

Social Assessment of Land in Cambodia

A Field Study

Working Paper 20

**So Sovannarith, Real Sopheap, Uch Utey, Sy Rathmony
Brett Ballard and Sarthi Acharya**



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Responsibility for the ideas, facts and opinions presented in this research paper rests solely with the authors. Their opinions and interpretations do not necessarily reflect the views of the Cambodia Development Resource Institute.

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Acronyms and Abbreviations

Acronyms

ACLEDA	Association of Cambodian Local Economic Development Agencies
CDRI	Cambodia Development Resource Institute
DLMUPCC	Department of Land Management, Urban Planning, Construction and Cadastre
FinnMap	Finnish agency in Cambodia
GTZ	German Agency for Technical Co-operation
ILO	International Labour Organisation
LDSC	Land Dispute Settlement Commission
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MRC	Mekong River Commission
NGO	Non-Governmental Organisation
NTFP	Non-Timber Forest Products
OLMUPCL	Office of Land Management, Urban Planning, Construction and Land
PET	Protracted Emergency Targeting
RCG	Royal Cambodian Government
SES	Socio-economic Survey
Sida	Swedish International Development Agency
UNICEF	United Nations Children’s Fund
UNTAC	United Nations Transitional Authority in Cambodia
VDC	Village Development Committee
WFP	World Food Programme

Non-English Words

<i>Sangkat</i>	: an administrative territorial subdivision equivalent to a <i>commune</i> . <i>Sangkat</i> is used in provincial town or city, eg. <i>Sangkat Tenle Bassac</i>
<i>Khan</i>	: an administrative territorial subdivision equivalent to a <i>district</i> . <i>Khan</i> is used in provincial town or city, eg. <i>Khan Chamkar Mon</i>
<i>Chamkar</i>	: Land which is used for growing crops other than rice.
<i>Krom Samaki</i>	: ‘Solidarity groups’ formed during the 1980s as a form of collective farming.

Executive Summary

The Royal Government of Cambodia has embarked upon a reform agenda designed to promote sustainable economic and social development, poverty alleviation, and peace. As a prelude to the titling project, the government decided to first conduct a social assessment of land in order to obtain a report on the ground situation concerning, land control, conflicts, and the capacity of different authorities to effectively and efficiently govern land rights. The main objectives of this social assessment are to (1) identify the different stakeholders of land and the project, (2) examine the social and institutional capacity at the local level for governing land rights, (3) forecast possible negative impacts of the project, and (4) make relevant policy recommendations.

The study is qualitative in nature and has relied primarily on five case studies conducted in five villages, each from the Kandal, Prey Veng, Kampot, Kompong Speu, and Rattanakiri provinces, as well as one urban case study in Phnom Penh. Each of the village studies represents a different agro-ecological zone, while the Phnom Penh study focuses on squatter settlements. However, the study may not be representative of the whole country. Various qualitative methods such as small group discussions and individual interviews with farmers, migrants, demobilised soldiers, women's groups, and local officials were used to develop these cases. The research team also interviewed personnel from the land management departments at the provincial and district levels, the provincial land dispute settlement commissions, chief judges at provincial courts, tax department officials, as well as village, commune, and district chiefs. In Phnom Penh, a daylong seminar involving municipal officials and NGOs was organised to elicit information on land issues in the city. Interviews were also held with officials in the Central Cadastral Office. All observations are based on responses from field interviews.

Cambodia privatised lands in 1989 and it is widely believed that there was a fair distribution of both agricultural and residential lands at that time. All those whose main occupation was agriculture received land according to household size. However, due to inadequate financial and human resources, a complete mapping and titling of land could not take place at that time. People therefore continued to rely on local traditions and customs to govern land rights according to the productive use of land. In the last decade, there have been significant socio-economic changes (e.g. refugee repatriation, the advent of markets and urbanisation, increased population growth) that have placed varied demands on land. As a result, the composition of stakeholders in land has emerged rather unevenly. Following the law of the market, maximum demands have been placed on commercial lands, roadside lands, productive lands, urban lands, and the like. People who have not been able to adapt to such changes have not benefited from this process, and in many cases have actually been adversely affected. These people include the most vulnerable segments of the population (e.g. the rural

poor, women heads-of-households). There are at least five major problems that require attention: (1) inequality in land holdings, (2) landlessness, (3) insecure tenancy, (4) land conflicts, and (5) encroachment on urban lands by squatters.

Land use patterns have changed dramatically, particularly in locales characterised by high commercialisation. Such changes have been linked to increasing demand by more diverse groups of interests, including private companies and state institutions, as well as individuals in positions of authority, such as government officials and military personnel. The demand for land has also increased among the peasantry because of accelerated land atomisation and restrictions placed on their access to forest and fishing resources. Such changes in land use patterns have also been accompanied by a corresponding shift in people's perceptions of land rights. Two practices of ownership and control are now rapidly emerging as more and more land is acquired by people and institutions from outside the local community for purposes other than subsistence farming. Land use rights are recognised locally by people within the peasant community according to traditions and customs, while ownership rights are recognised by people from outside the community according to the formal law and procedures laid-down by the state. More than one mode of land ownership and control is not harmonious because there is a frequent interface between the two modes in which more powerful parties are able to take advantage of those who are more vulnerable. In this sense, people routinely seek venues and employ procedures that promote their own self-interests.

Land markets are most active in areas situated along roads and near urban or market centres. In such areas, the demand for formal land claims (i.e. titling deeds) is high in order to facilitate transfers, clarify land boundaries, and avoid disputes. However, due to the high costs of land titles – mainly in the form of unofficial payments – many land transactions are routinely facilitated at the lower levels of the administration through an exchange of application receipts or written contracts between buyers and sellers, which are not necessarily tenable in law. Only people with adequate financial resources and/or political access are able and willing to obtain proper land certificates. In areas characterised by subsistence farming systems away from roads and urban/market centres, people either rely on receipts or local/community based social institutions for validating use rights to certain areas of land. However the demand for written documentation in these areas is also increasing because people wish to ensure a smooth process of succession and land transfer to their offspring.

A complex hierarchy of government officials and elected representatives governs land. An application for making certificates goes through at least 8-10 offices, spread across the village, commune, district, province and the national capital. Inquiries and land measurements take enormous time, a process also lengthened for want of proper (human and physical) resources. For one, most rural people, farmers and non-farmers alike, are not well versed with this governance system. They would prefer to avoid the system in favour of local traditions and customs and deal only with local institutions. There are, however, some people who avoid the formal system in order to avoid paying genuine taxes as well. Next, the duality of systems of land control not only co-exists, actors within the government itself, particularly at the lower levels (e.g. village and commune chiefs) are party to perpetuating it. Different stakeholders understand land titles differently, and even the guardians of the law themselves, the courts and dispute settlement mechanisms, do not have a clear and consistent understanding of the law and rules. The *de facto* sanction extended to different practices of governance of land has ensured that the actual law is never fully implemented. The ambiguity in rules and multiplicity of practices in land transactions has also contributed to increasing corruption, which is exacerbated by the unrealistic remuneration structure provided to government staff. In many areas, a proper certificate may cost up to US\$300-400, almost all in the form of unofficial payments to officials and representatives spread across different departments. Predictably, the poor rarely, if ever, obtain the right papers because they have neither the support of the law nor the resources to by-pass the law. Women are especially vulnerable in this regard since they tend to have less access to and control over resources with which to advocate for their own rights.

The frequency and nature of land disputes is also increasing as more diverse interests compete for land resources. More land disputes now involve village people and people from outside the local peasant community, including private companies and state institutions, and increasingly require more formal institutions for resolution. Any new land titling effort will generate more demand for dispute resolution, involving both formal and traditional community-based governance mechanisms at all levels. Such an increase would, in all likelihood, overwhelm a state-machinery that is already falling behind on its caseload. The most significant constraints in terms of the capacity to handle an increased volume of cases are related to inadequate financial and human resources, including technical training in the law and procedures. At the same time, the land dispute settlement commissions and provincial courts are currently perceived by many people, particularly those in rural communities, to be inherently unfair in terms of a structural bias that favours those with more resources and access to power, while precluding the full and equal participation of disadvantaged groups (e.g. the poor, women, and indigenous people). Part of the problem regarding people's faith in the system is related to inadequate information about and understanding of the laws and procedures governing property rights. The crisis of confidence in the dispute resolution process, as it is currently structured and practised, represents a significant problem of good governance.

Some of the principal recommendations are listed below:

Titling land by the law and sequencing of activities: Irregularities in land control should be settled in accordance with the new law before titling takes place. The same rules should apply to individuals, companies and other entities as well as government authorities. The new titling programme should also sequence the titling process. A suggestive approach is: residential land first, followed by agricultural land (rice) land, then *chamkar* (non-rice crop, cash crop) land, and thereafter public land such as beaches, forests, pathways, and roads. The logic of such sequencing follows the principle that the shelter and livelihoods of the poor should be the first priority.

Strengthening decentralised land governance: The law should be unambiguous and implemented at a decentralised level, with a view to ensuring that all procedures are transparent, speedy, and affordable for all people. The current system of land titling and registration should be decentralised. If possible, the district should be the terminal point of registration given its close proximity to the local level. Strengthening the capacity of local authorities and creating village/commune level committees, perhaps with NGO participation, is a necessary component of such a decentralisation exercise. In order for the titling programme to proceed, all previous transactions should be validated and upheld as long they have not impinged on the rights and interests of the weaker segments of society.

Resolving disputes: All land dispute cases should be resolved in a way that is consistent with the spirit and intent of the relevant laws governing land rights. The dispute resolution process should be decentralised so that it corresponds with the land titling process. Maximum effort should be made to settle cases with local/community-based mechanisms, including those cases that involve government authorities and companies. The authority of the village/commune leaders should be upheld to the utmost. Cases that cannot be resolved at the local level should follow clear paths of appeal. The membership of the dispute settlement committees should be non-partisan and entirely civilian. More financial and human resources, including training, must also be allocated at the local level.

Framing a new relocation and habitation policy: An effort to settle internally displaced people, landless, and urban migrants can help strengthen peace and stability as well as alleviate poverty. There are enough land resources in rural areas to meet the needs of the landless. There is also urgent need to relocate and/or regularise the present illegal settlements in Phnom Penh. A more innovative relocation and habitation policy must be put in place, which strikes a reasonable and fair balance between the needs and interests of these people and the long-term development objectives of the city.

Recognising indigenous people's rights: A reasonable approach must be devised that protects indigenous people's traditional access to, and control over, communal land, while meeting the broader development objectives of the state that are designed to promote better standards of living in such areas. Communal land titling procedures will require the active collaboration of both the public and private sector, including NGOs that have relevant experience in these areas.

Recognising women's rights: Special efforts must be directed at strengthening women's access to land ownership and dispute resolution. Legal codes are urgently required that ensure women's rights to a fair and equitable division of land in the event of divorce and inheritance. Women must also have some legal guarantees that ensure their access to fair and impartial dispute resolution. There is a need for active collaboration between the government and civil society organisations to provide women with information about their rights in the context of the new land law, as well as provide support to enable women to advocate for their rights.

Following best practices: There are successful titling experiences from outside and within the country, which offer lessons for the new titling programme. The government's systematic titling programme, assisted by GTZ and the Finnish government, uses aerial mapping to produce exact pictures of demarcated land. Not only is this approach more efficient, it is cheaper as well. The project has used approaches like holding village meetings to resolve boundary disputes, in addition to other consultations. It would be useful to evaluate the extent to which this approach can be replicated on a larger scale.

Financing land titling processes: The operational budgets for all levels of the administration involved with land titling should be strengthened through inter-governmental transfers and supplemented with revenue collected from user-fees. The fees should be uniform for all people and should be published. A tax on land sales and transfers of ownership should be paid before any transaction is approved. Companies and individuals who have acquired more than five hectares of land should pay a tax based on a higher percentage of the sale value of land.

Generating data and disseminating information on land rights: The creation of a bureau of statistics to serve all ministries and departments is a useful step in strengthening the database of the economy. This bureau can also collate and reconcile data produced by different ministries, in addition to collecting its own data. People must know and understand the law and the different rules, procedures, sub-decrees and clauses that are enacted from time to time. The use of television and radio can be especially useful since these media are often found in even the most remote corners of the country.

Chapter One

Introduction

1.1. The Intent

The Royal Government of Cambodia has embarked upon a reform agenda designed to achieve sustainable economic and social development, poverty alleviation and peace. The Land Policy Framework is one of the most important policy initiatives in this agenda, which includes accelerated land titling, establishing a legal framework to enforce property rights, and setting up territorial master plans and zoning rules. A new land law that will supersede the earlier one of 1992 has been drawn up and approved by the National Assembly.¹ A comprehensive project for titling and registration of land is being undertaken as a part of the land policy. This paper makes a social assessment of the land situation, with the purpose of informing the project.

1.2. The Background and Need for This Study

Cambodia's agricultural sector is among the least developed in Asia, and its land and labour productivity is perhaps the lowest in Southeast Asia. With a yield in the range 1.3-1.5 tonnes of rice per hectare that has remained unchanged for decades,² it is becoming increasingly difficult to maintain secure livelihoods in the countryside where over three-fourths of Cambodians dwell. The natural population growth rate is over 2.5 percent per annum and there has been virtually no occupational diversification away from agriculture occurring, even in recent years when the economy has shown some buoyancy.³ The pressures on the primary sector to yield more and broaden its activity base are thus very high.⁴ Cambodia was once a rice-self-sufficient and food-exporting country; it is now a net food importer. Many people, in as many as 350 communes out of about 1,600, are dependent on multilateral food-aid programmes. The problems described here lend credence to the need for a land programme to promote food security, in addition to creating an administrative and legal framework for achieving peace and justice.

¹ A concise statement of recent events and intents on land policy can be seen in Sida (2000). The word 'land' is used here to cover all types of land, including agricultural and residential.

² While there was some positive trend observed in the 1990s, a long-period comparison shows that similar levels of productivity existed as early as in the 1960s.

³ There are some 130,000 workers engaged in the garment industry, which began to develop in the mid-1990s. According to CDRI studies, the impact of this industry on the structure of the labour force has been minimal.

⁴ This problem is best illustrated by the fact that despite rapid growth in the economy for several years in the 1990s, its impact on poverty was, at best, minimal. For elaboration, see Acharya (2001) and Godfrey *et al* (2001).

A sketch of the contemporary land situation is a useful starting point. Cambodia's overall land area is estimated at 18 million hectares, including about 8 million hectares given out in the form of land concessions, about 3.3 million under protected forests, and about 2.7 million under cultivation (mainly rice)⁵. The rest of the land is comprised of scrubland, water bodies, undulating terrains, unused land, urban areas and mine-affected land. Demarcation of land by ownership and use, at the broad, country level as well as at individual plot level, is more usufructory than formal, particularly in rural areas. There is neither a large-scale articulation of private property guaranteed by the state and law, nor do cadastral maps and demarcation details exist, other than for very small areas. The system of use rights worked well when the population of the country was about 4-5 million and living in relative isolation. Most other countries having a history of land systems similar to Cambodia's developed a system of formal property rights during the later half of the 20th century. This came about through modernisation and gradual adaptation of the market economy. Cambodia, however, missed this process because the country was at war for almost three decades. In the early 1990s, the country was suddenly exposed to the market economy and the global economic environment without being adequately prepared⁶. As a result, there are few regulatory and control mechanisms in place, which are a prerequisite for a market economy to function efficiently. In fact, their absence has been a significant obstacle for both the private sector and for the populace at large. This is a potential source of social strife, which most people desperately want to relegate to the past. The need to bring land under a comprehensive administrative-cum-legal framework is thus a very high priority.

As of now, several types of land control systems co-exist. Many people, after their displacement in the earlier decades, are still looking for land. Also, new families are being formed due to the rapid population growth in the 1980s. Keeping these factors in mind, it is imperative for the authorities to make a comprehensive land measurement, titling and registration process a priority, while taking all stakeholders of land as partners. Since proper targeting of land title and registration activities, ensuring a fair deal to vulnerable sections of the society, and being socio-culturally appropriate, institutionally feasible, and gender sensitive, are some of the inalienable components of the project, the government considered it appropriate to first conduct a social assessment for collecting some data that would help in reaching these objectives. This paper, which is a revised version of the report prepared by CDRI for the government, presents the findings of such an assessment made after visiting selected field settings and interviewing people, authorities and concerned donor agencies.

1.3. The Objectives

The social assessment was conducted with the following specific objectives:

1. To classify who are the different stakeholders of land and of the project, their level of awareness and knowledge, experience, interest, need, problems, constraints and limitations faced with regard to acquisition of, or the application for, ownership and possession rights and the subsequent registration of land transactions;
2. To determine the level of social organisation and capacity at the village and community levels to participate in organised systematic adjudication and land registration activities;
3. To identify the traditional and current land dispute resolution mechanisms at the village, commune, district and provincial levels and, people's perceptions of their effectiveness;

⁵ The area given out for forest concessions is highly contested. The figures given here are taken from Williams (1999). A fuller statement on this can be seen in Chan *et al* (2001).

⁶ In most countries market forces have gradually evolved so that the absorption of their different aspects is ensured. In Cambodia it was virtually a shock.

4. To recognise equality and inequalities between men and women in regard to ownership rights and use of real property;
5. To predict possible negative impacts of the project on specific individuals and groups, and how these can be mitigated;
6. To suggest what needs to be done to enable villages, communes and local government units to participate substantially during project design and implementation, and what should their participation be;
7. To caution against possible social risks, that can possibly affect the success of the project.

1.4. Methodology

As the objectives mention, the main aims of the social assessment are to: (1) identify different critical stakeholders in the project and land, (2) judge capacities of the local administrations to address different aspects related to the titling programme, and (3) forecast possible negative impacts of the programme and suggest mitigation measures. Following a brief literature survey, a stakeholder analysis was done based on existing knowledge and field studies conducted in six provinces. Representatives of different organisations associated with titling were interviewed, and in some cases even brought together for discussion. The officials included were personnel from the Ministry of Land Management, Urban Planning, and Construction (MLMUPC), the provincial Departments of Land Management, Urban Planning, Construction and Cadastre (DLMUPCC), and the District Offices of Land Management, Urban Planning, Construction and Land (OLMUPCL). Personnel from the Central Cadastral Office, representatives of the Provincial Land Dispute Settlement Commissions (LDSC), officials from the Provincial Departments of Agriculture and Forestry, Provincial Chief Judges, and Provincial Tax Departments, as well as District Chiefs/Deputy Chiefs, and Commune Chiefs were also interviewed. In some cases, the team was also able to meet Provincial Deputy Governors. In order to understand urban issues from the point of view of the stakeholders in the project, a seminar was organised with representatives from Sangkats, Khans, Phnom Penh Municipality, urban development authorities, and NGOs.

Table 1.1. The Sample Area

Target province	Criterion for village /area selection	Selected village/area, commune and district (name)
Kandal	Commercial activities in addition to cultivation, resettled populations	Kampong Pring village, in Sethabo commune, Sa-ang district
Kampot	Rice and chamkar cultivation and fishing activities	Kampong Thnoat village in Konsat commune, Kampot district
Prey Veng	Predominantly paddy (surplus) plus fishing activities, sedentary populations	Babaong village in Babaong commune, Piem Ro district
Kampong Speu	Resettlement areas, large concession activities	Village 4, Treng Traying commune, Phnom Chruot district
Rattanakiri	Indigenous people's groups	Phum Psak village in Ta-org commune, Konmum district
Phnom Penh	Low income settlement, illegal land occupation	Villages 14 & 15, Sangkat Tonle Bassac, Khan Chamkar Mon

Five case studies from five villages, each from the provinces of Kandal, Prey Veng, Kampot, Kampong Speu and Rattanakiri representing different agro-ecological zones, concentration of returnee populations, demobilised soldiers and indigenous peoples, in addition to one urban case study (in Khan Chamkar Mon, Phnom Penh), form the core of the field inquiry. Farmers' groups, women's groups, returnees, displaced persons, demobilised soldiers and migrant populations were some of the constituents who were interviewed. Details of the sample can be seen in Table 1.1 below. Some of the methods employed in preparing

these case studies were qualitative, such as focus group discussions, small group discussions, and individual discussions with farmers, families, women's groups and village level officials/representatives as well as more in-depth probes into individual cases of concern.

Useful information from GTZ and the Finnish Government (FinnMap)-assisted land registration programmes has also been gathered in order to learn lessons on relevant "do's and don'ts" with regard to community participation in the systematic titling programme.

Like others, this study also has its limitations. For one, it is a small, purposively sampled study; as a result, it cannot claim to represent the entire land situation in Cambodia. Next, the urban situation in smaller towns is not addressed in the paper. Lastly, being a study based on 'rapid' qualitative methods, it perhaps lacks some perspectives that detailed anthropological studies would capture. In this regard, the research has not been able to generate enough firm, quantitative parameters.

1.5. Layout of the Paper

This paper is written in seven chapters. Following this Introduction, Chapter 2 sketches the socio-economic and political contexts of Cambodia in regard to the land situation. Chapter 3 details the land situation in the country as seen from the field studies in both rural and urban areas and interviews with different stakeholders and authorities, with specific reference to regional differences. The principal purpose of this chapter is to identify the different stakeholders in land. Chapter 4 discusses the administrative mechanisms presently in place for titling and registration, and their strengths and weaknesses. It then identifies the stakeholders in the project and their capacities and constraints. Chapter 5 examines the different types of land conflicts, the different conflict resolution mechanisms (created by the state and community) and their efficacy in conflict resolution. Chapter 6 then articulates policy recommendations and suggestions designed to promote a smooth titling process, and to subsequently reap benefits from it. Chapter 7 concludes the paper. Short summaries of each of the villages and urban settings studied and the urban policy implementers' seminar append the paper. Interview guides and tools of interview are annexed as well.

Chapter Two

The Land Situation in Cambodia¹

2.1. Theoretically Locating the Land Situation

Property rights are being transformed (in the recent years) in several countries throughout the world – in parts of Asia, Africa, former socialist countries in Europe, and in countries where there is rapid change from agriculture to industry. Such transformations are also occurring in places where there are large indigenous populations involved. In many instances the change is too quick and it affects large numbers. One of the approaches adopted by governments is to privatise lands, under the assumption that markets will efficiently allocate them to the highest welfare of the society. This, however, may not be true all the time, particularly when the markets are imperfect or underdeveloped, when there are few resources and opportunities for subsistence farmers to change in other activities, or finally, when the affected groups lack information about the legal and administrative systems. The effective management of transitions in which there is protection of interests for different groups, particularly the weaker sections, therefore becomes central to achieving success in land reforms.

Not long ago, Asian farming-systems could have been categorised into two major types: *intensive* farming systems and *extensive* farming systems. The former existed in relatively more populated areas where resources were mobilised to undertake intensive work on less available lands. The management system was hierarchic and regimented. Property rights were relatively well defined, and were supported by drawings of land boundaries. There were also codified rights to forestlands and other common property resources. Such systems, among other places, were found in South Asia. In contrast, many parts of Southeast Asia, Cambodia included, had extensive farming systems where there was an abundance of land compared to population size. Forests could be cleared to bring more land under cultivation with virtually no ecological implications. In these farming systems, peasants did not possess many means of production, and they also invested little in land. When land fertility would begin to decline, people had the option to shift to other plots and areas. Shifting cultivation thus is a part of the extensive farming systems. Land was not a traded commodity; instead it was considered to be a gift of nature. Extensive farming systems had relatively feeble social hierarchies and loose and un-codified systems of land rights (Boserup 1965).² Also, the concepts of ownership, control and use of land had their own connotations. For example, the use of land was the most important in the sense s/he who used the land defined its control and ownership. This is a fundamental difference between the commonly held notions in today's private property regimes and those understood in extensive farming systems (Hanks 1972). Stakeholders of land were the relatively undifferentiated peasantry, whose demand for land

¹ This chapter is largely based on the existing literature and data.

² See also, Jose (1986) and Bray (1986) for further details on the Southeast Asian situation. For Cambodia, useful references can be seen in earlier French colonial writings summarised in Chandler (1993) and Meijers (1994) and also Thion (1993: 20-41)

was met by the bounties of nature. With the advent of modernisation and population growth, extensive farming systems have been seriously disrupted, and people dependent on it have faced impoverishment.

While Cambodia has experienced one of the most turbulent histories in the last 100 years, the basic livelihood strategy never effectively changed from subsistence-oriented farming to any other form. The peasants have remained illiterate and poor and have not had the opportunity to modernise or improve upon their survival strategy. There is no denying that product markets have developed to some extent in many areas as farmers have begun to produce for the market and profit, especially *chamkar* crops (non-rice, commercial crops). But the same cannot be said about land markets.³ Thus, large numbers of the populace still live in the shadow of the land systems of previous years. This aspect is further highlighted below.

2.2. A Brief History of Land in Cambodia

In the pre-colonial period, land belonged to the sovereign, but people could freely cultivate as much land as they wished. Limited means of cultivation, however, restricted individual land holdings to no more than 1-3 hectares. Since the population was small and there was as such no land market, farmers could freely move from one area to another and acquire ownership of land. Owners had exclusive right to possess, use or inherit agricultural land without having to fulfil any formalities other than a token feudal tribute (Thion 1993). Through the late 1800s to 1930s, the French colonists tried to introduce the system of private property and formal ownership of land, but were not entirely successful. They were able to make some progress in the rice growing plains, but vast areas outside the plains (e.g. forests and swidden lands) were left out. Post-colonial Cambodia (1953-1975) utilised the same land system as the one put in place by the French, but again, the success in land codification, privatisation and commercialisation was rather limited. The Khmer Rouge (1975-79) collectivised all land. Privatisation was resumed in the mid-late 1980s, and was formalised in 1989. Since then, farmers and non-farmers have been able to possess private lands as long as they use them. Land unused for more than three years reverts back to the state.

As stated above, through the last 100 years or so, evolution of land markets and commoditisation of land have been slow and uneven. In some parts of the country (e.g. the major rice fields around the *Tonle Sap*) sedentary farming has firmly taken root. However, even there many customary habits regarding land holding and control have continued to prevail. Also, in the new areas that have been recently cultivated in the past few years, the old custom of claiming land by felling trees still prevails. These lands are claimed first and applications to authorities for legitimising those claims are then made later. In many instances, though, such applications are never made. Shifting cultivation, which is principally, though not exclusively, practiced by indigenous populations, occurs mainly in the northeast. In such areas, the notion of property is community oriented and not private. Forests, which still cover more than half the country, are now under sovereign ownership, even though large concessions have been granted to private companies. Within the forests, there are still villages where people continue to practice swidden or other forms of cultivation, as well as gather wood and non-timber forest products.⁴

As land is increasingly privatised – in term of ownership as well as control – co-existence of multiple modes of control of land is emerging. First, there is the subsistence

³ In the recent years people have lost land because of excessive indebtedness or for meeting expenses towards illness. This should not be mistaken with evolution of a land market or transformation of the land use mode. An evolved land market is one in which people are able to use the market mechanism for optimal resource/land allocation and use.

⁴ Villagers though are now increasingly being stopped from their traditional access to the forest by the concession holders.

mode that a large majority of the population follows. Second, there is the communal control of land found in the shifting cultivation areas. Third, there is the market mode that has engulfed all urban areas and spread to rural areas through speculative interests, commercial farmers as well as land and forest concessionaries. There is often a conflict between people using different modes of control. The market-oriented interests invariably gain since they have the state, law and information on their side, in contrast to peasants who are more often illiterate and have modest means. This has led to dispossession of land and distress to many, which is a situation that may not be politically desirable if it continues. The transition mentioned earlier thus needs to be carefully managed so that there is a check on land alienation and disruption in people's capacity to earn secured livelihoods.

2.3. Some Critical Concerns in the Present Land Situation

When land was privatised in 1989, it is widely believed that there was a fair degree of equity in the distribution of land and that almost all who were eligible, actually received land. Ownership rights were given for residential plots of sizes not exceeding 2,000 square metres. Possession rights were given for cultivated land of plots not exceeding five hectares, and concession rights were given in plantation plots greater than five hectares. In addition, ownership rights were given to citizens who occupied houses and dwellings in Phnom Penh (Williams 1999). After a decade, however, there has been widespread discontent at the local level about landlessness and inequality. Evidence of such discontent can amply be found in a number of newspapers as well as scholastic writings (Kato 1999). The direct impact of land distribution between 1989 and 1998 on poverty reduction has been difficult to discern though it is well accepted by all that thorough land reforms must be carried out.⁵

There are at least five issues about which there is widespread concern. These are: (1) rising land inequality, (2) landlessness, (3) lack of secure tenure, (4) increasing conflict related to land, and (5) growth of illegal squatter settlements in urban areas, particularly in Phnom Penh. These are discussed in turn here.

2.3.1. Land inequality

While systematic data on land inequality are far from adequate, existing sources suggest that land inequality has risen significantly in the recent years. The Socio-economic Survey (SES) of 1997, which is representative of the whole country, except for some small areas left out due to the prevailing conflict at that time, shows a Gini coefficient of inequality of the value of 0.66 for rural areas.⁶ This is high in absolute terms. The Mekong River Commission (MRC) survey of 1995-96, conducted in eight provinces, mainly covered a large number of fishing communities. The sample size is large, covering over 5000 households, and is hence quite representative of the populations it surveyed. It shows a Gini coefficient of land inequality of 0.61. Other surveys showing unequal distribution of land include a joint survey by the World Food Programme (WFP) and UNICEF (in 1998, known as the Baseline Survey) and another by the WFP (also in 1998, known as the Protracted Emergency Targeting (PET) survey). Although smaller in scale and targeted towards the poorer sections of society such as displaced persons and similar groups, these still show Gini coefficient values of 0.50 and 0.47, respectively.

There are many possible reasons identified for such inequality in land holdings. The first is *demographic pressure*. For example, population in the 1980s rose at a very rapid pace and it is estimated that between 1990 and 1998, it rose by about 30 percent (Williams 1999; NIS 1999). A very large number of new families have emerged, many of whom are landless (Biddulph 2000). The area of land under cultivation increased at a slower rate, however, and the total cultivated area under paddy has yet to reach that of the 1960s, as seen from data for

⁵ See RGC (1999) for poverty trends in the 1990s.

⁶ A Gini coefficient of inequality ranges between zero (total equality) and unity (total inequality).

late 1990s. Since only modest occupational diversification has occurred – the population dependent on agriculture has increased significantly – many more people have to be accommodated on the same areas of agricultural land. Since family structures, land quality, morbidity patterns, and associated expenditures all differ across households and regions, the socio-economic and political dynamics of land control also vary (Kato 1999; Biddulph 2000). As a result, some households have had to sub-divide land, while others have had to sell parts or all of it. Inequalities have thus come about. The second reason relates to the *large unsettled populations* that have emerged during the 1990s. For example, many of the refugees returning from the Thai border in 1992-93 did not receive land. One major reason was that land in their preferred resettlement areas was already claimed, was mined or was contested by different fractions. Many in this population group were thus not able to reap the benefits of the land distribution scheme of 1989, and had to be accommodated on holdings owned by their family members. This in turn resulted in a family sub-division of holdings (and increasing inequalities). Third, *formal credit markets are weak*, particularly in rural areas. This means that farmers must depend on credit at very high interest rates for buying/hiring inputs such as fertilisers, draught animals and labour. In the event of a bad harvest (e.g. floods, droughts or pest attacks), some small or less resourceful farmers are forced to sell part or all of their lands to more resourceful people for repaying their debts. This, in effect, means that some land holdings become larger, while others, smaller. In the same vein, it has been observed that a poor public health system forces people to use private health services when they fall ill. These are expensive, and many people have to dispose of part or all of their land and other resources to meet health care expenses (Biddulph 2000).

Lastly, *speculative purchases* of large areas of land by a few people have contributed to the rise in inequality. The dynamics are somewhat as follows. It is now widely accepted that the benefits of development in the last decade have gone, to a very large extent, to those who live in Phnom Penh or other large urban centres.⁷ But unlike elsewhere (e.g. Thailand, China) where there are many opportunities for investment such as industries, stocks, bonds or the like, Cambodia has very limited avenues for investment. After exhausting investment possibilities in hotels/restaurants, people have invested in land because there are no other choices. Land transfer in favour of the city-based rich at the expense of the rural, often poor, has thus become an inevitable process.

2.3.2. Landlessness

It is a major cause of concern that farmers involuntarily lose land and become landless. Estimates based on SES 1997 data show that up to 12 percent of all rural households are landless. The MRC survey shows that within fishing communities, the figure could be as high as 24 percent. The Baseline survey shows landlessness to be about 11 percent, and the PET study places it at 17 percent. Landlessness is higher among female-headed households than among male-headed ones. The more urbanised and commercial regions (e.g. Kandal, Kampong Cham) and some western provinces (Battambang, Koh Kong) have higher rates of landlessness than others have. The reasons for landlessness are just about the same as those for the inequality in land distribution: high demographic pressure, low occupational diversification, unsettled populations (including returnee refugees) high costs of borrowing, poor quality social/health services which force people to use high-priced services, and speculative land acquisitions by a few. Some additional reasons for landlessness are shortage of labour power (particularly in the female-headed households), persistent fighting in some areas and slow progress in demining land. The Baseline survey also shows that a small percentage of people had to sell residential lands to meet food expenses. These were more likely to be female-headed households than male-headed ones. Since land plots are in any case small – average holding per household is in the range 1-2 hectares – a land sale in many

⁷ This urban bias is a well-recognised fact now. See for example, Curtis (1998: 80-84).

cases results in total landlessness. Observations indicate that very small landholders are the ones who most easily become landless.⁸

2.3.3. *Lack of land tenure*

After lands were privatised in 1989, a very large number of farmers and urban dwellers were given receipts to support their claims. However, according to the Department of Cadastre and Geography, not more than 13-14 percent of the estimated 4-5 million applicants have received formal certificates of ownership. Equally important, after the receipts for the initial claims were made lands have been subject to transfers and sub-divisions. Such transactions have not necessarily been reported to the appropriate authorities. Unreported agricultural land transfers are more likely in rural areas compared to residential lands and lands in urban areas. The SES 1997 also suggests that there is some confusion among the respondents, as most do not seem to know what appropriate land papers are.

Historically, the land tenure system in Cambodia, as mentioned earlier, has been of the 'extensive' type in which there were no firm land rights awarded to people. In recent times with the advent of the market system, this legacy has created problems of insecure tenure. The greater the extent of commercialisation, the more insecurity is felt by those not effectively integrated into the market. For example, the PET survey shows that up to 3 percent of the households reported land loss due to forced takeover by others.

Experience suggests that "land tenure is critical if farmers are going to invest in sustainable agricultural practices. Farmers in Cambodia have no legal titles to the land they cultivate and this has led to land disputes and created an unstable environment for land improvements" (RGC 1998). This is a quote from the government's own documents, which acknowledges the consequences of insecure tenure. The situation worsens when bureaucrats are tempted to oblige those who can afford to pay for manipulating papers (Williams 1999).

Not only do landholders and farmers lose; the state also loses because no land tax is paid on most transactions. Also at stake is the legitimacy of the system when it is characterised by inaction.

2.3.4. *Land conflicts*

Systematic statistics on the status of conflicts are not available, but it is believed that these are on the rise, as seen from the records of the provincial land disputes settlement commissions and the judicial system. Conflicts are also observable in media reports of farmers coming to the National Assembly to complain about loss of their land. The large surveys referred to earlier also show that some farmers have been forced off their lands. The potential for conflict is high in such situations.

The Oxfam project on land reports the existence of unsolved cases of conflict on land between farmers and authorities in the five provinces it studied in the western parts of the country (Williams 2000). There are conflicts arising out of unsettled boundaries and contested claims on land in other parts of the country as well. Land conflicts are not unique to Cambodia, as they exist in all parts of the world. Problems arise when: (1) there is a weak basis of settlement (e.g. no documentation); (2) there is an ambiguous legal system (which also includes complicated and expensive procedures); and/or (3) there is a lack of impartial and efficient conflict resolution mechanism. This is typically the case in Cambodia.

Lastly, in some countries there is a well-defined relocation and habitation policy, and in case land has to be acquired for larger public use (including use for security purposes), the aggrieved parties are relocated under this provision. Cambodia's relocation policy does not address such issues.

⁸ For a detailed compilation of statistics on land inequality and landlessness, see Sik (2000).

2.3.5. Urban shanty settlements

Phnom Penh has been receiving migrant populations in search of livelihood ever since the 1980s. They not only come from other provinces, but from neighbouring countries as well. Many have illegally occupied land and set up shantytowns on land owned by the city. This has occurred along the riverside, in some areas of the south and in portions of the Khan Tuol Kork. Municipal authorities have removed some of these populations, but their livelihood needs have brought them back. It is estimated that squatter populations number more than 175,000, spread across 20 slums and low-income settlements. The tension between the zoning and beautification of the city on the one hand, and efforts by these groups to earn a livelihood on the other, is a cause of concern.

The new land policy framework, of which the titling programme is an integral component, is expected to help redress the issues mentioned here, as well as others. If not, the framework may remain as ineffective as the previous land law was. The social assessment tries to shed light on each of these issues, and highlights the implications for the titling programme.

2.4. Summing Up

Market relations are increasingly affecting the subsistence sector, which has its historical origins in extensive farming systems. The country, however, has remained at a very low level of occupational diversification. Added to this problem is the large number of displaced people who are still searching for a place to settle. This has raised the demand for land. With the emergent commoditisation of land, there appears to be tension arising at the borders between the different modes of land use. A titling programme can definitely help to ease and resolve such tensions.

Chapter Three

The Land Situation¹

3.1. Land Use Patterns

During the 1980s, individual households primarily directed land use at maintaining subsistence levels of agricultural production for self-use and minimal exchange, but not for the larger commercial markets. It is estimated that the average land size was never more than 1.0-1.5 hectares and that productivity was in the range 1.2-1.5 tonnes per hectare. Both per unit land holding and productivity were often insufficient to meet the household's annual food requirements. Also, a large part of potentially arable land was not cultivated because of social upheaval. During the 1980s, the country was a net food importer. In many areas, particularly those located near water resources and/or forest areas, people compensated for seasonal deficits in rice production with home gardens, foraging in the forest, and fishing.² Land values remained generally low in the absence of a demand for land from outside the subsistence sector, limits on population movement, and lack of cash to buy land. Other deterrents to the development of a land market were low levels of rural development services and infrastructure, lack of other forms of investment, very low levels of human capital formation, and relatively high economic isolation. In such circumstances, land ownership and control were more or less synonymously linked to the productive use of land, and recognised according to custom by neighbours and local authorities at the local level. Indeed, the privatisation of land in 1989 reflected this fundamental linkage between use rights and control/ownership rights, as each household was eligible for formal land titling based on household size and the productive use of a given area of land (up to five hectares).

From the beginning of late-1980s, when controls over population movements were relaxed and with the advent of a more open market economy and international exposure, land use patterns have changed dramatically in areas situated along major roads and near urban market centres. For example, in Sa-ang district (Kandal Province) and Phnom Srouch district (Kampong Speu Province), local farmers have been moving out of subsistence rice farming in order to enter urban labour markets or to engage in *chamkar* (cash) cropping for sales to Phnom Penh markets. At the time of the survey, a considerable surplus of horticultural and animal-based food products (pork, chicken) could be seen in markets, along with modern agricultural input supplies. In Piem Ro district (Prey Veng Province), farmers have intensified wet-rice production for sale in urban markets through the use of inputs such as fertilisers. However, in many parts of Kampot district (Kampot province), and Rattanakiri, where indigenous people who have traditionally practised swidden forms of cultivation, people have more or less maintained traditional land use patterns. It is believed that this uneven spread of

¹ This chapter is entirely based on the fieldwork conducted in the six settlements.

² Statistics show that up to 75 percent protein input in the Cambodian diet comes from fish (Murshid 1997).

market-oriented production is a countrywide phenomenon, as only a few areas have experienced external exposure, while the vast majority has not.

The changes in land use by local residents have been accompanied (and, in fact, caused by) increasing demands on land resources from origins outside the community, including individuals, private companies and state institutions. For example, in Sa-ang and Phnom Srouch, many local farmers have sold both residential and agricultural lands to people with commercial interests from Phnom Penh, or other urban-based buyers frequently referred to as ‘people from Phnom Penh’. In Phnom Srouch, local farmers have sold land to large commercial farmers, commercial interests and private companies. In Rattanakiri, indigenous people have sold land to migrants from other provinces who in turn have begun to use the land more intensively, in contrast to swidden cultivation. In Phnom Srouch, private companies have acquired agricultural land from the military through concessions granted to them. Thus, another source of demand for land are the concessions given to plantations, for logging or for commercial agricultural production. In nearly all cases – other than forests given out on concessions – the supply of land has emerged from the subsistence sectors.

In Phnom Penh too, land use patterns have distinctly altered. Considered once as one of the most beautiful cities of Southeast Asia, the city now accommodates more than twice the population for which it was planned. A large proportion of this increased population has come to occupy land on riversides, lakesides, public places, pavements, and on the periphery of the city. These demands for urban land have been met mostly through encroachment, illegal sales and purchases, and transfer of land use from agriculture to residential purposes.

Such shifts in land use patterns have been accompanied by a corresponding shift in people’s perceptions of land rights. Generally speaking, under conditions of subsistence cultivation, where land values were/are relatively low, control over land was/is based primarily on the actual productive use of land, that was/is recognised and enforced according to local traditions and customs. However, as land assumes increasing value and becomes an object of commercial exchange, control-rights increasingly tend to be based on the legal means recognised and enforced by the state. A dual system of control and ownership is rapidly emerging in areas where land is being acquired by people and institutions from outside the community for purposes other than mere subsistence farming. *Land use rights* are recognised locally by people within the community, while *formal legal rights* are recognised by people from outside the community. The system is not quite divided into these two clear categories, however. Those people who recognise the importance of obtaining some papers to support their claim on land, but are not able to ‘buy’ the rights papers, try to generate forms of evidence that are more than just traditional, but yet not quite correct in law. There are, thus, several types of unauthenticated contracts signed and kept by the landholders.

3.2. Land Transfers/Acquisition

In four of the five rural areas studied, the primary means of land acquisition, other than inheritance, have involved sales and “land grabbing”. Only in Kampot (the fifth area) were there few, if any, land sales or transfers; only inheritance was reported. The team was informed, however, that land grabbing has occurred in the neighbouring districts of Kampot.

3.2.1. Land sales

In Sa-ang and Phnom Srouch, land sales primarily involve smallholder farmers selling land to people from Phnom Penh who buy residential plots and/or agricultural areas for *chamkar* production or land for speculative investment. In the case of non-agricultural plots, the purpose has been for the construction of a factory, business, or a residence. In Rattanakiri, land sales have involved locals who sell land to people from Banlung town or from other market centres (e.g. merchants, government and military officials). Land has also been sold to migrants from areas such as Kampong Cham and Takeo. In the majority of these cases, the

primary motivation for selling land is the need for short-term cash, which cannot be met from subsistence activities. In the case of distress sales, people cited the need for cash to pay for family health care (Kampot) and/or pay off outstanding high-cost loans (Piem Ro). In other cases, people sold land in order to finance the purchase of consumer goods and/or make home improvements. In a few cases, people reported selling land in order to buy land elsewhere and/or invest in more productive forms of production, such as motorcycles for commercial use (reported in Sa-ang and Kampot.)

One variation on land sales was reported in Rattanakiri where people reported selling land after being threatened by outside buyers or their agents. In such cases, people indicated they agreed to sell land along the road after they were told that the land would otherwise be taken by the state. People reasoned that they might as well get something for the land if it was going to be taken anyway.

3.2.2. Land grabbing

In Phnom Srouch and Rattanakiri, instances of land grabbing were reported. While some families surely were affected, the quantities of land grabbed were however not large enough to affect the entire village. These cases generally involved people or companies from outside the community or the military, who had access to more resources and power. In both of these areas, land grabbing took place in one of two circumstances. First, land grabbing occurred in areas where swidden agriculture was the primary mode of cultivation. These lands were lying fallow, but were locally recognised as being under the domain of subsistence farmers and their communities. However, to outsiders such lands appeared, at the moment of acquisition, not to be under productive cultivation and were therefore available to take. In the second case, land grabbing involved land that was actually being used by people, but for which they did not have an official title. Probably the best example of this mode of land grabbing involved a Korean company that had obtained land from the military in Phnom Srouch. The company expanded its area of control to include land that was actually being productively farmed by 108 families, including the village chief.

Land grabbing has taken a unique route in Sa-ang, where at least one person, who already controlled a piece of land, by-passed the regular route of going through the village and communes chiefs in order to obtain a certificate. He is said to have succeeded in 'influencing' officials at the higher levels to declare his land plot to be larger than what it actually was so he could take over a neighbour's plot. This larger plot was then registered as a single parcel, thereby depriving the unsuspecting neighbour of part or all of his/her land.

3.2.3. Encroachment

Land is sometimes obtained through encroachment. This generally involves smaller/landless farmers, who encroach upon property formally belonging to either the state or to a large commercial enterprise. The state, private individuals, and companies reported several instances of encroachment in which people occupied land that they claimed was theirs. In Sa-ang, a group of 1992-93 refugee returnees occupied lands along a canal that was supposedly state property. The local police eventually evicted this group. In Phnom Srouch, migrants occupied unused land that buyers from Phnom Penh had acquired from local residents. Other instances of encroachment reported in these areas included people who establish agricultural plots in state-controlled forests. Cases of returnees encroaching on company land in Kampot were also mentioned. Probably the most well known instances of encroachment, however, occur in Phnom Penh. Here migrants from rural areas *ex-post facto* acquire use rights on state land, and set up large-scale shantytowns and businesses. This encroachment has assumed semi-permanent status, with land plots and houses being constantly bought and sold.

3.3. Land Titling/Certificates

The total number of applications for land certificates exceeds four million. However, the actual number of certificates issued since 1989 is only about 540,000. This figure seems to be reflected in the study areas as well.

Government officials in the provincial Departments of Land Management, Urban Planning, Construction and Cadastre (DLMUPCC), as well as the District Offices of Land Management, Urban Planning, Construction and Land (OLMUPCL) routinely attributed the low number of certificates issued to the fact that people did not value land certificates and/or that they did not understand how to obtain them. Conversely, people in the study areas routinely cited five reasons for wanting land titles, despite the fact that many of them had not made efforts to obtain them. First, people observed that land titles would help facilitate land sales (Kandal). Second, they cited that land titles were useful for obtaining credit (Piem Ro). Third, land titles would help clarify boundaries of land and thus help reduce land disputes (Phnom Srouch). Fourth, titles would protect their claims to certain areas of land (Phnom Srouch). Last, land titles would help families pass on their land to children in the future (everywhere). However, people cited the high transaction costs (long delays and large unofficial fees) as the primary reason why they did not obtain certificates. In fact, the arguments of both government officials and landholders are partially correct, though for different reasons. The explanation is much more complex than what either government officials or people, have elaborated.

In the mid-to-late 1980s, many people initially applied for land certificates at a time when land was used primarily for subsistence levels of agricultural production or residence in the village. At that time, land values were essentially quite low and there was no land market of significance. In such circumstances, land use rights were more or less recognised and enforced according to local traditions and customs. In this sense one's claim to land depended more on the informal agreement of neighbours and local authorities than it did on the formal recognition of the state. In the absence of a land market where land had little or no value as a commodity for exchange, land certificates did not appear to have much value. Those circumstances continue to prevail in large tracts in the hinterland of the country, and therefore accounts, in part, for why many people do not pursue land certificates. In this regard, government officials are at least partly correct when they suggest that people do not value land certificates. However, it would be more accurate to say that people may not value land certificates under certain specific conditions; namely, in areas where subsistence farming continues and where there is little or no perceived demographic pressure on land, or few pressures to purchase land.

Moreover, the ability of the provincial DLMUPCC and district OLMUPCL cadastral teams to conduct land surveys and issue certificates has also been severely limited by constraints associated with lack of technical, human and financial resources. To make up for a lack of financial resources, applicants are asked to pay 'unofficial fees'. As costs have increased over time, people have decided not to pursue the land-titling process through to its culmination in the granting of land certificates.³ This set of circumstances largely accounts for why many small-hold farmers in areas clearly characterised by newly emerging land markets do not obtain certificates, despite the fact that they may have originally applied for them.

However, it is important to note that in the four rural study areas where land markets are emerging, the demand for formally recognised land claims is nevertheless changing in order to facilitate various kinds of land transactions. In Phnom Penh City, the demand for land has rapidly risen in recent years, but no such transition is occurring, since the whole area has

³ It is interesting to note that the demand for certificates did rise earlier to peak in 1995. Excessive costs are part of the reason for the decline in demand thereafter. There are other reasons as well, which are not elaborated here.

long had officially-recognised land titles. The demand for recognition of illegal occupancy is nevertheless taking place as slum-dwelling people put up permanent structures, thus making eviction much more difficult.

In the four rural study areas, where there is some degree of market penetration, the relationships between increased demand for land and the associated diversification of land use patterns is also accompanied by changes in people's perceptions of land rights. It is not surprising, therefore, to observe that as the value of land increases, people also demand more formal institutions for recognising and enforcing their respective claims to land. Thus as land use patterns change and become more diversified, traditional means of land control are being replaced by a growing demand for more formal institutions of land rights governance. For example, in Sa-ang and Phnom Srouch, where land sales involve local smallholders selling land to outsiders, the demand for land titles is related to the need to reduce the transaction costs associated with the sale. Buyers primarily want some kind of documentation that establishes and affirms their claim to land. Buyers also want land certificates, which establish clear boundaries that will not be disputed in the future. The demand for land titles in Kampot, however, is till so far mainly to facilitate sub-division of property at the time of inheritance. In Phnom Penh City, the authorities have regularised encroachments by entering into temporary 'use-right' agreements with residents.

In Rattanakiri and Kampong Speu, where problems associated with land grabbing are well known, people expressed a desire for land titles as a means of safeguarding their claims to land. People understand that in the context of an emerging land market associated with the increasing value of land, local traditions and customs are not sufficient for protecting their claims. They also expressed an interest in acquiring land titles as a means of facilitating land sales, and stated that land that was already titled had more value than land that was not yet titled.

However, the supply of formal institutional mechanisms in the form of land certificates has not yet kept pace with the demand. As a result, parallel mechanisms are being employed to meet this demand. For example, land sales are currently facilitated through two mechanisms. First, in areas such as Sa-ang and Phnom Srouch, transactions are primarily facilitated through the exchange of receipts for land title applications. Second, in Rattanakiri, land sales are facilitated by written contracts between buyers and sellers. In each of these cases, the village chief, and on occasion, the commune chief, authenticates the contracts for a fee paid by the buyer, which validates the land transaction. In both instances, the courts and the Land Dispute Settlement Commissions also recognise the transaction as representing a valid legal claim to the land, even though a sales tax may not have been paid for the transaction. Such procedures are grossly different from that laid out in the law. Buyers from outside the community may also further substantiate their claim to a specific parcel of land following such transactions by either building fences (e.g. in Sa-ang, Piem Ro and Phnom Srouch) and/or planting trees (e.g. in Rattanakiri). Even in Phnom Penh City, transactions based on letters authenticated by witnesses are not uncommon. Only in a few cases do buyers then apply for a formal land title according to established procedures. The fact that so few certificates are being issued relative to the apparent number of transactions suggests that the high cost of obtaining certificates is an inhibiting factor for many buyers, even in cases involving coerced sales, such as in Rattanakiri.

In the case of Kampot, where land use patterns have remained unchanged in support of subsistence agriculture, most people continue to rely on traditional village-based institutions for validating claims based on use. Indeed, many if not all, households were issued receipts for land certificate applications for their house plots in the early 1990s. However, these receipts were lost in a fire and there has been no follow up or demand for certificates by people since then. People indicated that they would welcome land titles but do not want to pay more than 2,000-3,000 riels for them. This suggests that there is no active land market

where land values are relatively low. In such situations, there are few if any, disputes regarding land and consequently little demand for land certificates.

3.4. Gender Aspects in Land Use and Ownership

The gender situation is far from benign in the Cambodian land scenario. Inequalities between males and females in access to land and land ownership have been growing in the villages studied. In this study, the gender gap was most clearly seen in the differences between male and female-headed households. Female-headed households control smaller-sized plots of farmland than do households headed by males, despite the fact that households headed by both sexes initially received lands of similar size from the state. After the land distribution in late 1980s, female-headed households could not enlarge their farmland as the male-headed households could due to shortages of labour and draft animals. In general, female-headed households have also been more vulnerable to becoming landless.

Regarding land titles, women have less knowledge of the importance of the receipts, certificates and papers than men have. Most female spouses – except female heads-of-households – do not know the sizes of their family plots. Low education plays a prominent role here. The study revealed that although most inherited plots are still under the name of parents, it is the males and not the females who hold the receipts or certificates among the inheritors (Piem Ro, Sa-ang, Kampot and Phnom Srouch). Women especially seem to have less authority in protecting ownership rights over inherited lands, as well as lands that are under shared ownership. Very often female spouses are forced to give up their inheritance in order to repay their husbands' debts (Piem Ro).

This survey found that the court system is expensive and that female-headed households are not able to afford court fees and other expenses. Hence these households are not able to take advantage of formal settlement systems. In addition, since women are usually less educated than men, they depend more on male relatives and friends when negotiating with state authorities. This costs extra money and is not always affordable.⁴ Consequently, women give up formal fights and fall back upon traditional faith and beliefs to overcome their loss. Since credit and other markets are undeveloped, farming households very often face desperate situations caused by large debts at high interest rates, natural disasters, and unpredictable fluctuations in rice prices. Such circumstances force distress sales of land. Female-headed households are particularly vulnerable to the loss of their lands because their credit burden is often higher. Many lack labour, draft animals and capital for buying fertilisers; hence everything must be purchased on credit.

3.5. A Word About Population and Resource Balance

It is widely believed that Cambodia has enough land; hence unlike many countries, the strategy of livelihoods needs to be defined differently. Village visits revealed that farmlands per household were small (0.50-1.0 hectares in Kampot; 0.75-1.25 in Sa-ang, 1.50-2.0 in Piem Ro, etc.), and yet farmers were not able to fully utilise the land for want of inputs such as draught animals and credit for other inputs. Household economic security is further affected by reduced access to common property resources such as forests and fisheries. In fact, such access will be further restricted with the formalisation of forestland boundaries.

The efforts by some people to sell land to buy motorcycles or boats for commercial purposes, or to migrate to urban areas, represent desperate attempts to break out of the 'agrarian trap'. In this sense, the titling programme, by itself, is not going to effectively

⁴ In the case of land grabbing by a Korean company from 108 households in Phnom Srouch, the female heads-of-households interviewed admitted that they would have dropped their complaints after reaching the district if it had not been a problem of the whole community. In Kandal, a woman head-of-household whose *chamkar* land plot was invaded by her neighbour, a government official of the province, decided to drop the case because she had no money to pursue it at higher levels.

contribute to better livelihoods of rural people unless agricultural intensification creates channels for input supply at competitive prices and creates stable markets for outputs. An expansion in rural infrastructure that would permit more productive private investments in land and diversify the occupational base is thus important.

3.6. Summing Up

Land markets are most active in areas situated along roads and near urban or market centres. In such areas, the demand for formal land documents is the highest, for facilitating land transfers, clarifying boundaries and avoiding disputes with would-be claimants. However, due to the high cost of titles, many land transactions are routinely facilitated at lower levels of the administration through a transfer of application receipts or written contracts between buyers and sellers. Only people with adequate financial resources and/or access are able and willing to obtain land certificates. In the absence of land markets, particularly in areas characterised by subsistence farming systems away from roads and urban/market centres, people rely on receipts and/or local social institutions for validating use rights.

In terms of stakeholders in land, the above analysis suggests a very dynamic and varied picture across the country. Historically, the original stakeholders have been peasant farmers who followed their own traditions until forced to change. New stakeholders have emerged over time, and there is no reason to believe that their types and numbers will remain the same as today. In the broadest sense, commercial and industrial interests represented by businesspersons are one group. A second group is made up of military officials as well as civilian authorities. This group has financial and political power and its interests are to accumulate wealth through speculation, as well as commercial use of land. The third group consists of migrants, returnees and rootless populations who have moved around the country to seek a home and livelihood. This group has little financial or political clout, but it has nevertheless made its presence felt.⁵

⁵ This paper does not present any discussion on mined areas since there were none in the regions where the fieldwork was conducted. This however is a major issue in Cambodia. According to Cambodian Mines Action Centre, about 1.7 percent of the country is affectedly mines and much of it is productive land. De-mining is continuously going on. Once de-mined, a field suddenly becomes much in demand because of its high productivity, and attracts many stakeholders. Redistribution of de-mined areas has not been free of problems. Reports from Halo Trust and Mines Awareness Group, two NGOs involved in clearing mines, stand witness to this.

Chapter Four

The Governance Structure of Land¹

4.1. Introduction

Before discussing the administration of land and the titling system in detail, a point about the land distribution of 1989 requires mention. Land distribution in the late 1980s was partly a *de facto* recognition of lands that people already controlled under the *Krom Samaki* system, though fresh lands were also distributed. The country had just emerged from a decade and a half of experiencing different forms of collective and co-operative agriculture, and the concept of private property was not uniformly recognised or practised by either the populace or the administration. Thus, while lands were distributed and private ownership of plots was recognised, no clear demarcation of each plot was actually made. The authorities were plainly not equipped to do this²; and the populace was unaware of the need for it since they were illiterate and unexposed to legal issues. As seen later in Chapter 5, such ambiguities regarding land boundaries eventually became a source of contention.

4.2. The Titling System

The system of land registration and titling in Cambodia is somewhat different from that found in many other countries. For example, the same authorities are in charge of registrations for both agricultural lands and residential lands in rural as well as urban areas. From 1989 to 1994, the Department of Cadastre was located within the Ministry of Agriculture. The provincial and district offices of the Department of Cadastre carried out the work and the Provincial Governor was the final authority for issuing certificates for both agricultural and residential lands. From 1995 to 1998, the Department of Cadastre was shifted to the Council of Ministers. The final authority also shifted from the Provincial Governor to the Director of the Department of Cadastre. In 1998, the Department of Cadastre (now referred to as the General Department of Cadastre and Geography) was again relocated to the newly established Ministry of Land Management, Urban Planning and Construction (MLMUPC). One of the main tasks of this Ministry is to undertake a comprehensive survey, mapping and registration of all land in the country.

The formal mechanism of land titling and registration according to the current policy, is as follows:

¹ This chapter relies on field interviews with village groups, village and commune officials, officials in-charge of titling at various levels, and provincial authorities.

² The Central Cadastral Office confirmed this statement.

Box 4.1. The Sporadic Land-Titling Process in Cambodia³

1. An applicant has to make application to his/her commune chief in a standard form. Completed application forms are certified by the commune chief and forwarded to the district OLMUPCL. The owner receives a receipt for his/her application.
2. A sub-committee is formed consisting of the commune chief as its chair, the village chief (of the applicant's village), one or two officials of the staff of the OLMUPCL (district cadastral office), and one elderly person from the community whose knowledge and authority in the village is respected.
3. The sub-committee, in consultation with the applicant, fixes a date for site inspection. Owners of neighbouring lands to the applicant's land parcel are also called to ensure correct and mutually acceptable boundary demarcation during the measurement process.
4. Prior to the visit, an announcement is made (by the district chief) about the intent of the applicant to title his/her land. A notice of 10-15 days is given for any party to raise objections or contest the claim. This notice is displayed on/near the site (e.g. the concerned village, commune office, district office).
5. During the visit, the applicant must erect signposts at appropriate places in order to demarcate his/her land and also identify the shape of the land. The neighbours can raise objections, if they have any, at this stage. The land survey is completed upon satisfactory completion of the boundary demarcation. A standard form is then filled in and duly authenticated by neighbours and others in the sub-committee. The background of the applicant, his/her family details and the mode of acquisition (e.g. inheritance, purchase), are noted. Any plantations or construction on the land is also recorded. In the event that one or more of the neighbours is a state authority, their representative(s) are called for the boundary inspection.
6. In the event of a dispute concerning the applicant's claim, the matter is not processed further until it is settled. Otherwise, the form is signed by the commune chief in his/her capacity of chairperson, and forwarded to the district OLMUPCL cadastral office with a recommendation to issue a certificate. The relevant documents are then forwarded to the district chief.
7. In the case of agricultural land, the district chief can approve issuing the certificate if s/he is satisfied. S/he can call for clearance from other concerned parties if s/he deems it necessary. In the case of residential land, the chief of the district cadastral office recommends the matter to the district for verification, who in turn refers the case to the provincial DLMUPCC. This department then submits the papers to the provincial governor for final approval and issuing of a certificate.
8. The process, however, does not end here. In the case of agricultural land, the district OLMUPCL routinely refers the matter to the provincial DLMUPCC, which in turn refers the case to the central authorities (Cadastral Office, MLMUPC) to verify the legalities, and whether the laid out procedures have been properly followed. In the case of residential lands, the provincial authorities refer the case to the central authorities (Cadastral Office, MLMUPC), again for checking on the procedures and legalities. In both cases, certificates are issued after the Central Cadastral Office has verified the procedures and legalities and entered the case details in the immovable property register. A file is created at the Central Cadastral Office for each land parcel for which a certificate is issued.

Source: Interviews with officials and vanAcker (1999)

³ As against sporadic registration, systematic registration follows a different path. See for details, RGC (2000).

Box 4.1 shows that the sporadic titling process, though comprehensive, can be extremely lengthy and time-consuming. It also involves officials from the local to national levels.⁴ In the case of transfers, the tax department is also involved though otherwise the process is the same. Many in the field maintained that the titling and registration process takes too much time to complete, and is also prone to corruption by officials at all levels. This is because low-paid government officials are tempted to accept favours in exchange for giving out other favours. They are able to do so more easily when the procedures are multiple and complicated. The emergence of middlemen offering to help for a fee is also not uncommon. This was a typical complaint at Sa-ang and Piem Ro.

The official cost of undertaking a complete registration process should be about 15,000 - 20,000 riels (about \$4-5). In reality, the research team was informed that individual titles could cost up to \$300-400, mostly paid in the form of unofficial fees and favours. In the city of Phnom Penh costs are even higher. Part of the reason is that the state provides no financial support for operational costs. As a result, costs of travel for verification and other expenses are borne by the concerned parties. It is not surprising, therefore, that only about 13-14 percent of the land parcels are titled out of an estimated 4-5 million applications made in the early 1990s.

The other major complaint heard was about the change in the procedures. Everyone realises that lands in Cambodia are not mapped and that there are genuine difficulties in undertaking proper registration in the absence of maps. But what bothers everyone - people, public representatives and officials at the lower rungs - is the repeated change in procedures (Sa-ang, Kampot, Phnom Srouch, Piem Ro, Phnom Penh). Until about 1992, the registration procedures ended at the provincial level. The concerned authority in the case of agricultural land was the Ministry of Agriculture, Forestry and Fisheries and in the case of residential land, the district authorities and the provincial governor's office. Then the management transferred to the Council of Ministers, until the new Ministry of Land Management, Urban Planning, and Construction (MLMUPC) was established in late-1990s. The certificates issued earlier looked different and were authenticated differently from the ones issued now. The proposed systematic titling programme is the third change, and the majority of people, as well as officials outside the MLMUPC, are not clear whether the existing certificates will be replaced or will continue to be valid. The procedure is another matter that is not clear. For example, will all those people already possessing certificates have to make fresh applications? If yes, how and where? Finally, will more money have to be paid?

4.3. What Is a Title?

As repeatedly stated earlier, for a great number of people, the common belief and understanding is that as long as they control their land and that fellow villagers and neighbours know each other's land, this is sufficient proof of their ownership and control. The use rights mentioned earlier in the text hold true even today, particularly in rural areas for agricultural lands. This is particularly true for those populations who do not live near commercial centres, highways or regions identified with high levels of commercial activities. This practice though, is increasingly being threatened as commercial interests enter the area (e.g. villages on Highway 4).

Then, there are application receipts obtained by households and farmers for the claims that they had made earlier for their lands. As mentioned previously, this number is large at 4-5

⁴ Box 4.1 refers specifically to the land titling process within the MLMUPC. It should be noted that the Departments of Forestry and Fisheries are also involved with land titling in areas under their jurisdiction. It is also important to note that current land registration practices have been decentralised in Kandal Province and Phnom Penh Municipality, which locates the final authority for approving and issuing certificates at the provincial level rather than referring the matter to Phnom Penh.

million for the country. However, the proportion of receipts to total land parcels is not known.⁵ It was learned from village interviews that there are many more receipts for residential lands than for agricultural lands. The reason is simple: in more than one locale the team was informed that officials from the district had come to provide them with ‘some papers’ for their land (Kampot, Phnom Srouch, Piem Ro). These officials did not go to the rice fields because in some cases there was lack of adequate security (in the early 1990s), while in other cases the officials simply did not care to travel far distances. Some people have lost their receipts. Many receipts are misplaced or left with one party during transfer or division of property. In the case of division of land, the receipt becomes superfluous because it pertains to the undivided property. But people hold on to the receipts nonetheless (Kampot, female-headed households in Phnom Srouch, Piem Ro). The fact that these people have not cared to obtain titles supports the argument that use rights prevail among many people and in many parts of the country.

A large number of people consider the receipts to be the titles. Some in the more remote/backward areas (e.g. villages in Kampot and Rattanakiri) said that they did not know and did not need to have more than their present papers – though many cared about the papers they possessed. In the more market-exposed locales, however, people said that the receipt was not only an insurance against land grabbing, but was also useful in terms of land sale and property inheritance. These latter responses are from villages that are at the crossroads of market/speculative development and their lands are increasingly being targeted by external agencies. Areas in Sa-ang, Kep⁶ and Phnom Srouch provided evidence of this. Receipts are freely traded when transactions occur. For an unofficial fee, village or commune chiefs change the names on the receipts as the lands change hands. While this is an unacceptable deed in law, it is widely accepted in transactions involving land that would be used for subsistence farming. In the context of stakeholder participation for the *project*, this could pose a major contradiction, since the upholders of law have encouraged this practice.

Certificates have been issued in fewer numbers – the cadastral office states that there are 518,258 in all. A province-specific distribution can be seen in Table 4.1. In many instances these have been issued on the volition of the authorities, rather than on insistence of the certificate holders. Women-headed households in Phnom Srouch informed the research team that earlier in the 1990s, district officials had come to the village to complete formalities and then to deliver papers. In the case of Kampong Thnoat village in Kampot province, duplicate homestead land certificates were issued when the earlier application papers and records were destroyed in a fire at the commune and district offices. But these, until today, have lain unclaimed with the erstwhile village chief for several years. In appearance, the certificates look old and moth-eaten, which shows their age. Residents have not taken them since they are not willing to pay the chief sums as little as 5,000-6,000 riels for each certificate (an expense which he claims he incurred in making the duplicates). Those who have certificates and/or have insisted on getting them are the ones who either have acquired land for commercial farming where title deeds are necessary for further sale, or for obtaining formal credit, or for construction, or for putting land to any use that brings the owners into contact with state authorities.

As mentioned, cases of people trading lands and property by scratching-out old names and re-writing new ones on certificates and having village and commune chiefs to authenticate them – for an unofficial fee – have been found. This practice cuts down on both official and unofficial costs, and reduces long and painful ordeals with bothersome officials. The fact that this is widely accepted by the local populace is evidence that the control and

⁵ It is vitally important to know how many land-parcels there are in the country – by use, for example in agriculture, homestead, public places, etc. but such statistics are not accurately available.

⁶ While Kep was not one of the study areas, a brief visit was made to Kep on the suggestion of officials in Kampot.

authority of the sovereign and the official rules are of little consequence locally. However, trouble may arise when there is interface with external agents and the unwritten laws are swept away by written rules, however inconsistent and unfair they may be. This has been, and will be, much to the disadvantage of the peasants.

Table 4.1. Progress in Land Registration (From 1989 to December 31, 2000)

Province / Municipalities	A. Certificate of Possession (1989-95)	B. Certificate of Possession (1995 until 2000-end)	Total of A and B
Kandal	109,749	9,675	119,424
Sihanoukville	11,659	5,779	17,438
Siem Reap	28,098	5,041	33,139
Kampong Cham	16,618	6,505	23,123
Kratie	3,064	1,261	4,325
Pursat	10,857	4,140	14,997
Koh Kong	6,490	2,756	9,246
Prey Veng	36,884	2,061	38,945
Svay Rieng	38,530	1,808	40,338
Kampong Chhnang	25,981	3,291	29,272
Battambang	19,432	6,683	26,115
Bantey Meanchey	13,641	3,745	17,386
Kampong Speu	22,469	4,204	26,673
Takeo	43,336	2,770	46,106
Kampot	54,462	1,668	56,130
Kampong Thom	4,973	2,152	7,125
Kep	570	783	1,353
Rattanakiri	436	1,056	1,492
Mondolkiri	00	00	00
Stung Treng	00	128	128
Preah Vihear	00	104	104
Pailin	00	31	31
Oddar Meanchey	00	95	95
Phnom Penh	1,028	4,621	5,649
Total	448,277	70,357	518,258

Source: MLMUPC

Finally then, what is a title, how is it transferred, and who are the agencies involved? In urban areas, most legal landowners have proper certificates and none of the encroachers is able to obtain anything more than a temporary lease paper. For the rural populace, different approaches serve the purpose of a title. These could include word-of-mouth, receipts, written contracts, and proper certificates. The transfer process is also ambiguous. Authorities at different levels put a final seal on transfer papers, depending upon who the clients are, and the social acceptability of the authority. Likewise, the agencies involved too can be different, from the local ones to those in Phnom Penh; some are actually authorised, while others are self-styled authorities.

4.4. Problems Faced by the Authorities in Titling and Registration

The official machinery also has its own difficulties. At the broad macro level, the basic problem arises with the definition of land use and jurisdiction of individual authorities. The government owns the bulk of the land. One estimate places it at near 80 percent, including forests, common lands, water bodies, unused lands and scrublands. There are several ministries and other authorities that actually exercise control (e.g. the Ministry of Agriculture, Forestry and Fisheries controls forests and water bodies; the military owns lands acquired for strategic purposes). However, it is not clear whose boundary finishes where, and whose

begins where. Also, up to 25 percent of the communes have no defined boundaries.⁷ Likewise, there is no clear definition of an urban area – the census definition is not a legal definition. A lack of dialogue between different government ministries and departments or between communes and districts only worsens matters. It is not unheard of that two government departments contest the same land. The lack of an over-riding authority to adjudicate matters between ministries has permitted each major ministry/department to control its own lands in ways that are quite independent of any central rule of governance. Under these circumstances, line department officials, particularly at the lower levels, face significant confusion.⁸

More serious problems arise when there are larger numbers of people involved. It is useful to mention a case from a forest area in one of the villages in Kampot. The country has vast forest areas but within forests there are a number of small habitations. Villagers grow paddy by carving out small plots within the forests and collect non-timber forest products. When the forest is 'privatised' by the government to be given out for concessions, both rice production and the forest produce of these farmers are affected to different degrees. The officials do not know what policy to follow, as there is neither a clear law mentioning the rights of these populations, nor is there a functional and well-funded rehabilitation and resettlement policy in place. To complicate matters further, the number of people affected and their means of livelihood are also not known. The 1998 census provides some information, but it is not enough for action.

At times, the methods used by some government agencies to acquire land become a source of contention between different stakeholders of land, which in turn confuses officials in the line departments. The example most quoted concerns land acquisition by the military in the early/mid-1990s in Phnom Srouch and other districts in Kampong Speu. While no one will contest the security related reasons for which land was acquired, there are two points to note. First, the military did not pay for the lands it took, nor were the displaced farmers and villagers settled elsewhere. In such cases, after the emergency blew over, the lands should have reverted back to their original owners. This clearly has not happened so far. Instead, the military, in the cases observed, has developed these lands either for settling their retiring soldiers or leasing out these lands to private companies. Second, is land disposition after security related operations are completed, the job of the military? Should not the Ministry of Land Management, Urban Planning Construction, Ministry of Agriculture and Forestry, or other ministries or even decentralised authorities, such as commune councils, be involved in deciding whose jurisdiction these lands should fall under? What should be their final use? Is there no requirement for a law governing these matters, now that peace has returned?

Dealing with water bodies represents another case of ambiguity. In Cambodia waters rise in monsoons to inundate large areas. These become fertile breeding grounds for fish, and fishing-contractors lease-in these lands from the fisheries department for a price. When the waters recede, the lands are sown for crops. One view is that if these lands should be titled to the landowners, fishing rights should technically go to these owners as well. But this is not acceptable to all, as it is argued that the case is that of a resource, which for part of the year remains common, and for part of the year, private. Hence for fishing, the common property resource rules should apply. But even here, the question of who should receive the royalty for fish is not yet settled. While these issues have been debated and a range of solutions offered in seminars, there are no guidelines available to officials at the operational level.

The country has large tracts of unused land. There is often a complaint heard at the district and commune levels that people who own such lands evade paying taxes because of their political clout, and at the same time, the nation loses because the land lies unused. But

⁷ Data were provided in the office that does systematic registration.

⁸ Discussions with officials of MLMUPC and the Central Cadastre Office provided the basis of these conclusions.

another fact is that government lands are lying unused as well, and in much larger areas. There is, however, no government ministry or department paying taxes to keep these lands unused. Not only does this create different standards for the private and public sectors, it also contributes to the national loss mentioned above.

There are other ambiguities as well in the law that makes the task of officials difficult. One example concerns construction alongside highways and rivers. This is not permitted up to a certain distance from either side of the highway, as per Sub-decree No. 06 (Declaration on Eliminating and Solving Anarchical Land Grabbing, July 1997). In fact, Cambodia as a country has large concentrations of population along roads and rivers, partly due to reasons pertaining to security. People would probably move away if some infrastructure were created for them further from the road. In the absence of infrastructure, however, it is impossible to follow the law, since it is physically impossible to move such large numbers away from the roadsides and riversides.

Table 4.2 Estimates of the Number of Staff Working in the Ministry of Land Management, (Provinces, Municipalities and Centre)

	Provinces	Professional Staff*	Technicians**	Skilled Workers	General	Total
1	Pailin	2	7		23	32
2	Bantey Meanchey	6	14		30	50
3	Battambang	4	24	1	66	95
4	Siem Reap	5	15		79	99
5	Kampong Thom	5	14	0	28	47
6	Pursat	2	9	2	32	45
7	Kampong Chhnang	3	24		56	83
8	Stung Treng	1	4	0	9	14
9	Kratie	3	9		17	29
10	Kampong Cham	5	47	4	59	115
11	Prey Veng	2	24	3	71	100
12	Svay Rieng	2	16	0	23	41
13	Takeo	2	35	6	52	95
14	Kep	1	13		4	18
15	Kampot	2	27	3	52	84
16	Kampong Speu	4	23	2	39	68
17	Sihanoukville	10	17	2	38	67
18	Koh Kong	2	25		19	46
19	Preah Vihear	1	5			6
20	Rattanakiri	2	6		6	14
21	Kandal	17	84	2	94	197
22	Phnom Penh	141	98	5	243	486
23	Oddar Meanchey	1	2		6	9
24	Mondolkiri	0	0		4	4
	Total A	223	542	30	1,050	1,844
(Ministry of Land Management, Phnom Penh)						
	General Department Administration	15	12	1	106	134
	Urban	89	18		9	116
	Construction	94	28		3	125
	Cadastral	19	90	4	123	236
	Total A + B	440	690	35	1,291	2,455

* Professionals include Ph.D.s, Mining and Hydrological Engineers, and Architects

** Technicians include Construction and Cadastral Personnel

Lastly is the problem of costs. Government personnel do not have sufficient official expenses available for any of their legitimate work. Travel, subsistence expenses, and such costs are usually met out of personal pockets since reimbursements, even when they are made, are far from sufficient. This is clearly not affordable and therefore, favours are routinely sought from clients. This is also not sustainable. Not only does their non-partisan role come under question, their efficiency is also restricted by the amounts provided by their clients. In this regard, it should be mentioned that many people at the lower levels, public representatives as well as the bureaucracy are so poorly paid that it is impossible for them to subsist on their salaries. Said one official, that if the minimum wage act, which for the garment industry workers guarantees \$45 per month, is extended to all sectors, the government would be found to be the biggest defaulter.

4.5. Capacities

The staff at the provincial DLMUPCC and district OLMUPCL also face problems in their work arising from their lack of human resource capacities. In each of the five provinces visited the field staff strength varied, but there was no association found between the staff size and the area they covered, or the population they served. The staff size ranged from 14-100 persons per province (Table 4.2). While in Kandal the authorities said that the staff had the skills but not the equipment, elsewhere they complained of the need to provide training. In this regard the training provided by GTZ was highly praised. In terms of equipment, the provincial DLMUPCCs and district OLMUPCLs were found to be less equipped compared to their counterparts in agriculture and planning. There were no computers, no maps, no transport, and at least in one case, not even enough chairs in a room for 10-12 people to hold a meeting. Lastly, in some cases there still are problems of spatial jurisdiction. In Treng Traying commune (Phnom Srouch) for instance, some ex-Khmer Rouge people have settled, and unilaterally declared their area to be an independent commune. The government has so far not agreed to this division. The commune chief of Treng Traying maintains that he is apprehensive to venture out in that part of the commune for official work because he is not regarded as chief there.

4.6. Summing Up

In the context of the questions raised by the objectives put forward in the first chapter, the stakeholders in the *project* can be extended to the different officials and representatives at village, district, province and Phnom Penh levels. But the matter is more complicated than just a count. For one, poor peasants know and trust little beyond their own surroundings. For them, the village and commune chiefs, whether good or bad, are the real authorities. Indeed, these representatives also define the laws for themselves. For example, they approve transfers of properties at their own levels. There is a little more uniformity of operation at the higher levels, though evidence from Rattanakiri reveals that alternative procedures to the established rules are widely prevalent at higher levels as well.

One is forced to conclude that each locational typology defines its own sub-set of stakeholders in the project, though the universal set is the one mentioned earlier in Chapter 3. It also should be mentioned that different stakeholders are likely to have difficulties in reconciling their past activities because each has violated the law in the past, and now they will be pledged to uphold the law in the titling programme. There is also the problem that some stakeholders in *land* are also stakeholders in the *project*. This dual role can, at times, be difficult to reconcile. For example, if the village chief in Village 4 at Phnom Srouch has lost land, he cannot be expected to be totally non-partisan in carrying out his responsibility as a local chief in the titling programme. In such situations, some village communities suggested participation by NGOs since they are perceived to be non-partisan (Kampot, Kampong Speu).

The legitimacy and capacities of different authorities are sometimes questioned. While the local people trust their own surroundings, the larger commercial interests patronise and

trust the bureaucracy at the higher levels. This works fine as long as there is no interface between different interests, but one can expect frictions when interests clash. Regarding capacities, the section on 'Capacities' above summarises the situation. It needs mention that many people preferred NGO staff to facilitate matters since their non-partisan credentials are, for the most part, perceived untarnished.

Chapter Five

Conflicts and Conflict Resolution Mechanisms¹

5.1. Introduction

The frequency and nature of land conflicts have changed as land use patterns have evolved from subsistence to commercial farming systems. Under subsistence modes of cultivation, land rights have largely been governed at the local level by institutions following local customs and traditions. As the demand for land increases, more formal institutions of the state, as a third party for enforcement, have been employed to govern land rights. The transition from informal to formal institutions governing land rights has been problematic for a variety of reasons. First, formal mechanisms of governance are inadequately funded in terms of personnel and financial capacity. Second, there is widespread misunderstanding of the law and procedures by all parties concerned. Third, formal institutions have lost the trust of people due to corruption. This chapter identifies the main types of land conflicts observed in the study areas and then discusses the means of dispute resolution.

5.2. Land Conflicts

Conflicts over land were observed in all the study areas, though the nature of the dispute and the parties involved varied from place to place. The most frequently reported conflict involved boundary disputes between neighbours. Many such disputes occurred in the early 1990s because proper measurements were not made when land was distributed in 1989. Indeed, the titling process itself could not go forward until such disputes were resolved.

In the early phases of land titling, when land values were relatively low and there was less demand for land, most of these disputes could be resolved according to traditions and customs that governed land use rights at the local level. However, in the mid-1990, the nature of the conflicts as well as the parties involved began to change as land values increased. Perhaps the most significant aspect of such changes is that in a growing number of cases involving land grabbing, agricultural concessions, or disputes involving collateral for loans, local people actually have begun to lose their land to other people or institutions from outside the community. It follows that land conflicts now represent an increasingly serious social problem that undermines both the faith of people in the system and their ability to achieve sustainable livelihoods.

5.2.1. *Conflict between neighbours*

Rudimentary markers and/or fencing traditionally establish land claims. These have been enforced according to local customs that are commonly understood by people in the community. In other instances, boundaries may be more or less invisible, yet known to neighbours. Thus, one may say that land use rights for a particular parcel of land are

¹ This chapter relies on both interviews at the village/local levels and discussions with officials.

ambiguously defined, yet clearly understood. Any disputes over use and control are routinely resolved through direct negotiation between neighbours according to community-based customs and rules that involve compromise and/or some degree of compensation that is agreed upon by the parties concerned. In some cases, village leaders may help facilitate such agreements when the parties themselves cannot reach agreement. In Rattanakiri, village elders have traditionally played a major role in governing land usage and associated disputes. In cases of disputes over adjoining agricultural lands involving people from different villages, parties to the conflict could appeal to their respective village chiefs or village elders, who might help facilitate negotiation.

The nature of such disputes between neighbours over boundaries has changed as land values, and hence the frequency of land sales, has increased. There are several elements to such conflicts. First, as land values increase, some people try to claim increasing areas of land. One method that people have used to assert an expanded claim is to encroach on neighbours' lands by extending fences. Second, there are many instances of overlapping claims in which different people submit applications for certificates for the same parcel of land. Problems associated with overlapping claims are especially problematic in the context of land sales. The third, and perhaps most significant change in the nature of such disputes, involves the increasing number of land sales to people from outside the community. Whereas earlier, neighbours of the same village or locale relied on traditional methods of resolution, disputes now often involve both local people and people from outside the community. Many such disputes occur when people from outside the community buy land and then build fences to reinforce their claim to a specific parcel. These disputes may involve a conflict over actual boundaries and/or public access for paths. For example, in Sa-ang, one villager reported that a person from outside the village built a fence that blocked access to a path that was used by villagers for animals. A conflict ensued when the villagers took down part of the fence. In this context, fencing strategies as a means to establish and enforce one's claim to a particular parcel of land can be both a cause of conflict and a means of resolving or avoiding conflicts in the future.

5.2.2. Conflicts within families

Another common form of land dispute involves inherited land that is contested by siblings and/or other family members. A common kind of dispute also involves land that is controlled by one relative, but used by other relatives. For example, in Sa-ang local officials reported that family members who came from outside the village asked relatives to use land. After farming the land for several years, these family members then filed a claim for the land based on their productive use of the land. Women may be especially vulnerable in land conflicts within families, especially when they are not formally included on land certificate applications or the certificate itself. They are also vulnerable in such disputes because they frequently lack control over other resources with which they could maintain use rights and/or access to decision-making.

5.2.3. Conflicts with creditors

In Piem Ro (Baboang village), there were three reported cases of land disputes that occurred when land-owners used land as collateral for loans to finance agricultural inputs. When the borrowers were not able to repay the loan due to poor yields and/or falling prices, the creditors demanded that they transfer ownership of all or some part of the land to them. Again, women heads-of-household appear to be acutely vulnerable in such conflicts since they rely more on credit to finance inputs than do others. Two of these cases were resolved through the intervention of local authorities.

5.2.4. Conflict between villagers and local authorities

Conflicts over land that involved villagers and local authorities have taken several forms. First, conflicts were reported in some areas when village and/or commune chiefs sold village land to outside companies or individuals. For example, in Kampot, there were cases reported in which commune and village chiefs sold village land without consultation with villagers or compensation. In such instances, the local authorities benefited personally from the sale and villagers were denied access to, or use of, the land. In other instances, conflicts occurred when people encroached on public land claimed by local or district authorities. Such a dispute involving a group of 1992-93 returnee refugees occurred in Sa-ang when they occupied land along a canal that was considered public land by authorities. In this particular situation, the district officials called upon the local police to evict the returnees, who were considered to have illegally occupied the land in question. Such problems are exacerbated when boundaries between villages, and the governance of public land within the community, are ambiguously defined.

5.2.5. Conflict between local jurisdictions

In Phnom Srouch, there have been instances in which the chief from one village affirmed land certificate applications in another village. Also in Phnom Srouch, Khmer Rouge defectors have established a separate commune that is not officially recognised by the civilian authorities. Within this commune, former Khmer Rouge leaders validate land claims that are not endorsed by the DLMUPCC. However, the commune chief indicated that even though he is not directly involved in land certificate-related activities in that area, he is sometimes called upon to help resolve disputes involving such claims. In Rattanakiri, people from Phum Ta-ong 1 claimed land that was currently being used by villagers from Rabong 1 in another district. The Ta-ong villagers based their claim on the fact that they had used this land during the Pol Pot years. The Ta-ong villagers filed their claim with the district authorities, while the Rabong villagers appealed to provincial authorities. Such cases suggest that ambiguity in the delineation of administrative jurisdiction is both a source of potential conflict regarding adjudication of claims, as well as an impediment to the resolution of such conflicts.

5.2.6. Conflicts involving state institutions

Probably the most significant cases of this sort involve the military, which acquired control over certain lands during the conflict with the Khmer Rouge. Despite the Khmer Rouge defections in 1997 and the advent of peace and greater security, the military has maintained control over such areas. Land conflict cases involving local people and the military were reported in Kampot over unused land that people began to cultivate. One case involves 10 hectares of land that 40 households claim. This has been unused by the military since 1995. In Village 4 (Kompong Speu), local villagers claimed land that was being used by the military for artillery training. In this particular case, the provincial Land Dispute Settlement Commission (LDSC) decided in favour of the military. Another type of conflict involves soldiers who claim land controlled by the military. In these particular cases, the military has informed soldiers that they and their families will eventually have to give up the land where they have been quartered. The soldiers indicated they are prepared to take the case to the local civil authorities, but civil authorities at the provincial level indicated that they might lack jurisdiction over land controlled by the military.

5.2.7. Conflict between villagers and private individuals and companies

Such cases involve instances of land grabbing and concessions. For example, in Phnom Srouch, a group of 108 households reported that they had lost land that was given out by the military to a Korean company for a large agricultural plantation. This group, which included the village leader, made a complaint to the district land authorities, which in turn referred the case to the provincial LDSC. The case was eventually referred to the national LDSC.

Villagers in Village 4 indicated that they have not heard anything about the outcome of the case and expressed a desire to appeal to the highest authorities. They suggested that they would accept compensation in the form of land in the area, but were not prepared to accept land compensation outside the area. In Rattanakiri, people from three villages in Borkeo district filed a complaint with the LDSC alleging that an agent acting on behalf of an individual acquired their land through fraudulent means. Though the court favoured the agent and his client, it also stipulated that some compensation should be paid to the aggrieved parties. This case will reportedly be appealed to the National Supreme Court. Also in Rattanakiri, people from Phum Ta-ong 1 reported land grabbing by government officials from Banlung. Many of these cases involved land along the road that local people initially allowed these officials to use upon request. In some cases local people accepted cash compensation in order to resolve the dispute, while in others people simply lost their land.

5.3. Land Dispute Resolution

There are generally two types of institutional mechanisms that are employed to govern land use dispute resolution: *local community-based mechanisms*² and *formal mechanisms*. Community-based mechanisms are employed at the local level to resolve land use issues and associated disputes that primarily involve neighbours and/or relatives. These mechanisms have been discussed above. Formal mechanisms involve intervention by third party institutions of the state. There are primarily three types of formal mechanisms governing conflict resolution. The land dispute resolution process in Cambodia often involves both informal and formal mechanisms being employed at the same time.

5.3.1. Local Authorities

In some respects, the village and commune chiefs represent a bridge between informal mechanisms of social enforcement and the more formalised state structure. These leaders generally employ local customs and traditions to solve disputes between neighbours or within a family, while at the same time representing the legal authority of the government. It is at this level that decisions and actions of local leaders in their capacity as government authorities acquire the legitimacy of legal force, even though the procedures they may employ might not be technically legal. This, then, is one source of confusion about the law governing land rights and the point at which distrust of the system is initiated. At the same time, villagers often expressed greater distrust of officials at the provincial level, who, they maintained, did not understand the local situation. People at the local level also expressed concern that persons from outside the community who appeal to legal procedures, enjoy greater access to formal legal processes, much to villagers' or local people's disadvantage.

5.3.2. Provincial courts

Since the early 1990s, and the advent of more land disputes in the wake of the 1989 land distribution, the provincial courts have been increasingly used by disputants to resolve land conflicts. Most of these conflicts have involved boundary disputes, overlapping claims, and inheritance. In essence, cases that could not be resolved between neighbours, with or without the intervention by local authorities, ended up in provincial courts. For example, court officials reported that most cases they hear involve disputes between individuals. The courts are expected to decide cases based on the relevant laws governing use. In this sense, the courts will make judgements about who is wrong and who is right.

The courts face significant constraints in terms of staffing and finance relative to the number of cases they are expected to hear. In all provinces, the courts reported that they were not able to hear all the land dispute cases brought before them. In many instances, land dispute cases competed with other types of civil cases (e.g. divorce) as well as criminal cases

² For want of a better phrase, these are also referred to as 'informal mechanism' in the text.

for the time and attention of the court judges. As a result, there were a relatively high number of land dispute cases that had to be carried over from one year to the next (e.g. Kampot, Kandal, Kompong Speu). Another problem concerns the training and supervision of judges. Not all judges are adequately familiar with the land laws and, as a result, may issue decisions that are legally incorrect. Moreover, it was reported in one province that the chief judge lacked the authority to provide supervision and oversight for junior judges serving at the court. Table 5.1 provides some brief data on the status of cases in courts.

Table 5.1. Provincial Court Case Summary

Location	Total Cases (2000)	Land Disputes	Total Cases Resolved	Total Carry Over	Land Cases Over Time
Kandal	1,152	600	400	600	increasing
Kampot	unknown	76	not available	not available	increasing
Prey Veng	not available	not available	not available	not available	25-30% inc. 1990
Kompong Speu	~ 500	~ 200	~ 200	~ 300	increasing
Rattanakiri	100	3 of 4 resolved	not available	not available	increase expected

5.3.3. Land Dispute Settlement Commissions (LDSC)

These have been established at the provincial and national levels since 1998 by the government with the purpose of resolving land disputes through negotiation, lest the courts get clogged by impossibly large numbers of land dispute cases. They fall under the jurisdiction of the Ministry of Interior and the Council of Ministers. They also have working groups at the district levels. Usually one of the deputy governors chairs the LDSC at the provincial level. Other members of the committee routinely include officials from the DLMUPCC, OLMUPCL, military, and police, as well as the district, commune and village chiefs from the locale involved in the disputes.

Provincial LDSCs hear cases that involve disputes between individuals and state institutions, as well as disputes between individuals. LDSCs try to facilitate agreements between the parties involved by mediating negotiations. As such, they do not have formal authority to make decisions based on the law, but rather represent administrative procedures for reaching agreement. The fundamental approach for resolving these types of cases is based on the traditional mechanism of informal negotiation and agreement, which involves compromise and “splitting the difference” and/or some form of compensation (e.g. cash, in-kind). For example, a member of the Konnum District Working Group in Rattanakiri indicated that the most practical method for resolving cases was to use local customs to facilitate agreements between disputants.

Either the disputants themselves or the commune chief generally refers cases to the district level settlement mechanisms when local/community-based mechanisms fail to produce an agreement. Cases that cannot be resolved by the district committee can then be referred to the provincial LDSC. The more complex cases involving state institutions or powerful individuals are sometimes referred to the national LDSC. However, cases may then be returned to provincial courts for a final decision. For example, the case at Borkeo district referred to above was returned to the provincial court in Rattanakiri from the national level. As noted, it is likely that this case will then be appealed to the National Supreme Court. Another example concerns the case referred to above in Phnom Srouch involving the 108 households that lost land to a Korean agricultural concession.

LDSCs reported that they were able to resolve a number of cases brought before them (Tables 5.2 and 5.3). However, the resolution of such cases often entails considerable time and expense on the part of the LDSC members, as well as the disputants. For example, members of the LDSC must first conduct investigations of the case in the field, where

negotiations between the disputants are then frequently facilitated. Some LDSCs indicated that they might try to resolve a case three times before referring it to the next level. Despite their success in resolving a number of cases, the LDSCs at both the district and provincial level reported that they were not able to complete work on all the cases that were brought before them, and that there were varying degrees of carryover from one year to the next. As a result, an increasing backlog of cases appears to be accumulating in many areas.

The LDSCs face several constraints in terms of staffing, training, and finance at both the district and provincial levels. First, there are no permanent staff members on the committees, as members are drawn from other departments and institutions. In most cases, LDSC members have neither received formal training in conflict resolution and negotiation, nor instruction regarding the relevant land laws. Second, the LDSCs do not have an operational budget with which to conduct their investigations and facilitate negotiations. Members must either self-finance their activities and/or accept unofficial contributions from disputants for transportation, meals, material, and other costs. As a result of such constraints, the time and resources available for working on land dispute cases is extremely limited. Indeed, such unofficial financing arrangements can undermine the impartiality of LDSCs if their activities are funded by one of the contesting parties.

Table 5.2. Land Dispute Settlement Commission (LDSC) – Provincial Summary

Location	Total cases	1999	2000	Resolved/Pending	Comment
Kompong Speu	48	22	26	15/34 pending	19 not yet investigated
Kandal	not known		32	16/10	6 referred elsewhere
Kampot	12				
Prey Veng	non available			99% cases referred to court	
Rattanakiri	~ 20	n/a	20	4/4	5 referred elsewhere, others unknown

Table 5.3. District Summary

Location	Total cases	1999	2000	Resolved/Pending	Comment
Phnom Srouch	not available				
Sa-ang	22			9/7	6 referred elsewhere
Kampot	not available				
Piem Ro	non available				
Konmum	5	n/a	5	4/0	1 case not solved

5.4. Observations

Both the courts and LDSCs reported that a significant problem they face is that many people involved in dispute resolution do not understand the relevant laws and/or procedures involved. Part of this problem may be related to the fact that people at the local level who have traditionally relied on local customs to resolve conflicts may expect similar rules to apply to the formal legal system. When a decision is made against them based on law, they may feel that they have been cheated. In this sense, many of the conflicts over land that involve local people and individuals or institutions from outside the community, represent a clash between formal and local/community-based institutions of land rights governance.

Another set of problems occurs with regard to the enforcement of decisions. For example, the court in Kompong Speu indicated that they were unable to impose fines or make arrests in cases in which one party failed to appear in court or simply disregarded court orders. The court also indicated that enforcement was particularly difficult when it involved powerful individuals and/or institutions. In terms of enforcement, the courts tend to prefer to work through social networks in which family members or employers are appealed to for

help. This represents yet another example in which the formal system of dispute resolution relies on informal mechanisms to govern land rights issues.

Next, the provincial courts have larger caseloads than do the various LDSCs at the provincial level and the district committees. One reason for this is that LDSCs have only been recently established and, as a result, many people may not be aware of their function. A second reason is that courts are obligated to hear all cases brought to them, while LDSCs enjoy some degree of discretion in terms of accepting cases or referring them elsewhere. A third, perhaps more important reason, may relate to the composition of LDSCs, in the sense that they are comprised of individuals representing powerful institutions (e.g. the police and military). For many people, particularly those at the local level, the difference in the social status may be intimidating. Moreover, people may believe that in cases involving state institutions, they will not receive a fair judgement simply because the case is being facilitated by individuals representing those same institutions. It follows that the potential conflict of interests that is embodied in the LDSCs may represent a structural impediment to effective dispute resolution. As a result, those who seek third party intervention may decide that the courts represent a better option in terms of dispute resolution. However, this does not suggest that people necessarily have more faith in the specific objectivity of the courts. Indeed, one of the most consistent themes that emerged from the interviews is that people lacked confidence in the objectivity and impartiality of the formal institutions, and generally had more faith in local/community based institutions.

Fourth, the distribution of cases between the courts and the LDSCs according to type of conflict appears to be somewhat random in the sense that there is considerable overlap between the two concerning the types of cases that they hear. This suggests that there is no clear delineation between the jurisdiction concerning the type of case that each hears. As a result, both institutions report hearing cases involving household disputes and conflicts between households and local authorities, as well as conflicts between households and state institutions. One area in which there appears to be some distinction, however, is that the LDSCs appear to hear more cases involving groups of people versus local authorities or companies, while the courts tend to hear more cases involving conflicts between individuals. Nevertheless, instead of acting to complement each other in dispute resolution, these institutions at times end up *de facto* competing against each other.

Fifth, the points at which cases are initiated appear to be somewhat random in that similar types of cases are frequently initiated at different points and levels within the dispute resolution system. For example, certain parties may take a case directly to either the district or provincial LDSC, thus by-passing the local dispute resolution process (e.g. village and commune chiefs). In this regard, it appears that people or institutions from outside the community tend to by-pass local institutions of dispute resolution and go directly to higher authorities. This can be dis-empowering to the local people. At the same time, there is some evidence (e.g. Piem Ro) to suggest that local people with social connections may refer their problem to a relative or friend who has a high position in Phnom Penh or the province. The latter then refers the case back to the court or LDSC through informal channels. These factors, taken together, suggest that the point at which cases are initiated is sometimes based on the strategic assessment of people with influential connections who seek a venue that offers the most favourable outcome to their interests. Such processes, especially when coupled with the structural composition of the LDSCs referred to above, may further erode people's faith in the impartiality of the system and may be one reason why people appear to opt out of the system.

Sixth, the dispute resolution process is expensive in terms of time and financial resources. Part of the problem associated with costs concerns the fact that both the LDSCs and the courts lack adequate resources for conducting their work. Another fact concerning costs – particularly with regard to the provincial courts – relates to the physical distance between the village and the provincial centre. People who lack financial resources and/or the

time to travel to the court will opt out of the process, especially if they feel that the decisions may already be biased against them beforehand. In this sense, lack of resources represents a significant structural impediment that excludes the more disadvantaged elements of society from justice, such as poor farmers at the village level. This type of structural exclusion is especially overwhelming for women – especially single heads of household – who have less time and financial resources compared to males.

Seventh, both the courts and LDSCs appear to be seriously over-loaded in terms of their capacity to address all the land dispute cases. The most compelling evidence in this regard – in addition to the statements by court judges and LDSC members – are the figures cited above. In nearly every instance, there is at least some degree of carry over from one year to the next. It is not surprising that such gaps – especially with respect to the courts – appear widest in the most densely-populated areas (e.g. Kandal) where land dispute cases from both rural and urban areas compete for time and resources with other civil and criminal cases. Even in cases from rural areas, which LDSCs tend to accept in fewer numbers, there are cases carried over from one year to the next or referred to elsewhere. In nearly all interviews with LDSC members and district level committees, members indicated that under the current circumstances (e.g. inadequate financial resources and staffing), they are working at maximum capacity and could not take on additional cases. Another reason for the potential overload in the LDSC system may have to do with the methodology employed. As noted above, LDSCs do not render legal judgements based on the law; rather they try to facilitate agreements through negotiation between disputants. Such processes can be especially time consuming when parties cannot agree, and, as a result, one case may require considerable time and effort before it is referred elsewhere for further attention.

One way, therefore, to look at the problems associated with the ability of the formal institutions to resolve cases, is to consider dispute resolution as a limited resource that must somehow be allocated among competing sources of demand. This suggests that decisions must be made about how to allocate scarce time and resources to resolve cases. For example, when asked about how they prioritised cases, the Kandal court indicated that they gave priority to criminal cases. One member of the LDSC in Kompong Speu indicated that priority was given to cases that had potential political ramifications. It was also suggested in Kompong Speu that cases that received attention were sometimes determined by the ability of disputants to finance the investigations. This factor, when coupled with the strategic search for friendly venues by certain individuals or institutions referred to above, is probably the most serious shortcoming resulting from the lack of funds, as well as inadequate staffing and training for staff.

It is not surprising that people at the local level routinely expressed more faith and confidence in local traditional institutions of conflict resolution than with more distant formal institutions. Part of the problem is that local people feel officials at higher levels may not care to understand the situation at the local level. At another level, this problem is associated with the belief that justice is available only for people who have wealth and access to power. There is a general crisis of governance in that the formal institutions for dispute resolution are not perceived to be fair and impartial.

Indeed, many villagers – particularly those who experienced conflict with people or institutions from outside the community – complained that they simply could not afford the high cost of dispute resolution. One villager from Sa-ang explained the problem regarding the LDSCs in this way: people with more resources and/or access to power could simply ‘drag them through the system’ until they achieve a desired result. Thus, it appears that an unspecified number of conflicts actually go unresolved as people with fewer resources (e.g. finances, time) opt out of the process. Such problems are especially problematic with women heads-of-households, who often lack time and resources compared to male disputants.

5.5. Summing Up

The frequency and nature of land disputes is now increasing as more diverse interests compete for land resources. Many more land disputes now occur between village people and people from outside the community, including companies and organisations. Disputants increasingly rely on more distant formal institutions for resolution in addition to local authorities. This suggests, then, that the demand for dispute resolution involving formal and informal mechanisms of governance at all levels will also increase – perhaps dramatically. Such an increase would in all likelihood overwhelm a system that is already falling behind on its caseload. The most significant constraints in terms of the capacity to handle an increased volume of complex cases for the formal system are related to inadequate financial and human resources, including technical training in the law and procedures. The informal system, being a vestige of the older order, presently has begun to lack legitimacy, transparency and synchronisation with the formal system and law.

Even though the formal mechanisms for dispute resolution are in place, they are currently perceived by many as inherently unfair in terms of a structural bias that favours those with more resources and access to power, while precluding the full and equal participation of disadvantaged people (e.g. the poor, women, and indigenous peoples). It appears as if there is a crisis of confidence in the dispute resolution process as it is currently structured and practiced.

Part of the problem regarding people's faith in the system is also related to inadequate understanding of the laws and procedures governing property rights. On the one hand, this may be a function of a lack of education. On the other, it is related to a lack of information about the laws and procedures. Such problems are, in turn, exacerbated by the lack of transparency and adherence to established procedures by all parties concerned. With the informal system not getting rejuvenated and the newer one being perceived to be what it is, this crisis of confidence is inevitable. As in other countries that face a similar set of problems, it is perhaps inevitable that people will employ extra-legal strategies to turn decisions in their favour. This, for all intents and purposes, represents a question of good governance.

There are underlying 'factors of success' that warrant more attention. The primary factors that promote successful conflict resolution are: (a) commonly-understood and shared rules; (b) faith in the impartiality and fairness of procedures; and (c) effective enforcement of decisions. For example, one reason why boundary disputes between farmers are often resolved at the local level is that people share a common sense of traditions and rules about how such disputes should be handled.

Chapter Six

Policy and Recommendations

6.1. Introduction

As this social assessment aims to create an understanding of the realities on the ground, it is expected to help in developing a policy package that the government is drawing up for land titling. The paper offers numerous cases and evidence that have policy implications. This chapter puts them together with the explicit purpose of their selective or full incorporation in a policy package. The basic premise upon which this chapter rests is the need to promote peace, bring justice to all, particularly the weaker sections, and help clear a backlog of pending issues with regard to land. Surely one cannot expect larger development objectives to be met by titling alone, since a titling programme is not a development plan. But a successful titling programme can certainly pave the way for implementing development plans more effectively.

6.2. Titling Land According to the Law and Sequencing the Activities

The titling process should not be a mechanistic provision of papers to those who control land as of today, or on a specific date. In the absence of mapped boundaries between lands held by different stakeholders, including government departments and ministries, and in the presence of conflicts described in the text above, any titling exercise on an ‘as is where is’ basis is likely to run into a great deal of arbitrariness, which might eventually undermine the very legitimacy of the exercise. In this context, a judicious interpretation and application of the (new) land law that underlies the titling process holds the key to the success of the titling programme. Thus, first, a word about the law itself is essential. The text so far makes it abundantly clear that both clients and officials are confused about the existing law. The procedures and the requirements intimidate the former, while the latter have much confusion about interpretations and uncovered areas. Hence, clarity, simplicity and wider dissemination of the law underlying the titling process, in this case the new law that has recently been adopted, are key to success.

A few sample questions encountered in the survey suggest the need to make the law as unambiguous as possible. The present Cambodian land law specifies ceilings on the size of land holdings; although many people hold more land than is allowed in the law. Should there be a legal ceiling that specifies limits to individual holdings? Should all legal stipulations regarding land size be fulfilled before titling commences? What should the exceptions be, if any? These questions require attention, since different actors interpret the present law differently. For example, one interpretation says that the ceiling applies to only the initial allotments and not to subsequent acquisitions.¹ Then there is the issue of settling illegal occupations and encroachments, irrespective of whether they are on private or public lands.

¹ Source: Court judgement, Rattanakiri.

Does illegal occupation of land, which goes unchallenged for several years, imply the *de facto* right of the occupier to it? What should the legal position on this issue be? Finally, is it (not) essential to explicitly mention the jurisdictions of each ministry, to use, rent, sell or lease land the way each deems appropriate?² There are many more questions that call for attention, and unless the interpretation of rules and procedures is clear, new questions will continue to emerge. In short, the new land law *should be interpreted unambiguously and be the guiding principle for titling*.

The sequencing of titling work can be important, as is illustrated by the following case. There could be serious dislocation of people in forest villages if all the forests are titled in the name of the Ministry of Agriculture, Forestry and Fisheries without taking account of these people's existence. Disputes may also emerge at the periphery of forestlands where a few farmers may claim lands at the borders. The settlement of disputes would become very difficult in the event that lands are titled without regard to such issues, as parties who obtain title papers will in all likelihood, dig in their heels for a protracted struggle to retain their ownership. Procedures will become more complicated as well, because the matter moves to another authority. There is, then, the question of changing the land use by type (from forest to farming in this case). Lastly, a newly issued title will have to be altered, questioning the very legitimacy of the whole process.³ In almost all cases, villagers, local representatives, as well as government officials suggested that the titling work should protect the basic livelihood of all. In this regard, it was suggested that the new titling programme should sequence the titling as follows: residential land first, followed by agricultural (rice) land, then *chamkar* land, and thereafter, public lands such as beaches, forests, pathways and roads.⁴ Forests and waterlogged/inundated areas require separate attention, in which the use rights to forest produce are ensured and the traditional fishing rights of communities are restored.⁵ It is worth the mention that the concept of community forest management or joint management of forests by the government and community are still alien to people in areas where this study was conducted. However, the concept is *not* alien to the country and it could be introduced gradually but definitively.⁶

² This paper has tried to provide answers to these questions raised above, as obtained from responses from the field. These answers should provide a basis for how the issues hitherto, un-addressed in the present law, can be incorporated in the new one. Ceilings on individual land holdings are important to maintain from the point of view of making land available to a maximum number of people. It needs no mention, that all require residences and most need agricultural lands since occupational diversification is very low. In addition, there is all the reason to believe that small farms are likely to be more efficient in the Cambodian context since resources such as working capital, draught animal power, etc., are rather limited. Input as well as output markets, and also infrastructure, are far from developed at this stage, and do not permit economies of scale to be reaped. Field observations also suggest that larger pieces of land are, to an extent, held for speculation, and are not productively used. Only in cases where there are proposals to develop large orchards or to do commercial farming for larger markets, can exceptions be made. Before titling, authorities should satisfy themselves regarding all legal requirements of ceilings since *ex-post facto* settlements are impractical. On encroachments, if there is a disputed situation, the matter needs clearance from dispute settlement authorities. Undisputed occupation, if it has been for a while, say five years, should be regularised in favour of the present occupant(s). Lastly, the land law should specify the jurisdiction of each ministry and department.

³ Of course there is the reverse possibility of farmers claiming and grabbing lands not belonging to them; but in the Cambodian situation, justice to small farmers outweighs such considerations.

⁴ This sequencing is a suggestion arising out of the concern people expressed without knowing whether the new titling programme will be of a systematic or a sporadic type. In a systematic registration process, the sequencing is geographic and not by land-use pattern. But even in this, some consideration of the concerns expressed in the field is critical.

⁵ The government has already introduced localised fishing rights. All those who knew about it welcomed the step.

⁶ Some NGOs have introduced this concept in Cambodia in a limited way.

6.3. Strengthening and Decentralising Land Governance Authorities

There are several issues that must be addressed in the context of land titling administration. Some that emerged in the course of the inquiry are discussed below.

- There is a great deal of confusion and discomfort, experienced by both the clientele and authorities in managing the procedures and the excessive centralisation in titling. The less affluent people must spend a lot of time and money, and also face frustration. As mentioned earlier, of the reasons people did not seek titling, are the cost and the extra effort. In this regard, the centralisation of authority in Phnom Penh did not find much favour among a significant number who chose to speak on this subject. Inferences from many village-level interviews suggested that the final authority should not be very close or personalised (for the sake of legitimacy), but it must not be too far away. It is believed that the district can be a useful level at which the operations can effectively stop. The higher authorities (at the province and the national capital, respectively), for purposes of records, need be provided only with data in tabulated form, while the original records could be maintained at the district level. This decentralisation may, however, imply a great deal of capacity building at the district level, meaning extra costs to be incurred. Hence this paper suggests that, in principle, decentralisation is the direction to take; though the levels at which different operations take place will have to depend on administrative feasibility.
- The authority of the local bodies (village and commune) should not be violated by anyone. It should be mandatory that all land acquisitions, transactions or transfers be made through the established channels, unlike at present where the more powerful elements begin the process at the top, and only in the end inform the local authorities⁷. Following of procedures by everyone is important, both to maintain the sanctity of the law and procedures and to build confidence in the system.
- Transparency in administration is central to achieving good governance. The present problem of too many unofficial payments discourages people from trying to obtain titles for their lands and also undermines the legitimacy of the system. Many people suggested that committees similar to Village Development Committees (VDCs) could be set up for consultation and monitoring the titling process. These committees could be composed of village elders, demobilised soldiers, the village teacher and women representatives, in addition to the village chief. Others suggested that a commune committee might be more appropriate, since the communes are likely to be important organs in the new decentralised system after the proposed commune elections in early 2002. In short, a representative committee to monitor operations at the local level is desirable.
- There have been a number of agreements and transactions in the form of exchange of receipts, certificates and written agreements, which have been authenticated by several personnel in authority, but they are not necessarily correct in law. It is, however, impossible to retrieve all the past records and correct them. Instead it is proposed here that all cases in which there is no conflict between the concerned parties should be regularised *ex-post facto*. Only in the case of disputed lands should a case be referred to conflict resolution authorities for settlement before titling is done. This is the principle followed in the systematic registration scheme.

The inevitable question of having too few staff members at lower levels and too many at higher levels will have to be addressed by a more realistic personnel policy.

⁷ Members of the provincial authorities in at least two provinces stated this.

6.4. Resolving Disputes

6.4.1. The traditional system

Large sections of the population, particularly in rural areas, place more trust in local-community-based institutions of dispute settlement than the formal mechanisms. It is, therefore, important that such institutions are strengthened and synchronised with the laws of the land. The best method may be to empower commune level institutions, since this level will soon have elected representatives. Commune councils should, in addition, take up the task of disseminating the land law through both formal and non-formal means that reach to the largest number of people most effectively.

Maximum effort should be made to settle cases locally, even in cases where government authorities and companies are involved. For this purpose, local institutions will have to be strengthened, both in terms of jurisdiction and implementation. Cases should be referred to higher authorities only when they cannot be solved locally.

As regards the existing pending cases, it is imperative to have all of them settled on a one-off basis through extra sessions of commune councils or such authorities, if necessary, before titling is undertaken. One major gain of this exercise will be that, post-titling, there would be no burden of the past to carry into the future.

6.4.2. The formal system

The formal land dispute resolution system currently lacks the financial and human resources to manage the current caseload in a way that is consistently fair for all people. Any increase in the volume of cases will, in all likelihood, overload the current mechanisms and further undermine people's faith in the system. In order to strengthen the formal system, the procedures for initiating cases and the paths for appeals should be simplified and clarified. Considerable attention must be devoted to strengthening the institutional capacity of the LDSCs, both at the district and provincial levels. In this regard, the LDSCs will require their own budgets and staff training.

Clarifying procedures: All cases should be resolved in a way that is consistent with the spirit and intent of the relevant laws governing land rights. The dispute resolution process should be decentralised in a way that corresponds with the land titling process. In principle, all land dispute cases should be initiated at the local level. As a first step, therefore, priority attention should be given to resolving conflicts at the local level before they are referred to the formal system. A useful approach is to study the procedures followed by the systematic land titling projects (i.e. of GTZ and FinnMap) that involve public meetings at the village level in which boundaries are clarified. Cases that cannot be resolved at the local level should then follow a *clear path of appeal* from one jurisdiction to another. For example, the path should go first to the district, then the LDSC, and so on. Both the provincial and national courts should be granted the power to refuse admission of cases. The courts should be charged with deciding cases that represent conflicts over constitutional points of law, as well as conflicts between jurisdictions. A special land dispute resolution unit should be established in each court under the direct supervision of the chief justice who is responsible for overseeing that all decisions are rendered in strict accordance with the laws governing land rights. The judge responsible for the land dispute unit should possess legal expertise in the area of land laws.

Institutional capacity building: In order to strengthen the institutional capacity of a decentralised dispute resolution system, more financial and human resources must be allocated at the local level (e.g. village and commune chiefs, relevant members of the commune councils). Three points in this regard are noted below:

- *Training:* Local-level officials, LDSC members, and provincial court judges frequently lack a clear understanding of the relevant laws and procedures governing

land rights and dispute resolution. Training activities should be provided to the relevant officials concerned at three different levels: (1) local authorities (i.e. village and commune chiefs, commune council staff); (2) members of the provincial and district land authorities, including LDSC members; and (3) provincial and national courts (e.g. chief judges and other justices hearing land case). The training should concern the relevant laws governing land rights as well as conflict resolution and negotiating techniques.

- *LDSC membership*: The current membership of the LDSCs is drawn from various departments at either the provincial or district levels, some of which represent potential conflicts of interest. It is proposed that, as far as possible, membership of LDSCs should be non-partisan and entirely civilian. LDSCs should have permanent staff members who are responsible only for working on land disputes and other land cases – including investigation and recommendations.
- *Financing*: None of the conflict resolution authorities currently has budgets for investigating and negotiating land dispute cases. LDSCs should be provided with adequate budgets in order to investigate and facilitate cases. This should include transportation, meals, supplies and other expenses. Official budgets should be supplemented with modest published fees that are paid equally by the parties to the dispute.

6.5. Framing a New Relocation and Habitation Policy

Cambodia has had a policy to help settle people who were displaced during the civil war. This policy needs to be extended to cover those who are involuntarily displaced from their agricultural and residential lands in rural areas, as well as those who are likely to be affected by squatter clearance in urban areas.⁸ In many respects, the two problems of involuntary displacement and rural-urban migration are closely linked. The phenomenon of such migrants occupying land in urban areas is not unique to Cambodia, though the problem here is aggravated by the fact that there is only one large city. What can be done to stop excessive in-migration when most modern development is concentrated in Phnom Penh? The eventual solution is to promote a multi-nodal model of development and occupational diversification. But in the short term, the current system will have to be better managed to achieve the best interests of all.

There is the immediate problem of relocating about 35,000 families (175,000 persons) in slums,⁹ which is about 15 percent of the population of the city of Phnom Penh. It is not clear whether all of these people who are spread across an estimated 20 settlements occupy lands illegally, but some surely are. This is particularly so of those who have occupied lands on the riverbanks, as Case Study 6, presently later in this paper, illustrates. That study also shows that many who have been relocated have returned, since their livelihood in the new locations is insecure.

One way to address this problem is to pursue a more comprehensive relocation and habitation policy, as has been done in several cities of Latin America and Asia. There are many variants of these models, depending upon the finances available, the geography of the city, and the socio-economic profile of the populace. The success of such policies also depends upon complementary development policies that will strengthen the employment opportunities and income levels of the working populations.¹⁰ A word of caution should be

⁸ While it is true that not many relocation schemes around the world have been successful, there are some successful stories, for instance in China and Malaysia. The general lack of success should not become a reason for not adopting or relying on relocation strategies.

⁹ The Municipality of Phnom Penh has provided these numbers.

¹⁰ More details on these can be seen in ILO (1999).

mentioned: cash compensation is of little use because the money given out is often insufficient; it is spent too fast; and is frequently used for unintended purposes.

Most policy makers and implementing agencies believe that the city requires proper zoning, and that the relocation of people should follow a definitive plan. They believe that Phnom Penh will expand and that more people will come in the future. To meet this challenge, a demand-led and partially self-funded settlement plan would probably work better than other approaches. A westward expansion of the city is deemed more feasible, keeping in view the fact that the eastern parts are prone to floods.

Relocation of urban squatters, however, is not easy for a variety of reasons including the high costs and political sensitivities involved, as well as the fact that neither land nor jobs are readily available at new locations.¹¹ The most radical solution is to regularise unauthorised settlements, reclassify them into regular low-income localities and provide them with all the facilities that the city offers to other residents. This may, however, not be possible *carte blanche* because the costs could be prohibitive and the competing demands for the land could be very high. This may also attract additional migrants. Hence, a selective policy is more desirable. In many countries, unauthorised settlements are regularised and reclassified, but each dweller is authorised to stay there only if that family has resided for a minimum number of years in the city and/or has occupied that land for a stipulated number of years. Other conditions may include possession of a family card or some other document to establish one's identity and proof of holding a legal business, profession or service.¹² There are also other radical solutions offered in some situations, such as setting up entirely new colonies for such populations on the periphery of cities. Efforts are then made to create new jobs for them, as well as offer them credit, create marketing facilities for them, and train them in alternative skills. However, such alternatives are not inexpensive.

In the rural sector, it is estimated that unused land, which is not under forest cover, is about 1.7 million hectares.¹³ While all of this land may not be fit for agriculture or human habitat, surely much of it can be used, as the topology of the country suggests. The Oxfam land study estimates that up to 3 percent of families in the country have some land-related disputes.¹⁴ Translated into numbers, families dependent upon agriculture should be about 1.5 million, and 3 percent of these would be 45,000. Even if all of these families were to be resettled, a very unlikely possibility, the total agricultural land required would be less than 100,000 hectares; i.e. less than seven percent of the unused land. Hence it is possible and feasible to implement a rural relocation policy, even if the 'land for land' principle is followed.

6.6. Recognising Indigenous People's Rights

In areas such as Rattanakiri that were originally inhabited by indigenous people whose land use patterns and life styles differ substantively from the majority Khmer population, people's traditional access to land is increasingly being constrained by land transfers to people and institutions from outside the tribal communities. Sales, land grabbing, and the granting of concessions by the state characterise such transfers.

A reasonable balance must be devised that protects indigenous people's traditional access to and control over communal land while meeting the broader development objectives of the state that are designed to promote better standards of living in these areas. In the long

¹¹ It must be recalled that migrants settle on certain locales because there are jobs available in the vicinity. If they are settled in places far away from their job locations, they are not able to meet the transport costs.

¹² This does not mean that unemployed person have no place in the society. The purpose in this stipulation is to exclude persons engaged in illegal or immoral activities.

¹³ Williams (1999) has calculated these figures based on several data sources.

¹⁴ See Biddulph (2000: 7)

term, the objective of better standards of living with more secure incomes requires a more productive use of land resources. For many people, this will involve adopting more productive agricultural practices and/or developing additional sources of income from traditional access to forest resources. For others, this may involve additional opportunities for secure and gainful employment.

Such long-term objectives are, however, undermined by current patterns of land transfers to people and institutions from outside the indigenous communities. Such transfers threaten to deprive people of access to land, which has been traditionally governed by the tribal communities. In the short term, therefore, land procedures must be designed in accordance with a law that safeguards indigenous people's traditional patterns of land control, as longer-term development objectives are implemented.

One approach to protecting indigenous land rights involves the concept of communal land titles in which a particular community is granted ownership over land that it currently controls. There are currently several models which demonstrate that the concept of communal land rights is feasible. However, it appears that such efforts are both expensive and time consuming to implement. For example, lands must be surveyed and mapped in order to establish clear boundaries between various communities. Then the methods for implementing such procedures must be worked out in advance by the provincial DLMUPCC so that communal land titling can be replicated in more communities in an efficient and effective manner.

The community, in accordance with locally established rules and regulations, and in conjunction with government's laws concerning land rights, would govern such areas. Rules and methods for governing land allocation and disputes between individuals of different communities, as well as between communities, must therefore be devised. Of special concern are mechanisms that can be employed to ensure that village leaders act according to the preferences of community members. Moreover, the effective implementation of communal land governance must be developed in a way that recognises an individual's rights to specific parcels of land, including the right to sell and/or otherwise transfer ownership rights to other parties, both from within, and from outside the community. These and other complex matters must be worked out in detail before communal land titling processes can be implemented.

It is appropriate for the government to collaborate with civil society organisations to undertake such measures, rather than working on its own. Hence, a communal land titling process must include the active collaboration of both the public and private sector, including NGOs that have experience in these matters. More attention must therefore be devoted to learning about the precedents that have already been established.

Special efforts must be made to inform all parties concerned in the indigenous areas about the relevant laws governing land use and ownership. Also, special efforts must be made to inform people about land conflict resolution procedures. This is particularly important with regard to indigenous people who do not speak or read Khmer as a first language. Again, such public awareness campaigns must involve the active collaboration of both the public and private sectors.

6.7. Recognising Women's Rights

The situation with regard to women, including female heads-of-households, requires special consideration. Women face many economic and social obstacles that undermine their ability to establish and maintain control over land. For example, women are especially vulnerable in situations concerning the division of household land in the event of divorce or inheritance. One problem concerns the fact that they are frequently not listed on land documents. Another problem is that women - even more so than men - often lack sufficient information about their rights with respect to land and, as a consequence, are not able to protect their ownership rights when disputes arise. Female heads of households often lack adequate resources to invest in

household production (e.g. draft animals) and/or meet daily household needs. In situations where they may actually have land, they must often use land as collateral or must sell it in order to obtain cash for food purchases, household emergencies (e.g. health care), or agricultural inputs.

In the context of implementing the new land law, special efforts must be directed at strengthening women's access to land ownership and dispute resolution.¹⁵ Legal codes are urgently required that ensure women's rights to a fair and equitable division of land in the event of divorce and inheritance. Women must also have some legal guarantees that ensure their access to fair and impartial dispute resolution. One important step in this regard concerns the need for active collaboration between the government and civil society organisations to provide women with information about their rights in the context of the new land law, as well as provide support to enable women to advocate for their rights. In terms of promoting women's access to land titling, consideration should be given to affecting preferential rates for land titling fees. This may be especially relevant in cases involving female heads of households. Authorities at all levels of the land-management and dispute-resolution administration should also receive training and instruction about the rights of women with respect to the new land titling laws.

It should be noted that the long-term success of such policies also depends upon complementary development policies that address both the practical (e.g. education, health care, income) and strategic (e.g. active participation in decisions affecting household and community) needs of women in society. At the same time, those efforts that ensure more secure rights over land can make a valuable contribution to promoting the overall situation of women in particular, as well as society in general.

6.8. Following Best Practices

There are many successful land-titling practices in different parts of the world. The experiences of Thailand and Indonesia could be especially instructive. Even within the country, the MLMUPC, with technical assistance from GTZ and FinnMap, has been doing systematic titling in selected areas (Takeo, Kampong Thom, Kampot, and Kompong Som) on an experimental basis. They use aerial photographs available with the Mekong River Commission to demark each agricultural plot. Since these are digitised and mapped exactly to scale, there can be no mistake in the boundaries. Consensus is reached in village meetings on demarcation of boundaries before certificates are issued with the map of the plot and its surroundings drawn on the certificate itself. The experience so far shows that ministry staff is quick to learn the technology of interpretation. The cost, it was stated, turns out at \$15-20 per certificate, compared to more than twice this figure in the case of sporadic mapping.¹⁶ The time taken is also much lesser.

Systematic titling, though, is no substitute for human agreements.¹⁷ For residential plots, there is no substitute for local consultation and settlement of boundaries as such areas do not come out clearly on photographs due to their smaller sizes and thick vegetation covering the villages. For agricultural plots, aerial maps can help to establish an objective basis for bifurcation of land, but are no replacement for enforcement or conflict resolution.

¹⁵ A statistic, recently calculated by the Central Cadastral Office, based on a sample of about 45,000 titles, shows that an overwhelmingly large number of titles were joint, in the name of both the man and the woman. Titles only in the man's name were few and less than those only in the woman's name. These data suggest that having names on titles alone will not bring about gender equity; the policy will have to address the whole sociology of gender.

¹⁶ In the calculation it could not be ascertained whether foreign experts' costs, which are presently borne by the German and Finnish governments respectively, are included or excluded.

¹⁷ The Sub-decree on the Procedure of Establishing Cadastral Index Map and Land Register (RGC 2000) is very clear: that the procedure of human consultation cannot be short-circuited.

The one lesson that systematic titling teaches is that technology facilitates, but is not an alternative to a rule of law and good governance.

There are NGOs (e.g. Non-Timber Forest Products in Rattanakiri province) that have helped establish precedents for communal land titling, land settlement, and joint forest management. Intervention by Buddhist monks in dispute settlement has also been found successful. While this paper will not go into many details not observed in the fieldwork, a mention of other institutions and practices in regard to governance of land and dispute settlement surely is warranted.

6.9. Financing the Land Titling Process

The MLMUPC, provincial DLMUPCCs, and district OLMUPCLs do not have sufficient funds to finance the cost of land titling. The operational costs associated with land titling include cadastral survey equipment, administrative equipment (e.g. computers) and supplies, transportation, and staffing (e.g. training and salaries). People currently pay a modest fee to the local authorities to obtain an application for a land certificate. People must also pay unofficial fees to government staff at the district and provincial levels in order to finance the costs of measuring the land and issuing land titles. These unofficial fees are currently too high for most people to afford, and as a result, many people decide not to acquire land titles. Rather, they routinely rely on the receipt for the land certificate application to substantiate their claim to a particular parcel of land. In the process, the state also loses considerable revenues. *The guiding principle ought to be that land titling should be affordable for all people.*

The recommendations in the following paragraphs should be implemented in the context of the objectives governing the public finance reform, currently being considered by the government. These reforms envision a more decentralised system of public finance in which public services are financed by both, inter-governmental transfers from tax revenues and/or donor assistance, as well as user-fees for the services. In the case of user-fees, the basic principle is to make cost recovery more efficient, transparent, and accountable in the sense that the supply of a specific service reasonably approximates demand.

First and foremost, the operational budgets for all levels of the administration involved with land titling should be strengthened through inter-governmental transfers. These budgets should be supplemented with revenue collected from the fees that people pay for the land certificate application and the titling process itself. The modest fees currently charged for land certificate applications should be continued, perhaps increased a little more for a certificate, and should be progressive in the sense that larger areas would require proportionally higher fees. The revenue from such fees should remain with the authorities issuing the applications. The payments of all other fees associated with the titling process should be formalised. Moreover, the fees should be uniform for all people and should be published according to a rate established by the MLMUPC. The revenue from fees associated with cadastral surveys and issuing land titles should be divided between the provincial and district departments to help defray costs associated with the land titling process. Such a decentralised approach to partial cost recovery will promote the long-term sustainability of the land titling process.

The tax on land sales and transfers represents an important source of potential revenue for the state. The current practice is that four percent of the land sale value should be paid to the Provincial Tax Department before a land title is issued. However, in most cases, people undervalue the sale price. Also in most cases, transfers take place outside the formal processes and no tax is paid. In both cases, the state loses considerable amounts of potential revenue under the current practices. Of equal importance is the fact that such procedures result in considerable confusion and misunderstanding among all parties regarding the criteria for a legally valid land claim. A tax on land sale and transfer of ownership should be paid *before* only the transaction is approved. No land claim should be recognised in any form by the

LDSC or courts unless the required tax has been paid according to established procedures. In order to substantiate a person's or an institution's (e.g. private company) claims to a particular parcel of land, the courts should require documented proof that the tax has been paid.

In the interests of a more equitable and progressive tax system, companies and individuals who have acquired more than five hectares of land should pay a tax based on a higher percentage of the sale value. In order to check the tendency of people to understate the value of the land sales, local authorities who sign off on land sales must verify that sale prices reasonably approximate the market value of such land. Such procedures should be complimented by special efforts to strengthen the system of land valuation at the appropriate levels. One approach that is practised in some countries is to standardise the rates for different zones (separately in rural and urban areas and by land use), depending upon the current valuation of land. These standards are reviewed every few years.

6.10. Generating Data and Information and Spreading Education on Land Issues

Presently there is too little data on almost every aspect of the economy and society. There is even less information available at the local levels. Also, data that are available (e.g. information on land transfers at the village and commune levels) are not efficiently collated and presented. A strategy to establish decentralised databases is important for both titling and development purposes. One way that can be cost effective is that village and commune-level surveillance centres record information on select key variables and changes therein at their levels, which can then be compiled at the district and higher levels. The existing functionaries can do this job and no fresh recruitment need be made. These databases should regularly be up-dated, and widely disseminated among the users, while delays in their compilation and availability should be minimised. These data, however, are no substitute for large surveys, which in any case should be conducted from time to time.

As of today, different ministries and departments maintain their own databases. They are not necessarily synchronised with each other, and as a result, different ministries make policies and strategies based on different figures for the same items. The need to establish a central bureau of statistics – which would collect, collate and reconcile already collected data – is paramount. In other countries such a bureau serves all government and concerned organisations, and even publishes and markets the data. A similar model is proposed for Cambodia as well.

Literacy in Cambodia is not very high and is particularly low in rural areas. This is especially true among older persons and women. Most people in villages do not know the law and are not conversant with the procedures of land registration, transfer, succession and inheritance. In one village in Kampot district, people said that salient features of the land law, including procedures, user fees for different services, and the grievance redressal procedures, should be written on posters and placed at appropriate locations in villages. Also, there could be special village meetings for explaining the relevant elements of the law and the procedures involved in titling and other related matters. NGOs and other elements of the civil society should be involved in public education. Perhaps some of the most effective tools for disseminating such information are radio and television, as even the most remote areas often have them.

Chapter Seven

Concluding Observations

Cambodia is a late beginner on land reforms and therefore has the advantage of learning from the experiences of other countries. There have been mistakes committed elsewhere, which have cost those countries basic food security (e.g. Africa). Such mistakes can be avoided here. Unlike in the 1950s and 1960s, detailed experiences, including elaborate manuals on different facets of land reforms, are now available. It is important that the concerned planners and officials become acquainted with the relevant literature.

Cambodia has multiple modes of land use. The subsistence mode predominates, though market forces are rapidly gaining ground. Due to a rather sudden exposure to the market economy, the peasantry – which is also burdened by illiteracy and isolation – is suddenly faced with multiple demands on their only means of subsistence. As a result, many have lost lands or are struggling to maintain control over them. The ensuing conflicts are also being settled in a multiplicity of ways that are not necessarily consistent with each other, or with the law. In this regard, the administrative system, which is largely a top-down bureaucracy, is not able to fully grapple with the situations prevailing at the local level. They are also ill equipped to do their jobs in terms of a lack of financial and human resources. Many in the administration, for want of a better compensation received from the government, are also tempted to accept unofficial favours. Those who cannot pay (i.e. the poor) almost always lose out.

A distinction should be made between *stakeholders in land* and *stakeholders in the project*. The different *stakeholders in land*, in addition to the peasantry, include modern commercial and speculative interests, government officials, the military and various concessionaires. The heaviest demand for land is in urban areas, along developed roadsides, at riversides, and in commercially developed centres. The *stakeholders in the project* are government officials and politicians who at times may also have interests in land. Such a blurring of the distinction between common and private interests may at times compromise the neutrality of the bureaucracy, and create potential areas of conflict. Dispute settlement mechanisms are in place, but not all of them are impartial and transparent. Moreover, they are also overworked and under-funded. In addition, unequal resources and insufficient access to information by different stakeholders of land and in the project presently make the system not so fair for all, especially when there are clashes of interest. The peasantry is inevitably the loser.

As in other developing countries, women's position in Cambodia is typically lower than that of men. They do not own land unless they head the household. They are also less educated and not conversant with the law. As a result they are more dis-empowered compared to their male counterparts. However, their labour participation is rather high when seen in the international context, which places them differently in the labour market. To ensure a better

gender balance in land ownership, land titling must address specifically the feasibility of registering lands jointly in the name of men and women.

To address the problems raised above, this paper has placed heavy emphasis on decentralising the programme including the dispute-settlement mechanisms. This would introduce more transparency and local control over the programme, as well as create more confidence among farmers. The paper also strongly recommends that the commune councils are strengthened, and entrusted with the responsibility of conflict management and all other local investigations. The titling itself can have the district as its nodal centre. Local conventions and customs are still widely prevalent in rural areas. Effort to harmonise the formal legal system with local administration can reap rich dividends.

The need for capacity building at all levels has been strongly identified. The demand varies at different levels. Locally, training in law and dissemination of rules and regulations, as well as in reconciliation of disputes, are essential. At higher levels, skills in community development and conflict management can be useful. Technical training in land survey techniques and interpretation of digitised images can be useful at all levels. Lastly, finances for equipment and transport as well as operational expenses, are required for the successful and sustainable implementation of the programme.

Case Studies and Stakeholders Seminar Proceedings

Case Studies of Five Villages and One Low-Income Urban Settlement, and Report of a Stakeholders' Seminar on Urban Settlements:

- 1. Village Kampong Pring, Kandal**
- 2. Village Kampong Thnoat, Kampot**
- 3. Village Baboang, Prey Veng**
- 4. Village 4, Kampong Speu**
- 5. Villages Phum Psak and Ta-orng, Rattanakiri**
- 6. Squatter settlements in Sangkat Tonle Bassac, Khan Chamkar Mon, Phnom Penh**
- 7. Synopsis of the Proceedings of the Stakeholders' Seminar: Urban Land Settlements**

1. A Case Study of Kampong Pring Village in Kandal Province

Introduction

Kandal is among the more commercialised and urbanised provinces in Cambodia. It has the second highest population after Kampong Cham according to the Census of 1998. The province has 206,189 households comprising 1,075,125 people.

Sa-ang district, where this study was conducted, has 32,457 households. It is among the more developed districts in the province. Since this district is close to the provincial capital (Takmao) and the city of Phnom Penh, there are commercial activities here, as well, in addition to primary sector activities of growing rice and cash crops, and fishing. Land transactions are changing the livelihoods of local people, while at the same time contributing to transforming occupational patterns away from subsistence agriculture to secondary and tertiary jobs. Among the 16 communes in this district, three – Roka Khpos, Sethabo and Svay Rolum – are relatively more developed where garment factories have substantially transformed local economic activities. Thousands of women are shifting their jobs from unpaid family labour to wage work in these factories.

Being commercially well developed in parts, a multiplicity of stakeholders, and hence conflict on land, has emerged. Land disputes have occurred in this province since the advent of the free market economy. Among the 32 cases received by the Provincial Land Disputes

Resolution Commission in 2000, only 16 were solved at the province level and 10 had to be submitted to the Ministry of Interior for decision.

Village of Kampong Pring

The village of Kampong Pring, where the social assessment was conducted, stretches for 2.5 kilometres along the Tonle Bassac River, south of Takmao. It is situated in Sethabo commune of Sa-ang district. It is one of the more commercialised and urbanised villages in the three most advanced communes of Sa-ang district. The village has 336 households with a total population of 2,492. The number of households in the village increased from 220 in mid-1980s to 336 in 2001. This increase is reportedly due mainly to new-married families and returnees.¹ There are more than 30 female-headed households, who reportedly own smaller farmland plots, compared to the male-headed ones.

The village area is estimated to be around 590 hectares, of which about 100 hectares are under residential land and 160 hectares are farmland, including 40 hectares under dry-season rice, 107 under wet-season rice, and 12 hectares under *chamkar* crops. Public lands and water bodies have reportedly been privatised by the local authorities over time. The price of land varies according to its location and economic potential. The land price increased dramatically in 1996: a plot (15mx100m) was priced at \$5,000-10,000 compared to just (around) \$350-720 in the early 1990s. *Chamkar* land costs \$1-2 per square metre. Farmland in general costs \$0.3 per square metre.

Livelihood

Land speculation since the early 1990s and the construction of a garment factory in 1996 have both transformed the economic wellbeing of the village community and land use-pattern in the entire area. Only 45 percent of households now rely on agriculture (e.g. growing rice, cash crops and fishing), compared to an estimated 99 percent in the mid-1980s. Many farmlands have been sold to companies and/or speculators during the last decade. The non-agricultural jobs are more secure and are better paying. The garment factory in the village employs about five thousand workers, each earning an average of \$50 monthly wage. The factory has also attracted migrant labour from other provinces. Since these in-migrants need accommodation, the villagers have found an opportunity to earn extra-income by renting their houses for \$10-15 a month per person, with food optionally provided. Many house owners have reported abandoning farming because they have opted for preparing food for their house-renters. Consequently, many farmlands are now available for leasing to the farming households at more competitive prices compared to earlier. Although there is a 50 percent decrease in the demand for labour in agriculture, agricultural workers are able to command a higher price for their labour (5,000-6,000 riels of wage a day now compared to 3,000 riels in the early-1990s) because quite a few have switched to non-agricultural occupations.²

Land holdings and landlessness

All households received land for both residential and agriculture in late 1980s. Each family was given 15mx100m of residential land. There was a variation in the sizes of farmlands distributed according to the number of adults, elderly and children in the family. The average was 0.5 hectares per family. After the initial land distribution, families with male labour and draft animals cleared up more lands and expanded their farm sizes.

While the average farmland size is small, a few households are reported to have larger plots of farmland – up to three hectares. Up to 40 percent households reported that they own

¹ It was informed that that there were 18 returnee families in 1990.

² It is though not certain whether this is an increase, given the fact that riel has depreciated against the dollar. No one seems very sure whether this depreciation has affected local food prices.

no farmland. Landlessness is not a main concern though, because villagers view off-farm jobs to be more profitable than working on farms. The prices of land offered by speculators are encouraging individual households to sell their lands. Land speculators, mainly from Phnom Penh and some overseas Khmer people, have also bought lands here, sometimes in the name of their kith and kin. Out-migration from this area in the recent years has not been reported to be high despite significant landlessness.

Receipt and registration

About 95 percent individual households in this village possess certificates of their residential lands distributed in 1992 (of size 15mx100m). For farmlands though, only receipts were distributed, and there was no follow-up for giving certificates. One plot (15mx100m) of residential land on the roadside, with proper papers is priced in the range \$5,000-10,000.

The wealthy, mostly from Phnom Penh, have recognised the importance of a certificate more than the local residents have. To secure legal ownership, they have opted for obtaining a proper certificate. Many though, have by-passed the village and commune level routes and have gone to higher authorities directly. In contrast, the local people have relied exclusively on village and commune authorities for land papers and transactions. They do not go to higher levels and avoid paying high taxes and unofficial fees (\$200-500) at different levels. A written agreement, though not correct in law, is drawn up between the sellers and buyers and signed in the presence of a witness. This unofficial transfer reportedly costs only about 40,000-50,000 riels (about \$10).

In a similar vein, illiterate parents verbally transfer particular parcels of land to their heirs, or at times make hand-written statements signed in the presence of neighbours. In these cases lands continue in the name of parents even after they die. This practice is reported to have resulted in a few land disputes among relatives after the death of parents.

Another problem likely to be faced in the forthcoming registration scheme is the unclear size of land occupied by individuals. Two issues that are likely to be problematic are cited here. First, the sizes of occupied farmlands are not properly recorded on the receipts (issued in the early 1990s) because owners have been avoiding paying high taxes. Second, many households have cleared up more lands behind their house plots, which makes their present holdings larger than what they were earlier given. Again, these have not been officially recorded.

Land disputes and settlement mechanisms

Conflicts occur within communities on boundaries, between communities and local authorities on access to public lands, inundated lands, etc., and between local and ethnic minority people, on land control.

The titling programme has been affected by local boundary disputes. It was stated that up to 5 percent of landowners were not issued certificates earlier because of such boundary problems. Most residents believe, though, that local authorities can easily address boundary conflicts.

Land concentration in the hands of outsiders, who often fence their boundaries with concrete walls or fences, has brought a new dimension in the articulation of property rights. In contrast, most locals have not put impermeable fences around their residential lands. In many cases, the fences have blocked the right of way to other lands (including private), water sources and forests. This has been a source of conflict.

It was reported that the village leader, in conjunction with the commune leader, had sold the *Krom Samki* (community controlled) land to private individuals in the late 1980s without informing the community or sharing the proceeds with them. Many returnees were, in the process, deprived of lands. They are now living in illegal settlements. There was also a

public demonstration staged by the local people against this act. The legitimacy of local leaders has been tarnished, and at the same time, there is some tension between the returnees and local authorities.

Although both the court system and Land Dispute Settlement Commission (LDSC) are official organs of the government, the local residents were aware of only the court. At the grass-root level, people approach the village and commune leaders to help in conflict resolution. Most local people maintain that disputes can be settled in a congenial and friendly environment only at the local level. They find the formal and upper levels in the government to be too expensive and intimidating. In many cases, the poor do not even put up a fight. They drop their complaints and rely on providence – ‘those who commit crimes will repay for their sins in the next life’. The village has so far witnessed at least three cases of lands belonging to poor women-headed households, being appropriated by others. The women interviewed indicated that contesting cases at the upper levels not only requires a lot of money, but it also draws them away from their jobs, meaning that they lose livelihood for the period that they are away.

The incapacity of courts to enforce their judgements in some cases further erodes people’s faith in the formal system. For example, in one case the court had ordered restoration of land taken from one ethnic group by another, but the court order was not followed. Such cases were quoted when people stated that they believed that fairness could only be ensured within the community and not outside it.

Stakeholders' observations on land titling

Any official recognition of ownership right on land was viewed as essential. Respondents valued the certificate as:

1. "Gold" that can be used to obtain cash or facilitate sale of land at a better price;
2. Indicating a *proper ownership* of their land, which can help them protect their property from predators. Land papers also improve the capacities of local people, make transactions more transparent, and prevent mismanagement of common lands; and
3. Help decrease land disputes.

Local respondents were not aware of the systematic registration system, which can offer certificates without any fee. The peasant households are willing to pay 5,000-10,000 riels for a certificate. The commercial interests who did not have the papers were willing to pay more.

2. A Case Study of Kampong Thnoat Village in Kampot Province

Introduction

Kampot province is situated in the southern part of Cambodia and, along with Kep and Kompong Som, is defined as a separate coastal agro-climatic zone of the country. People’s occupations here are partly dependent on the forest and partly on the sea, since historically there has been some significant forest cover and the Gulf of Thailand lies on the south-west. There are eight districts, 90 communes and 460 villages in the province. The total population is 528,405 persons (104,993 households), as per the Census of 1998. Agricultural activities are composed of both rice cultivation and other non-rice crops (*chamkar*). Large areas are also given out in land concessions. Many feel that this is a reason for the contested claims on land. A typical contention arose when the military occupied large tracts of land in the early-mid 1990s, and after the hostilities were over, sold or leased the lands to commercial

companies. Local farming communities traditionally have claimed use rights over these lands even if they may not have cultivated these lands for quite a while.

Kampot district, where this study was conducted, is among the more backward areas on the province. There are few if any, commercial activities here. Since this district is near the coast and located on a river mouth, many people have taken up sea as well as fresh water fishing. The area of the district is 111,691 hectares, out of which 15,150 hectares are under rice cultivation, 4,600 hectares under salt fields, 43,750 hectares under forests, and 27,191 hectares under land concessions. This district has large tracts of unused land, which could be put in use with an active land policy. In fact unused land owned by both private parties and government, has been a source of contention in this district.

Both at the province and the district levels, there are land disputes and problems relating to the operations of state organs. For instance, there are disputes involving the military, companies, and communities regarding unused lands. There are also disputes between communities and authorities regarding unused lands. There are at least 10 cases pending before the provincial LDSC and about 100 cases before the provincial court regarding land. Officials feel that the number of disputes is increasing in the province. This case study, however, outlines only those issues that pertain to the village studied.

The village of Kampong Thnoat

The village of Kampong Thnoat, situated in Konsat commune (the commune has six villages), is rather backward, even though the area appears agriculturally and climatically rich with a fairly good vegetation cover. It has virtually no commercialised activities. Land costs are low at \$100-150 per hectare, and agriculture is all under the subsistence mode. Land is not commercialised and is rarely transferred. There have been few if any, transactions in the past decade (i.e. as far as memory goes). Besides agriculture, people take up fishing and wage work on salt fields. This village, unlike the district as a whole, has no unused land. The main occupation here is paddy cultivation, *chamkar* (vegetables, fruit) and sea-cum-river fishing. There is some homelessness, and in a few cases more than one family shares the same house.

Geographically, this is a very widely dispersed village with over 400 households spread along 2-3 kilometres of the road. There are 18 sub-groups of households formed in the village to ensure administrative co-ordination. Each has a chief, though only one is a woman. The village chief, who has recently taken over, is illiterate, and he has entrusted most responsibilities to his grown-up son who can read and write. There are many female-headed households – 120 as estimated – because of widowhood and desertion. Most women-headed households own very small plots of lands if at all. The primary school is two kilometres away, and the hospital is located in the district town.

Livelihood

There has been little in-migration in recent years and as this is a poor area, some people migrate out for work. Most people feel that with the growing population, the future lies in activities related to sea and salt and not land, which is becoming increasingly atomised.

People hire labour and labour reciprocation is also quite common. Older people, particularly women, hire labour to cultivate their lands. Landless people, who rent land, also hire labour. The use of others' bullocks for tilling is not uncommon since there is a shortage of draught animals. In fact land is not used to its potential for want of complementary inputs like draught animals.

Most farmers cannot use surface irrigation since water is on the other side of the road, and they cannot dig a canal to bring water to their side, as the road would be damaged. The

average size of rice land is 20 *kongs*.³ There is a lot of *chamkar* land and *chamkar* crops are also grown on house plots extensively. Given the location of the village close to the sea, the soil is somewhat brackish, and as a result, the rice crop tends to be adversely affected. A lack of credit shows up in the low application of agricultural inputs. There is no ACLEDA⁴ credit provided in this village. Some private credit is available at 4-5 percent interest per month. In order to obtain credit though, lands need not be registered. It only requires two persons to vouch for the loan and/or the borrower should possess a family card.

Land holdings and landlessness

The village folks are generally poor, as the average holding does not exceed 0.5 hectare per household among the majority. Only a few households own larger plots of land. There are a number of new families that have come to occupy lands here since the early 1990s. They were provided lands by opening up new areas. This practice, though, has now ceased.

The village has no returnees of recent origin. People were 'shifted around' in nearby villages in the late 1970s and then moved back soon after. Up to 30 percent of households are landless, and they work on salt fields and fish. A few families who are landless are the relatives who came later to join the earlier dwellers. These late entrants could not obtain land in the distribution of late 1980s. Also, salt workers were not given land under the pretext that their principal occupation was not agriculture. Landlessness also occurs because parents divide their (small) holdings among to their 1st or 2nd offspring, while the rest remain landless. Hence, fishing has emerged as a major activity in the village. It is also quite common for people to engage in multiple occupations for survival.

When land was distributed through the decade of the 1980s, plots were given out in such a way that each adult was given 10 *kongs* and each teenager seven *kongs* of land for agriculture. The average land holding per household added up to around 0.5 hectares per household. Receipts for all lands were made in early, mid- and late 1980s.

Today the average land size, if a few larger holdings are left out, has been reduced to 10-15 *kongs* per household. The landless are the salt workers, some late/newcomers (mainly relatives of residents), and families formed by new marriages. Sometimes people sell land to buy non-agricultural assets, like motorcycles and boats and voluntarily become landless. There are no cases of land grabbing reported in this village. In fact, nobody has lost land here by any means that they would resist. Demographic forces are the main reason for landlessness. In 1984-85 people received land for both residence and agriculture. Rough calculations show that most of the 30 percent landless today, other than the salt workers, lost land because of demographic forces.

There was only one case of a land dispute that reached the court. It involved a woman who owned land in the village before 1979. This was an unnecessary dispute since ownerships of origin prior to 1979 are not tenable under the present law. The village chief/elders settle any smaller disputes that may occur concerning boundaries or succession.

There are virtually no formal or informal transactions of land in this village, only subdivisions. The use of land as collateral for loans, though, is common.

Illness is common, though only the very small holders have been reported to sell land, as they have few other means to raise cash to meet health expenses. Selling land for meeting health expenses was reported only in rare cases. Instead mortgaging of land, as stated earlier, is more common. Often such transactions are informal and village based, and land is retrieved as soon as the loan is paid back.

³ A *kong* in Kampot is about 1/100 th of a hectare in this area.

⁴ ACLEDA was an NGO that later converted to a micro-credit bank. It is one of the few institutional credit outlets available to farmers.

Receipts and registration

Fires broke out in the early 1990s in the commune and district offices, in which all papers relating to land in the area were burned.⁵ Since then, farmers have not made attempts to obtain duplicates. Each tiller/dweller, they say, knows the other's lands, and hence there is no contest over land. There were no major boundary conflicts reported, and the few that arise are settled in the village itself. There are no court cases in this village regarding land, other than the one stated earlier.

The story of the papers being burned in the fire goes even deeper. It was reported that seven years ago (i.e. in the early 1990s), the then village chief took all the land receipts from villagers along with 1,500 riel each, with the promise to get them certificates. The fire then occurred, destroying the records. District authorities mention that duplicates in many cases were issued, including for Kampong Thnoat village. Duplicate certificates have been in the possession of the ex-village chief for several years now, and the research team saw these in his possession. Most of them are moth/white ant-eaten, and if not preserved immediately, they will be completely destroyed. The ex-chief maintains that the villagers owe him 'expenses' for reissuing these certificates, while the villagers do not want to pay 'unofficial monies'. Hence the stalemate. This situation essentially suggests that the demand for land papers is very low. Land is only a means of subsistence and not necessarily a tradable commodity, except in time of distress.

There have been no reported cases of sporadic registration here, which further strengthens the argument related to the lack of demand for land titles.

People say they know what titling is, though in reality most may not. Many of them have mistaken a receipt for a title. They welcome the titling exercise nevertheless, because they can then legitimately transfer land to their children. But they do not want to pay more than a token amount, say 1,000 riels per plot, for it. Only a small group offered to pay a little more – 5,000 to 10,000 riels. In the case of further sub-division of property (among the offspring), there is also reluctance to pay for the transfer costs. People said that they trust the existing agencies for doing this job, but they prefer higher authorities at the district, compared to local authorities. Also, the local authorities' skills are questioned. The highest level of faith is placed in NGOs, despite having no experience with them as there are none located in the region.

The MLMUPC, with technical assistance from GTZ, has initiated a titling programme in Sri Chaing commune. It is not there in Konsat commune.

People do not know about land laws, but they would like to know more. It would be most useful if information about the land law is disseminated in the village. The 18 group leaders could be the focal point for this. Bulletin boards/posters in the village, listing the law in very simple words, was proposed as a way to disseminate the salient features of the law.

Problems and disputes

There were cases reported of the commune and village chiefs having sold land of the *Krom Samaki* without permission of members or paying them. This was in the late 1980s or early 1990s. This incident has caused some mistrust towards local leaders.

Conflicts have also occurred because migrants who came to stay with relatives then staked claims on property. These residents in-migrated seeking security initially, and then stayed on. In agriculture, conflicts originate also from unused land. In fact, there was scramble for unused land, which has all been used up now. Conflicts in this village occur mainly between households, as there are no outside parties here, unlike other parts of the

⁵ The Khmer Rouge, it was alleged, lighted these fires.

district and province. In some cases when land is divided into very small portions, land boundaries are often contested, and this too becomes a cause of conflict among small farmers.

There is some forestland near the sea (belonging to the state) and farmers collect firewood from there. In an odd case there has been a skirmish between villagers and forest authorities, and in a few cases the concessionaires.

People insist that all dispute settlements should be made at the district level, which means it is not local and, yet, not too far geographically.

It is suggested that the new titling programme should follow the following order:

1. Residential land;
2. Agricultural (rice) land;
3. *Chamkar* land.

Villagers said that there is seldom a visit by a government official here, other than the visits by the commune chief. They have seen people on some occasions coming to measure lands, but they do not know why.

A word on titling

In the situation described here, it is evident that while land titling is perceived to be useful, it may not find many takers in the subsistence sectors. To induce people into paying will be even more difficult. People not picking up titles due to quarrels on amounts not exceeding a few thousand riels is evidence to this. This is true for both housing and agricultural plots. The inevitable answer is that titling alone is not an answer to these people's problems relating to poverty and subsistence: agricultural modernisation must accompany the titling process.

This case study, unlike some others that reflect many dynamics of land in the form of land transfer and associated conflicts, paints the extant picture in a large number of villages and farmers in the main rice-growing plains of the country in different zones. It points out that conflict alone is not the impediment to titling. There are other, equally important issues like poverty and agrarian backwardness, which also call for attention.

3. A Case Study of Baboang Village in Prey Veng Province

Introduction

Prey Veng, like most other provinces along riversides, is an agriculturally predominant area. According to the Census of 1998, agriculture is the main occupation of 83 percent of the work force. There are 310,000 hectares of farmland including 238,000 hectares of wet-season rice, 60,000 hectares of dry-season rice, and 12,000 hectares under other crops. Irrigated agriculture consists of 30 percent of the total. There are 5,600 hectares of conservation forest. The conserved forest decreased from 40,000 hectares in pre-1970 and to 5,600 hectares in 2000 because of anarchical encroachment of land by military and pressures created by the increased population. There are 217,487 hectares of fishing area, of which 134,099 hectares are fishing lots and 83,388 hectares are for public fishing. During the fishing season from October to June, most of the lands are used for growing receding rice and other crops. The size of fishing lots will be reduced to 50,711 hectares in the next fishing season according to government's new fishery reforms.

Piem Ro district, where the study was undertaken, has the highest population density, and is relatively more advanced among the 12 districts in this province. Since this district is situated along the Mekong, it is regarded to be rich in fish and rice as well as cash crops. In the district, there is a total of 12,000 hectares of farmland: 7,928 hectares under dry-season

rice, 2,754 hectares under wet-season rice, and 1,318 hectares under *chamkar* crops. There are 3,287 hectares under water bodies. The district consists of 12,069 households – a total of 66,362 people.

There have been land disputes here since the early 1990s. These disputes are now a leading concern in the area, though the team was informed that there are serious land disputes occurring in other districts as well. For example, in Preah Sdach district there were conflicts between military, police and local authorities/community on newly cleared lands, though a solution has now been reached. In Ba Phnom district, two more cases were reported. The first involved the military, Prey Veng Department of Forestry, and the local farming community. The Department of Forest grew trees on 630 hectares of land near Chhoeu Kach Mountain in the mid-1980s. In 1989 the Council of Ministers decided to give more than 300 hectares of this conserved forestland to the military. The military in turn occupied more land than this, much to the dismay of the local community. Another dispute involves a company, which with support from the military, forced farmers to sell their farms to the company that is repairing Road No. 1. The company has dug at 16 places for sand and has occupied 50 hectares of farmland not belonging to it.

The village of Baboang

The village of Baboang has 2,542 people: 536 households (38 of minority origin whose main occupation is fishing). The number of households in the village increased from 434 to 536 between the mid-1980s and 2001. This increase is mainly due to newly married families, though there are a few returnees as well.

The village has about 742 hectares of land: 24 hectares are residential land, 23 hectares are under water bodies and 695 hectares are under dry-season rice, of which 190 hectares are irrigated. The soil here is fertile with rich soils from floodwaters coming from the Mekong. Chemical fertilisers for sowing high yielding variety rice have commonly been used since the late 1980s. Yields averaging 3-4 tonnes per hectare of rice have been recorded here. Without fertiliser application, the rice yields are as low as two tonnes. The increase in population has placed excessive demand on land, and there is now no more common land or inundated forest. More than 20 hectares of inundated forest has been cleared for farming since the late 1980s.

Livelihood

Rice farming is the main source of income for about 480 households in the village. It provides seasonal earnings not only for the poor in the village (about 20 percent agricultural labourers), but also to an estimated 400 migrant labourers from neighbouring districts and provinces between February and April each year. A labourer can earn a daily wage of 5,000 riels for harvesting activities. Tractor owners from in and outside the village can earn between 80,000-100,000 riels for harrowing and ploughing one hectare of land. The average cost of farming one hectare for rice production is around 750,000 riels, excluding seeds and family labour. Many farmers do not have working capital and they normally borrow money at high interest rates of 10-30 percent for a season.

Farmers also fish in addition growing rice. The fishing lots cover most dry-season rice in the wet season. These have been privatised since the mid-1980. Farmers have been permitted to fish only in a small area located at 100-105 metres away from the village. Due to poverty, many villagers go fishing further away. When caught, they have been arrested and fined 5,000-50,000 riels by the fish lot-owners, or have had their fishing nets confiscated. In the recent fishery reform announcement by the government, the fishing lot covering this village will be given back to the village community in June 2001.⁶ Farmers appreciate this reform very much and believe that they will be able to improve their livelihood.

⁶ This was told to the team during the fieldwork in March 2000.

Land holding and landlessness

Although the village produces surplus rice, a majority of the villagers is poor. Each farming household owns on average 1-1.5 hectares of land. The lands are concentrated in a few households as a result of distress sales, mortgaging of lands and gambling. Also, the more vulnerable farmers (i.e. those without farming equipment and/or means for buying agricultural inputs) have lost productive lands, since the rice price has been fluctuating in the last few years. A few households own more than 10 hectares of land, while at least 40 households have no farmlands other than those under pledge.

In the late 1980s each household received 1-2 hectare(s) of farmland according to the size of family and the ability to clear up land. Each family member received from the state land equivalent to 0.12 hectare for those possessing low and medium labour, and 0.16 hectare for those possessing sufficient labour. At that time the village households took back their inherited residential lands that they owned before 1979. Ethnic minority people as well came to live on boats by the river in late 1980s. They own(ed) no land. Due to the fact that no more land was available, very few returnees from the Thai-border camps who came in the early 1990s received land. Many of them though have bought residential lands in the village.

Registration and receipt

Officials of the district cadastral office along with the commune leaders, in 1991 encouraged villagers to apply for ownership certificates for both residential and farmlands. Although almost all individual households applied for certificates at the office of Baboang commune, only about 85 percent of households received certificates for their residences. For farmlands, few if any certificates have been issued, and people mainly have application receipts only.

About 10 percent of households, all better off, applied for and received certificates in the late 1990s. These buyers wanted certificates quickly so as to articulate their ownership as part of the lands were bought in distressed sales caused by prohibitive expenses for illness and agricultural credit at high interest rates (10-30 percent per month or season, depending upon the situation). In a few cases, obtaining certificates caused boundary disputes. One certificate costs about \$100-200. It costs 50,000-100,000 riels (\$13-26) to make a receipt for a newly cleared farmland plot, mainly in the form of unofficial fees, at the district cadastral office.

Most land transfers have so far been informally transacted in the village. To make formal transfers, a 10 percent tax is charged on the total value of the land. For an informal agreement letter with thumbprints of the sellers (husband and wife) and buyers (husband and wife), and witness from the village chief, only 10,000-30,000 riels are needed. In effect, the receipt is transferred from the seller(s) to the new owner(s).

Many illiterate parents or elderly relatives verbally transfer their land plots to their children or relatives in the presence of witnesses, such as relatives or neighbours. At times they have informal inheritance letters prepared and imprinted with thumbprints. These are made in order to avoid cost. It is also believed that such papers can buy peace for future generations. It was found that these people do not know the rules. It is no wonder that all inherited lands are still officially recorded in parents' names.

Both land receipts and certificates are used as collateral to obtain credit. For obtaining credit, an informal letter is written to this effect, often in the presence of a witness. Poor farmers were forced to pledge their lands for as long as 2-3 years for credit equivalent to about \$175. The amount of credit of course depends upon the size of the land. Many farmers have borrowed money at interest rates of 10-30 percent per month for family food consumption, illness and buying farm inputs. Shortfalls in household incomes, caused by either the unpredictable price of rice or poor harvests, or the accumulation of the principal and interest on existing loans, were reported to be the main causes of loss of productive land.

Land disputes and resolution mechanisms

Land disputes have occurred since the early 1990s and have been increasing overtime. Most disputes were/are boundary conflicts, problems arising out of distress sales and mortgages, inheritance, and land grabbing by rich relatives. Boundary disputes peaked during the land-titling programme in 1991. As of now, the main cause is distress sales, being forced by creditors. Disputes occur when loans due are not paid, or there is need to divide the land for paying a creditor. Almost all such disputes and those related to inherited land have reportedly been solved at the village level. The village chief, elders and witnesses play an important role in resolution of such conflicts. It may be stated though, that the resolution is not necessarily fair to all, at all time. The poor at times get a raw deal.

So far there have been eight significant disputes reported, including three boundary disputes, three collateral-related disputes, and two of land grabbing by rich relatives. The village chief has so far helped solve all the debt-related disputes by converting short-term loans into long-term ones. District authorities have helped settle boundary disputes. The others are being contested in the courts. In short, local based mechanisms, to quite an extent, appear functional.

In one case, a younger sister cleared a plot of inundated land in the 1980s, and had a receipt for this land. She gave this land to her younger brother to farm after a few years. After the national elections of 1993, her elder brother claimed this land when the younger one decided to give the plot back to his sister for one *Chi* of gold (about \$34) and 200 kilograms of milled rice. Although there were witnesses to the earlier transfer in the village, commune and district, who affirmed the land belonged to her, the court, after delaying the case for four years, reportedly favoured the older brother. The brother was warned that if he were cheating his sister he would suffer consequences in the next life! Community leaders in other cases have reported similar unfairness as well. This has affected people's faith in arbitration authorities at the higher levels.

People's views on benefits of land registration

Land certificates have been reported to be essential for the community. First, it can establish clear ownership of the individual's land, which can prevent land disputes and grabbing. This would provide people moral and economic benefits as well. Going through the court process was reported to be disruptive to earnings and expensive. Second, a land certificate is viewed as "gold", which can be used as collateral to obtain credit or be sold for money to meet the emergency needs of households.

Despite these benefits people have not demonstrated much keenness to obtain certificates because it is expensive relative to their present earnings. Villagers interviewed were willing to pay 4,000-5,000 riels for a land certificate. There was another concern: households believe that the new land registration programme will recognise the size of land for which each household holds receipts. Many households have cleared up more land after they obtained receipts in 1991 and as a result, the size recorded on their land receipts is smaller than the land plots they actually occupy. They feel they will lose out because of the registration. Also, they are afraid they will have to pay more taxes. Many fear that boundary disputes will again emerge with registration, as in 1991.

4. A Case Study of Village 4 in Kampong Speu Province

Introduction

Kampong Speu province is located in the central region of Cambodia. Its total population is 598,882. There are eight districts in the province. Much of the population is located along Route 4, which connects Phnom Penh and Kompong Som, on which the provincial centre is

also located. Some areas in the northern part of the province along Route 4 have attracted considerable industrial development. Further away, development investments are more along the lines of agricultural plantation concessions. At the same time, these areas are also attracting many investors from Phnom Penh, who are consolidating land for speculative investment and *chamkar* production. The proliferation of concrete fencing around unused areas of land along the main road is visible evidence of land consolidation and the increasing value of land in these emerging land markets. Former smallholders have either migrated elsewhere in the province or the country to farm, or to Phnom Penh to sell labour in the service and industrial sector. The areas further away from Route 4 are underdeveloped and are characterised by subsistence farming. Land located near the Aural Mountains is forested and quite rugged with relatively fewer inhabitants. Land values in these areas are quite low, and the development of active land markets has not yet occurred.

Following the issuance of Sub-decree 03 in 1989, which provided for the private control of land, only about 10-15 percent of eligible people applied for land certificates. Since then, only about 5 percent of the land in the province has been titled. The low number of applications and actual certificates has been attributed in part to the security situation. During 1989-97, government personnel were not able to conduct cadastral surveys, and as a result land titling was done only in those communes where security was stable. However, during the period 1993-97, the number of applications in the province increased along with the improvement in security climate following the UNTAC period. Since 1997, though, the number of applications decreased because people believed that they had used the land for so long that there is no need to file a formal claim. Also, the number of investments by outsiders decreased following the events of July 1997. In this sense, the land market in this area has been acutely sensitive to fluctuations in the political situation. Perhaps, more importantly, the unofficial price for a land certificate may vary between \$300–500, depending on location and circumstances, which deters the demand for titling.

Village 4

Village 4 is located in Phnom Srouch district, which is approximately 1.5 hours drive southwest of Phnom Penh along Route 4. The village is one of six closely linked hamlets located near the juncture of the main road and the road leading to Kirirom National Park. In 1982, 53 families returned to this area after having been relocated elsewhere by the Khmer Rouge. Until 1997, when Khmer Rouge units defected to the government, the area was a hotly contested zone. During this time, the military's Regional Force 44 acquired control over a considerable area of land in the region, much of it along Route 4. This land was used for military bases, training facilities, and quartering troops and their families. Since then, the military has maintained control over this land while setting some aside under Military Development Areas for various uses, including potential settlement sites for demobilised soldiers.

There are currently 446 households in the community. In addition to the original households, many of the current inhabitants are government soldiers and their families who have been based in the area since the 1980s, and migrants (e.g. farmers, petty-traders) from elsewhere in Kampong Speu and other provinces. The impetus for rapid large-scale population growth occurred in 1997 when local forces of the Khmer Rouge defected to the government, thus dramatically improving the security situation in the area. There are now approximately 1,033 former Khmer Rouge households in Treng Traying commune, which represent a third of the total population. Also, the area's easy access to both Phnom Penh and Kompong Som, and its close proximity to Kirirom National Park, has made it an attractive location for a variety of investors from Phnom Penh.

Land use patterns

The evolution of land use patterns, and hence the development of land markets, is closely linked to the security situation in the area over the past two decades. Since the early 1980s, the original residents reported that they were engaged in subsistence swidden farming while relying on the forest for other means livelihoods. People adapted their farming practices to accommodate the security situation. For example, some villagers indicated that they had been unable to develop wet rice cultivation because the area was insecure. The security factor also accounts for the fact that there was no land market and land values were very low during that time. Since the Khmer Rouge defections in 1997, however, the demand for land, and thus land value, has increased dramatically.

The emergence of a more competitive land market is characterised by a transition from swidden production to wet rice farming and small-scale commercial cropping, as well as larger scale investments by outside speculators and plantation concessions. In the long run, those subsistence swidden farmers who are not able to make the transition to commercial or wet-rice farming must supplement swidden production with off-farm employment or abandon the agricultural sector altogether and join the urban migration streams. According to the village chief, people in the village cannot expand the area under cultivation because the former Khmer Rouge, government, military, companies and powerful people, control all arable lands.

According to this narrative, the land market in Village 4, as in the rest of Khum Treng Traying commune, is characterised by competition among the original inhabitants and new arrivals, as well as buyers from Phnom Penh, companies with agricultural concessions, and the military and its soldiers, and former Khmer Rouge soldiers and their families.

Land certificates and titling

In Treng Traying commune, 60 percent of residences have receipts of applications, though only 2-3 percent people have received certificates. In the case of farmland, again a considerable percent have received receipts, but no certificates have been issued. In Village 4, about 10 percent of the farmland is receipted (i.e. application for certificate). It was stated that 53 percent of the residential plots in the village have certificates. This figure probably may involve mostly longer-term residences (who applied earlier when the price was much lower), as only about 10 percent of recent migrants have a receipt for an application. The village chief explained that it was very expensive to apply for a land certificate. The cost of an application receipt was about \$30-40, while the certificate itself might cost \$350-400. Translated into livelihood terms, this means that a subsistence (rice) farmer would have to spend about three years of production. For cash crops, though, it might require about two years of production, but then this too is prohibitively high. Generally then, only people who can afford the high costs apply for certificates. This usually involves wealthier people from urban areas who buy land from local farmers. They might also put up fences in order to reinforce their claim on the land.

Land Disputes

Under subsistence swidden conditions with a relatively small population, land disputes were minimal. Overlapping claims on the same area of land could be managed through direct negotiation, perhaps with the assistance of a local third party, such as the village or commune chief. More boundary disputes are now occurring, as local people who are selling their land must clarify boundaries as a condition of the sale. In some cases, land grabbing by larger plantations or wet rice farmers against small swidden farmers may initially take place in the fallow areas that are not currently productive and then claims are expanded following the initial entry. Another kind of encroachment occurs on unused land owned by outsiders when migrant or local people occupy land for either residence or farming, or both. Outsiders base

their claims on the fact that they paid for the land, and may even have a certificate for the land, while those actually occupying the land base their claims on productive use of land. The act of owning land while not actually using it, may represent a new phenomenon for the rural people whose traditional perceptions of land rights are largely non-contractual and based on use.

Other land disputes involve land that is controlled by the military. One particular case involving the Land Dispute Settlement Committee concerned a case in which 108 village households asserted that their land had been taken over by a Korean company, which operates as an agricultural concessionaire. It appears that the land transfer involved the military as well. The villagers claimed that their efforts to get their land back had failed so far despite having to go to Phnom Penh, including demonstrating before the National Assembly. They suggested that a fair resolution of the matter would involve either the return of their land or compensation of an equivalent amount of land *in the same area*.

Another case involves a type of dispute that apparently has also occurred elsewhere. It was reported that in the past some commanders allowed people to farm on land that was controlled by the military in the region. When the old commander was transferred and a new commander took over, he revoked people's ability to use that land for whatever the reason. In such situations where families have farmed a particular piece of land for a period of time, they may feel that they have acquired a legitimate claim on that land. This conflicts with the military's control over the same land.

Another type of dispute involves soldiers who have been quartered on land under military control since the early 1990s. A few households believed their claim on the residential plot and some adjacent land is valid, based on their long-term residence and productive use of the land (e.g. trees, farming). However, their own military unit has told them they will have to give up this land sometime in the near future. They feel this is not fair and that they are prepared to appeal to the Land Dispute Settlement Commission if they are forced to move.

A last type of dispute observed has involved a group of villagers who claimed land that was being used by the military for artillery training. The Land Dispute Settlement Commission heard the case and upheld the military's prerogative to continue using the area in question for their purposes. The claimants say that they will continue to struggle, though they could not specify how.

Dispute Resolution

Just as the evolution of land use patterns determines the nature of land disputes, so does the evolution of land disputes condition the dispute resolution process. For example, the chief judge of the provincial court indicated that the preferred method of resolving cases is essentially by negotiation, as the court or the LDSC have no *real* power of enforcement. In cases involving disputes between households, such as boundary disputes or overlapping claims, the disputes can usually be managed through negotiation. However, the chief judge observed that it is difficult for the provincial court to enforce its decisions when cases involve powerful people or institutions. Generally speaking, courts tend to handle cases involving disputes between households, while the commission tends to handle large disputes involving companies or organs of the state, as such disputes have the potential to become political. One of the objectives of the commission, therefore, is to diffuse cases that may entail political consequences. For example, a member of the commission suggested that some groups might encourage a few disputes with some kind of political motive.

Provincial and district authorities indicated that they are often unable to regulate land issues and conflicts, in part because they lack clear jurisdiction in certain areas. For example, civil authorities said that they are not aware of the military's plans regarding land use and requirements. It appears that decisions concerning land use and acquisition are made at higher

levels of the government in Phnom Penh, while decisions regarding transfers can be made locally. In cases involving transfers of military controlled land to private companies, local authorities report that they are not able to intervene in situations in which land disputes may occur because they lack authority in such cases. In this regard, then, there appears to be no overriding consistent authority that is responsible for governing land rights issues.

Another example of ambiguous or conflicting jurisdiction concerns Khmer Rouge defectors located in one particular area of Khum Treng Traying (near the boarder with Kampot province) who have established their own commune in which they govern their own affairs, including issuing land certificates. While this land is under *de jure* control of the commune chief, he is *de facto* not in control of it. Only when certain specific types of land disputes occur, he may be expected to intervene.

Observations

While it is difficult to comment on legal issues concerning such conflicting claims, it is important to note that they represent potentially difficult cases with conflicts of interests, particularly when the military is a member of the settlement commission.

Such disputes also highlight a problem associated with the fact that different ministries with varied sets of interests share the jurisdiction for land use planning and management. The settlement of disputes in these areas may be difficult for various existing dispute resolution channels to manage.

An important source of demand for land arises from military institutions and individual soldiers since they established a base in the area to combat Khmer Rouge forces operating in the Kirirom region. With the demobilisation process on the cards, retiring soldiers will increasingly demand lands to settle down, and their demand may be centred in this area only, since many of them have been posted here for several years. Therefore, many issues involving land are directly tied up with the issue of security and the onset of peace following the defection of Khmer Rouge forces in the area in 1997.

5. A Case Study of Phum Psak and Ta-orng Villages in Rattanakiri Province

The province of Rattanakiri is located in the northeastern corner of Cambodia, bordering Laos to the north and Vietnam to the east. The total land area of the province is approximately 1.16 million hectares and is classified into four agro-ecological zones. Its population is approximately 94,000, of which approximately 75 percent are people from eight different indigenous groups, who have traditionally practised subsistence swidden cultivation, supplemented by hunting, fishing, and gathering forest products. There is a 6-7 year cycle of rotation between production and fallow, along with hunting and gathering in the forest. Historically, Rattanakiri has always been the destination of migrants seeking farming and business opportunities. More recently, with the liberalisation of the economy and social opportunities the province has experienced a considerable degree of growth that is exerting increasing demand on land resources. Most of the increased demand for land comes from migrant farmers from other provinces, city people, as well as natural population increases among the local people. The most desirable land sought by migrants and investors from the provincial centre of Banlung and other market centres is situated along main roads, which has until recently been controlled by local people. Further, demand for land resources comes from land speculation, timber and agricultural concessions, and hydroelectric power installations. It follows therefore, that the dynamics of the land market in Rattanakiri are characterised by increasing competition between socio-economic development driven by outsiders and demands for land by indigenous people. The evolution of the land markets reflects a fundamental difference in perspective regarding the role and use of land in socio-economic development of the province, and has considerable implications regarding different groups perspectives on land use, land rights, and the way land disputes are resolved.

The provincial Department of Land Management, Urban Planning, Construction and Cadastre reports that a total of 44 land titles were issued in 2000. They observed that one reason for the low number of certificates relative to the actual number of land transactions is due to the high costs associated with forwarding applications to Phnom Penh for approval. Meanwhile, the Tax Department reported collecting only 6.9 million riels in revenue from land transactions since 1997. Given the high number of land sales that appear to take place throughout the province, this represents a tremendous amount of lost potential revenue for the government. A Land Dispute Settlement Commission was established in 1998 and began work in 2000. In its first year, this commission heard approximately 20 cases in addition to 13 “old” cases. Meanwhile, the provincial court heard about 50 civil cases in 2000, some of which involved land disputes. A recent case involving land sales by 247 people from three villages in Borkeo district to an agent working on behalf of a Phnom Penh resident illustrates that the formal legal system does not necessarily serve the interests of the peasantry. The case could not be resolved by the commission through negotiation and was subsequently referred to Phnom Penh where also it could not be settled. The case was then returned to the provincial court, which decided in favour of the buyer despite assertions that the sales transactions involved fraudulent means.

Phum Psak

The village of Phum Psak is situated in Khum Ta-ong commune. The district of Srok Konmum is approximately 10 kilometres west, along the road route from the provincial centre of Banlung. The people of the village are ethnic Kreung. The village has about 78 households (400 individuals), including three returnee households from Anlong Veng.

As in the rest of Rattanakiri, the predominant mode of agricultural production in the village is subsistence swidden farming. In this sense, the household is the primary social unit of production. Ecological conditions (soil fertility) and the availability of household labour largely determine the amount of production a household is able to reap for itself. Each household generally plants dry rice and maintains some perennial *chamkar* crops. To make up seasonal deficits in food production, households gather from surrounding lands as well. This way they also meet their demands for disposable cash for other household needs. As soil fertility decreases, farmers rotate to new land. The fallow cycle is generally 6-7 years for new areas. One’s right to use land is generally recognised by other members of the community according to traditional customs. Community elders enforce any disputes over land use rights. More recently, the village chief has assumed the power of enforcement in his capacity as a representative of the government. The village chief also has the authority to regulate the use of common properties within the domain of the village. According to the chief, the village controls approximately one thousand hectares and each family is allocated about five hectares of land.

It appears that many, if not all, people in the village have sold land at one time or another to people from outside the community, primarily people from Banlung or migrant farmers from other provinces. Indeed, people from outside the village now control all the land along Route 19 that was once claimed by the Kreung from Phum Psak. Many of the transactions appear to have been facilitated by written contracts on plain paper between the buyers and sellers. While most such transactions appear to have been voluntary, there were several cases reported in which land grabbing took place and/or sales and transfers were made based on fears that land along the road would be taken by the state if it was not sold to the prospective buyer. People have also been motivated to sell land because they need cash for a variety of reasons, including for health care, house construction, and purchasing consumer goods such as motorcycles and clothes. A few families appear to have used some of the proceeds from such transactions to invest in wet rice farming (on their remaining lands) through the purchase of cattle, buffaloes and ox-carts.

The village and commune chiefs have validated many of the written contracts on land transfer, which is a clear deviation from the established procedure. One migrant from Kampong Cham said that in the year 2000, he paid 15 *Chis* of gold (about \$510) for three land plots and that he paid unofficial fees to the village and commune chief as well as a high-ranking member of the district administration. Both the LDSC and the provincial court indicated that such contracts represented a valid claim to the land as the village and commune chiefs were government authorities. As a result, such contracts would be upheld in any land dispute, even though there appears to be no criteria governing the validity of an actual contract. Despite the apparent high number of land sales in the community, the village chief reported that no land certificates have been issued in the village. In fact, the commune chief reported that no land titles have ever been issued in the entire commune.

As a result of such transactions, people from the village have relocated their farming land to areas further away from the road. Most families continue to practise traditional swidden farming in an area called O'Cheng. However, some families have developed wet rice farming areas in another area called O'Kwes, perhaps with proceeds from land sales. It appears that land may become increasingly scarce within the community, based on reports from two of three returning refugee families. They report that they are currently farming on land controlled by family members and that the village chief has not yet allowed them to open up new lands. However, these people have only recently returned and may also face labour constraints in terms of opening up new land.

Phum Ta-orng 1

In the nearby community of Ta-orng 1 (48 households), village leaders presented a somewhat different situation in terms of the methods of land transactions and their consequences. They reported that in 1998, some 17 families lost their land along the road to outside people who claimed this land was not being used at that time. In a few cases, these outside people asked the villager's permission to use the land to plant cashew trees. Once they got control of the land, they then appropriated it. In three cases, people voluntarily sold land along the road. One villager stated that his family was able to maintain a sufficient livelihood before such land grabbing, but after it, his family has faced difficult circumstances as they have been forced to use land further away that is not too productive. Twelve other families have sold land over the past several years, while three families have been able to retain land along the road because they had previously planted cashew trees on them.

In 1999, several families from the village claimed land in Labaing 1 based on the fact that they had farmed this land during the Pol Pot years, but had abandoned it in 1981 due to a lack of draft animals and returned to their original locations. They presented their claim to district authorities while people in Labaing 1 appealed to the provincial level. In the end, the provincial authorities determined that the claim of Ta-orng 1 was not valid. In the meantime, some people from Labaing 1 offered to sell land to families in Ta-orng 1, but the latter declined to buy it on the ground that it was theirs anyway. It is not possible, based on the available evidence, to offer an opinion concerning the fairness or legality of such a decision. However, it is important to note that the loss of land along the road to outsiders appears to have had a spill over effect in terms of leading people to assert a land claim against another group. It appears that the government may be called upon to provide third party enforcement in a dispute between two villages. Without commenting on the specifics of the actual case, such a role appears imminently valid and appropriate. It is likely that the government will be called upon to facilitate additional such disputes in the future, given the current rate of population growth and consequent demands on arable land resources.

Case for communal land titling

Provisions in the new draft land law concerning communal land titling warrant comment concerning land management and the governance of indigenous people's land rights. A

successful model for this approach has been piloted by the NGO Non-Timber Forest Produce (NTFP). The model suggests that community land titling can be a feasible and appropriate alternative to individual land titling in terms of protecting village access to communal lands as well as preserving natural ecosystems. However, the process appears to be both time and labour consuming, and requires a considerable degree of mentoring from an outside organisation working in co-operation with the relevant government authorities. It follows that the process will be difficult to replicate on a wide scale unless there are more resources available to the government and communities complimented by positive collaboration between the private and public sector (e.g. civil society organisations and the government).

6. A Case Study of a Squatter Settlement in Sangkat Tonle Bassac in Khan Chamkar Mon, Phnom Penh

Background

Slum populations in Phnom Penh began to emerge in late 1980s. Initially it was the riverside area that received migrants from other provinces and from neighbouring countries. Then there was indigenous growth of this population over time. As of today, the authorities recognise the existence of at least 20 squatter settlements. This case study is drawn up for a squatter settlement in the Khan Chamkar Mon, near the Tonle Bassac River.

This temporary settlement consists of two locales, identified as Village 14 and Village 15 (despite the fact that they are in an urban area). Administratively, these are under Sangkat Tonle Bassac in Khan Chamkar Mon. This is reported to be the biggest squatter settlement among the 20 identified in Phnom Penh.

Village 14 has 2,024 households, including more than 400 households of minority origin, and a total of 9,853 persons, officially documented in 2000. Village 15 has 1,455 households (6,640 persons), including 95 of minority origin (459 people). These two villages accommodate another group of temporary rural-urban migrants, who rent a house or a room for stay in the village. This group is estimated to be about half the total population of the Tonle Bassac Slum, though they have so far escaped enumeration.

In the mid-1980s, there were only about 74 households who cultivated corn and some vegetables along the riverside. This is the present site of village 14. In the late 1980s, the number of households increased to about 300 due to natural growth and people moving-in from other areas. In the early 1990s, demobilised soldiers and local police encroached on these lands, sub-divided them into plots, and then sold them to people for \$70-80 each. During the UNTAC period, illegal houses were constructed by migrants from various provinces, minorities from elsewhere, and anti-social elements. In-migration peaked in 1995-96. Poverty, landlessness, food-insecurity and limited income opportunities in native villages caused this in-migration. In addition, there are a few poor people who originated from other places of Phnom Penh City. They sold their houses and moved to resettle in this area.

Livelihoods

The occupations of these urban dwellers are as follows: 1) daily-wage workers: construction, garments, cyclo drivers; 2) traders; 3) sex workers; and also, 4) government officials: civil servants, police and soldiers. Almost all working-age family members work, and each one's earnings range between 3,000-8,000 riels per day, except probably government officials and sex workers, whose earnings could have wide variation. It is believed that about 40 percent of households have extra incomes derived from renting houses (room sizes 3x6m) at 20,000-30,000 riels per month, or even higher if the houses/rooms are close to main roads and/or have high economic potential.

Ownership and housing

Almost all households in the village including households of Vietnamese origin possess family books issued by the Khan Chamkar Mon authorities. People know that they do not have the right to own any piece of land that they occupy here. The land belongs to the Phnom Penh Municipality and is officially maintained as an 'open space' in the city. However, these people have been allowed to build houses and live temporarily in the village since 1992-93. It was stated that each political party wanted more votes, so the illegality of these settlements has time and again been ignored.

Only wooden houses were permitted from 1993-94 to early 1999 by the local authorities. As of now, building any new house, wooden or concrete, or even extending an existing one is not permitted. Renovations, however, are allowed. Timber is now expensive, so people have begun to construct concrete houses on the sly. Authorities say they do not know what to do with them, and they maintain that they keep reminding the owners about the previous written agreements when the houses were built. Most houses were made out of corrugated tin and wooden/thatch walls. The average size of a house is 15 metre square and houses about five persons.

Each household had to apply for permission from the village and Tonle Bassac commune for building a house in pre-2000 period. A written agreement, costing 10,000-20,000 riels, was drawn up between the local authority and owner, indicating clearly that construction of a wooden house was allowed. No ownership right on land on which the house was built was allowed.

To renovate the house, the dweller had only to verbally ask permission from the village chief. Normally, each owner who was willing to contribute 5,000-6,000 riels and a packet of cigarettes to the village chief was granted this permission. Actually, this provided the owner with a chance to put up a concrete floor or wall.

Price of land and transferring ownership

Soldiers sub-divided the land into plots and sold these to poor migrants from various provinces for about \$70-80 each. The first buyers obtained written agreements with thumbprints of sellers and buyers. Almost all land plots have already changed hands several times. In the year 2000, the price of a plot with a wooden cottage/thatch ranged from \$200-3,500, depending on the size, and location (the distance from the main road), or its commercial potential.

A Family Book, issued by Khan Chamkar Mon, is used for transferring ownership of a house. The village chief changes the names of the former owner(s) to the new owner(s), and a simultaneous agreement of the commune and district chiefs is obtained. Usually, it costs \$20-25 per transaction in unofficial fees. Although people have learned that they will soon be moved out, land transactions continue. Often, such transaction takes place when people are forced to give up land in order to pay for outstanding loans.

Moving dweller-households from this slum areas

The Phnom Penh Municipality plans to move all temporary settlers by 2003. A total of 344 households (294 households in Village 14, and 50 in Village 15) were moved for resettlement to Veal Rinh, Mong Rithy's Oil Plantation and Tuol Sombo Village, in Phnom Penh during Step I of re-zoning in October 1999. There is some relaxation in moving the temporary settlers in Village 15 as of now, because priority is being given to resettle the residents of Village 14. It is planned that in Step II, 153 households and in Step III, 133 households will be move for resettled, in Prey Sor commune, Khan Dongko, among other places.

In the resettlement areas, each household has received a plot of land (8x15m), a latrine, one big water jar, some corrugated tins, a tent, and some milled rice. They also received transportation expenses.

After resettlement in the new areas, many households returned and rented rooms at 20,000-30,000 riels per month. Livelihood was the principal reason quoted. Only male-headed households have come back. The returned households/migrants complain that moving to new resettlement areas has not helped improve their living standards and they have become more vulnerable than before, especially women and children, for want of jobs, food security, health status/care and schooling access for children. Although wells were drilled in Prey Sor resettlement areas, the water could not be used because it is sour and unclean. As a result, two tanks of clean water are brought to supply to residents every day. This surely cannot be a permanent situation.

The intervention of the Phnom Penh Municipality seems like dragging duckweed. Almost all people are poor. One earner is hardly able to feed another member of the family, so each family member needs a job for survival. In addition, the returned migrants said that renting a room is increasing the cost of their living, while their earnings are not rising – in some cases, incomes are even declining.

Land disputes and settlement mechanism

So far, disputes between households have not been a problem because households are aware of having no ownership rights of any land here. There are four main problems in these areas. First, disposing household waste is a problem, but it is mostly addressed locally. Second, protecting the place from fire is a problem since all construction is of wood. So far they have no measures to protect against fire other than advising the neighbourhood to take care of cooking stoves and other inflammables. In fact small fires often break out. Three occurred recently, and each burned down at least 10 houses. Third, checking the behaviour of anti-social elements who try to use these villages for hiding after committing crimes elsewhere. The locals say that they work closely with the district authorities and police to keep track of such people. Photographs of tenants have also been maintained since 1999. As a result, better control of criminal activities has been maintained. Last, there is the issue of encouraging households to move from this area. Residents of Village 15 are presently not very tense – at least for a while – since the immediate aim of the authorities is to relocate residents from Village 14. This has, however, raised the anxiety of dwellers in Village 14.

Almost all disputes, except the criminal cases in the village, are solved at the local level. Since people know they are regarded as ‘legally temporary’ and have no ownership rights, there is no land dispute of any serious nature. The Tonle Bassac commune authorities have solved some disputes and nothing has so far reached courts. There is, though, a community claim for fair compensation from the Phnom Penh Municipality.

People's views on resettlement

None of these households has any objection to the government's plan, but they need fair compensation. They prefer new resettlements in areas around the Veng Sreng Road or in areas not too far from Phnom Penh. Close proximity to work places is an important criterion to choose a location. Economic and food insecurity induced them earlier to move out from their native villages. They are not willing to go back as they see no possibility to earn a livelihood there. People have learned that resettlement in Veal Rinh/Chamkar Mong Rithy area will not be viable. The livelihoods of women and children there have even deteriorated, according to some.

7. Synopsis of the Proceedings of the Stakeholders' Seminar: Urban Land Settlements⁷

1. Introduction

The area of Phnom Penh City is 375 square kilometres. It is administratively divided into seven districts (Khans), and consists of 76 smaller administrative units (Sangkats). There are four districts that constitute the city centre, consisting of only 28 square kilometres. The city has a population of 165,191 permanent households, which is about one million people, excluding those who have illegally occupied lands.

Only 25 percent of the owners of houses and lands have formally been issued possession certificates. Registration of lands and houses was identified to be important for private as well as public ownership of lands, as it will help in designing land use plan, solving land disputes and improving control over public lands. Land registration was also viewed as an essential tool to improve good governance for sustainable social, economic and environmental development.

The seminar discussed four major issues, namely zoning and land use in the city, immigration of people and the associated growth of urban slums, expansion of the geographic limits of the city, and the capacities of the existing staff to manage land titling and other aspects of urban development.

2. Urban Zoning

A rehabilitation plan for Phnom Penh was first developed in the mid-1980s. This was a formidable task since all the valuable documents were destroyed during the Pol Pot regime. After the city was emptied during the late 1970s, the returning people were encouraged to resettle here from 1979 till the early 1980s. About 70 percent of city dwellers at that time had originated from other provinces. The physical structure of the city was restored with technical assistance from Vietnam. As a result, the city was able to accommodate a population of about half million by the mid-late 1980s. Today, the population has risen to more than one million.

Participants reported that they had no knowledge of any zoning or land use plan that has been prepared for the city of Phnom Penh in the recent years. If there are any plans, they are not public for reasons not known to them. However, participants observed that the absence of a proper zoning and urban development plan has encouraged civic mismanagement in the city. According to the views expressed by participants, many public lands and buildings have been sold illegally and as a result, there are few structures and lands remaining for the development of infrastructure and utilities. Also for several years, many lands occupied for commercial purposes have not been productively used and are being held for speculation. Tax revenue accrued from such land is very low because the tax rate is low and the non-payment rate is very high. This has resulted in a considerable loss of revenue to the government. High unofficial fees for land titling and transfers were cited as the main reasons for discouraging people to obtain formal ownership of their lands or houses. It has also encouraged illegal occupations and the production of fake certificates. The beauty and environment of the city are also being undermined by an excessive concentration of commercial activities in small areas, as well as illegal constructions.

Every city requires plans and implementation mechanisms to ensure the growth of the city in an orderly and efficient manner. In their absence, both, infrastructure and private sector investment lag behind. The participants agreed that there should be proper zoning and map-based planning to sustain economic and social development and maintain law and order. Land management, registration, and titling were viewed to be essential prerequisites for achieving

⁷ This seminar was attended by about 40 participants drawn from the Municipality, Khan, Sangkat, Urban Development Authorities in Phnom Penh, and NGOs engaged in urban issues in Phnom Penh.

these goals. In this regard, a feasibility study of the social and environmental impacts of enforcing a zoning plan in the context of changing land use pattern in the city is urgently needed so that mitigation measures can be undertaken. A study of the relocation of illegal constructions and slums also needs to be incorporated into the short- and long-term land use plans.

Until now, the commune and district leaders have been blamed for the mismanagement of city land, promotion of illegal construction, and slum growth. However, most participants working in communes and districts complained that they have never had the opportunity to design plans for their own areas: planning the whole city is a far cry. In fact, given their limited and at times undefined jurisdictions, they find it difficult to effectively control land use and prevent unauthorised construction activities in their areas.

It was observed that participatory processes and transparency in zoning development plans would help in developing local leadership, provide efficient management and eliminate anarchy. This, however, is easier said than done. The evidence of a lack of will or commitment, for instance, can be found when many open spaces are sold or encroached upon by illegal settlers and migrants and no corrective steps are taken to address such problems. Also, evolving a zoning plan for Phnom Penh City alone will not help to solve the increasing population in the city. There is a need to develop settlement plans along with providing meaningful job opportunities for the whole country. For this purpose, the registration of immovable private and public properties would represent an invaluable beginning.

3. Population growth and in-migration

The imbalanced development between urban and rural areas is stimulating the inflow of rural-urban migrants in the city. People migrate to cities, in this case Phnom Penh, to seek better earnings and livelihoods due to worsening rural poverty as there are no jobs in their native villages. This represents a transfer of poverty from rural areas into Phnom Penh. In order to accommodate these migrants, the Phnom Penh Municipality is being heavily burdened. There are an estimated 472 illegal settlements, consisting of an estimated 35,165 households and 175,825 people (excluding homeless households and seasonal rural-urban migrants). These populations live on riversides, in open spaces, around lakes and on pavements. These people come from other provinces as well as neighbouring countries. The present capacity of the physical infrastructure, such as roads, water supply and sewage system, and productive job creation, are much less than the needs created by these migratory inflows.

The illegal settlements are partly a result of weak governance and management by district and commune leaders (though this blame was contested by both district and commune representatives), and in some cases, a result of political pressures. It was reported, for example, that no political party cared to check the anarchical encroachment of public lands or buildings during the last national election campaigns.

The Phnom Penh Municipality is now implementing a relocation plan for people living in illegal settlements in order to improve the aesthetics and address social problems in the city. However, this programme as designed is expensive and does not seem to be very successful. Hundreds of illegal households were relocated to Veal Rinh/Mong Rithy Oil-Plantation, Tuol Samba, Kors Romdoul and Poun Phnom, but many among the resettled populations have returned for economic and livelihood reasons. The participants believed that the relocated areas need to be well equipped with good infrastructure, including water supply, roads, schools and hospitals and more importantly, economic opportunities for the relocated populations. In this regard, the non-availability of adequate funds is a major problem.

The inhabitants of squatter settlements and homeless/street people are perceived by many as anti-social elements as they are believed to participate in thievery and other crimes, as well as immoral activities. Until now, the municipality, with assistance from NGOs, has tried to accommodate street children in orphanages. However, the effort has not met with

much success, as most commune and district participants observed that many street children return to streets after being hosted in orphanages. The main reason cited is the poor management of orphanages and insufficient care of the children. The government so far has no plan or place for relocating homeless city dwellers. Since funds are limited and land is short supply, most participants from communes and districts argued that enforcing strict administrative measures, such as forced repatriation of migrants, could be a heartless, but nevertheless feasible solution.

Despite the limited administrative and financial capacities of the communes and districts, participants reported that they still keep records of and report about illegal dwellings in their districts to higher authorities. However, there is unlikely to be a lasting solution to such a problem, since migration is a national issue and Phnom Penh Municipality alone cannot improve the situation. There is a need for inter-provincial co-operation, especially for bridging the social and economic gap between rural and urban areas. In this context, while rural development is viewed as important for narrowing down this gap, spatial development (i.e. development of smaller towns throughout the length and breadth of the country) can be equally important.

4. Geography of the expanding city

Phnom Penh City is facing a rapid increase in population. There is new construction and a rise in commercial concentration, which are placing excessive demands on accommodation, public utilities and services. These expansions are having adverse impacts on traffic congestion, drainage system, aesthetics, environment and social security.

The city's expansion plan is being developed. The development of the city is being planned toward the west because that area is not seasonally flooded during the rainy season or when the river waters rise. Regarding city expansion, three development alternatives, with their related social and economic potentials and risks, were indicated. First, Phnom Penh still has potential growth areas, especially 347 square kilometres in the three suburban districts. Khan Dangkor is among these three districts, which is now being developed under the relocation programme, though as of today it is not much of a success. This could be more closely followed. Second, the establishment of more satellite townships could be another alternative for solving the present problems. Most seminar participants agreed that motivating people to move to other cities is not a problem if there are good infrastructure facilities and jobs in those places. Third, if commercialisation and industrialisation are fairly evenly distributed between different provincial capitals, this alone would balance the urban development needs.

Most participants however argued that the master plan documents should be publicised and transparently debated in order to:

1. Promote good governance and to avoid mismanagement of land use at all levels,
2. Ensure participation of local residents so as to protect local interests and benefits for them, and
3. Minimise politicisation by political parties

5. Capacities of the present administration

Titling and registration of lands were perceived as the fundamental prerequisites and tools for a development plan of the city. The number of staff members available to do the job was not found to be a constraining issue. However, technical capacities are lacking, especially at the district and commune levels. Most of the personnel are inexperienced in urban planning. In

addition, it was agreed that people at all levels in government institutions are poorly equipped in terms of materials and finance.

There is first the need for developing a master plan for zoning/land use and expansion of the city. Next comes the technical training to implement such a plan as well as monitor and evaluate its performance. Co-operation between different ministries, NGOs and private sector should be promoted in order to ensure sustainability as well as administrative acceptability.

A number of NGOs and international organisations, such as UNCHS, Action Nord-Sud and USG, have been actively engaged with the slum communities in terms of providing assistance in the relocation programme of the Phnom Penh Municipality. These efforts could be streamlined with the government's activities to promote synergy.

While Phnom Penh, like other provinces, has encountered many kinds of land disputes, here they have taken a strong political undertone. Conflicting interests between illegal settlements and infrastructure rehabilitation programmes also are a cause for concern. For example, many infrastructure projects are being delayed because there are illegal settlements in the way. The present legal system has not been able to solve these problems. Though a land dispute commission has been established to facilitate depute settlement, most conflicts are politicised and often referred to higher government authorities. The commission or similar bodies are not given the chance to solve problems.

More seriously, all lands around Phnom Penh are already occupied and are very expensive. Neither the Phnom Penh Municipality nor the government has enough resources to implement a relocation programme. A lack of finances was identified as a problem at other levels, as well. Participants in the workshop appeared to prefer external financial assistance rather than raising government revenues.

A Guide to Conducting Qualitative Interviews

1. Rural Issues

(1) Secondary data to be collected for social assessment: information to be collected from the government and other offices and knowledgeable persons

		Province	District	Commune	Village
1.	Population				
2.	# Households				
3.	Agriculturally dependent population (%)				
4.	Literacy (%)				
5.	Landless (%)				
6.	New (in-migrating) population (last 1 year) (nos.)	X	X		
7.	Who are they? (in (6) above)	X	X		
8.	Out-migration (nos.): who are they?	X	X		
9.	% farm area				
10.	% forest area				
11.	% water surface/fish				
12.	% concessions				
13.	% state lands				
14.	% private lands				
15.	% Common land				
16.	Irrigation coverage (%)				
17.	Rice land yield (kg/ha)	X	X		
18.	Average plot size (ha)	X	X		
19.	Extent of farm mechanisation	X	X		
20.	Land price (\$/ha)	X	X		
21.	Road coverage	X			
22.	Land distributed (year)				
23.	Many disputes (yes/no)				
24.	Settlement mechanisms				
25.	% disputes settled				
26.	Approximate house-less households	X	X	X	

(2) Information to be collected from talks with higher authorities (district /commune chiefs and others and get selected answers from governors/deputy governors. Questions with asterisks could be aimed at governors/deputy governors as well)

Note: All information pertains to both, agricultural and residential land. Please note the responses according to which land the respondent refers to.

General

1. To what extent does land provide principal livelihood in this area?
2. What different uses, has land has been put to other than residence?
 - a. Forest; b. Grass lands; c. Agriculture; d. Water bodies; e. Plantations; f. Concessions

Please give a quantitative judgement
3. What are the different uses that land is put to in the area? a. Agriculture; b. forest; c. forest concessions; d. water bodies (fish concessions); e. others (explain)
- *4. Who are the principal stakeholders of land in the area? Discuss this in detail to obtain directly and indirectly interested parties on land.
5. In there the phenomenon of big landlords rising in your area? Explain this land consolidation.
6. Is there insurgency in the area? What is the extent? What is the protection against it? Who holds the arms?
- *7. What are your opinions on land consolidation for agricultural modernisation?
- *8. Can more land be brought under the plough? Explain.
9. Have there been changes in landlessness and land transfers in the recent past?
- *10. What is the incidence of unauthorised sales by local officials in your area?

Specific

- *11. Should the registration of land in your area follow any sequence or should it be broad-based? Explain.
- *12. Please state the specific responsibilities, according to you, of different agencies in the decentralisation of work (MLMUPC, MAFF, Province, Commune etc.)
- *13. Can NGOs help? How?
- *14. Do you know of FinnMap or GTZ experiences? Any comments?
- *15. How does one handle the newly de-mobilised soldiers?
- *16. What are the guidelines you would suggest for bringing-in gender concerns in documenting land ownership? In collecting information, and in executing the programme?
- *17. What changes in the law you would like to see in the laws so that gender concerns receive sufficient address? (Joint-ownership, rights to proceeds on sale, use of property as collateral, division of property of marriage break)
- *18. How should the issue of transfers of public lands to private, be handled? Conditions when it should be done, accountability, prices, transparency, and methods of transfer?
- *19. How should legal information be spread?
20. How many duplicate transfers have you come across? How can they be handled?
- *21. How are the *poor* encroachers to be compensated?

22. Is there a need to monitor the titling process? How?
- *23. On grievance redressal mechanisms: what are your suggestions? How should it be formed/strengthened?
24. At what level is this ideal, and how should it be strengthened to make it effective, efficient and fair?
- *25. Do you feel that the existing titling machinery have sufficient skills to handle the job?
- *26. What should be done to raise the capacities of provincial, district and commune staff to handle the titling issue? Training, better transparency, NGO involvement, better farmer/stakeholder consultation, settlement in village meetings, any other?
27. What, according to you can be negative fall-outs of the titling exercise, and what can be done to minimise this effect?

On solutions

- *28. What should be the priority in titling? State land, private land, agricultural land, residential land, forestland, common land, estates, etc.
- *29. What institutional initiatives should be carried out at the MLMUPC, MAPP, and other ministries, for maximum efficiency?
- *30. How can the project meet the expectations of groups like de-mobilised soldiers?
- *31. Do you think that the MLMUPC has the potential for this job? Who has the potential and how many agencies should work together?
- *32. What should be done to raise the capacities of provincial, district and commune staff?
- *33. How can poor encroachers be compensated?
- *34. Is there a need to monitor the titling process? How?
- *35. What is your suggestion for the houseless households? Should they be given house plots?

On indigenous people's concern (Rattanakiri)

- *36. What are the customary and legal rights of women in property? Are joint titles permitted? Are women protected in the event of divorce, abandonment or death of spouse?
- *37. What is the present practice in decision making about land and real estate? Is it joint, individual, or any other? Are women included in it?
- *38. Do individuals (including women) have equal rights on operational decisions regarding land?
- *39. Is there a clash between customary land laws and the law of the land?
- *40. Are there provisions in the customary law for exercising rights, which also exist in marital property law, while these rights are not reflected in title deeds or registration documents?

(3) Questions for group discussions at village and small groups

(Collect information on the composition of the group, by gender, socio-economic composition, age-composition, education, location at the village by number of years, etc. A minimum size should be 9-10 persons and a maximum 20-25. Please ensure women's and small farmer's representation in the group. In the event a larger group is available, structure the discussion differently—more as a PRA than FGD).

Note: All information pertains to both, agricultural and residential land. Please note the responses according to which land the respondent refers to.

General

1. Have there been changes in landlessness and land transfers in the recent past?
Reasons: a. Demographic/new marriage; b. Over-allocation made; c. Wrong allocation; d. Land grabbing (because of a price rise due to new road, irrigation or modernisation)
2. To what extent are people forced to sell land? Give reasons.
3. What are the main causes of indebtedness? Who are the creditors? What are the terms of reference of borrowing?
4. Who are the principal stakeholders of land here? Discuss this in detail to obtain directly and indirectly interested parties on land.
5. What is the incidence of land grabbing? By whom and how much? Where?
6. What is the nature and extent of dispute in farm boundary areas?
7. What is the extent of dispute by causes of dispute?
8. What is the average size of land in agriculture? Is it good for normal agricultural operations?
9. Opinion on agricultural modernisation on productivity growth: Is land consolidation essential? Is it going to make some landless? What to do?
10. How can unused land be distributed, in larger people's interests, within the present legal framework?
11. Can more land be brought under the plough?
a. Cutting forest, b. clearing shrubs, c. privatising common land, d.
12. How can erring local government officers be made more accountable?
13. What should be done to make titling more 'poor-friendly'?
14. How can the court system be made more accessible to the common folk?
15. Is the phenomenon of domination of large landlords high and rising in your area?
16. Are there people without house plots? Who are they, why do they not have houses, and what can be done for them?

Legalities

17. How to spread legal information?
18. Trials of erring officials
19. How to make courts more efficient, professional and low cost?
20. What are the main mechanisms of land dispute settlement in the area?
21. How efficient are they?

22. Are they neutral or partisan? In whose favour are they partisan? Can you give examples?
23. How many issues of duplicate land allocation have been detected?

Ownership and registration

24. What is the status of customary land in your area? (Talk of the rights and responsibilities)
25. How are these inherited and maintained? What is the role of government in these?
26. What is the proof of ownership of the land that you presently hold? Agriculture/house
27. How secure do you feel about your present occupancy of the land? If there are insecurities despite papers, please explain the reasons.
28. How did you acquire the 'proof' of your ownership?
29. For those who acquired their certificates through sporadic registration system of the government, how did they know about this? How much time and money did it take? What are the difficulties and problems encountered?
30. For those who have not applied for registration of their lands, how what keeps you from applying for it?

Landlessness and disputes

31. Is there a lot of out-migration due to lack of land availability?
32. Is the population rising too fast and placing overt demands on land causing landlessness?
33. Who are the landless? How did they become landless?
34. Are they renting private land, using government land or are they farming illegally?
35. For those paying rent or sharecropping, to whom do they pay? What is the term of reference? And what is the periodicity of payment?
36. What is the tenure security of any of the arrangements?
37. Is the payment a legitimising of their stay/farming of the land?
38. How many people have lost land? How, and to whom?
39. Are there lands under dispute? Please explain the dispute by type, parties involved, possible causes and consequences.
40. What are the dispute settlement mechanisms and their efficacy, efficiency and fairness?
41. If disputes continue, why is it so? Please explain.
42. Do you suggest mechanisms at local/commune level, district or at higher levels? Who should be in-charge?

Titling programme

43. Are they aware of the government's titling programme? How did they learn about it? What is the programme?
44. How, if at all, do you see any benefit of this programme in your land security and quality of life? a. For agricultural lands, b. for house plots, c. for others
45. Are there any negative fall-outs in each of the three as in (44)? Explain.

46. How can communities and the village help in the titling programme? Agriculture / residential?
47. How much are they willing to pay for receiving titles for their parcels? a. agriculture, b. house plots
48. Have the communities been able to organise themselves to improve access to land and proclaim ownership/rights?
49. If yes, which government agencies have been helpful to them?
50. In any case which agency do you feel has the capacity and their faith to carry out this programme successfully?
51. What are the difficulties that you foresee in furthering this programme?
52. How do you suggest that the programme of titling be strengthened?
a. Training, b. transparency, c. NGO involvement, d. settlement in village meetings
53. What should be policy towards residential land? Should all be provided with residential land on a one-time basis?

2. Urban Issues

(Collect information on the composition of the group, by gender, socio-economic composition, age-composition, education, location at the locale by number of years, etc. A minimum size should be 9-10 persons and a maximum 20-25. Please ensure women's and poorer people's representation in the group. In the event a larger group is available, structure the discussion differently—more as a PRA than FGD).

General

1. Have they lived in Phnom Penh all along or have they come here lately? Can they tell us the number of year(s) they have been here?
2. What are the reasons for coming here?
3. Do they own land here? If no, who owns the land that they have constructed their house on?
4. What are the kinds of houses that exist here? (see and mention the material, with facilities like electricity, water and toilets)
5. If they do not own the land, who owns it? How do they live there? a. rented, b. relative / friend, c. occupied government/other land
6. Have they invested more money in rented premises?
7. Do you consider their stay legal or illegal? Explain what is legal or illegal.
8. Have they ever faced eviction or threat of eviction? If yes, by whom and how often do they feel it?
9. How secure do they feel in the present abode? Do they feel they can be evicted soon? Please note the reaction of people with and without titles / other documents
10. If given option to move elsewhere, with proper papers, will those without papers move out? If yes, what are the minimum conditions you will pose for moving out?
11. Are they willing to pay extra for legalising the land and security of tenure?

Community organisation experience and interface with other organisations

12. Do they have a community association?

13. Does it address questions regarding access to land, housing and other amenities?
14. What is their membership coverage? How often do you meet?
15. What are the other activities of the association?
16. How effective has the effort at organising people helped?
17. What are the problems that they face in organisation of people?

If there is no association

18. Do they feel that they should be organised?
19. Do they feel organisations can provide you better security?

Titling programme

20. Are they aware of the government's titling programme? How did they learn about it? What is the programme?
21. How, if at all, do they see any benefit of this programme in your land security and quality of life?
22. Are there any negative fall-outs in each of the three as in (22)? Explain
23. How can communities help in the titling programme?
24. How much are they willing to pay for receiving titles for their house plots?
25. Have the communities been able to organise themselves to improve access to land and proclaim ownership/rights?
26. If yes, which government agencies have been helpful to them?
27. In any case which agency do you feel has the capacity and their faith to carry out this programme successfully?
28. What are the difficulties that you foresee in furthering this programme?
29. How do they suggest that the programme of titling be strengthened?
 - a. Training, b. transparency, c. NGO involvement, d. settlement in community meetings
30. What should be policy towards residential land? Should all be provided with residential land on a one-time basis?

3. Background Note on the Stakeholders' Seminar on Land Issues in Phnom Penh City

The Royal Government of Cambodia is undertaking major reforms to achieve sustainable social and economic development. Within these reforms, a new Land Policy Framework is one of the most important items. There is sufficient evidence to suggest that making productive assets accessible to the poor is central to alleviating poverty. Since land is the most valuable asset in the Cambodian context, a rational land policy that would reduce landlessness and ensure security of land tenure could go a long way towards stabilising and raising people's incomes. In this regard, the government expects to undertake map-based land titling and registration as a part of its new land policy.

The land question is usually referred to in the agricultural context, and rightly so, but with a rising urban economy and population, urban land issues loom large as well. Increasing in-migration and a rapidly growing shantytown population are evidence of this. The urban context is also important because land in urban areas is used for diverse purposes – housing, social infrastructure, industries, commercial activities, and government facilities, to name a few. It is thus necessary to ensure a land-use pattern that is both optimal and just, so that it

will remain sustainable. The Ministry of Land Management, Urban Planning and Construction (MLMUPC), with technical assistance from Cambodia Development Resource Institute (CDRI), is making a social assessment of the land situation in urban areas, using the example of Phnom Penh, so that the experiences and views to different stake-holders can be obtained regarding the land titling and registration process.

The social assessment has a number of important objectives: to identify the different stakeholders, their uses for urban land, the methods and approaches stakeholders use in conflict resolution, the capacities of administrations to adjudicate and enforce laws, and the capacities which civic authorities and communities need to develop. These objectives will be achieved through some limited field based studies in low-income communities and a seminar in which the views of different stakeholders will be obtained. This note provides a background for this seminar.

The key issues to be discussed in the seminar are as follows:

- A. *Land use patterns and zoning of land in urban as well as sub-urban areas:* Here the principal issue will be to understand the present land-use pattern and problems associated with it, particularly in regard to the needs of different population groups. This would be helpful in zoning of land, since zoning necessitates determining population densities, and estimates of lands required for public utilities such as electricity, water and sewerage, in addition to lands required for open spaces. The effects of zoning on the present populations will thus form a part of the debate. Misuse of rights, like illegal constructions and unauthorised land controls, will also form a part of the discussion¹.
- B. *Population growth and in-migration:* Both men and women from other provinces are continuously moving into the city of Phnom Penh. This adds to the natural growth in the existing population, which is estimated to be in the range of 2.5 per cent annually. Given the fact that large numbers of rural-to-urban migrants are not from privileged sections of the society, homelessness and insecure tenancy are not uncommon. For quite a while now, people have been making homes on boats on the river and on pavements. These homeless populations may increase as the attraction of city jobs pulls more and more people into the city. Phnom Penh's situation may deteriorate rapidly because the country has only one large city. The city second in size is only a tenth of the size of Phnom Penh. What should be the population and migration policies, habitat policies, or decentralised urbanisation policies that may be most suitable? What should be the policies towards the existing urban slum and pavement dwellers? These are some questions that would form a part of the discussion.
- C. *The geography of expanding city:* Some important questions are, which direction is the city expanding in, is this controlled or uncontrolled expansion, and what land is being brought into the urban milieu? The questions are important not only in regards to zoning, but also in regards to developing roads and transportation as well.
- D. *Capacities of the present administration:* Is the present administration adequately equipped to handle the whole titling programme? Are the current mechanisms, used for conflict resolution by communities and the administration, adequate and sustainable? Are the numbers of personnel adequate and is their training and equipment sufficient? What are the gaps in skills and knowledge and at which level?

¹ It is important to distinguish between land-law violations made for reaping extra profits, from encroachments made by the poor for survival (discussed in the following paragraph).

In the course of this seminar, effort will be made to elicit information and views of the different participants. It is hoped that participants will present the experiences of their organisations, including personal experiences, on specific as well broad issues, and also offer suggestions.

4. Points for Discussion at the Urban Seminar

Group 1 – On zoning

1. When was zoning done the last time for the city? How much of the city has changed since then?
2. Reconciliation between a city plan (proposed or approved) and the actual physical structures already in place (here the specific reference is to encroachments on public lands and unauthorised constructions), and implications thereof.
3. The question of regularisation of old and more recent slum settlements, and implications thereof – more specifically, will all or most of the unauthorised structure and residents be vacated?
4. The issue of transfer of land use pattern from one purpose to another (e.g. transfer of agricultural lands to housing plots, or dwelling spaces to commercial spaces), and implications thereof
5. The issue of open spaces, location of schools, hospitals, public utilities, roads, transport
6. Determination of population and housing densities in the city (density of construction) – what are the factors to be considered?
7. Issue of recognition of illegal constructions and extensions

Group 2 – Population Growth and In-Migration

1. The extent of in-migration and implications for physical spaces in the city – history of population movements in the city
2. The issue of homelessness among the poor and migrants, and the dynamics thereof
3. Pavement dwellers in the city – their status regarding abode, and the dynamics of this population
4. Workspaces for those who are engaged in businesses located in unauthorised structures – implications for recognition of these activities and therefore land allocation for them
5. Issues relating to tenancy of lands and spaces
6. Issue of mis-match between earnings patterns in the city and land prices
7. Issue of social spaces for the weaker sections of the society (roads, education, health, welfare)

Group 3 – Geography of the Expanding City

1. What is the pace and direction of expansion of the city?
2. Implications of a ‘one-big city’ model of development, on congestion, electricity, water, sewerage, drainage, transport, etc.
3. Is it feasible to increase the size of Phnom Penh much beyond its present limits? Or is it more desirable to promote satellite townships, as has been do in many other countries, for absorbing the population?

4. Implication of the expanding city on land-use – for factories, commerce and residence (prices, availability, sustainability) – away from agriculture. Would this mean that lands obtained from farmers (at modest rates) would be transferred for non-agricultural use at high prices? Would there be implications for income/asset distribution?
5. Possibilities and need of a multi-nodal urbanisation design – is the present design of having four nodes, namely Phnom Penh, Sihanoukville, Pailin and Kep, be enough or more centres be needed?
6. Financing expansion of the city

Group 4 – Capacities of the Present Administration

1. Is the staff available in sufficient numbers to take up the titling work? Do they possess sufficient qualifications?
2. Need for tools, equipment and financial support
3. Staff in other towns and cities
4. Logistic problems – issues that effect/involve inter-departmental or inter-ministerial collaboration as well as local authorities and community co-operation
5. Mechanisms for conflict resolution and reconciliation between different households / parties and between households and the authorities
6. Relocation and habitation plan
7. Collaboration between the government and NGOs in actual implementation of titling.

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Social Assessment of Land in Cambodia: A Field Study

Several types of land control systems co-exist in Cambodia today. Many people after their displacement in the earlier decades, are still looking for land. Also, new families are being formed due to the rapid population growth in the 1980s. Keeping these factors in mind, it is imperative for Cambodian authorities to make a comprehensive land measurement, titling and registration process a priority, while taking all stakeholders of land as partners. In preparation for such an undertaking, the Ministry of Land Management, Urban Planning and Construction considered it appropriate to first conduct a social assessment to collect data which would facilitate proper targeting of land titles and registration activities; ensure a fair deal to vulnerable sectors of society; highlight socio-cultural and gender factors requiring special consideration; and assess the institutional feasibility of a land titling and registration project. This paper, which is a revised version of the report prepared by CDRI for the government, presents the findings of such an assessment made after visiting selected field settings and interviewing people, authorities and concerned donor agencies.

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