

## TERMS OF REFERENCE

### Individual Contractor

#### 1. Project Information

|                                  |   |
|----------------------------------|---|
| <b>Assignment Title:</b>         | Assessing the economic opportunities of indigenous communities with collective land title in Cambodia |
| <b>Practice Area:</b>            | Land Management and Allocation  |
| <b>Cluster/Project:</b>          | Economic and Social Rights Unit   |
| <b>Duty Station:</b>             | Phnom Penh  |
| <b>Expected Place of Travel:</b> | Three provinces of Cambodia (Ratanakiri, Mondulakiri and Kratie)                                      |
| <b>Contract Duration:</b>        | 29 Working days (10 May – 30 June 2017)   |

#### 2. Background and Project Description

For indigenous peoples in Cambodia, securing rights over their lands and resources is a *sine qua non*-condition for their long-term well-being and a precondition for them to be able to continue to exist as distinct peoples. Secure land and resource tenure is one of the most basic human rights for indigenous peoples and is a key feature of the international recognition of their human rights.

In Cambodia, the 2001 Land Law is the principal legal framework for formalizing customary ownership of indigenous peoples through the granting of collective land titles (CLTs). The Land Law recognizes the collective land management practices of indigenous peoples and the need to safeguard their right to maintain their traditional ways of life which are closely associated with the use of land and resources under their customary use. As of December 2016, 14 indigenous communities in Cambodia have obtained a CLT.<sup>1</sup>

The process to obtain collective land title is cumbersome and costly. Some estimates indicate that the total costs for one title may be as high as 70.000 USD per community. In practice, this has meant that communities are entirely dependent on the financial and technical support of NGOs and donors to formalize their collective right to land. In terms of duration, estimates suggest that it takes indigenous communities close to four years to obtain title. As the process is very long, many indigenous community members withdraw from it during the land registration process, thereby slowing down the process even further. Notwithstanding, collective land titles remain the most important tool by which indigenous communities can assert their rights against external land encroachment.

Collective title is meant to provide permanent tenure security for the entire community as land under the CLT can only be sold to fellow community members. This provides protection, but also prohibits the use of the land title as collateral for loans and significantly reduces the opportunities for titled communities to access finance and to develop economically. Financial institutions are reportedly unwilling to accept collective land title as collateral issued in the identifying name of an entire village and have pointed to a number of challenges in doing so, including who should be registered as the recipient of the loan (the entire community, the community management committee, the village leader, or other individuals or groups in the community), and how the lending agency could retrieve its money back if the borrowers default on a loan.

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<sup>1</sup> Of these, five are located in Ratanakiri, seven in Mondulakiri and two in Kratie.

To explore the hypothesis that it might be more difficult for members of indigenous communities with collective title to access finance, OHCHR seeks to undertake an in-depth review of some indigenous communities that have received CLTs and compare their level of access to finance to that of typical rural Khmer villages. The review will include relevant lessons from good international practices regarding access to finance of indigenous persons and peoples (i.e. on both an individual and collective basis).

Based on the findings, the study will present action-oriented recommendations to stakeholders involved in supporting indigenous communities with collective land titles, including Government authorities at the national and sub-national levels, UN agencies (OHCHR included), NGOs and indigenous communities. Recommendations will also be directed at lending institutions and informal money lenders, with the view of ensuring that indigenous peoples with CLTs are not excluded from economic opportunities to develop their lands and improve their livelihoods as they wish after they obtain collective land titles.

While the specific communities that will be covered in depth by the present study will be jointly selected by the consultant and OHCHR, the 14 indigenous communities that have received CLTs are expected to be surveyed.

### **3. Objective of the Assignment**

- Compare indigenous peoples' access to financial opportunities to develop their land, including to micro-finance and bank loans and access to saving groups and informal money lending, to that of typical rural Khmer villagers and review and document financial institutions' policies on collective land title as collateral;
- Examine the situation of indigenous women and challenges they face in realizing their human rights, particularly in respect of livelihood support;
- Identify capacity constrain on beneficiary indigenous communities that limit their ability to fully benefit from loans.
- Provide concrete and action-oriented recommendations to key stakeholders that have the role to play in supporting indigenous communities with collective land titles, including banks, saving groups and informal money lenders micro-credit institutions.

### **4. Scope of Work**

The Individual Contractor shall:

- a. Review available literature and data on access to finance and indebtedness among rural Khmer to serve as a basis for comparison with members of indigenous communities with CLTs.
- b. Conduct in-depth household interviews with members and non-members of the previously selected indigenous villages in Mondulkiri, Ratanakiri and Kratie with collective land titles. The questions for the interviews shall be formulated by the Contractor in coordination with OHCHR and will be designed to gather information on the impact of the allocation of the collective land title on the livelihoods, well-being and land tenure security

of families living in these villages, in particular the opportunities and challenges community members have to access finance for the development of their land, their levels of indebtedness; their capacity for financial management; and the proportion of families who abandoned their CLT for a private land title or who are considering doing so.

- c. Interview at least ten representatives of financial institutions, including microcredit providers, banks, saving groups, and informal money lenders to document the level of access to loans by indigenous communities with collective land titles to develop their lands and livelihoods, and to assess whether these institutions have policies in place on the use of collective land title as collateral.
- d. Draft final assessment (max. 20-25 pages excluding annexes)

##### 5. Expected Outputs and Deliverables

| N                       | Deliverables/Outputs  | Estimated Duration to Complete | Target Due Dates | Review and Approvals Required <i>(Indicate designation of person who will review outputs and confirm acceptance)</i> |
|-------------------------|---|--------------------------------|------------------|--|
| 1                       | Literature review and devising i) household interview questions and ii) questions to financial institutions and other lenders   | 3 working days                 | 16 May           | OHCHR head of Economic and Social Rights Unit  |
| 2                       | Fieldwork: Conduct household interviews with members and non-members of indigenous communities with collective land titles (Rattanakiri, Mondulkiri, Kratie)  | 15 working days                | 6 June           | OHCHR head of Economic and Social Rights Unit  |
| 3                       | Fieldwork: Conduct interviews with main lending institutions (banks, MFIs, informal money lenders) in nearest district towns and/or provincial capitals of the areas of the target indigenous communities | 3 working days                 | 12 June          | OHCHR head of Economic and Social Rights Unit  |
| 4                       | Present first draft of report, including recommendations for follow-up  | 6 working days                 | 22 June          | OHCHR head of Economic and Social Rights Unit  |
| 5                       | Present final draft of report following OHCHR's comments  | 2 days                         | 30 June          | OHCHR head of Economic and Social Rights Unit  |
| <b>Total # of Days:</b> |   | <b>29 days</b>                 |                  |  |

## 6. Institutional Arrangements

The Individual Contractor will work with the Economic and Social Rights Unit (ESRU) of OHCHR Cambodia. S/he will be briefed by a focal point from the Unit at the start of the assignment, and will henceforth report regularly to her/him throughout the assignment.

The Individual Contractor may be accompanied and guided by a member of ESRU during the assignment or may be required to work independently.

OHCHR will supervise the Individual Contractor. The contractor will report directly to OHCHR's appointed Focal Point. The Contractor will be expected to liaise frequently with the appointed Focal Point; providing weekly updates on planning and progress on project implementation. The Contractor will be required to liaise with the Commune and District authorities in the areas where s/he plans to conduct research.

The Contractor will arrange all logistics, project personnel s/he would sub-contract for the duration of the assignment, office space and support services required for project implementation. ***All travel, accommodation, food and other costs (including translation and interpretation) shall be arranged and covered by the Contractor. The Individual Contractor will be expected to observe the highest professional and ethical standards, as well as to observe UN Security recommendations.***

## 7. Duration of the Work

The project shall commence on 10 May 2017 and shall end on 30 June 2017. Payment will cover 29 person-days, spread out during this period. All deliverables must be submitted by the individual Contractor to OHCHR by the final date of the contract.

## 8. Duty Station

The Individual Contractor shall carry out the work in select indigenous communities, to be chosen in consultation with OHCHR. Meetings with OHCHR will take place at OHCHR premise in Phnom Penh. This assignment is required the Consultant to travel to 3 provinces, Ratanikiri, Modulkiri and Kratie, for 18 working days.

Methodology: The Individual Contractor is required to submit the methodology proposed for conducting the assignment along with the application for this post.

## 9. Minimum Qualifications of the Individual Contractor

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|--------------------|---|
| <b>Education:</b>  | University Degree in a relevant field, such as law /political sciences / human rights / anthropology /agronomy is essential, a higher degree an advantage.  |
| <b>Experience:</b> | At least 10 years of experience working in human rights, in particular relating to indigenous peoples and land, including at least 5 years of experience working on land and/or indigenous peoples' issues in Cambodia<br>Experience in conducting household surveys<br>Experience in conducting interviews |

|                              |   |
|------------------------------|---|
|                              | Experience in conducting focus group discussions<br>Experience drafting public reports  |
| <b>Competencies:</b>         | <p><b>Technical competencies</b><br/>Proven professional competence and knowledge of the areas of work.<br/>Proven expertise in land and indigenous peoples issues in Cambodia<br/>Ability to work independently<br/>Excellent drafting skills</p> <p><b>Functional competencies</b><br/>Ability to work quickly and responsively.<br/>Cultural sensitivity and valuing diversity.<br/>Strong organizational and planning skills.</p> <p><b>Corporate competencies</b><br/>Demonstrates integrity by modeling the UN's values and ethical standards.<br/>Promotes the vision, mission, and strategic goals of OHCHR and the United Nations.<br/>Displays cultural, gender, religion, race, nationality and age sensitivity and adaptability.<br/>Treats all people fairly without favouritism.<br/>Fulfills all obligations to gender sensitivity and zero tolerance for sexual harassment.</p> |
| <b>Language Requirement:</b> | Ability to communicate in English is essential, Khmer an advantage.   |
| <b>Other Requirements:</b>   | N/A   |

#### 10. Criteria for Evaluation of Level of Technical Compliance of Individual Contractor

| Technical Evaluation Criteria  | Obtainable Score |
|--|------------------|
| University Degree in a relevant field; higher education an advantage.  | 10               |
| Minimum 10 years of experience working in human rights, in particular relating to indigenous peoples and land, including at least 5 years of experience working on land and/or indigenous peoples' issues in Cambodia. | 50               |
| Experience conducting research interviews  | 10               |
| Experience drafting research reports in English; knowledge of Khmer an advantage.  | 30               |
| <b>Total</b>   | <b>100</b>       |

#### 11. Payment milestones

The consultant will be paid on a lump sum basis in installments, as follows:

| N | Outputs/Deliverables                            | Payment Amount |
|---|---|----------------|
| 1 | Upon satisfactory completion of Output 1        | 20%            |
| 2 | Upon satisfactory completion of Outputs 2 and 3 | 40%            |
| 3 | Upon satisfactory completion of Outputs 4 and 5 | 40%            |

#### 12. Annexes

Existing literature or documents that will help the consultant gain a better understanding of the project situation and the work required will be provided to the consultant once the contract is signed.

**13. Approval**

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|---------------------|---|
| Signature:          | .....                                     |
| Name:               | Wan-Hea LEE<br>.....                      |
| Title/Unit/Cluster: | Representative<br>OHCHR-Cambodia<br>..... |
| Date:               | .....                                     |