an indigenous community** as a group of people who reside 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. Article 24 also states an individual who meets the ethnic, cultural and social criteria of an indigenous community, is recognized as a group member by the majority of such group, and who accepts the unity and subordination leading to acceptance into the community shall be considered

to be a member of the indigenous community and is eligible to have the benefit of the rights, guarantees, and protections provided by this law. FAO's Policy Brief indicates that a restriction to customary land claims according to Article 7 of the Land Law is that "no regime of ownership of the immovable property before 1979," which marks a cut-off date for any traditional land claims.<sup>4</sup> However, in practical terms this issue is not an actual cut-off date because people today still enjoy large areas of land they held before 1979, and it has more to do with the tension between MoE (for conservation) and ICs (customary practice), and hence a coordination mechanism needs to be in place as stated in the Lessons Learned Section below.

18. **Cambodia's National Land Policy 2015** (or Land White Paper') focuses on "respecting custom, culture, and preserving cultural heritage and history" of Cambodia's indigenous groups. In the event of illegal occupation of state land, there could be an opportunity to provide to landless and vulnerable low-income families parcels of land that are suitable for their living, but that needs to be done on a case by case basis.<sup>5</sup> The **National Policy on Development of Indigenous Minorities (2009)** aims to ensure land security for indigenous people, and in doing so that they can attain decent living conditions, be free of hunger and extreme poverty, and that their culture can be protected and maintained.<sup>6</sup>

19. **The Forestry Law (2002)** generally recognizes indigenous peoples' traditional rights to natural resources and the practice of shifting cultivation for IPs living in or nearby state forests. They do not need to seek permission for the use of non-timber forest products. Article 15 requires forest concessions not to interfere with customary use rights on the land property of indigenous communities whether they are registered with the state or are traditional practices of IPs residing within, or adjacent to forest concessions. The law also allows indigenous communities to have access to and use of forest land for non-timber products, land for water sources etc., even if this use is not part of the communal titled land areas. The law it also allows for the community to establish community forestry; and the **Sub-Decree on Community Forest Management (2003)** sets out rules for the establishment, management and use of community forests in Cambodia, which are allocated and can be renewed for 15 years periods.<sup>7</sup>

20. **The Protected Area Law (2008)** set out the framework of management, conservation, and development of protected areas to ensure the management and preservation of biodiversity and the sustainable use of natural resources. There is a provision that forest-dependent and indigenous peoples can have access to the use the natural resources in a sustainable manner and live within protected areas. The law divides a protected area into four different zones, and each of these is defined by its land use and management: core zone, conservation zone, sustainable use zone, and community zone. However, so far only one national protected area has been fully zoned. Within a protected area, the law permits the establishment of community protected areas (CPAs), which can include areas of the sustainable use zone and community zone as a platform for engagement by communities and other stakeholders in protecting the land and resources within it, and to benefit from biodiversity conservation, livelihood subsistence and the maintenance of cultural and spiritual values. Under the law, resources (e.g. NTFPs) can be used for livelihood subsistence but not for commercial purposes.<sup>8</sup>

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<sup>4</sup> FAO and MRLG: *Challenges and opportunities of recognizing and protecting customary tenure systems in Cambodia*. Bangkok 2019, 13 pp. License: CC BY-NC-SA 3.0 IGO. The Policy Brief concludes that "Due to the cut-off date (1979) in the Land Law, this means that communities can only exceptionally claim customary rights to old settlement areas and former production zones."

<sup>5</sup> Ironside, J. (2017). *The Recognition of Customary Tenure in Cambodia*. MRLG Thematic Study Series #5. Vientiane: MRLG.

<sup>6</sup> FAO and MRLG. 2019. *Challenges and opportunities of recognizing and protecting customary tenure systems in Cambodia*. Bangkok, 13 pp. License: CC BY-NC-SA 3.0 IGO.

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*



21. **Sub-Decree No. 83 on the Procedures of Registration of Lands of Indigenous Communities (2009)** defines the procedures, types of land, and state agencies involved with communal land titling. Article 6 of this sub-decree outlines the five types of land that can be allowed for communal land titling comprising (1) residential land, (2) spiritual forest land, (3) burial forest land, (4) actual farming land and (5) the land reserved for shifting cultivation. The same article also specifies the size of spiritual and burial land should not be larger than 7 ha each. The sub-decree does not include forest land for NTFP or waterbodies as potentially entitled for communal land titling. An indigenous community land titling (ICLT) manual<sup>9</sup> December 2018 was prepared by the Cambodia Office of the High Commissioner for Human Rights (OHCHR) to guide the titling process (as outlines in Annex 1, and in Section 6).

#### 4. Relevant International Instruments

22. At the international level, the human rights treaties to which Cambodia is a party, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), stress the rights of IPs to pursue their economic, social, and cultural development freely. Moreover, the rights of IPs have been defined and certified by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which Cambodia voted in favour of in September 2007. In addition to individual rights, the rights contained in UNDRIP seek to protect the collective rights of IPs because recognition of such rights is necessary to ensure the continuing existence, development, and well-being of IPs as distinct peoples. UNDRIP Article 26.3 requires states to provide legal recognition and protection to the lands, territories, and natural resources of IPs. This includes identification, demarcation, titling, and other legal recognition of the land. Also, Article 10 states that “indigenous peoples shall not be forcibly removed from their land or territory,” and Article 26.1 states that “indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired.”

23. The USAID Brief<sup>10</sup> notes that while there are international instruments, the practices of recognizing the rights and tenure arrangement from one country to another differ. Many governments globally have formally recognized community land and natural resource tenure by referring to many names, including community, customary, communal, collective, indigenous, ancestral, or native land rights recognition. Essentially, community land is about tenure security for IPs who belong to a group, but at the same time, this does not require the group to manage their land on a communal or collective basis. The allocation of land is for individual use, and mainly residential and farming lands. Due to external threats, there has been an increasing number of countries that recognize communal land and resource arrangements through the provision of title or certificate according to relevant laws and policies. However, the processes and practices to identify the rights of these groups vary from one country to another, and hence no country’s experience stands out as being applicable to all. There are both strengths and weaknesses as seen below in Annex 7.

#### 5. World Bank Environmental & Social Standards and Cambodian Law

##### 5.1. World Bank Environmental and Social Standards

24. In the project locations where implementation will impact, whether positively or adversely, indigenous peoples, this Indigenous Peoples Planning Framework will apply. It draws on both the

<sup>9</sup> Manual on Indigenous Communities Identification; Legal Entity Registration; and Communal land registration process in Cambodia (published in December 2018). Cambodia Office of the High Commissioner for Human Rights (OHCHR)

<sup>10</sup> Source: Brief: Community land and natural resource tenure recognition: review of country experiences, USAID, February 2016



applicable Cambodian legal and regulatory framework described above, and the World Bank's Environmental and Social Standard ESS7<sup>11</sup>, along with ESS1, ESS8 and ESS10. Where there are gaps or inconsistencies between these standards and the national legal and regulatory framework, the relevant provisions in the standards will apply.

25. The purpose of ESS7 is to contribute to poverty reduction and sustainable development by ensuring that projects supported by the Bank enhance opportunities for Indigenous Peoples to participate in, and benefit from, the development process in ways that do not threaten their unique cultural identities and well-being. To that end, ESS7 has the following objectives:

- (a) To ensure that the development process fosters full respect for the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods of Indigenous Peoples.
- (b) To avoid adverse impacts of projects on Indigenous Peoples, or when avoidance is not possible, to minimize, mitigate, and/or compensate for such impacts.
- (c) To promote sustainable development benefits and opportunities for Indigenous Peoples in a manner that is accessible, culturally appropriate, and inclusive.
- (d) To recognize, respect, and preserve the culture, knowledge, and practices of Indigenous Peoples, and to provide them with an opportunity to adapt to changing conditions in a manner and in a time frame acceptable to them.
- (e) To obtain the Free, Prior, and Informed Consent (FPIC) of affected Indigenous Peoples in the three circumstances in which a project will have (i) adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation, (ii) cause relocation of indigenous peoples from such lands, or (iii) significant impacts on indigenous peoples' cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected indigenous peoples' lives.

26. Overall, the purpose and specific objectives of ESS7 are accommodated by the main objective of the Cambodian legal and regulatory framework for land titling for the country's indigenous communities, which is to preserve and protect the customs, traditions and natural resources of IPCs, improve land use and management in a sustainable manner, enhance livelihood development, and reduce or eliminate land conflicts. Moreover, the indigenous communal land titling process defined in the ICLT manual<sup>12</sup> from December 2018 also largely, but not fully, meets and can accommodate the process requirements regarding meaningful consultations with and involvement of particular beneficiary IP communities (Annex 1 and Section 10). Specific gaps between the Cambodian legal and regulatory framework and the World Bank's Environmental and Social Standards are described in more detail below and concern the requirements regarding Meaningful Consultation/Free, Prior, and Informed Consent; Social Assessment; Indigenous Peoples Plans for activities in specific land titling sub-projects based on this Indigenous Peoples Planning Framework (which itself is also not required by the Cambodian legal and regulatory framework); explicit management of inclusiveness (e.g. gender) in both consultation on the project and in representative bodies of the IP community engaged in these consultations; and (v) grievance redress arrangements.

## **5.2. Definitions of Indigenous Peoples and Community**

27. According to the Land Law (2001), Article 23 states that: "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

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<sup>11</sup> The full name of ESS7 is Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.

<sup>12</sup> Manual on Indigenous Communities Identification; Legal Entity Registration; and Communal land registration process in Cambodia (published in December 2018). Cambodia Office of the High Commissioner for Human Rights (OHCHR)

possession according to customary rules of collective use. Before gaining legal status under a law on communities, the groups existing at present shall continue to manage their community and immovable property according to their traditional customs. They shall be subject to the provisions of this law.” Also, Article 24 states that “an individual who meets the ethnic, cultural and social criteria of an indigenous community, is recognized as a group member by the majority of such group, and who accepts the unity and subordination leading to acceptance into the community shall be considered to be a member of the indigenous community and is eligible to have the benefit of the rights, guarantees, and protections provided by this law.”

28. The World Bank’s ESS7 uses the term “Indigenous Peoples” in a generic sense (meaning that in a specific national context they may be referred to with a different terminology) to refer exclusively to a distinct social and cultural group possessing the following characteristics in varying degrees:

- (a) self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others;
- (b) collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas;
- (c) customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and
- (d) a distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

29. While the terminology used in the Land Law (2001) to define a ‘indigenous community’ and in ESS7 to define ‘indigenous peoples’ differ in their specific wording, they nevertheless share the intent of identifying a set of common and distinctive features regarding ethnic, social, and cultural identity that set these groups apart from the majority, along with their customary rules of collective attachment and use of distinct areas. However, FAO’s Policy Brief (2019) observes that the exact definition of indigenous peoples in the Land Law (2001) remains to be spelled out, especially regarding specific groups like the Lao-speaking minority in Cambodia. At the same time, the ESS7 definition is broader than the government’s definition, and would also cover social groups such as the Lao and Cham ethnic groups. To address this gap, the IPPF will include these groups for SLC sites based on ESS7 criteria, but not in the eligibility criteria for ICLT titling and livelihood support for as they are not considered indigenous under the Land Law.

30. Another issue that also needs to be noted in a discussion of how best to define ‘indigenous communities’ and ‘indigenous peoples’ in Cambodia is that due to Khmer migration in search of land, many indigenous peoples now live intertwined with Khmer people.<sup>13</sup> The current social reality of ethnically mixed communities poses the question of how this can be managed for land titling regarding both SLCs and ICLTs under this IPPF for LASED III. As of now, it is the government’s definition of an indigenous community that will determine eligibility for an ICLT. Moreover, LASED III will not become involved in the ICLT process until Phase 3.1 when the IC has submitted the application to MLMUPC. The implication is that the membership of the IC will be determined before LASED III becomes involved. Consequently, when appraising whether a particular indigenous community that expresses ‘demand’ for inclusion in the project, and which would already be at Phase 2.5 in the ICLT process, LASED III will need to confirm through a due diligence verification that Phase 1 and 2 of the ICLT process complies with ESS7’s requirement regarding (a) the requirement of ‘meaningful consultation’, (b) the requirement that this consultation has been socially representative and inclusive, and (c) assessing and avoiding adverse impacts and providing sustainable benefits. The verification exercise should include the two key results of the process, namely (i) whether representation in the Community Committee is socially inclusive, and (ii)

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<sup>13</sup> FAO & MRLG: *Policy Brief – Challenges and Opportunities of Recognizing and Protecting Customary Tenure Systems in Cambodia*. Bangkok 2019.

whether the community by-laws for the ICLT provides equitable benefits across sub-sets of the IP community.

### 5.3. Gaps between Cambodian Laws and ESS7

31. Table 1 below describes key gaps between ESS7 and the Cambodian Laws:

**Table 1: Gaps between Cambodian Laws and EES7**

| ESS7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Cambodian Laws                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Gaps                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Meaningful Consultation (para 23)</b><br/>The Borrower undertakes an engagement process with the affected IP community, and the engagement process will include stakeholder analysis, information disclosure, and consultation in a culturally appropriate and gender and intergenerationally inclusive manner.</p> <p><b>Free, Prior, and Informed Consent (FPIC) (para 24 and 25)</b> - Where (a) adverse impacts on land and natural resources of IP; (b) relocation of IP; or (c) impacts on cultural heritage of IP will occur, ensure the adherence to consultation resulting in of (FPIC).</p> <p>Ensure that Indigenous People (IP) present in or attached to the project area are fully consulted and can participate in project design and determination of implementation arrangements.</p> <ul style="list-style-type: none"> <li>Assess the nature and degree of expected impacts on IP</li> <li>Prepare a consultation strategy</li> <li>Develop a time-bound plan of measures and actions</li> <li>Avoid adverse impacts wherever possible</li> <li>Identify mitigation and development benefits including compensation as appropriate</li> </ul> | <p>Sub-Decree No. 83 on Procedures of Registration of Lands of Indigenous Communities (2009) defines the Indigenous Communal Land Titling (ICLT) Process.</p> <p><b>Phase 1:</b> Self-identification of IPCs with the Ministry of Rural Development (MRD)</p> <p><b>Phase 2:</b> Recognition of IPCs as legal entities by the Ministry of Interior (MoI)</p> <p><b>Phase 2.5:</b> Preparation of a preliminary map showing boundaries and land uses according to the different categories of IPC lands; development of internal rules on the use and management of the land; submission of application for collective titling and issuing of interim protection measures (IPM)</p> <p><b>Phase 3:</b> Surveying boundaries and issuing the collective land title after public display (30 days) and approval by other ministries such as the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of Environment (MoE) for the registration of state land</p> <p>Sub-Decree No. 83 on the Procedures of Registration of Lands of Indigenous Communities (2009)'s Article 6 defines the five types of land for communal land titling (1) residential land, (2) spiritual forest land, (3) burial forest land, (4) actual farming land and (5) the land reserved for shifting cultivation.</p> | <p>LASED III only gets involved at Phase 2.5 after a beneficiary community has been recognized by MRD as IP, and after formation of Community Committee and adoption of community by-laws.</p> <p>Gap 1: Verification that Phase 1 and 2 did comply with ESS7 requirements for Meaningful Consultation.</p> <p>Gap 2: For Phase 2.5 and 3, develop plan for Meaningful Consultations as defined in ESS7 para 23, that ensures and documents:</p> <ul style="list-style-type: none"> <li>Social, gender and generational inclusiveness regarding both consultations, representation in decision making bodies, and access to benefits.</li> <li>Avoidance of adverse impacts related to the demarcation of the ICLT area and associated infrastructure, and if unavoidable develop mitigation and compensation arrangements.</li> </ul> <p>Gap 3: Undertake a Social Assessment (ESS7 Appendix A) to inform the planning of Meaningful Consultations and the IPP.</p> <p>Gap 4: Indigenous Peoples Plan for the sub-project level activities through Phase 2.5 and 3 as well as regarding subsequent infrastructure construction and livelihood activities.</p> <p>Gap 5: Grievance Redress Mechanism that is accessible for both members of the beneficiary IP community and members of neighboring communities that may be affected by the sub-project activities.</p> <p>Gap 6: the Lao and Cham ethnic groups will be covered by IPPF for SLC sites.</p> |

## 6. Brief Socio-Economic Profiles of Indigenous Peoples in Cambodia

32. There are about 24 different Indigenous Peoples groups in Cambodia, totaling approximately 200,216 people or about 1.2% of Cambodia's total population of 16.5 million (Ministry of Planning, 2019). The major groups are Bunong, Jarai, and Tumpuon, who are concentrated in the provinces of Ratanakiri (about 50% of the province's 185,000 people) and Mondulkiri (about 80% of the province's 73,000). Small

numbers of Indigenous Peoples are also spread across another 13 provinces, in a countrywide total of around 455 villages, although the actual number of villages depends on the categorization of what constitutes an IC because many indigenous people live intertwined with Khmer people. Land tenure security is crucial to their ability to maintain their distinct cultures and to develop economically. Many of them have turned from subsistence shifting cultivation to cash crops such as cashew and sedentary agriculture.

33. Most smallholder farm families in Cambodia mix agriculture with other income sources, with a common strategy being to farm rice, chickens and vegetables primarily for home consumption, while seeking cash income from paid employment or from small business activities. Paid employment opportunities in the target Provinces are likely to be mainly on commercial agriculture enterprises including rubber and other types of plantation, cassava etc. Seasonal employment in rice cultivation is of declining importance with the increasing use of broadcast seeding and mechanical harvesting replacing traditional methods. Migratory labor is also important, with young women especially going to work in garment factories mainly located around Phnom Penh, and men seeking employment in construction in Phnom Penh. Migration outside Cambodia is also important, primarily to Thailand and to a lesser extent to more distant countries.

34. As indicated in ESP, in LASED III, members of indigenous communities are around 14% of the population of the target Provinces. There are more than half of all households in 63 of the 284 Communes in the target areas, the rest are mainly ethnic Khmer. In Cambodia as a whole around 8% of the population are believed to be ethnic Vietnamese, Chinese or from the mainly Muslim Cham minority. Not many are present in the northeastern provinces, but a significant Lao-speaking minority in Stung Treng Province. With regards to ID-Poor data, about 17% of households are poor, with small difference across the provinces. The poverty rate is found higher in communes where there are the higher number of IPs, but contrastingly lower in communes with low population density.

35. As shown in Table 2, the majority of the population of the target provinces is engaged in agriculture, as 64% of the adult population of the target provinces depend on agriculture and/or access to natural resources as the primary occupation, despite natural resources (fishing, hunting and non-timber forest products) use as a primary occupation as low as about 3%. Next to agriculture and natural resources is the self-employment are overwhelmingly the next most common 16%, followed by 7% of the adult population in formal employment in the private or public sector. It is interesting that in communes with majority IP population and communes with low population density, higher proportion is engaged in agriculture and natural resources, but almost none is formal employment.

**Table 2: Livelihood by Sector as Percent of Adult Population**

| Province                          | Agriculture and Natural Resource | Self-Employment | Wage Labor (agriculture and construction) | Private Sector Employment | Public Sector |
|-----------------------------------|----------------------------------|-----------------|-------------------------------------------|---------------------------|---------------|
| Kampong Thom                      | 61%                              | 18%             | 4%                                        | 6%                        | 2%            |
| Kracheh                           | 62%                              | 16%             | 11%                                       | 3%                        | 2%            |
| Mondulkiri                        | 71%                              | 15%             | 18%                                       | 1%                        | 5%            |
| Preah Vihear                      | 70%                              | 13%             | 2%                                        | 1%                        | 5%            |
| Ratanakiri                        | 74%                              | 17%             | 4%                                        | 1%                        | 3%            |
| Stung Treng                       | 66%                              | 16%             | 5%                                        | 1%                        | 4%            |
| <b>Total</b>                      | <b>64%</b>                       | <b>16%</b>      | <b>3%</b>                                 | <b>4%</b>                 | <b>3%</b>     |
| <i>IP &gt; 50% of HH</i>          | <i>81%</i>                       | <i>7%</i>       | <i>1%</i>                                 | <i>0%</i>                 | <i>2%</i>     |
| <i>Pop &lt; 20/km<sup>2</sup></i> | <i>78%</i>                       | <i>8%</i>       | <i>1%</i>                                 | <i>0%</i>                 | <i>2%</i>     |

Source: Commune Database (CDB), 2018

36. With regards to land, landlessness and encroachment, the land ownership and land access rights in northeastern Cambodia plagued by a number of issues which involves disputes and competing claims. Up until 1989 land distribution was considered a fairly equal across households. Most rice land in the lowland

Provinces of Cambodia is subject to ownership from this period and had almost no major land conflict occurred. The Land Law of 2001 recognized ownership rights if a person stayed on the land for five years before the adoption of this Law. But many plots have not obtained “hard” formal titles from MLMUPC, except “soft” ones signed by local authorities, and they can still use to it as collateral for access to loans. Unlike the private titles, hard of soft, which people from the lower land have it, the indigenous peoples (IPs) own land collectively according to traditional customs stated in the 2001 Land Law.

37. Northeast Cambodia contains substantial protected areas including protected forests and wildlife reserves. Parts of protected areas have been adopted as Community Forests (under a framework of MAFF Forestry Administration) or Community Protected Areas (under MoE). In fact, the protected areas are under the management of MoE and are sub-divided into different zones, but the boundaries of these zones may overlap with the Government-granted ELC areas and IC-claimed areas. In early 2017 the Government announced a new sub-decree that protects almost 1.5 million hectares as the conservation corridors<sup>14</sup> and there have been cases where IPs claimed part of these areas as ancestral land in order for inclusion into the ICLT, which has caused a key challenge.

## 7. Experiences of and Needs for Indigenous Community Land Titling

38. The RGC has recognized IPs’ right to their land by enabling them to register collective ownership over this resource through the Indigenous Community Land Titling (ICLT) process. Registering collective ownership of a community’s land is generally appealing to IPs since the registration gives them secure tenure to most of their traditional land, and therefore to enable them to manage the land in the communal manner that they have long followed. However, because of their vulnerability, attention should be paid to set up appropriate regulatory enforcement measures the Interim Protection Measures which is during the ICLT process, and also in post ICLT period to ensure effective enforcement of IP land rights; this would contribute much to the sustainability of ICLTs.

39. The Indigenous Community Land Titling (ICLT) process comprises several different stages and has required several years to complete. The process follows an ICLT manual prepared by the Cambodia Office of the High Commissioner for Human Rights in consultation with MRD, MoI, the MLMUPC, MoE, MAFF, and several civil society organizations (CSOs). Since the introduction of Sub-Decree No. 83 in 2009, and the issuing of the first communal land titles in late 2010, the status as of December 2018, was that 141 ICs had obtained MRD recognition (phase 1). Of these, 128 ICs had obtained legal entity status by MoI (phase 2), and 68 of these had submitted titling applications including 24 who have completed the whole process and received an ICLT (under phase 3). In a workshop organized by MRD and the NGO Forum on 10<sup>th</sup> October 2019, the update was that there were by then 150 ICs with MRD recognition (phase 1), 137 with legal entity status with MoI (phase 2), and 25 ICs with ICLTs. By January 2020, there were 30 ICs who had obtained communal land title registration. Credit should be given to civil society organizations (CSOs) such as Indigenous Community Support Organization (ICSO), Development and Partnership in Action (DPA), Non-Timber Forest Products (NTFP), Highlanders Association (HA), and UNOHCR who have provided a lot of support to indigenous communities to obtain ICLTs, especially during phase 1 and phase 2. The Project would aid the titling process for additional ICs along with development support to all titled ICs.

**Table 3: Applications and ICs that Received Communal Land Titles**

| Name of Province | Number of ICLT Applications submitted (Phase 2.5 completed) | Number of ICs that have obtained ICLTs |
|------------------|-------------------------------------------------------------|----------------------------------------|
| Ratanakiri       | 35                                                          | 17                                     |
| Mondulkiri       | 20                                                          | 07                                     |

<sup>14</sup> <https://opendevelopmentcambodia.net/topics/protected-areas/>

|              |    |    |
|--------------|----|----|
| Kratie       | 06 | 04 |
| Stung Treng  | 05 | 02 |
| Kampong Thom | 02 | 0  |
| Total        | 68 | 30 |

Source: MLMUPC

40. In Cambodia, most ICs have only been in their present location since the late 1970s. Before the time of the Khmer Rouge, entire villages were often relocated due to their dispersed small settlements. For example, most ICs in Ratanakiri showed establishment dates from 1980 to 2011, while some in Mondulakiri from 1975-1986. Due to the cut-off time (1979) in the Land Law, the ICs can only exceptionally claim customary rights to old settlement areas and former production zones<sup>15</sup>; or if those areas fall within the state land mandated by the Ministry of Environment and Ministry of Agriculture, Forestry and Fisheries, they can still have access to other types of tenure arrangements such as Community Forestry (CF) or Community Protected Area (CPA) if they so desired.

41. Generally, the ICs described that the main benefits of ICLTs are that they have been able to prevent land encroachment or expropriation by influential individuals or entities, and that the area constitutes a means for economic growth or self-subsistence, and that titling legitimizes traditional and cultural ways of handling such territories under customary institutions and rules. Still, there has been no evidence about how community titles have enhanced their livelihoods and agricultural production. It is suggested that an integrated approach to land titling and livelihood development would improve the social and economic well-being of ICs. But it is important that the livelihood activities should be prepared, designed, implemented and evaluated in ways that are suitable to IPs' circumstances, needs and priorities or it may be counterproductive and eroding their existing culture and social organization.

42. The ICLT is considered one of the best available options for ICs to protect their customary land and natural resources. The title provides an assurance for them if they have to file a complaint to the courts, in the event they have conflict with encroachers or outsiders. Yet, despite this, some communities still face land disputes after they have received collective titles due to land encroachers who continue to occupy titled land, and illegal logging also still takes place, especially in large areas such as spiritual forests, burial forests, and on specially reserved land.<sup>16</sup> This calls for more strict measure and enforcement from relevant agencies and the active involvement of ICs to mitigate such incidences.

43. From a gender and intergenerational perspective, an effort is required to engage with vulnerable groups such as women, youth, and elders so that they are included in decision-making on land and natural resource governance. It is noted that indigenous youth have had little role in communal land titling activities, and nor have women. Consequently, it is necessary to provide space in the consultation process and in representative local bodies (e.g. the IP community Committees) for both women and youth. This would strengthen women's capacity, primarily to communicate with outsiders, and their ability and that of indigenous youth to assist their communities. Another study stressed that gender issues are often insufficiently addressed in the formulation of internal rules and by-laws, access to collectively managed land resources often follow traditional and sometimes discriminating rules for women or prevent women from fully participating in decision-making.<sup>17</sup> In contrast, during the field trip, it was observed that women and elders actively take part in the discussions with an outsiders on the ICLT process and challenges, but have had little access to see young people. Therefore, it is important effective medium of communication with them and creating spaces that are suitable for them to share perceptions and experiences.

<sup>15</sup> FAO and MRLG: *Challenges and opportunities of recognizing and protecting customary tenure systems in Cambodia*. Bangkok 2019, p. 7. License: CC BY-NC-SA 3.0 IGO.

<sup>16</sup> *ibid.*

<sup>17</sup> FAO and MRLG. 2019, p. 8.



## 8. Lessons Learned from ICLT Implementation

44. The following are lessons drawn from Phase 3 of the ICLT implementation in consultation with the officials of MLMUPC. These lessons are used to inform modifications of various steps of the ICLT process throughout this document.

45. The IPs have little understanding of the whole ICLT process, except a handful of Indigenous Peoples Communal Committee members who have been through some levels of awareness-raising and interactions with government officers and NGO representatives with experience of the process. The fact that ICLT land cannot be used as collateral for a mortgage or securing loans from banks or MFIs deters IPs from participating in ICLT processes, while they ignore the long term benefits of land tenure security for their entire community. So, more convincing communication, perhaps by NGOs that have a long exposure to working with IPs, about the ICLT benefits and processes, and the potential pitfalls of adopting private titles should be made available, especially in a language that is suitable to the context.

46. With regard to inclusion of forest land in ICLTs, MoE has maps of Protected Areas (PA) and corridors, but this information has not been shared with the Ministry of Land Management. The issue here is that right after the public display, MLMUPC must identify the location of the proposed IC land and whether that overlaps with PA and corridors areas. Generally, it takes time to obtain such information. The important lesson here is that to speed up the process there is a need to set up a coordination mechanism whereby relevant information and data from the Ministry of Environment and Ministry of Agriculture could be shared and discussed. At the same time, the MLMUPC could also share the ICLT process and experience with MoE for mutual understanding and support.

47. MoE officials are opposed to accept larger land areas in protected areas that would enable ICs to continue agricultural land use and the exploitation of forest products as part of ICLTs due to incompatibility with MoE's conservation objectives. However, when MoE then allocates a smaller piece of protected area land, it is opposed by the IC. So far, the requests for protected area land by three ICs has been rejected by MoE, but MLMUPC has still send similar requests from five other ICs for MoE's review and approval. While the Protected Area Law (2008) defines four different protected area zones - community zone, sustainable use zone, conservation zone, and core zone – that differ in terms of land use and management attributes, and of which the two first would be allowed for sustainable use and residence by ICs. However, so far MoE has only done zoning for one national protected area. FAO (2019) also acknowledged that full zoning and land-use planning exercises of all protected areas need to be accelerated. All zones need to be appropriately identified and mapped as stipulated in the Law on Protected Areas.<sup>18</sup>

48. During the ICLT process, NGOs and the ICs have worked together to complete the preliminary mapping stage (Phase 2.5, Step 2). This involves not only manual sketch mapping, but also work to complete GPS demarcation, and transform the sketch map into a digital map. It is a critical step in the ICLT process to produce a proper map, that all relevant parties – both those that are included and those excluded from the proposed ICLT area – can agree to before the application for ICLT registration along with the map is submitted to the MLMUPC. However, without the involvement of the cadastral officer the mapping exercise has been found to be a challenging task. Although the existing laws and policies do not explicitly require the involvement of cadastral officers in the mapping of the ICLT area, the constructive engagement with them to produce the required map is highly important since the officers have both the technical skills and full information on land use and land rights that need to inform the mapping exercise.

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<sup>18</sup> FAO and MRLG. 2019.

## 9. Communal Land Registration Processes

49. To promote inclusive processes in ICLT, the project would apply a transparent, consultative approach to ensure all relevant stakeholders freely adhere to methods that comply with legal regulations and in line with ESF requirements. However, in taking into account issues of ownership and sustainability, it is of utmost importance that the approach should not rush to obtain the results, but rather to follow their own pace as that would achieve the twin goals of building their capacity or increasing their awareness about relevant laws and procedures, ensure full participation, and achieving visible results from the titling process and infrastructural development. Inclusiveness means also taking into consideration of the interest of IC members who have migrated from the community, perhaps due to lack of economic opportunities. Some of these migrants may still have their household members as residents while others may migrate as a household. If within the reach, they should be notified about ICLT process so that they can consider whether to return to their home communities to establish their rights within the ICLT and to take advantage of opportunities created by the project.

50. Sub-Decree No. 83 on the procedure of communal land title registration defines three-successive phases for IPs to obtain collective land titles. The process starts (Phase 1) with the Ministry of Rural Development (MRD) recognizing a group of people as an indigenous community (IC). Next, in Phase 2 the Ministry of Interior (MOI) determines whether to register the IC as a legal entity. The last two phases involve land registration under MLMUPC. The first set of activities (Phase 2.5) involves the development of a registration application by the IC. With assistance by NGOs, the IC prepares internal rules on land management, establishes a temporary map called a 'preliminary map' that shows the lands the IC claims, and submits an application to the provincial department of the Ministry of Land Management, Urban Planning and Construction (MLMUPC) to register the land under communal title for the IP community. Finally, a communal land title is issued to the IC (See Annex 1 for details on the process).

51. LASED III will support both 1) the ICs that is ready to start from Step 1 of Phase 3, which means they have already completed Phase 1 at Ministry of Rural Development, Phase 2 at Ministry of Interior, and Phase 2.5; and 2) those ICs that have already obtained communal titles but would still benefit for livelihood development assistance. However, the process description that follows, provide more details from the beginning of Phase 2.5.

52. After the effectiveness of LASED III, but before supporting the land titling and livelihood activities for indigenous peoples, it is key to establish a good understanding of the opportunities for and risks to indigenous peoples. Therefore, as the first step during LASED III implementation, the activities listed below will be undertaken which will result in a revised IPPF with more detailed procedures for implementing ICLT and a revision of the ICLT process. MLMUPC will set up a technical working group including with participation of indigenous peoples' organization and support NGOs to participate in this assessment.

- (a) Undertake a more detailed assessment of experiences to date regarding opportunities, risks, and design and implementation features of the ICLT titling activities already undertaken by the government. The study should also examine the legal issues concerning conflicting claims regarding inclusion or exclusion of forest land that have been made by ICs and MoE respectively (see para 48).
- (b) Assess the current ICLT system and procedures (legal and institutional) to identify areas for simplification and/or efficiency gains, and to include provisions to enhance the social assessment, consultation and FPIC process in view of national, international and ESS7 requirements;
- (c) Consultations and workshop(s) with relevant stakeholders on ICLT, potentially including experts and experiences from other countries; and



- (d) Undertake social and cultural profiles of ICLT communities, considering also the tangible and intangible cultural heritage in accordance with the Cultural Heritage Protection Framework (CHPF).

### **9.1. Phase 1: Ministry of Rural Development (MRD) recognizing that a particular group of people is an indigenous community**

53. The objective of this phase is to obtain a letter from the MRD minister that recognizes that a list of people from a particular village constitutes an Indigenous Community (IC) belonging to acknowledged indigenous group. The IC also elects an Indigenous People's Community Committee (IPCC). The recognized list of IC members may exclude some people who are non-IP and some IPs who do not want to take part in the ICLT. In practice, this phase has received technical and financial support from one or more NGOs.

### **9.2. Phase 2: Ministry of Interior (MoI) granting the IC legal entity status**

54. This phase involves two activities. One is the drafting and adopting of bylaws or statutes for the IC, which will be used as part of the requirements for obtaining legal entity status from the Ministry of Interior, according to the Law on Association and NGOs 2015 in Article 6. The MoI makes the form of bylaws available for interested ICs to work on it before seeking legal entity status. The bylaws describe the roles and functions of IC members and the management committee, also meetings and identification of the communal property.

### **9.3. Phase 2.5: Preparation and filing of communal land registration application**

55. This phase involves the launching by the IP community of the ICLT application to the MLMUPC. The result of this phase can be considered as the cut-off date for land related claims as step 3 is when an IC submits a 'preliminary map' of the proposed ICLT area prepared with the involvement of people from adjacent communities and other involved entities.

56. In this phase, there are three main steps as outlined in Table 4 below:<sup>19</sup>

**Table 4: Phase 2.5 of ICLT Process**

| Step     | Description                                                             | Activities                                                                                                                                                                                                                                 | Activity Details and Stakeholders                                                                                                                                                                                                                                                                                                                                                                                                |
|----------|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Step 1.a | Data collection and drafting of a sketch map of the proposed ICLT area. | The Community Committee (Phase 2, Step 3) with technical support leads the activities to develop a manually drawn map indicating the boundaries of the proposed ICLT area and its features – e.g. spirit area, public land, streams, road. | A hand-drawn sketch map will be developed (e.g. on a flipchart) by the Community Committee with technical expert support around the same time that the internal rules are drafted. The Village Chief, village elders, members of the Community Committee, representatives from neighboring villages, and members from the Commune Council, including the Commune Chief, should participate at different stages of this activity. |
|          |                                                                         | After the sketch map is completed, the Commune Chief and District Governor chair a meeting to present the map to stakeholders and record their consent and/or concerns.                                                                    | Participants include representatives of the neighboring villages, representatives from the State Land Working Group, Community Committee members, village elders, Commune Council members, and other local authorities.                                                                                                                                                                                                          |

<sup>19</sup> The following information is drawn from OHCHR paper and the consultation with MLMUPC officials.

|          |                                                                                                   |                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|          |                                                                                                   |                                                                                                                                                                                                                        | To authenticate their consent of the map, the participants will sign or thumbprint the document.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Step 1.b | Data collection and developing the sketch map into a 'preliminary map' of the proposed ICLT area. | Transforming the sketch map into a digital map, also called "preliminary map" for the ICLT application.                                                                                                                | This activity requires that the different field teams and stakeholders including representatives from the District State Land Working Group, Community Committee members, village elders, village chiefs from neighboring communities, and Commune Council members are all engaged in conducting the land survey and recording of GPS data. The activity also requires training by the District Cadastral Officer and Development Partners/Civil Society Organizations.                                                                                                                                                                                                           |
|          |                                                                                                   | After the conclusion of GPS mapping, a digital map will be created by the expert cadastral officers, together with DPs/CSOs. Following that, a meeting will be organized by the community to validate the digital map. | Participants should include all Community Committee members, village elders, village chiefs from neighboring communities, Commune Council members, and representatives from the District Cadastral Office and the District State Land Working Group. The final preliminary map is to be produced by the cadastral officers, together with DPs/CSOs. It will be presented to the involved stakeholders, who will authenticate their consent of the map by signature or thumbprint.                                                                                                                                                                                                 |
| Step 2   | The IPC establishes its internal rules                                                            | NGOs help the IC to prepare its internal rules and helps facilitate that the content of these rules provide equitable benefits to all members of the IC.                                                               | The internal rule preparation will be done through meetings between the Community Committee (formed at Phase 2, Step 1) and community elders that produce a first draft with the presence of the Village Chief and the Commune Chief. When a draft is ready, another meeting for all IC members, including women, youth, and poor households, is held to review, revise if necessary, and agree on these rules. The participants in this meeting have the full right to raise any concerns and request revisions of the rules. As the draft and possible revisions are agreed upon by IC members, there will be one last meeting for final review and adjustment where necessary. |
| Step 3   | Submission of ICLT application to MLMUPC                                                          | DPs/CSOs help IPCC to fill out forms and relevant documents to produce a completed application.<br><br>The application with the preliminary maps is submitted to MLMUPC for the ICLT.                                  | When the preliminary mapping and internal rules are completed, the IC is ready to submit its ICLT application to the Provincial Department of Land Management, Urban Planning, Construction and Cadastre (PDLMUPCC) through the District Cadastral Office. The PDLMUPCC reviews and verifies that everything is complete, and then PDLMUPCC prepares a plan for registration and issuance of communal land titles.                                                                                                                                                                                                                                                                |
|          |                                                                                                   | Issuing interim protective measures (IPM)                                                                                                                                                                              | After receiving a registration application, the director of the Provincial Department of Land will send a letter to the Provincial Governor requesting for an issue of IPM that will protect the lands for which the indigenous community has sought collective titling by freezing all buying, selling, and transferring of land rights.<br><br>The finalization of a 'preliminary map' that is endorsed by the IP community and by representative from neighboring communities, and that is verified by PDLMUPCC establishes the <b>Cut-Off Date</b> for eligibility of claims regarding land acquisition. If                                                                   |

|  |  |  |                                                                                                                                                                                          |
|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  |  | land acquisition impacts have been identified, this would also be the starting point for preparation of a Resettlement Plan (RP) as required by the Resettlement Policy Framework (RPF). |
|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

57. An important issue here is that there may be areas between identified for the IC that overlaps with protected areas or conservation corridors. The Protected Areas Law (2008) states that one of the four zones in a protected area known as “community zone,” is the management area(s) for socio-economic development of the local communities and indigenous ethnic minorities, and such community zone land may already be used for residential lands, paddy field, field garden, or swidden (chamkar). Consequently, there is a need for an agreement with the Ministry of Environment following the Land Law if the zone is to be included in the larger ICLT area.

#### 9.4. Applying for Communal Land Registration

58. According to Step 3 of Phase 2.5, each community committee chair or indigenous customary authority shall apply for registration of their land with the district cadastral office. After receiving a registration application, and if the location, size, and boundary of the proposed ICLT area is agreed by the neighbors and administrative authorities, and if there are no conflicts or unresolved disputes, the director of the Provincial Department of Land will send a letter to the Provincial Governor requesting for a letter, known as *interim protective measures (IPM) protecting lands of indigenous community sought for collective titling*, to freeze all buying, selling and transferring of the land rights in the area of land that was requested to be registered as the indigenous collective land title. The IPM also makes it clear to subordinate authorities that they should not certify any letter of transactions on plots or parcels requested for the collective titling, and other adjacent plots until the collective titling gets done. Then, the Land District Officer makes a request to the District Governor to issue a public notice within at least 20 days before the date of the land boundary determination, the land measurement, and judgement on the titling.<sup>20</sup> Notice have to be posted to the public in places that is easy to see: such as the village office, Commune office, and the locations that community proposed. If after 20 days of the announcement, there are no objections or protests, the administrative authorities must proceed with the next step.

#### 9.5. Phase 3: Communal Land Registration

59. The provincial department of land will send a team to measure and place the boundary poles marking the land requested for communal land titles. The land officers will work with indigenous community members who have in-depth knowledge of their land boundary to demarcate the land and gather the GPS coordinate points to produce a map for public display.

60. After public display and once governmental authorities have established what lands will be titled to the IC, a sub-decree is adopted, reclassifying all land to be titled from state public land to state private land.<sup>21</sup> This is done despite the fact that three of the five categories of land that may be titled to ICs are identified as state public in the sub-decree on indigenous land registration.<sup>22</sup> Some IPs had the chance to get private land titles during *the Prime Minister's Directive 01 campaign*, and hence need to sign a letter withdrawing from his/her IC. MLMUPC offers an opportunity for these people to use their titles to join an ICLT if they wish to do so, but there is not any instance of this thus far.

<sup>20</sup> Form 20: Sample Notification on determination of boundaries, measurement and judgement of indigenous community land.

<sup>21</sup> State public land is generally state land with a clear public interest purpose, such as a government road, a mountain etc. State private land is simply all state land that is not state public land. State public land may not be sold, exchanged, leased for long periods etc. All these things may be done in state private land.

<sup>22</sup> Same as note above, article 6.

61. During this phase, the IC must carefully examine the map exhibited during the public display, and if there are objections, they must be raised during the 30 days of public display. The same applies to the neighbors of the proposed ICLT area. ICs should photograph this map and need to compare the unofficial map, the public display map, the map in the reclassification sub-decree, and the titles that are provided to the IC, to look for possible differences. ICs need to see if any parcels in the sub-decree have not been put into titles that were given to the ICs.

62. After receiving and reviewing the ICLT application from an IP community, the following steps in Table 5 will be done:

**Table 5: Phase 3 of ICLT Process**

| Steps   | Descriptions                                                                                                                     | Activity and Stakeholders                                                                                                                                                                                                                                                                                                                                                                                                                                               | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Step 1: | Measurement and data collection of land boundaries by type of use, determination of boundaries and identification of state land. | <p>NGOs take part in overseeing the process and potential challenges that may need to be addressed.</p> <p>The concerned IC to be active in the process.</p> <p>The adjacent community representatives take part to ensure that issues regarding potentially overlapping areas are resolved.</p> <p>The Technical Working Group that is to register the indigenous communal land will conduct state land identification, identify boundaries, and measure the land.</p> | <p>The Land District Officer makes a request to the District Governor to issue a public notice within at least 20 days before the start of land boundary determination, land measurement, and judgment. The notice must be displayed to the public in accessible places. When the period of the announcement is ended with no complaints, the officer will move on to the next step.</p> <p>At this stage, the community, including women, elders, committees, youth, and poor households, should be involved in showing the locations, boundaries, and the size of the various type of land occupied and used by the community to the Indigenous Communal Land Registration Team.</p> |
| Step 2: | Public display of the land                                                                                                       | <p>District Cadastral Officers are at the launch of the display to respond to questions that may be raised by IPs and people from communities adjacent to the proposed ICLT area.</p> <p>The Provincial Department of Land Management will write a request to the District Governor to issue an announcement about the public display.</p> <p>Members of the Provincial Land Management Committee will review to identify any errors in the proposed ICLT mapping.</p>  | <p>For the collected data, the Provincial Department of Land Management will write a request to the District Governor who will then issue an announcement about the public display of evaluated documents on indigenous communal land for 30 days, a period which allows the landowners, community, relevant institutions, members of the Provincial Land Management Committee, and people from communities adjacent to the proposed ICLT area to review and appeal in case of any errors.</p>                                                                                                                                                                                         |
| Step 3: | Reporting on the result of the public display of land                                                                            | <p>The Provincial Department of Land Management, Urban Planning, Construction, and Cadastral writes a report about the result of public display to the Provincial Governor.</p>                                                                                                                                                                                                                                                                                         | <p>After the public display of the community land evaluation finished, the PDLMUPCC will make a report about the result of public display to the Provincial Governor for review and decision.</p> <p>To decide the Provincial Governor writes to the Prime Minister through the Ministry of Land Management, Urban Planning, and Construction requesting for the reclassification for granting housing and</p>                                                                                                                                                                                                                                                                         |

|         |                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|         |                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | agriculture land located in the state public land.                                                                                                                                                                                                                                                                                                                                                                            |
| Step 4: | Decision on the result of the display of land, and request to issue land titles | <p>Meetings with the Provincial State Land Commission determine the report on the result of the public display, and to report on this.</p> <p>For decision, the Provincial Governor, as the head of the commission, writes to the prime minister through MLMUPC requesting for the reclassification for granting residential and agricultural land located in the state public land as a ICLT.</p> <p>The provincial governor request MLMUPC to issue land titles to ICs.</p> | In case of land disputes with neighbors or authorities, the procedure is to start from the Cadastral Officer who will send a letter all the way from the District to the Provincial Governor for intervention. Also, if there are IC members who claim any error or oppose the displayed evaluation document, then they can file the complaint to The Technical Working group for amendment or suspending the public display. |
| Step 5: | Letter to MoE and MAFF for approval of land concerned                           | The Ministry of Land Management issues a letter to the Ministry of Environment and the Ministry of Agriculture, Forestry and Fisheries asking for an examination and approval of the land concerned.                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Step 6: | Letter to Council of Ministers for land reclassification.                       | After receiving a request letter from the Provincial State Land Commission, the Ministry of Land Management issues a letter to the Council of Ministers requesting the land reclassification to be registered as a collective land in accordance with the decision of the Ministry of Environment and the Ministry of Agriculture, Forestry, and Fisheries.                                                                                                                   | Land types that could involve a request for reclassification by the MOE include wildlife sanctuaries, protected areas, environmental corridors, etc. In contrast, land types that could involve a request for reclassification from MAFF are agriculture land, community forest, and forest land covered by 2002 Forestry Law. Cultural heritage                                                                              |
| Step 7: | Issue collective land titles to indigenous communities                          | The PDLMUPCC will print collective land title, sign them, and disseminate them to the community                                                                                                                                                                                                                                                                                                                                                                               | The IP community land title includes community name, community location, reference numbers to the general plan showing the area, size, boundaries, and coordinates of the collective land, clarifying the type of land usage, and other remarks.                                                                                                                                                                              |

## 10. Potential Impacts on Indigenous Communities

63. The ICLT project will adhere to the principle of participatory processes, as indicated in the description of each phase above and the methods showing engagement of relevant stakeholders, through which competing claims in the ICLT areas are to be identified. Land that is subject to any unresolved contested complaints will not be included in ICLT titling. While no ICLT guideline sets a **Cut-Off Date** for eligibility of claims regarding the proposed ICLT land, it has been defined as Step 3 of Phase 2.5 when the IP community submits its application for a Community Land Title (CLT) to MLMUPC. The basis for the application is the finalization of a 'preliminary map' that is endorsed by the IP community and by representatives from neighboring communities, and that is verified by PDLMUPCC. If land acquisition impacts have been identified, this would also be the starting point for preparation of a Resettlement Plan as required by the Resettlement Policy Framework (RFP). However, individuals within or outside the proposed ICLT area as well as entities such as licensed Economic Land Concessions would have

opportunity to make claims regarding adverse impacts until 30 days after the public display of the final map of the ICLT area at Step 2 of Phase 3. Such claims will be assessed against the information on occupancy and land use within and outside the proposed ICLT area based on the ‘preliminary map’ (Step 3 of Phase 2.5) to identify cases of opportunistic encroachment that would not be eligible for compensation or assistance.

64. In SLC implementation, where there could be adverse impacts on ICLT land, and the affected persons are IP community members who still follow customary land management practices, these would be addressed according to the LASED III RPF and involving a process of FPIC to arrive at culturally appropriate agreements on how to address and mitigate the adverse impacts. It should be noted that while the term “customary owners” is not stated clearly in Sub-Decree 22 / SOP-LAR and a category of land ownership by the Land Law of 2001, it is considered in the RPF. For LASED III, IC potentially affected may include (1) ICs that are specifically targeted with support for ICLT and rural development activities on ICLT land; and (2) ICs, whether recognized or not by the Ministry of Rural Development (MRD), that may be present in areas where SLCs are implemented. In either case, the affected ICs may include both project beneficiaries (members of IC communities receiving ICLT, and land recipients in SLCs) and other IC resident in the area or not earning SLC titles. If affected adversely, indigenous persons and households will have the same right as others to file complaints through the project Grievance Redress Mechanism.

65. The project is expected to target 45 ICs, as illustrated in Table 6 below. In terms of eligibility for LASED III support, there is a total of 30 ICs who have to date received ICLTs from MLMUPC, and who are considered for infrastructure development and livelihood support. However, before they can receive this support, they will need to go through a process of screening, and a social and environmental assessment will be conducted to understand the risks and opportunities for the envisioned infrastructure development and livelihood support, as well as the areas where community capacity will need to be strengthened to respond to both the risks and opportunities. In this process, the project will develop strategies for sustainable development that are also culturally and economically appropriate to each specific community. As for the target of ICLT registration in 15 new indigenous communities, this will be demand driven. The selection of 15 beneficiary indigenous communities will be made from the total of 68 ICs that have already submitted their applications for ICLT registration at the Ministry of Land Management Urban Planning and Construction, and who have completed the first two Phases of the ICLT process.

**Table 6: ICLT and IC Communities Targeted for LASED III**

|       | IP's supports (ICLTs and ICs)                                                 |                                                     |                                      |
|-------|-------------------------------------------------------------------------------|-----------------------------------------------------|--------------------------------------|
|       | Titling                                                                       | Development support                                 |                                      |
|       | Indigenous Communities (to be selected for support to undertake ICLT process) | ICs (after completion of ICLT with project support) | ICs (have completed titling process) |
|       | 15                                                                            |                                                     | 30                                   |
| Total | 45                                                                            |                                                     |                                      |

66. The project is expected to have beneficial impacts on indigenous people, through (i) improved security of land tenure as members of ICLT communities and potentially as individual recipients of SLC land; and (ii) through rural development sub-projects supporting infrastructure and livelihoods at the ICLT and SLC sites. There are some risks of limited negative impacts which are discussed in the following section together with appropriate mitigation measures.

67. Improving infrastructure is a top priority for indigenous peoples' communities, and for both those who have already obtained communal titles and those who are in the process of getting communal land titles. Almost all the 30 indigenous communities that received communal land titles have continued to face

difficulties in access to markets, education, and health care services due to the lack of good roads in the villages and connecting roads.

68. Children's education is another priority for indigenous peoples because they want their children to receive higher education. Fieldwork with indigenous communities revealed, that many indigenous families can only send their children to elementary school because these are the only ones in or near their villages. However, many children abandon school after they finish elementary school. One of the main reasons for this is that they must travel far from villages to reach a high school, and road access is extremely difficult in the rainy season. Health issues are a concern as well, and indigenous peoples communities complained about the high cost of treatment each time they go to health centers or private health practitioners.

69. Finally, livelihood support is another top priority for indigenous peoples. Field observations during the preparation of this and other projects suggest that there is a positive improvement of the livelihoods of indigenous peoples in the communities where they obtained communal land titles. This is due to the tenure security of their land and the investment in agricultural crops such as cashew, cassava, and other crops that are produced for the markets, both on-site and in the provincial towns. However, indigenous peoples need additional support, mainly infrastructural such as road and irrigation, along with value-added technical skills and market linkage to continue improving their livelihoods as well as to becoming more climate resilient.

## 11. Risks and Mitigation Measures

70. As indicated in Table 7 on risks and mitigation measures, the project preparation process (ESA, fieldwork, consultations) should further assess which of these risks would need to be considered and addressed during LASED III implementation. Each of these risks are described and summarized in the Table below.

71. **Migration into IP areas and land loss:** A key concern is the loss of IPs' control over their traditional lands and related natural resources. This is unfolding in a context of increasing non-indigenous migration into indigenous areas, and the tendency of indigenous people to sell land for cash to buy modern equipment. The IPs' limited opportunities to influence decisions, and their lack of information about development projects are crucial to their loss of land and livelihood, and have led to IPs being one of the most disadvantaged and vulnerable groups in Cambodia, with overall low living standards.

72. There have been cases where ICLT lands were encroached by outsiders or exchanged in informal transactions which is against the law, as well as against the purpose of providing land security and livelihood improvement of ICs. This requires strengthening the capacity of IPCC members, in understanding rules and regulations, and potential legal action against those involved in such transactions, through trainings and exposure to similar experiences.

73. **Restrictions in the legal and regulatory framework curtailing potential ICLT land:** Another risk is the potential loss of land and access to resources that are not eligible or not included in the scope of ICLTs under the current legal and regulatory framework as described above in Section 3. For example, forest areas where indigenous communities used to have access to collect non-timber forest products, are not included in ICLTs if the Government has designated these as Protected Areas. Indigenous communities may receive renewable use rights to some of these areas, but their tenure security is weak, and this concern was expressed by the indigenous peoples' organizations who advocated a holistic approach to land titling, that would encompass all of the customary land and resource use areas that the indigenous communities have traditionally used. Therefore, it is suggested that more analysis of the legal and institutional framework needs to be undertaken regarding land tenure, community forestry, and community protected area



management, and that LASED III needs to support a participatory mapping process that would enable the IC not only to receive ICLT but also other forms of tenure arrangement.

74. MoE has not included any Protected Area Law (PAL) land in ICLTs, except an agreement to include in some ICLTs some Biodiversity Conservation Corridor lands under its jurisdiction<sup>23</sup> PAL permits the community to establish Community Protected Areas (CPAs) which can include areas of the sustainable use zone and community zone as a platform for community engagement with other stakeholders in protecting land and resources within it, biodiversity conservation, maintaining cultural and spiritual values, and livelihood support through customary means, but not for commercial purposes. However, ICs want to register protected area land as communal land, instead of as CPA with limited role and access, and therefore often reject the CPA option. Addressing the issue of potential inclusion PA land into ICLTs, even if PA areas are not fully zoned, should be pursued through an institutional solution in the form of a coordination mechanism whereby relevant information and data from the Ministry of Environment and Ministry of Agriculture could be shared and discussed. At the same time, the MLMUPC could also share the ICLT process and experience with MoE to promote inter-ministerial understanding and support. With regard to inclusion of forest land in ICLTs, MoE has maps of Protected Areas (PA) and corridors, but this information has not been shared with the Ministry of Land Management.

75. **Infrastructure needs:** Apart from the above risks and challenges, many indigenous communities are in the very rural areas in which the access to market is very difficult. Many indigenous communities that obtained communal land titles have faced a lot of difficulties during the rainy season when the roads become muddy and it is hard to bring their products to the market. In areas where there is better road access to markets, the marketing of agricultural products seems to be in better shape. Hence, infrastructure development such as roads that link the village to the main road is a key condition for improved market connection for ICs.

76. Finally, as described above, the access to education and health care is still a concern for the indigenous peoples due to the lack of school and health care services in their communities. While their children have access to primary schools within or nearby villages, pursuing to the next level in the provincial town has been a challenge, especially the cost of accommodation and other kinds of expenses. Likewise, access to affordable healthcare and the distance to healthcare facilities is also a concern.

77. **Health and safety issues during road construction:** As part of infrastructure development planned for ICLT villages, there may be many road construction activities which may cause environmental, health impact, and potentially also accidents for IPs in the area. It is important that the project during construction install road safety signs to avoid potential accidents amongst villagers, especially children, and to notify them in advance about the need to protect themselves from other impacts such as pollution

78. **Curtailling elite capture and enhancing inclusion:** During consultations, there are risks of potential exclusion of the elderly from due to their difficulties in understanding the Khmer language; of only partial participation by women and youth due to the domination of men during discussions, and of exclusion of existing indigenous peoples' organizations. It is suggested that the project considers using local translators to help elderly so that they can be aware of the information and have opportunity to participate in the discussion. To enable the participation of women and youth including by those from poor households and people with disabilities, there could where possible be a separation from elders' or men's

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<sup>23</sup> Sub-decree on Establishing Protected Areas Biodiversity Conservation Corridors (BDCC) System, No. 07 (2017). Article 3 explains that "Biological Diversity Conservation Corridor Systems are areas which connect all Protected Areas in Cambodia, namely national parks, wildlife sanctuaries, landscape protected areas, multiple use areas, Ramsar wetland areas, natural heritage areas, and biosphere reserved areas, coastal national parks to preserve natural vegetation of ecosystem." The idea is to allow wildlife to pass freely between protected areas. The sub-decree says that the BDCCs consist of altogether 1,427,940 ha.



groups to provide them space to voice their ideas and fully participate in the discussions. In some cases, project implementers could approach members of these sub-sets of the community individually to hear their stories, needs and constraints. For indigenous people's organizations, the project may invite them to key events or activities that is relevant to them.

79. The benefits of ICLT may not be shared equitably amongst all community members. This means that there could be competition within the indigenous community to occupy the reserve land, which is one of the five types of land that belong to them. Those families that have an active labor force may work hard to get large pieces of land while leaving smaller sizes of land for those who do not have a large enough labor force. Therefore, in order to enforce equity, they should discuss among themselves based on their customary practices to agree on principles of equity in order to allocate the reserve land amongst themselves.

80. It is possible that land use planning may result in restrictions on use of IP land that do not reflect the realities of present-day livelihoods systems. It is important to identify and mitigate land access risks during the ICLT planning process by using expert intermediaries to assist IP communities to identify issues, reach consensus and ensure the views of different sub-sets of the IP community (women, youth, elderly, poor/vulnerable) are fully considered in ICLT planning. This need to follow the Free, Prior, and Informed Consent (FPIC) principles that establishes good faith dialogue between the RGC and the IP community to ensure all sections are consulted and their needs considered.

81. **Cultural Heritage Protection:** While ICLT considers the five types of land that belong to any IC, which include culturally important sites (the spirit forest and burial ground), the SLC implementation in areas close to ICs could have adverse impacts on these sites. In addition, there could be damage to indigenous knowledge, institutions or social organizations if titling and livelihood activities are not prepared, designed and implemented appropriately and based on the IPs own circumstances, needs and priorities. Therefore, the project will ensure the identification and preservation of culturally important sites; and employ expert intermediaries to engage in inclusive dialogue with IP communities about potential impacts of development in compliance with the requirements of the Cultural Heritage Protection Framework (ESS8).

**Table 7: Summary of Risks and Mitigation Measures**

| Risks                                                                                                                                                                                                                                                               | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Increasing non-indigenous migration into indigenous areas and the tendency of indigenous people selling their land for cash to buy modern equipment.                                                                                                                | The project needs to provide them sufficient information and explain them to risk losing land and livelihoods under external pressure for land sales.                                                                                                                                                                                                                                                                                                  |
| Areas used to have access to NTFPs and other customary use but not included in ICLT due to protected areas or community forest.                                                                                                                                     | <p>More analysis of the legal and institutional framework for land tenure, and community forestry, and community protected area management, along with support for participatory mapping for potential ICLT and other form of tenure arrangement.</p> <p>Improve communication and coordination between MoE and MoA regarding mapping of PAs and potential inclusion in ICLTs of parts or all of the Pas sustainable use zone, and community zone.</p> |
| MoE has not included any PA land in ICLTs where ICs wanted to register such land as communal land, as opposed to CPA with limited role and access. As a result, ICs have often rejected a CPA registration due to incompatibility with the conservation objectives. | Set up the coordination mechanism of relevant ministries to discuss about the potential inclusion into ICLT land even if Protected Areas (PA) are not fully zoned.                                                                                                                                                                                                                                                                                     |

|                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ICs are in the very rural areas in which the access to market is very difficult. Many indigenous communities that obtained communal land titles have faced a lot of difficulties during the rainy season, especially for market linkage.                                                                                  | Infrastructural development such as roads that link the villages to the main roads is to key to market connection in ICs where they are still facing such problems.                                                                                                                          |
| Potential exclusion of elderly from consultation due to their difficulty understanding Khmer language; partial participation from women and youth in the consultation due to the domination of men during discussions, and exclusion of existing indigenous peoples' organizations from the consultation process.         | Use local translators to help elderly; separate women, youth and people with disabilities into their own groups to provide them space to voice their ideas. Also, approach them individually to hear their stories. Invite indigenous peoples' organizations to key events relevant to them. |
| Road construction activities which may cause environmental, health impact and accidents on IPs.                                                                                                                                                                                                                           | Put up the road safety signs during the construction and notify the IPs in advance about the need to protect themselves from other impact such as pollution and traffic accidents for children.                                                                                              |
| The benefits of ICLT may not be shared equitably amongst community members regarding occupation of the reserve land as some households have more active or larger labor forces than others to clear the land.                                                                                                             | Include appropriate rules in the Community By-Laws, and enforce these internal rules, or if such provisions are not included, follow the customary practices that agree on principles of equity in the allocation of the reserve land amongst community members.                             |
| SLC implementation could have adverse impacts on culturally important sites (the spirit forest and burial ground). Also, both SLC and ICLT could cause damage to indigenous knowledge, institutions or social organization if titling and livelihood activities are not prepared, designed and implemented appropriately. | Ensure the identification and preservation of culturally important sites; and employ expert intermediaries to engage in inclusive dialogue with IP communities about potential impacts of development in compliance with the requirements of the Cultural Heritage Protection Framework.     |
| Land use planning may result in restrictions on use of IP land that do not reflect the realities of present-day livelihoods systems.                                                                                                                                                                                      | Identify and mitigate land access risks by expert intermediaries to assist IP communities to identify issues, reach consensus and ensure their views are fully considered in ICLT planning.                                                                                                  |
| Potential cases where ICLT lands may be encroached by outsiders or in informal transactions or exchanges which are against the law, as well as against the purpose of providing land security and livelihood improvement of ICs.                                                                                          | Strengthen the capacity of IPCC members, in understanding rules and regulation and potential legal action against those involved in the transactions, through trainings and exposure to similar experiences.                                                                                 |

## 12. Framework for Free Prior and Informed Consent

82. The WB policy on IPs (ESS7) requires a process of free, prior and informed consent (FPIC) leading to collective support of affected indigenous peoples for the project activities that affect them. The principle of free, prior and informed consent is applicable in the event that the project, according to ESS7 (para 24), will (1) have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation; (2) cause relocation of IPs; or (3) have significant impacts on IP's cultural heritage. FPIC expands on the requirements of Meaningful Consultation (ESS7, para 23), which involves stakeholder analysis and engagement planning, disclosure of information, and meaningful consultation in a culturally appropriate and gender and intergenerationally inclusive manner. Since in the case of LASED III, the project objective is to provide sustainable access to land and technical services comprising infrastructure and livelihoods to different communities including indigenous communities, project activities involving demarcation of areas for ICLT and infrastructure implementation may subject indigenous peoples to one or more of the impacts described in ESS7, para 24.<sup>24</sup> For that reason, it is considered appropriate to

<sup>24</sup> FPIC is required when a Bank-financed project have: (a) adverse impacts on land and natural resources subject to

apply FPIC for ICLT. Moreover, SLC activities affecting indigenous peoples in line with para 24 would also require FPIC.

83. Similarly, the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) points out that a state has a duty to discuss with indigenous peoples well before agreeing on any project that has adverse consequence on their lands and other resources (UN General Assembly, 2007)<sup>25</sup>. The application of FPIC is achieved through:

- (a) the absence of coercion, intimidation or manipulation (**Free**);
- (b) early consultation with adequate time for local decision-making processes (**Prior**);
- (c) access to sufficient, appropriate information for a considered choice e.g. on the nature of the activity – its size, pace, reversibility, scope, rationale, duration, location – and its likely impacts (**informed**); and
- (d) the right to **consent**, or withhold consent, with due regard to customary institutions, gender and age.

84. Overall, the practical application of FPIC will be as follows:

- (a) The scope of FPIC will apply to the project design for sub-project specific activities comprising ICLT along with infrastructure and livelihoods, to sub-project implementation arrangements, and to their expected outcomes related to risks and impacts on the affected IPs.
- (b) FPIC will build on and expand the process of Meaningful Consultation described above, and will be established through good faith negotiation between the borrower (RGC) and the indigenous peoples.
- (c) The borrower will document (i) the mutually agreed process to carry out good faith negotiations as agreed between the borrower (RGC) and the indigenous peoples including all agreements reached as well as dissenting views.
- (d) FPIC does not require unanimity and may be achieved even if individuals or groups within or among the indigenous community affected by the demarcation of areas for ICLT and infrastructure implementation (or their indigenous peoples neighbors, if any) explicitly disagree. However, achieving FPIC requires careful documentation of both process and outcome of the negotiations, so that a record is established of agreements reached and of dissenting views.

85. The practical implication of the points listed above is that arrangements for consultations and negotiations should be carefully considered and tailored to the sub-project context. This would require the use of ethnic language(s) when needed, the provision of sufficient lead time to ensure that all affected indigenous communities are able to participate in the consultations and are fully informed of the sub-project, and the engagement and involvement of sub-sets of the indigenous community such as women, youth, elderly, and the poor and vulnerable. Consultation approaches may include:

- Community meetings, both with the community as a whole and with sub-groups, and focus group discussions and participatory planning exercises;

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traditional ownership or under customary use or occupation; (b) cause relocation of Indigenous Peoples from land and natural resources subject to traditional ownership or under customary use or occupation; or (c) have significant impacts on Indigenous Peoples cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected Indigenous Peoples.

<sup>25</sup> Free, prior and informed consent: how to rectify the devastating consequences of harmful mining for indigenous peoples' Angus MacInnes, Marcus Colchester & Andrew Whitmore (2017)

- Distribution of project information in both full format (project documents, assessment reports, etc.), simplified formats such as posters and brochures, and audio-visual material using local languages;
- Identification of contact persons within the communities (some training may be appropriate to enhance their ability to engage meaningfully in the consultation process); and
- Involvement of the affected IPs' communities, the Indigenous Peoples Organizations (IPO) if any, and other local civil society organizations (CSO) identified by the affected IP communities.

86. IPs need to have full information about the scope and impacts of any proposed sub-project development activities that would have impacts on their land, economic and cultural resources, and well-being. Given that, the process of FPIC as outlined above may therefore hypothetically result in a majority of an indigenous community not consenting to the available local options regarding demarcation of areas for ICLT along with the associated infrastructure and livelihood development support.

### 13. Implementation of FPIC in LASED III

87. Since LASED III is providing support for both SLC and ICLT land titling along with subsequent assistance comprising infrastructure and livelihoods to some communities, and since it is also providing infrastructure and livelihoods support to other communities that have already completed their titling processes, the contexts for FPIC in situations that might affect indigenous communities differ significantly, and these differences influence the scope of what compliance with FPIC will mean in practice. LASED III will have four contexts for FPIC as follows:

**Table 8: Contexts for FPIC in LASED III**

| Indigenous Peoples Communities                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                           | Khmer Communes                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 15 ICs to receive support for ICLT process starting at Phase 3.1 followed by infrastructure and livelihood development                                                                                                                                                                                                                                                                                                                            | 30 ICs that completed ICLT process to receive infrastructure and livelihood development                                                                                                                                                                                                                                                                                                                   | 12 Communes to receive support for entire SLC process followed by infrastructure and livelihood development                                                                                                                                                                                            | 14 Communes that completed SLC titling under LASED II to receive infrastructure and livelihood development                                                                                                                                                     |
| <b>FPIC context:</b> <ul style="list-style-type: none"> <li>• Due diligence assessment of consultation and engagement outcomes during ICLT process Phase 1, 2 and 2.5;</li> <li>• Establish FPIC engagement during ICLT process Phase 3, as well as regarding the infrastructure and livelihood development.</li> <li>• Also establish FPIC if impacts on neighboring ICs in terms of land acquisition or regarding cultural heritage.</li> </ul> | <b>FPIC context:</b> <ul style="list-style-type: none"> <li>• Due diligence assessment of consultation and engagement outcomes during ICLT process;</li> <li>• Establish FPIC engagement to ensure equity in planning of infrastructure and livelihood development.</li> <li>• Also establish FPIC if impacts on neighboring IPCs in terms of land acquisition or regarding cultural heritage.</li> </ul> | <b>FPIC context:</b> <ul style="list-style-type: none"> <li>• FPIC only required if SLC process (mapping) and/or subsequent infrastructure and livelihood development will adversely impact neighboring indigenous communities in terms of land acquisition or regarding cultural heritage.</li> </ul> | <b>FPIC context:</b> <ul style="list-style-type: none"> <li>• FPIC only required if infrastructure and livelihood development will adversely impact neighboring indigenous communities in terms of land acquisition or regarding cultural heritage.</li> </ul> |

88. The FPIC process outlined below provides the basic steps regarding FPIC that a sub-project should consider through its preparation and implementation cycle.<sup>26</sup> However, as outlined in Table 8 above, the

<sup>26</sup> FAO: *Free Prior and Informed Consent: An indigenous peoples' right and a good practice for local communities*, Manual for Project Practitioners, UN 2016.

support provided by LASED III establishes four different contexts where FPIC might be triggered, and only one of these comprises an entire sub-project preparation and implementation cycle.

### **13.1. FPIC in the Contexts of Assistance to Indigenous Communities**

89. As shown above in Table 8, LASED III will assist indigenous peoples communities in two contexts, namely (i) the 15 IPCs that will receive support for their ICLT process starting at Phase 3 and followed by infrastructure and livelihood development, and (ii) 30 ICs that have already completed their ICLT process and will now receive support regarding infrastructure and livelihood development.

90. **For the 15 ICs that will receive support for their ICLT process**, the scope for FPIC as described above in Section 10 would only start at Phase 2.5 when the support under LASED III begins. However, consultation, representation, and negotiations have all taken place during the preceding three Phases of the ICLT process, where inter alia the IC elected a IPCC, and drafted Community By-Laws to regulate their future ICLT, and conducted mapping and submitted the application to MLMUPC. Together these events will significantly influence what may happen after the LASED III support starts at Phase 3 and onwards through the titling process and the planning of infrastructure and livelihood assistance. This context for FPIC therefore requires:

- (a) An assessment of the consultation during Phase 1, 2 and 2.5 in terms of its adequacy in relation to the requirements of ESS7. This due diligence assessment should not focus on the process itself (which may have unfolded over several years and for which information may not be available), but on its outcomes. That is (i) whether the composition of the IPCC is inclusive and representative of the social and gender composition, (ii) whether the Community By-Laws accommodate the interests of different sub-sets of the IC including women, youth, elderly, and the poorer community members, and (iii) whether adverse impacts have been avoided and benefits to the IC are sustainable and culturally appropriate e.g. appropriate coverage of their land areas.
- (b) In the event that it is found that the IPCC does not adequately represent and include the different sub-sets of the IC, and/or that the Community By-Laws fall short of accommodating the interests of the weaker members of the IC, steps should be taken by LASED III to facilitate a process based on FPIC principles (see Section 10 above) that would rectify these shortcomings at the start of the LASED III support in Phase 3. The assessment of this should engage and seek the opinions of different sub-sets of the IC across gender, intergenerational, and wealth/power divides.
- (c) Planning and implementation of consultation and engagement activities starting with Phase 3 and through Phase 3 and the planning of infrastructure and livelihood activities should then apply the principles of FPIC as described above and in Annex 6. If there are indigenous communities neighboring the planned ICLT area, they too have to be engaged in an FPIC process to identify and avoid or mitigate any adverse impacts. Such impacts could involve land acquisition that could not be avoided and would have to be mitigated through a Resettlement Plan (RP) developed in compliance with the project's RPF, or they could involve impacts on cultural heritage that would have to be managed and avoided in compliance with the project's Cultural Heritage Protection Framework (CHPF).

91. **For the 30 IPCs that have completed their ICLT process** and will receive support from LASED III for infrastructure and livelihood development constitutes a different case that requires the following with regard to FPIC:

- (a) Here too, a due diligence assessment of the consultation and engagement outcomes during the entire ICLT process should be undertaken focusing on the composition of the Community Committee in terms of its inclusiveness and representativeness, and (ii) whether the Community By-Laws accommodate the interests of different sub-sets of the IC.
- (b) In the event that it is found that there are shortcomings regarding the inclusiveness and representativeness of the IPCC, and/or that the Community By-Laws fall short of accommodating the interests of the weaker members of the IC, steps should be taken by LASED III to facilitate a process based on FPIC principles (see Section 10 above) that would rectify these shortcomings at the start of the LASED III support for infrastructure and livelihoods. The assessment of this should engage and seek the opinions of different sub-sets of the IC across gender, inter-generational, and wealth/power divides.
- (c) FPIC consultation and engagement activities as described above and in Annex 6 should be in place before the start of the planning of infrastructure and livelihood activities. If there are indigenous communities neighboring the planned ICLT area, they too have to be engaged in an FPIC process to identify and avoid any adverse impacts, or if that is not possible, find measures to mitigate these impacts through a RP in compliance with the RPF. Any impacts on cultural heritage would have to be managed and avoided in compliance with the project's CHPF.

### **13.2. FPIC in the Contexts of Assistance to Khmer Communes**

92. **For the 12 Communes that will receive support under LASED III for their entire SLC process** followed by infrastructure and livelihood development, FPIC would only be required if the SLC process (the mapping of the SLC area) and/or the subsequent infrastructure and livelihood development would adversely impact neighboring indigenous communities. If such impacts are found to be unavoidable, the affected IPC members should be engaged in a FPIC in the context of the planning of a RP in compliance with the RPF. Any impacts on cultural heritage would have to be managed and avoided in compliance with the project's Cultural Heritage Framework.

93. **For the 14 Communes that have completed their SLC titling under LASED II** and will receive support from LASED III for infrastructure and livelihood development, FPIC would only be required if the infrastructure and livelihood development would adversely impact neighboring indigenous communities. If such impacts are found to be unavoidable, the affected IPC members should be engaged in a FPIC in the context of the planning of a RP in compliance with the RPF. Any impacts on cultural heritage would have to be managed and avoided in compliance with the project's Cultural Heritage Framework.

## **14. Preliminary Screening, Social Impact Assessments, and Indigenous Peoples' Plans**

94. A due diligence process concerning communities of indigenous peoples in the LASED III sub-project areas will include (1) a preliminary screening regarding the presence of communities of indigenous peoples in each sub-project area, (2) where required, sub-project level social impact assessments of the nature and scale of impacts on communities of indigenous peoples, and (3) preparation of an Indigenous Peoples' Plan (IPP) which includes the FPIC engagement process regarding the sub-project design and implementation arrangements within the specific local project context of identified impacts and risks.

### **14.1. Preliminary Screening**

95. A preliminary screening regarding the presence of communities of indigenous peoples will be undertaken at the start of the LASED III engagement both in sub-project areas involving Communes engaged in SLC processes or subsequent development activities, and in areas with IPCs engaged in ICLT

processes or subsequent development activities. In all sub-project contexts, the preliminary screening will focus on the following:

- (a) Name(s) of the indigenous peoples group(s) in the area;
- (b) Total number of different indigenous people's groups in the area;
- (c) Percentage of indigenous population to that area; and
- (d) Number and percentage of indigenous households that are likely to be affected both as beneficiaries and adversely by the sub-project.

96. If the preliminary screening indicates that indigenous peoples might be affected by the sub-project, an indigenous peoples screening checklist will be prepared. (a checklist format for screening of Indigenous Peoples is provided in Appendix 3). If the results of the preliminary screening showed, that there are indigenous peoples households in a proposed sub-project area or directly neighboring this, a Social Impact Assessment (SIA) will be conducted to understand the issues that will impact and/or are of concern to the communities of indigenous peoples in the area, whether they are affected as beneficiaries or adversely.

#### **14.2. Sub-Project Level Social Impact Assessments**

97. A Social Impact Assessment (SIA) involving field survey will be conducted by an external consultant for each sub-project that affects (whether positively or adversely) communities of indigenous peoples. The SIA will be conducted in consultation with the indigenous communities, applying a gender and intergenerationally inclusive approach, and will identify project-affected indigenous peoples, potential impacts, the nature of these impacts, and in case of adverse impacts their severity on different sub-sets of the indigenous population. The sub-project level SIA will cover the following issues as required by ESS7, Appendix A:

- (a) Baseline data on the demographic, social, cultural, and political characteristics of the IP community or communities, the land and territories that they have traditionally owned or customarily used or occupied along with those they currently occupy and use, and the natural resources on which they depend.
- (b) Identification of project-affected parties (both beneficiaries and adversely affected) and the elaboration of a culturally appropriate process for involving and consulting with the IPs at each stage of sub-project preparation and implementation, that will achieve FPIC regarding the project approach, access to benefits, avoidance of adverse impacts or if unavoidable, adequate mitigation measures.
- (c) An assessment, based on meaningful consultation tailored to the characteristics of the IPs and involving FPIC, of the potential adverse and positive identification of effects of the project. Critical to the determination of potential adverse impacts is an analysis of the relative vulnerability of, and risks to, the affected IPs, given their distinct circumstances and close ties to land and natural resources, as well as their potential lack of access to opportunities relative to other social groups in the communities and region in which they live. The assessment should consider differentiated gender impacts of project activities and impacts on potentially disadvantaged or vulnerable groups within the community of IPs.
- (d) The identification and evaluation of measures necessary to ensure (i) that the IPs receive culturally appropriate benefits under the project, and that access to these benefits is equitable within the beneficiary IP community, and (ii) adverse impacts are avoided, or if such measures are not feasible, that measures to minimize, mitigate, or compensate for such impacts are identified. The measures to be adopted by a sub-project regarding both (i) and (ii) should be arrived at through meaningful consultation tailored to the IPs and resulting in Free, Prior, and Informed Consent.



98. The main source of information for SIA will be direct interviews with potentially affected indigenous peoples' households, besides separate group meetings with the indigenous people's communities, including their leaders, youth, and men and women, and other marginalized groups. Apart from individual interviews, there will be group discussion focusing on positive and negative impacts of the subproject components and Indigenous Peoples groups' recommendations on design of the project components.

### **14.3. Indigenous Peoples Plan**

99. According to ESS7, an Indigenous Peoples Plans (IPP), to be included as part of ESMP, need to be developed in consultation with IPs with clear timeframe for implementation. But for SLC with affected IP communities, a stand-alone IPP will be developed in consultation with the IP community after land use planning and identification of infrastructure and livelihoods sub-projects is complete. The sub-project IPPs need to be tailored to the specific needs, risks, and impacts of the different communities as discussed above in Section 11, and as identified in the SIAs described in Section 12.2 above. A sub-project level Indigenous Peoples Plan will comprise the following:

- (a) A summary of the sub-project Social Impact Assessment, including the applicable legal and institutional framework and baseline data.
- (b) A summary of the results of the meaningful consultation tailored to IPs, and the outcome of the process of FPIC carried out with the affected IPs during project preparation.
- (c) A framework for meaningful consultation and FPIC tailored to the IPs during project implementation.
- (d) Measures for ensuring that the IPs receive social and economic benefits that are culturally appropriate and gender sensitive, as well as steps for implementing these. If necessary, this may call for measures to enhance the capacity of the project implementing agencies.
- (e) Measures to avoid, minimize, mitigate, or compensate IPs for any potential adverse impacts that were identified in the social assessment, and steps for implementing them (if stemming from land acquisition, in compliance with a sub-project RP).
- (f) The cost estimates, financing plan, schedule, and roles and responsibilities for implementing the IPP.
- (g) Accessible procedures appropriate to the project to address grievances by the affected IPs arising from project implementation, as described in the Stakeholder Engagement Plan.
- (h) Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the IPP, including ways to consider input from project-affected IP in such mechanisms.

## **15. Disclosure Arrangements for the IPPF and Site-Specific IPPs**

100. The IPPF and sub-project IPPs are disclosed in English and in Khmer language on the Executing Agency and World Bank websites and in Khmer at the Commune Office, after approval by MLMUPC and No Objection from the World Bank.

101. Generic information disclosed in sub-project locations includes: (i) project background and location (Map including of the ICLT or SLC areas); (ii) project objective, approach and potential benefits; (iii) the Indigenous Peoples Plan or a summary thereof with information on the agreements reached through the FPIC process, and (iv) the grievance redress mechanism. If the sub-project involves land acquisition, information will also be made available regarding the (v) scope of land acquisition and likely impacts, (vi) general information on compensation policy and eligibility criteria, (vii) methodology for calculation of compensation rates (through Replacement Cost Study - RCS), and (viii) contact person in the Inter-Ministerial Resettlement Committee's working group (IRC-WG).



102. Two **Project Information Brochures** (PIB) will be prepared and distributed. The first PIB will contain generic information on the project and sub-project (above). In case the sub-project involves land acquisition, a second, more detailed PIB will present specific information on (i) entitlements and compensation; (ii) relocation and possible sites; and (iii) GRM. The Updated PIB will be shared and disclosed to the affected communities prior to the start of the Detailed Measurement Survey.

103. Disclosure and distribution of documents in Khmer will not be sufficient where APs include non-literate people and people whose first language is not Khmer as in indigenous communities. LASED III will provide additional support to ensure that IPs have access to advice and explanation of disclosed documents in their own language. Additional measures will include (1) preparation and distribution of audio-visual materials in local languages; and (2) use of resource persons who will thoroughly study and understand the disclosed documents and present and explain the content of the documents in village meetings. The project will train Khmer-literate facilitators from within IC who will assist project affected persons who wish to examine the documents further. Capacity to support these tasks will be mobilized either from an NGO with suitable capacity, for example, Conserve Indigenous Peoples Language (CIPL), which is based in Ratanakiri Province but also operates in other provinces, specializing in media production: CIPL could be engaged to produce in CD or VCD format in relevant IP local dialects and to provide expert local language resource persons; or from the Provincial Department of Information (PDI); especially in Ratanakiri PDI has capacity to produce audio-visual materials and to broadcast in relevant dialects on regular radio programs which may provide better reach to the IC audiences.

## **16. Institutional Arrangements**

104. Under the overall guidance of MLMUPC, the ICLT component of LASED III would be technically handled by MLMUPC's General Department of Cadastral and Geography whose role is to mobilize, as needed, to deal with the technical and legal aspects related to the ICLT interventions. In addition, there will be a LASED III working group to support the ICLT work of the project, to be designated by respective provincial governors under the guidance of the Minister of MLMUPC. The project will also employ national consultants and technical assistants, so there should not be any issue in terms of staff and resources required to conduct the ICLT tasks. Dedicated safeguards staff, together with communication expert(s) will ensure that project implementation procedures are well understood and duly followed. The project communication team will ensure that internal and external information sharing and awareness raising will reach beneficiaries and other stakeholders through target group-specific communication means. Capacity building and assistance through external service providers (NGOs, consultants) is envisaged.

105. The experience of MLMUPC regarding the registration of collective titles for 30 ICs, makes the team composed of officials from the national level to the district level fully equipped to manage the project according to its objectives and approach. There are currently about 10 staff at the national level and 30 at the sub-national level along with several consultants and assistants that have been involved in the ICLT implementation for several years, and that will continue to play an important role in LASED III. However, this staff needs to be familiarized with the ESF instruments that LASED III will introduce (e.g. IPPF, RPF, SEP, ESMF), and it is important that the training and capacity building sessions will be organized under this project in order to orientate staff on these instruments, so that they can learn about the various processes and steps, especially on risks and mitigation strategies, as well as on meaningful consultation and the FPIC process.

106. MAFF is the implementing agency responsible for implementing agricultural and agriculture-related livelihood activities (Component 3), and its technical departments, especially the Generate Directorate of Agriculture (GDA) at national and provincial levels will provide agriculture support and extension services both on contents and delivery that are not only technically sound but also socially and

culturally appropriate. The services will be demand- and market-driven and will also take into consideration nutritional needs and implications for the beneficiary populations. Delivery methods will include modern information communication technology (ICT) for outreach and training, adapted to topics and target groups. MAFF will also be provided with the financial resources to engage experienced consultants, NGOs or other service providers in implementation.

## **17. Grievance Redress Mechanism**

107. The Borrower will ensure that a grievance redress mechanism (GRM) is established for the project, as described in the project's Stakeholder Engagement Plan (SEP) and in the RPF, which is culturally appropriate and accessible to affected Indigenous Peoples. Procedures to file grievances and seek action should be simple and understandable for project affected people. The mechanism will consider the principles of openness, transparency, fairness, accessibility, responsiveness, effectiveness and confidentiality.

108. It is important that GRM is known to all stakeholders and the information is in an accessible format that can be disseminated in the SLC and ICLT sites, and which includes (i) the means of submitting a grievance (see Appendix 3); (ii) the process for grievance handling; (iii) the time allowed for processing grievances; (iv) the right to anonymity; and (v) the right to seek redress through other channels. Information should make clear that the stakeholders will not be asked to pay to have their grievance accepted. More details on institutional arrangement and process of grievance is found in SEP's Section 6.

### **17.1 World Bank Grievance Redress Service**

109. Communities and individuals who believe that they are adversely affected by a World Bank (WB)-supported project may submit complaints to existing project-level grievance redress mechanisms or the WB's Grievance Redress Service (GRS). The GRS ensures that complaints received are promptly reviewed in order to address project-related concerns. Project affected communities and individuals may submit their complaint to the WB's independent Inspection Panel which determines whether harm occurred, or could occur, as a result of WB non-compliance with its policies and procedures. Complaints may be submitted at any time after concerns have been brought directly to the World Bank's attention, and Bank Management has been given an opportunity to respond.<sup>27</sup>

## **18. Monitoring and Evaluation Arrangements**

### **18.1. Monitoring and Evaluation (M&E) Design**

110. The project's M&E system would cover two levels: (a) data on implementation status and outputs including physical and financial status for individual sub-projects and aggregate progress reporting for the project as a whole; and (b) the achievement of outcomes according to the indicators specified in the project's results framework (see Annex 6 with an output and outcome reporting matrix). The first aspect focuses on the completion of plans and targets and are mandatory to monitor in order to see if the planned activities were carried out as planned and within the set timeframe. The second aspect is to examine the achievement or success of the project and the socio-economic situation and status of the project beneficiaries and help to evaluate the link of how the overall achievement that may be attributed to the project interventions, which will be conducted by an independent institution for mid-term and project completion. For this second aspect,

---

<sup>27</sup> For information on how to submit complaints to the World Bank's corporate Grievance Redress Service (GRS), please visit <http://www.worldbank.org/en/projects-operations/products-and-services/grievance-redress-service>. For information on how to submit complaints to the World Bank Inspection Panel, please visit [www.inspectionpanel.org](http://www.inspectionpanel.org).

it is important to set up outcome indicators, and have baseline data that need to be undertaken at the start of project implementation. The details of how and what period to be done will be specified in PIM document.

111. MLMUPC will submit quarterly summary sub-project specific progress reports and a consolidated progress report. The reports will be shared with the management level at GDH of the Ministry of Land Management, and MAFF's GDA for reviews. Then, the final version will be shared with the World Bank, and the World Bank Task Team Leader will also be routinely updated on sub-project implementation and any issues encountered.

112. In addition to the project M&E arrangements described in the preceding paragraphs, LASED III will engage an external consultant with no project implementation role, who will conduct regular independent monitoring of the implementation of the IPPF. The IPPF monitoring consultant will be a specialist in IP matters and will report at six-month intervals to the Project Director, with reports to be copied to World Bank. The IPPF monitoring consultant will provide inputs to the general independent monitoring entity, including for the Environmental and Social Audit of LASED III which will be conducted prior to Mid-Term Review (see ESMF).

## **18.2. Institutional Arrangements and Utilization of M&E**

18. The MUMUPC as executive agency will be responsible for planning and coordinating of the project's M&E activities, with support and inputs from the implementing agencies (MAFF). The monitoring and evaluation of the proposed project will be the responsibility of the project management teams (PMT) located at their respective ministries. The preparation and implementation monitoring of the project annual work-plan and budget (AWPB) will be carried out by the PMTs in accordance with different level of expected results.

19. The reporting requirements for physical progress monitoring, contract-based procurement management, and financial management reporting will be also carried out by the PMT of the EA with inputs from the IAs. Quarterly provincial implementation reviews would be undertaken to assess the physical and financial progress and performance based on the Annual Work Plan and Budget (AWPB), and to address issues and constraints in implementation and management. A semi-annual M&E report would be submitted to IDA according to the agreed dates, usually in time for the implementation support missions.

20. The project M&E system would be supported by a computerized management information system (MIS) that is supported by a database, data management software, and dedicated national and provincial M&E Officers. A community-based approach would be used, wherever feasible, to help strengthen transparency, ownership, efficiency and accountability. The M&E would be used to inform management of the project performance, guide budget allocation, planning and decision making.

## **19. Sustainability**

21. The project builds on the good practices and achievements under the LASED and LASED II projects. The consolidation, replication, scaling up and a stronger focus on agriculture livelihoods would pave the way towards sustainability of communities' and individual households' livelihoods. Considering all factors and conditions in the project locations, and the required behavioral changes that would need to materialize, the proposed six-year project duration would be the appropriate time frame to achieve project sustainability. Below are the key sustainability measures that the project would adopt:

- (a) Land Titling. The implementation experience of the LASED pilot and LASED II has demonstrated that all land recipients receive their titles once they fulfilled related criteria, including living on the land for 5 years. Thanks to close monitoring of land recipients' activities,

- proper documentation has been obtained to establish eligibility of land recipients when they fulfilled the requirements. Such close monitoring will be maintained during the project's implementation to ensure that provision of land titles is effective. In ICLT areas, many indigenous communities would continue to experience external pressures and encroachment, and that would therefore require consideration of enhanced enforcement by local communities in cooperation with local authorities; and continuous dialogue between MAFF and MoE to address their overlapping areas of responsibility. In addition, the awareness raising among key IP leaders on relevant policies would eventually be shared by their entire communities.
- (b) Access to (and need for) Finance increases over the life of the project. So far, access to finance has not been a major issue because farming activities by land recipients have been mostly a low input-low output endeavor. As land recipients start transitioning from former agricultural workers to fully established farmers engaging in diversified cropping systems, their need for credit to finance farm expenses (both investments and operations) becomes greater. At the same time, with their land titles (after 5 years) for SLC's TLRs, their abilities to provide collaterals for loans are much stronger and therefore, their access to finance would be largely secured.
  - (c) Technology Transfer (through extension and advisory support). The planned formulation and implementation of a comprehensive extension strategy, not limited to face to face extension services but leveraging ICT technology, is expected to generate relevant and cost-effective technical services to the diverse groups of land recipients.
  - (d) Infrastructure Operation and Maintenance (O&M). Under the government's policy of de-concentration of financial management and controls, increased accountability for public service provision is handed over to the sub-national levels of government, and funding is provided in the form of unconditional grants from the central government budget. Procedures have been created that allow District and Municipal (DM) councils to engage with citizens and civil society, and to promote local economic development. Thus, the regulatory framework would enable the sustainable maintenance of infrastructure assets at the local level.
  - (e) Market Linkages. The expected development of farmers' organizations for which the project would provide strong support would be a key enabling factor. This would help reduce commercial transaction costs and facilitate linkages with private sector traders and exporters both in the input and output markets. Tapping into the existing organizations that have already established strong market links should be an entry point of their learning and exchanges.
  - (f) Water Management. The project pays careful attention to the technical design of the irrigation infrastructure to ensure it is properly calibrated to the needs of the farmers and operates efficiently. In addition, the planned extension strategy would provide proper training and assistance to irrigation producers for the operation and maintenance of the schemes. There should be ways in which local resources may be mobilized for ensuring sustain access to water for consumption and production.

## Annex 1: The ICLT Process

| Phase 1                                                                                                                                             | Phase 2                                                                                                                       | Phase 2.5                                                                                                                      | Phase 3                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>MRD: IP Community Identification Process</b>                                                                                                     | <b>MoI: Official Registration of IP Community as “Legal Entity”</b>                                                           | <b>IP Community: Launching ICLT Application to MLMUPC</b>                                                                      | <b>MLMUPC: Measuring, Public Display, Reclassification and Issuing ICLT to IP Community</b>                                                                                          |
| Step 1: Publicize awareness among provincial authorities (relevant departments) and authorities at the district, commune and village levels and IC. | Step 1: The IPC to draft community by-laws as well as forming Community Representative Committee                              | Step 1: Collect data and produce preliminary maps by defining boundaries of community land type participated by all landowners | Step 1: Measurement and data collection of land boundaries by type of use, determination of boundaries and identification of state land                                              |
| Step 2: Indigenous communities show their willingness to initiate identification process of the ICs                                                 | Step 2: Reviewing community members’ commitment and purposes                                                                  | Step 2: The IPC establish its internal rules facilitated by NGO (drafted by MoI)                                               | Step 2: Public display of land evaluation documents + complaint                                                                                                                      |
| Step 3: Raising awareness about the process among the target communities                                                                            | Step 3: The IPC to organize Community Congress in order to formally adopt the “community by-laws” and “Community’s Committee” | Step 3: The IPC to apply for a CLT to MLMUPC                                                                                   | Step 3: Reporting on the result of display of land evaluation documents                                                                                                              |
| Step 4: The IPC to elect a Community Commission Representative and self-identify as “indigenous”.                                                   | Step 4: The IPC to submit the legal entity registration application to the MoI                                                |                                                                                                                                | Step 4: Meeting with the PSLC to decide on the report on the result of the public display of the land evaluation and requesting the MLMUPC to issue land titles to the IP community. |
| Step 5: MRD issues Identity Certificates to the indigenous communities                                                                              | Step 5: The MoI to register the IPC as a “Legal Entity”                                                                       |                                                                                                                                | Step 5: MLMUPC issues a letter to the MoE and the MAFF asking for an examination and approval of the land concerned                                                                  |
|                                                                                                                                                     |                                                                                                                               |                                                                                                                                | Step 6: The MLMUPC issues a letter to the CoM requesting the land reclassification to be registered as a collective land in accordance with the decision of the MoE and the MAFF.    |
|                                                                                                                                                     |                                                                                                                               |                                                                                                                                | Step 7: Issue collective land titles to indigenous communities.                                                                                                                      |

## Annex 2: Progress Report Format

**Reporting period:**

**Reported by:**

**Name of the Project:**

|                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Development Objective (Goal):</b>                                                                                                                                      |
| <b>Output/Outcome/Impact Indicators:</b>                                                                                                                                  |
| <b>Brief descriptions of program/project activities and indicators during the period:</b>                                                                                 |
| <b>Brief description of your target groups and geographic areas reached during the period:</b>                                                                            |
| <b>Please describe your program(s)/project(s) results (impact, outcomes including outputs):</b>                                                                           |
| <b>Relevance – Analysis:</b> (do we contribute to change in life people of target groups?)                                                                                |
| <b>Networking and cooperation:</b> (Please describe your most important network results or activities (national and international) in which you have been involved)       |
| <b>Risk Management and Challenges:</b> (your organization's internal risks and challenges and External risks and challenges in the context affecting the program/project) |
| Lessons learned and recommendations from program(s)/project(s) implementation:                                                                                            |

### Snapshot Activities and Status

| Output/Outcome | Intervention Activities | Implementation Activities |        |           | Status<br>(Reason if not) |
|----------------|-------------------------|---------------------------|--------|-----------|---------------------------|
|                |                         | July                      | August | September |                           |
|                |                         |                           |        |           |                           |
|                |                         |                           |        |           |                           |
|                |                         |                           |        |           |                           |

Noted: Status: (N) = implemented, (x) = Not yet

### Annex 3: Preliminary Screening

#### A. Introduction

Each project/subproject/component needs to be screened for any indigenous people impacts which will occur or have already occurred. This screening determines the necessary action to be taken by the project team.

#### B. Information on project/subproject/component:

- a. District/administrative name: \_\_\_\_\_
- b. Location (km): \_\_\_\_\_
- c. Civil work dates (proposed): \_\_\_\_\_
- d. Technical description: \_\_\_\_\_

### C. Screening Questions for Indigenous People Impact

| Key concerns                                                                                                                                                                                                                      | Yes | No | not known | Remarks |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|-----------|---------|
| <b>A. Indigenous Peoples Identification</b>                                                                                                                                                                                       |     |    |           |         |
| 1. Are there sociocultural groups present in or using the project area who may be considered "tribes" (hill tribes, scheduled tribes, tribal peoples), "minorities" (ethnic or national minorities), or "indigenous communities"? |     |    |           |         |
| 4. Do such groups maintain collective attachments to distinct habitats or ancestral territories and/or to the natural resources in these habitats and territories?                                                                |     |    |           |         |
| 5. Do such groups maintain cultural, economic, social, and political institutions distinct from the dominant society and culture?                                                                                                 |     |    |           |         |
| 6. Do such groups speak a distinct language or dialect?                                                                                                                                                                           |     |    |           |         |
| 7. Have such groups been historically, socially, and economically marginalized, disempowered, excluded, and/or discriminated against?                                                                                             |     |    |           |         |
| 8. Are such groups represented as "Indigenous Peoples," "ethnic minorities," or "tribal populations" in any formal decision-making bodies at the national or local levels?                                                        |     |    |           |         |
| <b>B. Identification of Potential Impacts</b>                                                                                                                                                                                     |     |    |           |         |
| 9. Will the project directly or indirectly benefit or target Indigenous Peoples?                                                                                                                                                  |     |    |           |         |
| 10. Will the project directly or indirectly affect Indigenous Peoples' traditional sociocultural and belief practices (e.g. child-rearing, health, education, arts, and governance)?                                              |     |    |           |         |
| 11. Will the project affect the livelihood systems of Indigenous Peoples (e.g., food production system, natural resource management, crafts and trade, employment status)?                                                        |     |    |           |         |
| 12. Will the project be in an area (land or territory) occupied, owned, or used by Indigenous Peoples, and/or claimed as ancestral domain?                                                                                        |     |    |           |         |
| <b>C. Identification of Special Requirements: Will the project activities include:</b>                                                                                                                                            |     |    |           |         |
| 13. Commercial development of the cultural resources and knowledge of Indigenous Peoples?                                                                                                                                         |     |    |           |         |



|                                                                                                                                                                                                                                                                                                               |  |  |  |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--|
| 14. Physical displacement from traditional or customary lands?                                                                                                                                                                                                                                                |  |  |  |  |
| 15. Commercial development of natural resources (such as minerals, hydrocarbons, forests, water, hunting or fishing grounds) within customary lands under use that would impact the livelihoods or the cultural, ceremonial, and spiritual uses that define the identity and community of Indigenous Peoples? |  |  |  |  |
| 16. Establishing legal recognition of rights to lands and territories that are traditionally owned or customarily used, occupied, or claimed by Indigenous Peoples?                                                                                                                                           |  |  |  |  |
| 17. Acquisition of lands that are traditionally owned or customarily used, occupied, or claimed by Indigenous Peoples?                                                                                                                                                                                        |  |  |  |  |

#### D. Anticipated project impacts on Indigenous Peoples

| Project component/ activity/ output | Anticipated positive effect | Anticipated negative effect |
|-------------------------------------|-----------------------------|-----------------------------|
|                                     |                             |                             |
|                                     |                             |                             |
|                                     |                             |                             |

#### E. Indigenous People Impact

After reviewing the answers above, safeguard team confirms that the proposed subsection/section/subproject/component (tick as appropriate):

☐ has indigenous people (IP) impact, so an indigenous people plan (IPP) or specific IP action plan is required.

☐ has No IP impact, so no IPP/specific action plan is required.

|                                                  |                                                  |
|--------------------------------------------------|--------------------------------------------------|
| Prepared by:<br>Signature:<br>Name:<br>Position: | Verified by:<br>Signature:<br>Name:<br>Position: |
|--------------------------------------------------|--------------------------------------------------|

#### Annex 4: Sample Grievance Redressal Form

The Project welcomes complaints, suggestions, queries, and comments regarding project implementation. We encourage persons with grievance to provide their name and contact information to enable us to get in touch with you for clarification and feedback.

Should you choose to include your personal details but want that information to remain confidential, please inform us by writing/typing \*(CONFIDENTIAL)\* above your name. Thank you.

|      |                       |                          |
|------|-----------------------|--------------------------|
| Date | Place of registration | Project Town<br>Project: |
|------|-----------------------|--------------------------|

#### Contact information/personal details

|                                                                                                                       |        |                |     |  |
|-----------------------------------------------------------------------------------------------------------------------|--------|----------------|-----|--|
| Name                                                                                                                  | Gender | Male<br>Female | Age |  |
| Home address                                                                                                          |        |                |     |  |
| Place                                                                                                                 |        |                |     |  |
| Phone number                                                                                                          |        |                |     |  |
| Complaint/suggestion/comment/question Please provide the details (who, what, where, and how) of your grievance below: |        |                |     |  |
| If included as attachment/note/letter, please tick here:                                                              |        |                |     |  |
| How do you want us to reach you for feedback or update on your comment/grievance?                                     |        |                |     |  |

#### FOR OFFICIAL USE ONLY

|                                                                            |                                                             |
|----------------------------------------------------------------------------|-------------------------------------------------------------|
| Registered by: (Name of official registering grievance)                    |                                                             |
| Mode of communication:<br>- Note/letter<br>- E-mail<br>- Verbal/telephonic |                                                             |
| Reviewed by: (Names/positions of officials reviewing grievance):           |                                                             |
| Action Taken:                                                              |                                                             |
| Whether action taken disclosed:                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Means of disclosure:                                                       |                                                             |

## Annex 5: FPIC Checklist Used in Field Projects

| Descriptions                                                                                                                                                                                                                                                                                                                                          | Yes | No | Not known | Remarks |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|-----------|---------|
| 1) Does the project staff have the knowledge and competence to work with indigenous peoples in a culturally appropriate manner? Has the project staff been trained on how to interact with Indigenous Peoples?                                                                                                                                        |     |    |           |         |
| 2) Has a detailed communication strategy for the dissemination of information been developed considering indigenous peoples' own mechanisms, language and locations?                                                                                                                                                                                  |     |    |           |         |
| 3) Have the individuals identified as legitimate leaders of the indigenous communities involved been met and consulted?                                                                                                                                                                                                                               |     |    |           |         |
| 4) Have the involved communities had enough time to get expert advice on the project? Have enough resources been facilitated for them to get expert advice on the project?                                                                                                                                                                            |     |    |           |         |
| 5) Have adequate mechanism and procedures for effective participation in the FPIC process been established?                                                                                                                                                                                                                                           |     |    |           |         |
| 6) Has a Participatory mapping analysis with relevant information been carried out?                                                                                                                                                                                                                                                                   |     |    |           |         |
| 7) Have timely consultations (well prior to project design) been carried out?                                                                                                                                                                                                                                                                         |     |    |           |         |
| 8) Have the indigenous communities involved been enabled to participate fully and effectively in project scoping, design, implementation, M&E, mitigation and determination of the need for further review and management of the project?                                                                                                             |     |    |           |         |
| 9) Has project information (including environmental and social assessment document; environmental social management plan; and evaluation) been disseminated early and through appropriate means?                                                                                                                                                      |     |    |           |         |
| 10) Has the proper understanding of the information provided to the indigenous communities involved been verified?                                                                                                                                                                                                                                    |     |    |           |         |
| 11) Is the consultation process documented?                                                                                                                                                                                                                                                                                                           |     |    |           |         |
| 12) Has the documentation of the consultation process been disclosed in a timely matter and using appropriate languages, formats and locations?                                                                                                                                                                                                       |     |    |           |         |
| 13) Has the consent been provided explicitly and recorded and affirmed in the format preferred by the community?                                                                                                                                                                                                                                      |     |    |           |         |
| 14) Do the participatory monitoring and evaluation of the project include indicators that indigenous peoples determine to be relevant?                                                                                                                                                                                                                |     |    |           |         |
| 15) Has the community been engaged in an adequate negotiation process on land and resources agreements, governance arrangements, legal and financial arrangements, employment and contracting opportunities, culturally appropriate benefits sharing, processes and mechanisms for monitoring, grievances and dispute resolutions, among other items? |     |    |           |         |

Source: FAO, Manual for Project Practitioners, 2016

## Annex 6: Output and Outcome Evaluation Matrix

| No   | Areas of Output and Outcome Indicator                                                                  | Sources of Information                                                          | Responsibility |
|------|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|----------------|
| 1    | <b>Beneficiaries have access to agriculture resources, selected infrastructure and social service</b>  |                                                                                 |                |
| 1.1  | Land area registered as ICLT under project support (ha)                                                | Record of officer<br>Record of IPCC                                             | MLMUPC         |
| 1.2  | IP families benefiting from ICLT registration under project support (Number)                           | Record of officer<br>Record of IPCC                                             | MLMUPC         |
| 1.3  | Farmers reached with agricultural assets or services (Number)                                          | Record of officer<br>Record of IPCC                                             | MAFF           |
| 1.4  | Beneficiary households with year-round access to safe drinking water (Percentage)                      | IPs, IPCC                                                                       | MAFF           |
| 1.5  | Beneficiary communities (project sites) connected to commune centers with an all-weather road (Number) | IPs, IPCC                                                                       | MAFF           |
| 1.6  | Beneficiary communities (project sites) with access to (at least) primary schools services. (Number)   | IPs, IPCC                                                                       | MAFF           |
| 1.7  | Beneficiary communities (project sites) with access to (at least) a health post. (Number)              | IPs, IPCC                                                                       | MAFF           |
| 1.8  | Satisfaction of beneficiaries with the land titling process (Percentage) – gender disaggregate         | IPs, IPCC                                                                       | MLMUPC         |
| 1.9  | Satisfaction of beneficiaries with the agriculture services provided (Percentage) gender disaggregate  | IPs, IPCC                                                                       | MAFF           |
| 1.10 | Participation of women on decision-making bodies (Percentage)                                          | IPCC                                                                            | MLMUPC         |
| 2    | <b>Component 1: SLC and ICLT Investment Planning and Prioritization</b>                                |                                                                                 |                |
| 2.1  | ICLT area allocated to beneficiary communities (ha)                                                    | Records of officer<br>Record of IPCC                                            | MLMUPC         |
| 2.2  | Area allocated for sustainable community management (community forestry, spirits forests, etc.) (ha)   | Records of officer<br>Record of IPCC                                            | MLMUPC         |
| 2.3  | Number of ICLT beneficiary families (IP families) (Number)                                             | Records of officer<br>Record of IPCC                                            | MLMUPC         |
| 2.4  | Female-headed ICLT beneficiary families (Number)                                                       | Records of officer<br>Record of IPCC                                            | MLMUPC         |
| 2.5  | Perceptions on the functionality of the IPCC and AC, and other committees (eco-tourism) – Likert scale | IPCC, ICLT members, AC committee, AC members, and other committee & its members | MLMUPC<br>MAFF |
| 2.6  | Perceptions on the compliance of internal rules – Likert scale                                         | IPCC, ICLT members                                                              | MLMUPC         |
| 2.7  | Incidence of IC land sales to outsiders (number and percentage)                                        | IPCC                                                                            | MLMUPC         |
| 2.8  | Incidences of IC land surrounded by non-IC land which prevent their access (number)                    | IPCC                                                                            | MLMUPC         |

|     |                                                                                                                                 |                                              |        |
|-----|---------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|--------|
| 2.9 | Title-obtained ICs attained tenure security – Likert scale                                                                      | National and sub-national records, IPCC, IPs | MLMUPC |
| 3   | <b>Component 2: Community Infrastructure Development</b>                                                                        |                                              |        |
| 3.1 | Length of connection roads (km)                                                                                                 | Record of officer<br>Record of IPCC          | MLMUPC |
| 3.2 | Length of residential roads (km)                                                                                                | Record of officer<br>Record of IPCC          | MLMUPC |
| 3.3 | Length of agriculture access roads (km)                                                                                         | Record of officer<br>Record of IPCC          | MLMUPC |
| 3.4 | Length of agriculture access tracks (km)                                                                                        | Record of officer<br>Record of IPCC          | MLMUPC |
| 3.5 | Reduction in travel time between project communities and commune centers (percent)                                              | IPCC, IPs                                    | MLMUPC |
| 3.6 | Water management/irrigation plans prepared for all agriculture land at all project sites (percent)                              | Records of officer                           | MAFF   |
| 4   | <b>Component 3: Agriculture and Livelihood Development</b>                                                                      |                                              |        |
| 4.1 | Land under productive agriculture (ha)                                                                                          | IPs, IPCC                                    | MAFF   |
| 4.2 | Application of new/advanced ICT in training and extension (Yes/No)                                                              | Trained farmers, IPCC                        | MAFF   |
| 4.3 | Project beneficiaries who are members of an association (Percent) - gender disaggregate                                         | Record of IPCC<br>Record of officer          | MAFF   |
| 4.4 | Women participating in nutrition-sensitive training and adopting at least 3 of the promoted behavioral changes (percentage)     | Trained women, IPCC                          | MAFF   |
| 4.5 | Beneficiary communities have access to water for irrigation (percentage) – gender disaggregate                                  | IPs, IPCC                                    | MAFF   |
| 4.6 | Beneficiary communities have invested and increased agricultural productivity (percentage) – gender disaggregate                | IPCC, IPs                                    | MAFF   |
| 4.7 | Beneficiary communities have increased in household income from diverse sources (per capita & percentage) - gender disaggregate | IPs or trained farmers                       | MAFF   |
| 4.8 | Beneficiary communities that have sustained linkage with private sectors or markets for their products                          | IPCC, IPs, selected private entities         | MAFF   |
| 4.9 | Beneficiary communities have access to credit and other sources of fund                                                         | IPCC, IPs, local banks or MFIs               | MAFF   |

## Annex 7: major strengths and weaknesses of the land-related systems concerning community land and resource tenure

| Country                                | Strengths                                                                                                                                                                                                                                                                                                                                                                                                                | Weaknesses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cambodia                               | <ul style="list-style-type: none"> <li>• IP provided with communal land title.</li> <li>• A diversity of land types is included, including fallow land as part of shifting agriculture systems, and some forestlands.</li> <li>• Individual households can obtain title to their lands.</li> <li>• Individuals that leave the community are eligible for compensation of their individual customary holdings.</li> </ul> | <ul style="list-style-type: none"> <li>• Restricted to IP communities.</li> <li>• Does not include urban lands, all forestlands, and seasonal lakes.</li> <li>• Title contingent on continuation of traditional practices by community.</li> <li>• Complex and lengthy process involving multiple ministries with limited results.</li> <li>• Those who elect for individual title will not be able to join communal titles.</li> </ul>                                                                                                                                                                                                                                          |
| Indonesia                              | <ul style="list-style-type: none"> <li>• Constitution recognizes traditional communities and their customary (adat) rights to land.</li> <li>• Community customary rights cannot be extinguished or restricted without prior consent of adat communities, and just compensation.</li> <li>• Individuals may use customary rights as a basis for acquiring private title.</li> </ul>                                      | <ul style="list-style-type: none"> <li>• No current means to register communal title.</li> <li>• Individuals may use customary rights as a basis for acquiring private title but must extinguish their customary rights and conform with private land law rights.</li> <li>• The process to acquire rights in forestlands (70% of adat lands), is complex; the community must be legally recognized by documenting customary authorities and acts, exist in its traditional form, have leaders and institutions, occupy a defined area, have legal institutions to uphold customary law, and traditionally use forests for the community's daily needs.</li> </ul>               |
| LAO People's Democratic Republic (PDR) | <ul style="list-style-type: none"> <li>• Collective or communal tenure applies to all lands, not only IP customary lands.</li> <li>• Wide range of organizations eligible to apply for collective or communal title.</li> <li>• A wide range of land use types is covered: agricultural, forests, grasslands, water bodies, and others.</li> </ul>                                                                       | <ul style="list-style-type: none"> <li>• High burden to establish ownership through documentary evidence.</li> <li>• Long processing times for obtaining native customary title.</li> <li>• Conflicts among communities over boundaries results in perimeter surveys being cancelled.</li> <li>• Aerial photos and topographical maps are restricted and only available for community dialogue sessions.</li> <li>• Community maps are not allowed under amendments to the Surveyor Ordinance.</li> <li>• Only rights to settlement and cultivation areas eligible for registration; rights to areas customarily used for hunting/gathering and sacred sites are not.</li> </ul> |
| Malaysia                               | <ul style="list-style-type: none"> <li>• The statutory recognition of customary land rights is available to majority Malay ethnic group, Orang Asli (original peoples), as well as native peoples.</li> <li>• Doctrine of common law supports indigenous land rights.</li> <li>• Native Courts Enactment of 1992 permits adjudication of adat law systems, particularly to address long-standing conflicts.</li> </ul>   | <ul style="list-style-type: none"> <li>• High burden to establish ownership through documentary evidence.</li> <li>• Long processing times for obtaining native customary title.</li> <li>• Conflicts among communities over boundaries results in perimeter surveys being cancelled.</li> <li>• Aerial photos and topographical maps are restricted and only available for community dialogue sessions.</li> <li>• Community maps are not allowed under amendments to the Surveyor Ordinance.</li> <li>• Only rights to settlement and cultivation areas eligible for registration; rights to areas customarily used for hunting/gathering and sacred sites are not.</li> </ul> |
| Philippines                            | <ul style="list-style-type: none"> <li>• Customary land rights and autonomy recognized in statutes.</li> <li>• Constitutional entrenchment of land rights regime and autonomy.</li> </ul>                                                                                                                                                                                                                                | <ul style="list-style-type: none"> <li>• Funding, logistical, and manpower shortages in the National Commission on Indigenous Peoples.</li> <li>• Bureaucratic and procedural complexities in land-titling process causing evidential burden.</li> <li>• FPIC process inadequately followed.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                          |

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | <ul style="list-style-type: none"> <li>• Grant of formalized titles that transfer land from state to communities.</li> <li>• Law recognizes both individual and community rights.</li> <li>• Customary law determines allocation of rights within the community.</li> <li>• FPIC process legally enshrined.</li> <li>• Customary dispute resolution legally recognized.</li> <li>• Ancestral Domains Office assists in resolving disputes.</li> <li>• Rights of displaced IP/Indigenous Cultural Communities (ICC) to ancestral domain recognized.</li> </ul> | <ul style="list-style-type: none"> <li>• Prevailing assumption that ICC are homogenous (leading to exclusion of coastal dwellers and inadequate recognition of rights to coastal settlements, shorelines, and sea).</li> <li>• Law requires communities to practice traditional forms of production, but ICC are increasingly integrated into modern economic systems.</li> <li>• Multiple types of tenure regimes not adequately recognized by Certificate of Ancestral Domain Title/Certificate of Ancestral Land Title.</li> <li>• Stronger role of local governments enabled through decentralization undermines awarding of titles to IP/ICC.</li> <li>• Suspension of titles to areas with overlapping claims.</li> </ul> |
| Botswana   | <ul style="list-style-type: none"> <li>• Land Boards that comprise customary leaders, government-appointed members, and community-elected representatives are responsible for land administration.</li> </ul>                                                                                                                                                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>• Composition of Land Boards heavily represented by government resulting in marginalization of traditional authority.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Ghana      | <ul style="list-style-type: none"> <li>• Customary Land Secretariats introduced by donor projects to support the process to register customary lands under the 1986 Land Title Registration Law.</li> </ul>                                                                                                                                                                                                                                                                                                                                                   | <ul style="list-style-type: none"> <li>• The informal role of Customary Land Secretariats in the registration process has led at times to issues of legitimacy both within customary communities, and with government agencies with formalized registration mandates.</li> <li>• Reliance on donor funds for expansion and strengthening of Customary Land Secretariats</li> </ul>                                                                                                                                                                                                                                                                                                                                              |
| Liberia    | <ul style="list-style-type: none"> <li>• Proposed legislation recognizes customary rights.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <ul style="list-style-type: none"> <li>• Ambitious agenda for organizing communities and registering their rights may be unrealistic to implement.</li> <li>• Many customary lands are already under concession agreements.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Mozambique | <ul style="list-style-type: none"> <li>• Community ownership is recognized in the Constitution and covers most of the country's land base.</li> <li>• Government issues community land leases that include land for expansion.</li> <li>• Community land may be leased to investors with consent of community and subject to a community-investor agreement</li> </ul>                                                                                                                                                                                        | <ul style="list-style-type: none"> <li>• Inadequate registration of community land leases compared to estimated area of customarily held land, particularly compared to leases issued to investors.</li> <li>• Inadequate safeguards in place to support customary interests over those of more sophisticated investors.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                             |
| Brazil     | <ul style="list-style-type: none"> <li>• Demarcation of IP lands is required under the law.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <ul style="list-style-type: none"> <li>• Demarcation process involves limited community participation.</li> <li>• Implementation of demarcation requirements has been limited and process protracted</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Columbia   | <ul style="list-style-type: none"> <li>• Constitutional recognition of collective land rights of IP and Afro-Colombian communities.</li> <li>• Indigenous reserves are legal, social, and political entities with a collective title that are owned and managed with full private property and resource rights according to traditional indigenous laws.</li> </ul>                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>• Displaced peoples' population presents challenges to implementation.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |



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|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mexico | <ul style="list-style-type: none"> <li>• Long-standing, institutionalized example of formally recognized communal rights in the form of ejidos.</li> <li>• Permits communal and individual title in an ejido.</li> <li>• Title includes full rights of alienation.</li> </ul> | <ul style="list-style-type: none"> <li>• More effort needed to ensure gender and intergenerational equity in conveying <i>ejido</i> property rights.</li> </ul> |
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Source: Brief: Community land and natural resource tenure recognition: review of country experiences, USAID, February 2016

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