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## Land Transactions in Cambodia

Chan Sophal and Sarthi Acharya, of CDRI's research programme, examine data to decipher trends and patterns in land transactions in Cambodia.\*

Large-scale land transfers and sub-divisions have occurred during the decade of the 1990s in response to demographic pressures and a variety of other reasons. The resulting agricultural landlessness and land inequality have become problematic in recent years.

Land privatisation in 1989 was also accompanied by a general introduction of a market economy in 1991. There was a subsequent influx of foreign capital in the forestry and garments sectors, among others, and the population also grew very rapidly. Urban and foreign buyers and/or monied entrepreneurs began to acquire land for commercial farming, non-agricultural activities, as well as for speculation. In effect, therefore, land has become the object of demand from *multiple* stakeholders for different purposes. Some stakeholders have begun to acquire land formally while others have used informal means. In several areas the demand has exceeded supply and prices have risen dramatically. Next, with the emergence of market forces, the notions of economies and returns to scale have also implicitly crept in. Very small plots of land may be too uneconomical under the emerging crop regimes. As a result, many owners of small plots dispose of their lands in order to take up other, more viable vocations (So *et al* 2001). This is increasingly happening with land sub-division during succession and inheritance. The preferred practice is to sell rather than lease or rent land, since there is relatively low security of tenure in the absence of formal ownership rights and a non-partisan governance system.

There are no comprehensive data available so far with which to trace the extent of land transactions and



Almost 80 percent of the formal agricultural land transactions *outside* Phnom Penh were entered into by Phnom Penh residents. Formal purchases peaked in 1996, and have been falling since then.

reasons for this inequality. The General Department of Cadastre and Geography (GDCG), now attached to the Ministry of Land Management, Urban Planning and Construction (MLMUPC), keeps records of official land transactions for all types of land in the country. As on June 30, 2001, there were a total of 15,796 records available with the department, which included residential lands (8,915 records) and agricultural lands (6,881 records), in both rural and urban areas for the period 1995-2001. The purpose of this article is to examine data contained in these records, to decipher trends and patterns in land transactions.

Before proceeding further, it is important to bear in mind that these records belong to a limited set of only

### In This Issue

Land Transactions in Cambodia .....	1
Agrarian Situation in Contemporary Cambodia.....	5
Learning for Transformation.....	9
Economy Watch — External Environment .....	12
— Domestic Performance .....	14
— Economic Indicators .....	17
Glossary .....	19
CDRI Update .....	20

\* This article has been abridged from the report on Land Transactions in Cambodia—An Assessment of Transfer and Transaction Records. The full report will be published as a CDRI Working Paper in May 2002.

about 518,000 plots for which formal titles have been issued, out of a total of about 4.5 million (residential plus agricultural) for which receipts have been issued. This implies that the number of transactions recorded is from a very small and select subset. Since almost 90 percent of the plots are informally held, any transactions involving them are not included here.

### Official Transactions in Agricultural Land

There were a total of 6,881 transactions recorded in agricultural lands and 8,915 in residential lands, after some 50 entries were deleted during data cleaning. In terms of area, more agricultural land was traded than residential land. A total area of 17,146 hectares of agricultural land was *formally* transacted between 1995 and 2001, compared to 1,362 hectares of residential land. For space limitation, the current article hereafter discusses only transactions of agricultural land. Land transactions in Phnom Penh are also not included since they are not maintained by MLMUPC. Agricultural land herein includes land that is cultivated as well as that which is not yet cultivated but earmarked for cultivation in the future.

Table 1 shows trends in agricultural land transactions by provinces classified in two groups (i.e. large-town and small-town provinces), between 1995 and 2001, under the assumption that the two would have different levels of market development. Transfers in agricultural lands were remarkably high in the period 1995-7, which peaked in 1996 when 2,010 transactions involving 5,061 hectares took place. Since then, the activity has slowed. A close association between land markets and economic activities in general has been noted.

Interestingly enough, most of the officially recorded land transactions in the large-town provinces took place in just two provinces, Kandal and Sihanouk Ville. About 2,000 transactions took place in each of the two provinces, covering nearly 10,000 hectares. A sizeable part of Kandal's agricultural land has been converted to factory sites and residential land as urbanisation spills-

over beyond the Phnom Penh area. In addition, a number of large parcels have been bought up and neatly fenced in anticipation of more factories and commercial activities to come up in the future. The case is somewhat different in Sihanouk Ville, a coastal town where activities related to maritime trade have made their own demands on land. In Sihanouk Ville, a large part of the agricultural land sold has also been cleared from the forest, which is now the protected "Kbal Chhay National Park".

Battambang, well known for its high quality rice production, is a province where considerable rice land has changed hands in recent years, according to the small sample studies presented in the next section. However, this is not reflected in the official data presented below. There were only 114 formal transactions in that province, covering an area of 128 hectares, between 1995 and 2001. This accounted for only about 1.6 percent of the total officially recorded transactions of agricultural land in the country. Evidently, the majority of agricultural land transactions there have been informal. The distance of the province from Phnom Penh, the expensive transportation, other expenses involved in formal registration and transaction, and harassment, all inhibit farmers from following the formal channel. This, in all probability, would also hold true for Banteay Meanchey and other similarly distant provinces.

### Location of Buyers and Sellers

Between 1995 and 2001, a substantial number of purchasers of agricultural land resided in large-town provinces. Out of 6,637 agricultural land transactions *outside* Phnom Penh, almost 80 percent were purchased by Phnom Penh residents. Of the 805 transactions made in the distant province of Koh Kong, 418 parcels were purchased by Phnom Penh residents. In this data set, Phnom Penh buyers obtained about 85 percent of the total land area transferred in these transactions. This at one level reinforces the point about the concentration of wealth in the hands of urban dwellers, particularly in Phnom Penh. Even though the overall acreage that exchanged hands is small, such transactions

raise concerns about the disadvantage that the rural poor face regarding their access to natural resources in the regions where these lands are located. The widening gap between the rich and poor is of course also of great concern.

However, this observation has been made based on formal transactions that the data set reports, i.e. lands that have titles and have been formally transferred. Buyers from Phnom Penh, who in all probability would also have been the most educated, may have insisted on having proper papers for land transactions. Also, since they reside at a location different from the purchased land, they may have insisted on having

**Table 1. Official Transactions of Agricultural Land by Province between 1995 and 2001**

Location of land Transacted	Number of transactions							Total (1995-2001)	
	1995	1996	1997	1998	1999	2000	2001*	Number	Percent
Large-town provinces	1,055	1,330	1,154	434	334	119	90	4,516	66%
Kandal	640	791	465	143	159		..	2,204	32%
Siem Reap	9	41	19	8	19	29	10	135	2%
Sihanouk Ville	383	463	569	206	114	68	14	1,817	26%
Battambang	17	29	27	12	29	..	..	114	2%
Kampong Cham	6	6	74	65	13	16	66	246	4%
Small-town provinces	101	680	488	325	443	208	120	2,365	34%
Banteay Meanchey	..	3	5	22	17	20	40	277	2%
Kampong Chhnang	16	188	272	99	52	46	3	676	10%
Kampong Speu	27	84	59	23	34	16	2	245	4%
Kampot	19	66	18	27	49	19	12	210	3%
Koh Kong	34	307	97	77	225	61	4	805	12%
Takeo	..	9	14	41	34	7	12	117	2%
Other provinces	5	24	23	36	23	46	47	204	3%
<b>Total</b>	<b>1,156</b>	<b>2,010</b>	<b>1,642</b>	<b>759</b>	<b>777</b>	<b>327</b>	<b>210</b>	<b>6,881</b>	<b>100%</b>

such papers in order to ensure some tenural security. In contrast, buyers from rural areas, including those from the peasantry, may not have known or made the effort to pursue paperwork while making transactions. Hence, their names are not found in this data set. There is therefore no definitiveness about this observation.

After peaking in 1996, the number of transactions entered into by Phnom Penh inhabitants declined drastically. Formal purchases of agricultural land by Phnom Penh residents numbered only 198 in 2000, a dramatic drop from 1,757 in 1996. This decline may be explained by the slowdown of economic activities, rising land prices, as well as diminishing prospects for favourable profitability from speculation or other land uses.

Of the total buyers, 86 percent belonged to districts other than from where the land was located. Similarly, 48 percent of the sellers belonged to districts other than from where they sold their land. Evidently, some land that has been transacted was earlier purchased or acquired for speculative purposes. Also many may have bought and sold land to relocate themselves to areas of their choice. These data thus indicate that through this period, the relocation and settlement of people was still not complete after their dislocation in the 1970s and 1980s.

Another observation relates to the fact that there are many more urban buyers of land than rural. This partly could be explained by the large numbers buying land belonging to Phnom Penh and partly to the manner in which urban and rural areas are defined in the Cambodian statistical system. However, some part of the truth is that land *is* passing from rural to urban areas.

### Findings from Small Sample Field Inquiries

In an attempt to supplement the findings of the land market situation in Cambodia, a small sample survey using both quantitative and qualitative methods was undertaken in five provinces: Kandal, Kampong Cham, Kampong Speu, Battambang, and Sihanouk Ville. In each province, two communes in each of two districts were selected as interview sites. Thus there were a total of 20 communes from 10 districts selected for the study. The interviewees were the district cadastral office and commune chiefs as well as various other knowledgeable persons. The main purpose of this research was to obtain information on the magnitude, characteristics and trends in informal land transactions. Another objective was to find out whether the tax on land sales inhibits people from registering land transactions.

### Trends in Land Transactions

The interviews revealed that a few, sporadic land transactions were initiated as early as in the mid-1980s, although private ownership of land was not formally promulgated until 1989. The interviewees had *records* only of those lands that were transacted with their con-

sent or knowledge. Since many transactions, both formal and informal, by-passed them, none had records of *all* the land transactions.

The interviewees said that in the recent years, the number of land transactions was highest in 1996 in most communes and districts. This coincides with the findings from the data set of formal land transfers maintained at the GDCG discussed above. The trends suggested by the interviewees here are no different from those indicated by the formal data: both formal and informal land sales sharply rose in the first half of 1990s, with outside buyers beginning to purchase local land around 1993-4. It was reported that purchases of land by outsiders in 1995, mainly Phnom Penh residents and foreign businesses, caused a considerable "multiplier effect" in the land markets, as many people sold their land and bought less expensive land from other people. This process appears to have reached a peak in 1996.

### Kinds of Land Transactions

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One of the obvious reasons why land transactions are or are not carried out according to the law concerns whether or not the land is registered in the first place. In general, there are two types of official documents used for claiming own-

ership of land: receipts and certificates. As mentioned above, only 518,000 certificates, or a little over 10 percent of the total number of applications made in 1989 have been issued. Accordingly, land transactions involving certificates may constitute only a small proportion of total land transactions in Cambodia. Field interviews revealed that a significant number of households in certain areas do not even possess application receipts for their land. Some landholders have simply lost them, while others have not applied due to a lack of information or confusion about what and where to apply. There has also been failure on the part of authorities to remind landholders to apply. In a few cases the local authorities have not delivered the receipts to the people. Finally, many land plots have now been sub-divided, and as a result the original receipts have been rendered superfluous. Accordingly, many land transactions fell into one of the different forms stated below.

- i) Transactions with or without contractual agreement between the parties, in which the transaction is made without informing any local authority;
- ii) Transactions with agreement of the village level authority;
- iii) Transactions with agreement up to the commune level;
- iv) Transactions with agreement up to the district or provincial level. (This, however, is a rare case, as transactions that reach this level involve lands with certificates and are formally processed up to the GDCG in Phnom Penh);
- v) Formal transactions.

Field inquiries revealed that a significant number of land transactions, especially of small land plots fall into categories i) and ii) above. Such cases take place mostly in rural areas where the land price is low and the expenses for registration/transfer are unaffordable for most people involved. There is also no felt need for land certificates and registration since land markets in such locales have yet to evolve. In one commune for instance, the commune chief estimated that about 200 small parcels of rice land had been sold without a single certificate of proper transfer. Also, most of these transactions were carried out without informing the commune authority.

Among the many informal ways of transferring land ownership, transactions that involve the consent and approval of the commune chiefs are the most common. In certain communes, 90 percent of the total land transactions have followed this practice. The district cadastral authorities insist that the communes report all land transactions to them, despite the fact that only lands with certificates, transacted formally, require formal reporting. However, such reporting does not often take place; instead the commune chiefs routinely sign and put their stamp on a written agreement, which is taken by many to be 'official enough' to certify the ownership transfer. People either do not understand the procedure and simply accept the stamp and signature of the commune chiefs as final, or they feel that there is no other alternative even though such procedures are insufficient. At times, land transactions that have formal certificates are also not always processed up to the GDCG. A significant number of such transactions are settled at the commune level, as buyers want to avoid paying the registration over tax as well as by-pass complicated procedures.

District cadastral officials blame the commune chiefs for granting improper approvals and permitting such practices to perpetuate. On their part, commune chiefs claim that they do not grant approvals but rather merely take note of the transfer and report it to the district. They maintained that it is up to the concerned parties and not them to go to the district or other higher-level officials.

#### ***The Effect of the Registration Tax on the Official Reported Prices***

By law, land transactions are subject to a sales (or registration) tax of 4 percent. One objective of this study is to determine how, if at all, this tax inhibits people from reporting prices correctly and/or not using the formal land transaction channels.

The District Cadastral Office is responsible for evaluating land prices and the Provincial Tax Department calculates the amount to be paid. The money is deposited at the Provincial Treasury and the funds are used for meeting the expenses of provincial administration. In practice, a great deal of tax is evaded.

In the 18 communes covered, all formal transactions were taxed. However, the prices were understated in order to reduce the tax liability on the buyer. The extent of price concealment varies from one province to another, but on average only about 40 percent of the actual price paid is recorded in the official documents, suggesting a tax leakage of about 60 percent. In Kampong Cham and Battambang for instance, only about 20-30 percent of the actual price was recorded on the transfer papers, while in Kandal and Sihanouk Ville, 50-80 percent of the sale prices were recorded. In Kampong Speu the amount of leakage is reported to be 40-60 percent.

Prices are understated with the active collusion of many parties involved. First of all, none of the parties involved in the transaction wants to pay a lot of tax money. It is therefore in their interest to conceal the true price. Cadastral officials also find it beneficial to record lower prices because they are the recipients of an informal fee. A similar fee is paid to tax officials as well. In certain districts the negotiation of the tax between the *buyer* and tax officials takes place in cafe shops or in the Provincial Tax Department itself. When an agreement is reached, the tax official deposits part of the amount in the treasury while the cadastral officials work backwards to *calculate* a price, of which the amount paid into the provincial coffer would be equivalent to 4 percent. The

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taxpayer then pays only a fraction of what s/he would otherwise have to pay according to the actual prevailing prices. In light of this evidence, the prices reported on the official land transfer documents are far from accurate. This is the reason why they are not discussed in this paper.

Some cadastral chiefs expressed resentment over the power of tax officials and claimed that they could provide the government 10 times more revenue if they were given the authority to collect the tax from land transactions. They said that prior to 1975, when the registration tax was collected by the District Cadastral Office, the system worked much better despite the fact that the tax rate was 6 percent. This was because officials at the district level are closer to the field and know the land market and prices better than officials at the Provincial Tax Department. They also said that prior to 1975 the cadastral officials and other district officials had an incentive to collect as much tax as they could because they were each given 1 percent of the total sale value.

Despite the fact that people do not actually pay as much tax as they should, interviewees reported that the registration tax discouraged them from using formal channels to transfer land ownership. It was also widely acknowledged that many people do not want certificates for their lands because the resale of registered lands is difficult as it involves tax liabilities.

*Continued on page 11*