



**Advancing Land-based
Investment Governance**

iiied International Institute
for Environment
and Development

 **Columbia Center
on Sustainable Investment**
A JOINT CENTER OF COLUMBIA LAW SCHOOL
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY



Cambodia's Draft Land Law

Overview and Preliminary Analysis of Key Issues

Darryl Vhugen
15 February 2024

BACKGROUND

- ALIGN consortium
 - IIED, CCSI, Namati
 - Partnering with ODC
- The new law
 - Is to replace 2001 land law
 - Made available to ODC and many others last week
 - ODC held consultation with indigenous peoples and others in Siem Reap on 13 and 14 February (Try will summarize results)
 - Government wants comments by 16 February
 - Probably some opportunity for further input thereafter

OVERVIEW OF THE DRAFT LAND LAW

- 7 titles, 190 articles plus glossary
 1. General provisions
 2. Ownership and other Rights over Immovable Property
 3. Land use regulations
 4. Land and other real estate registration
 5. Cadastral Commission
 6. Land inspection
 7. Final Provisions
- Glossary with definitions

COMPARISON WITH EXISTING LAW

- General provisions and principles largely unchanged
- Retains same categories of land
- State public property: Adds the power to declare additional land as public land “in accordance with the legal regime prescribed by this law and the relevant legal documents.”
- Collective ownership (indigenous peoples):
 - Added definition and protections for “Burial Grounds”
 - Adds a rather vague section about how indigenous people cannot access forest lands but have in the past made agreements with the relevant authority.
 - Individuals joining a community must incorporate their land into the collective land.

COMPARISON WITH EXISTING LAW

- Co-ownership: much more extensive coverage.
- Economic land concessions
 - Removed the requirement to exploit the land within 12 months of receiving the concession
 - Removed limit of 10,000 ha
 - Removed limit of 99 years
 - Creates a restriction on granting more than one concession to any single individual or company
- Land administration provisions-largely unchanged
- Initial land registration: draft law has removed the right of claimants to appeal decisions of the Cadastral Commission to the judiciary

Key Issues and Potential Recommendations

1. **Recognition of Customary Rights:**

- a. The draft Land Law's focus on "Indigenous collective ownership" limits recognition to officially registered Indigenous Peoples communities, excluding other communities that practice customary land tenure systems and Indigenous communities who have not yet been recognized as such.
- b. This overlooks local communities with legitimate customary practices, leading to land tenure insecurity and causing more unwanted land disputes.

2. **Commitment to Gender Equality and Social Inclusion:** In keeping with the Constitution's commitment to women's and children's equal rights and freedom from discrimination, the draft Land Law could be improved by including specific statements of support for equal rights of leadership, access, and ownership as well as prohibition of discrimination against women.

Key Issues and Potential Recommendations

3. **Continued Public Consultation for Related Sub-decrees:** Not enough time provided for meaningful public consultation. It is important to continue and expand this consultative approach to include civil society, community representatives, and others in the process of finalizing this law and amending any related sub-decrees.
4. **Clearly Define How to Calculate Fair and Just Compensation in cases of Expropriation:** It is essential that any compensation covers all losses incurred by those whose land is taken and that the means of calculating such compensation is transparent, understandable, and in line with international principles. The law should make explicit reference to the Expropriation Law (2010) when referencing fair and just compensation.
 - And that law should be properly implemented.

Key Issues and Potential Recommendations

5. **Establish Restrictions on the Issuing of Economic Land Concessions:** There must be firm restrictions in place to ensure that such concessions do not interfere with the legitimate land claims of others or lead to increased land disputes. A ceiling on the size and term length of ELCs imposed under the 2001 Land Law should be reinstated, along with the restriction of only granting one ELC per individual or company.
6. **Establish a Process of Public Consultation before ELCs or SLCs can be Issued:** While the intricacies for the process for registering Land Concessions are laid out in the sub-decree, it is essential to establish in the law that such a process must include sufficient public consultation with those that could be impacted by the Land Concession, especially Indigenous Communities, women, youth, and other vulnerable groups.
 - Require FPIC from affected communities.

Key Issues and Potential Recommendations

- 7. Improve Indigenous Communal Titling:** Safeguarding the land tenure of Indigenous Peoples is a critical value of international law. To properly safeguard the land of Indigenous communities, the draft Land Law can be improved by additions such as:
- Asserting that access to gather NTFPs and steward watersheds will be maintained (Article 38)
 - Clarifying that Indigenous Peoples' rights cannot be expropriated for the "National Interest" without at least requiring FPIC (Article 39)
 - Allowing for Indigenous Communities to grant subsidiary rights over their land to individuals and organizations, such as for establishing carbon credits, but only after a rigorous process to ensure FPIC. (Article 41)
 - Provide an explicit mandate for the Ministry of Land Management, Urban Planning, and Construction to provide technical guidance and resources to Indigenous Communities to assist with the mapping of their collective property and registration as indigenous communities. (Article 148)

Key Issues and Potential Recommendations

8. Establish a More Detailed Approach to Dealing with the Occupation of Land: While it is important to clearly establish the process by which occupation or other forms of use rights short of full title can be turned into legal ownership, the current restriction that any occupation must have occurred before 2001 does not reflect the reality of land use as it has developed over the last twenty years.

Bottom Line: the draft law mostly does not cure problems with the existing law and creates some new issues that should be addressed.

Thank you



ALIGN

ALIGN: Advancing Land-based Investment Governance

ALIGN supports governments, civil society, local communities and other relevant actors in strengthening the governance of land-based investments. The project is implemented by a consortium led by the International Institute for Environment and Development (IIED), the Columbia Center on Sustainable Investment (CCSI) and Namati, and is funded with UK aid from the UK government.

This material has been produced as part of ALIGN by CCSI and IIED however the views expressed do not necessarily reflect the official views or policies of ALIGN partners or the UK Government.

