

Overcoming a Failure of Law and Political Will

CAMBODIA Country Paper
Land Watch Asia





Acknowledgments

This paper is an abridged version of the original Cambodia Land Watch Country Paper “Country Paper Cambodia on Land Issues” on the status of access to land and water, and opportunities and strategies for civil society advocacy. This is a collective effort of many civil society organizations, including STAR Kampuchea members and partners, and also individuals in Cambodia. Some updates were taken from STAR Kampuchea’s “Land Monitoring Report: Cambodia”, which is part of the CSO Land Monitoring Initiative of ANGO and Land Watch Asia.

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Acronyms

ADHOC	Cambodian Human Rights and Development Association	JMIs	joint monitoring indicators
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development	K–NAN	Kampong Cham NGO Advocacy Network
APSARA	Authority for the Protection and Management of Angkor and the Region of Siem Reap	LAND	Land Action Network for Development
CACA	Civil Society Advocacy Coordination Alliance	LASED	Land Allocation for Social and Economic Development
CC	commune council	LICADHO	Cambodian League for the Promotion and Defense of Human Rights
CDCF	Cambodian Development Cooperation Forum	L–LIN	Land Law Implementation Network
CG	Consultative Group	LMAP	Land Management and Administration Project
CHRAC	Cambodian Human Rights Action Committee	MAFF	Ministry of Agriculture, Forestry and Fisheries
CIDA	Canadian International Development Agency	MLMUPC	Ministry of Land Management, Urban Planning and Construction
CMDGs	Cambodia Millennium Development Goals	NALDR	National Authority of Land Dispute Resolution
DCA	DanChurchAid	NPA	Norwegian People's Aid
ELC	economic land concession	OHCHR	Office of the High Commissioner for Human Rights
GiZ	Deutsche Gesellschaft für Technische Zusammenarbeit/ German Technical Agency	RCW	Ramsar Convention on Wetlands
ICESCR	International Covenant on Economic, Social and Cultural Rights	SEZ	special economic zone
ILC	International Land Coalition	SLC	social land concession
ILO	International Labour Organization	TWG	Technical Working Group
		UDHR	Universal Declaration of Human Rights
		UN	United Nations
		UNDP	United Nations Development Programme
		UNOHCHR	United Nations Office of the High Commissioner for Human Rights
		WFP	World Food Programme





Quick Facts

Poverty is primarily a rural phenomenon. In 2004, 91% of the poor lived in rural areas.

The agricultural sector generates about 29% of GDP, but provides to about 80% of country's labor force.

45% of rural households in Cambodia owned less than 1 ha per household.ⁱ

According to Amnesty International, an estimated 150,000 Cambodians are at risk of eviction due to development projects, land disputes and land grabbing. From 1990 to 2008, some 26,600 families were evicted.ⁱⁱ

21% of rural Cambodian households were landless in 2008.ⁱⁱⁱ

40% of households whose heads are engaged in agriculture are poor.

Incidence of land related conflicts: 1,551 land disputes between 1991 and 2004, covering over 380,000 ha and more than 160,000 farming families.

As of 2006, two-thirds of these cases remain unresolved.^{iv}

Land disputes are concentrated in areas with abundant lands experiencing economic growth.

In 2010, only about a quarter of total land parcels were secured by land certificates: most Cambodians own land not officially recognized by the state.^v

ⁱ Cambodian Development Resource Institute. 2008 as cited in STAR Kampuchea in cooperation with Ngo Sothath. Land Monitoring Report: Cambodia, September 2011. Submitted to ANGO as part of the CSO Land Reform Monitoring Initiative.

ⁱⁱ Amnesty International, 2008. Rights Razed: Forced Evictions in Cambodia, AI Index. Available from www.amnesty.org/en/library/asset/ASA23/002/2008/2n/b1328237-07c2-11dd-badf-1352191852c5/asa230022008eng.pdf

ⁱⁱⁱ Cambodian Development Resource Institute. 2008.

^{iv} LICADHO Report, 2006.

^v STAR Kampuchea in cooperation with Ngo Sothath. Land Monitoring Report: Cambodia, September 2011.

CAMBODIA

Overview of Access to Land

Land management and administration in Cambodia can be traced back to its French colonial history, particularly the Civil Code of 1920, which established the system of French land law that recognized private property rights.

Though Cambodia gained its independence in 1954, an adequate land management system was not in place until the 1960s. Initially, few landholders sought to have their lands titled, in order to avoid the taxes they would have had to pay as land owners. By the next decade, however, private property rights had started to be adequately documented, particularly through cadastral maps and land titles. By March 1970, when General Lon Nol's coup d'état successfully deposed Prince Sihanouk, many of the low-lying areas planted with rice had been claimed by private owners. Yet the change in government only resulted in the deterioration of the land management system for the next five years.

In 1975, the Khmer Rouge regime put all lands under state ownership, destroying all records, including cadastral maps and titles. Government employees involved in land management, registration and surveying who did not manage to leave the country were re-deployed to the countryside or executed. In 1979, the State of Cambodia organized the collective as the basis for claiming user rights to agricultural land: while residential use rights were allocated on the basis of occupation, ownership of land still remained in the hands of the State.

Only 10 years later, after the fall of the Khmer Rouge, did a 1989 amendment to the Cambodian Constitution provide for a new private property system. According to Article 15 of the Constitution, "Cambodian citizens shall enjoy fully the right to own, use, bequeath, and inherit land granted by the state for the purpose of living on it and exploiting it."

Later, private property rights were also awarded under the Land Law of 1992. However, this law failed to regulate the granting of land concessions and it was not until 1998 that the Ministry of Land Management, Urban Planning and Construction (MLMUPC) was established to oversee the development of the policy and regulate the awarding of land concessions. This ministry also coordinated land use mapping and cadastral surveys, implemented land registration, and administered land transactions. The Land Law of 1992 was also amended in 2001 to address the same regulatory concerns more directly. Yet the NGO sector in Cambodia is one in the opinion that the law has not been properly implemented.¹

According to the NGO Forum on Cambodia, “The inadequate enforcement of laws and executive regulations in relation to the management of land and

natural resources results in the spoliation of the natural and cultural heritage of Cambodian citizens, especially vulnerable groups living in remote areas, through the use of different practices, such as misinformation, intimidation, threats, land grabbing, illegal logging and illegal land sales.”²

NGO and donor representatives view this as part of bigger problems related to poor governance, such as the lack of rule of law; lack of transparency; and corruption.³ The institutions responsible for equitable land administration and conflict resolution are also overly bureaucratic. As a result, even if cases of land disputes proceed to the courts, the complainants frequently lose.⁴ In other words, responsible government agencies do not sufficiently recognize the increasing problem of landlessness.

CASE STUDY #1

The Killings in Kbal Spean

On 21 March 2005, a mass eviction took place in Kbal Spean, a village in Poipet commune, O’Chrov district, Banteay Meanchey province. In the ensuing scuffle, five villagers were killed and at least 40 others were injured. Three members of the military and police forces were arrested, but were later released without charge.

The eviction incident took place at the height of a land dispute between the community and the official village chief, Tin Oun, who is claiming the land for himself.

According to the villagers, the district authority had awarded the land to them in 1997. Yet, a year later, Tin Oun applied for ownership of the same land and received a title to it.

The evictees moved to another area, but soon after returned to Kbal Spean

to face an uncertain fate. Nobody was charged for what the villagers regard as an illegal eviction, nor for the deaths of the five villagers. No land titles have been distributed to the villagers.

Representatives of the Kbal Spean community came to Phnom Penh and camped for nearly four weeks in front of the National Assembly Building. They then sent a letter to the Council of Ministers to request a quick and peaceful solution to the land conflict they were embroiled in. On 21 December 2005, the community received a reply from the Council of Ministers, informing them that their case was under the jurisdiction of the provincial authority, the governor of Banteay Meanchey Province. Upon receiving this information, the community representatives returned to Kbal Spean.

In May 2006, the conflict was resolved following the Prime Minister’s intervention. Provincial authorities negotiated a settlement between the 218 families living on the land and their village chief. The settlement permitted the families, who had previously held 10-meter by 20-meter plots of land, to retain slightly smaller plots, and awarded the rest of the land to the village chief.

Until now, human rights organizations are urging the government to continue its investigation of the eviction and the killing of the five villagers of Kbal Spean. They argue that the resolution of the land dispute does not expunge the culpability of the murderers nor the victims’ right to justice. ■



Moreover, the traditional power structure that characterizes Cambodian society— based on concepts such as deference to authority and patron-client relationships— constitutes another effective deterrent to people’s attempts to demand their right to land. “Deference to authority” prevents a person from standing up to his/her superiors; doing so is considered not only unacceptable, but foolish, as the complainant is bound to lose his/her case.

“Patron-client relationships” have their origins in the Cambodian tradition of absolute rule. In the absence of public law, relationships are based on the patron’s role of offering physical protection and financial assistance and, conversely, on the client’s obligation to show loyalty and occasionally, render service, to his patron. The continuance of this traditional power structure is thought to be one of the reasons for the ineffectiveness of land dispute resolution mechanisms. The “patron-client relationship” is based on the assumption that the patron

would always act benevolently toward the client, for fear of losing power, influence, and authority. However, this assumption is true only if the client is able to exert sufficient influence on the patron. Observers have noted that majority of the Cambodian population are unable to exert enough pressure to force a resolution of land disputes.

Land Ownership AND Distribution

- In 1999, 5% of landowners held close to 60% of all privately held land. By 2003, their share had risen to 70%. This means that the top 5% of landowners are increasing their control of private lands by 2% per year.
- Farming households own an average of 1 ha of land.⁵ However, 45% of households own less than 1 ha.⁶
- The landless comprise 21% of the rural population.⁷

CASE STUDY #2

The Dispossession of Cambodia’s Indigenous Peoples

The rights of indigenous peoples are protected by a number of international declarations and conventions ratified by the Cambodian government. These guarantees, combined with provisions in the Land Law of 2001, should provide ample protection for traditional forms of land ownership. But reality provides a jarring contrast to what the law intended. In the 1990s, large tracts of ancestral lands of Cambodia’s indigenous peoples were allocated as forest and economic concessions by the government. In January 2008, it was found that “not a single indigenous community [had] received a title to its collective property”.

Even without a formal title, indigenous peoples have certain

property rights, for example, user rights, by virtue of the Forestry Law. However, from 2002 to 2008, there has been a rush of land transfers from indigenous communities to provincial and Phnom Penh-based elite interests. Despite the existence of laws meant to protect indigenous peoples’ culture and rights, the continuing failure to implement such laws has led to widespread dispossession of indigenous communities and poses a continuing threat to their way of life. The NGO Statement on the Monitoring of CG Indicators (June 2006) urges the government to declare that “all land transactions in indigenous areas are illegal and that buyers will not receive ownership titles to illegally acquired land”.

The failure to implement national laws is not the only problem. Until now the Government of Cambodia has not yet ratified Convention No. 169 concerning Indigenous and Tribal Peoples (1989) of the International Labour Organization (ILO). This convention seeks to protect indigenous peoples as a workforce on their land, and thus their way of life. An important provision of this convention, Article 14.3, obligates the state to take all necessary steps to fully implement international laws for the protection of indigenous peoples at the national level. If the Cambodian government were to ratify this convention, it would find itself in a bind; hence, it is wavering in signing the convention. ■

- In 2010, only about a quarter of total land parcels were secured by land certificates. This implies that majority of Cambodians possess land without official recognition from the state.⁸ To illustrate, as of 2007, 36% of Cambodian households who own lands have government-issued land titles. In 2004, only 22% possessed lands with official state recognition.⁹

The landless in Cambodia are increasing over time. Landlessness is a key indicator of vulnerability to poverty. The following landless groups are especially vulnerable:

- female-headed households (The rate of landlessness among female-headed households is 21.2%);
- rural families, especially female-headed ones, that rely on common property resources, such as public land and water (They are more likely than most to fall victim to land grabs, insecure land tenure, and food insecurity);
- people who live in or next to concession areas;
- residents of informal settlements in urban areas; and
- indigenous peoples.

Issues Affecting Access to Land AND Tenurial Security

RISING DEMAND for LAND as an ECONOMIC ASSET

Because of economic growth and development, the demand for land is increasing and land values are going through the roof. Even if overall population densities are fairly low in Cambodia compared to its neighbors, land speculation and the unregulated allocation of land concessions are putting increasing pressure on the land. The rising demand for land is also attributed to the privatization of public lands, mega-development projects, the establishment of special economic zones (SEZs), land grabbing, and the allocation of land to the military. The price of land has skyrocketed, especially along the national borders, coastal areas, urban centers, and roads being rehabilitated. Settlers in Anlong Veng District, Oddar Meanchey province, near the Thai border, have reported that the price of land along the main road to

Thailand has tripled, in anticipation of the boom in tourism and business. As a result, land grabbing has run rampant throughout the country. The culprits are mostly military officials, businessmen, and politically influential persons. Land grabbing has become the main cause of land dispossession in both urban and rural areas in Cambodia. These property thefts are made easier because local people rarely have titles to their land.

Land speculation is the main motivation behind the recent barrage of applications for economic land concessions (ELCs). In 2004, some 2.4 million ha of land were allocated as ELCs, many of which cover areas beyond the ceiling set by the ELC sub-decree of 2005. ELCs are held by concessionaires for as long as 99 years, during which time the land would have appreciated in value many times over. This might explain why many ELCs, which cover huge tracts of land, are not immediately put to productive use by concessionaires; they are eventually sub-leased to other companies or to subsistence cultivators.

Unfortunately, the indiscriminate awarding of ELCs has taken away large agricultural areas from many small farmers. At the same time, what should have been productive land goes unused for a period of time after the concessionaire gets hold of it.

POOR LAND GOVERNANCE

Governance of the country is generally marred by shrinking democratic space, lack of the rule of law, legal impunity, lack of transparency, incompetence, corruption, a judicial system that cannot assert its independence of the executive, and the ruling political party that is more concerned with consolidating its power rather than governing well.

In regard to land governance, Cambodia has performed as badly. The Cadastral Commission, which was set up in 2002 as a dispute resolution mechanism, is plagued with bureaucracy and corruption. The NGO Statement on the Monitoring of CG Indicators, issued in June 2006, noted the commission's general weakness and lack of resources. It reported that while the commission has improved its ability to address small conflicts, "it is

not very successful in addressing more complicated cases that involve powerful people because of the pressure and threats it [is subjected to] when dealing with such cases.”

Elin Enge, advisor on Land and Resource Rights, Norwegian People's Aid (NPA), observed that “land registration leads to speculative investment and more and



CASE STUDY #3

No Poor People Allowed in Angkor

Within the Protected Cultural Zone of Angkor and Siem Reap reside families that have been living there since the 1970s. Many members of this community were born there, and make a living from farming, growing palm sugar and other crops, and doing other kinds of wage work. These families do not hold titles to the land because lands in protected zones are state property. However, local authorities had generally left the villagers alone, allowing them to live and work in the area.

In the year 2003, the Authority for the Protection and Management of Angkor and the Region of Siem Reap (APSARA), the government agency tasked with overseeing the protection of urban and tourist development, started to impose restrictions on the activities of residents in the area. It listed the names of the villagers, took pictures of their houses, and forbade them to make improvements on the latter, or to build new ones. APSARA also prohibited the collection of firewood from the forest.

These regulations have caused many problems for the villagers. They could not repair their homes, when these were destroyed by rain or storm. Newly married couples could not build a home for their family. As a result, homes have become overcrowded; a number of families have left the area. It has also become harder to make a living, given the restrictions. In contrast, rich people continue to build new and bigger homes in Angkor, while the APSARA turns a blind eye. ■

better land being held by the elite.” Land redistribution is not a priority of the government and leading international organizations. To benefit the poor and marginalized people, land registration needs to be participatory and should include the poor in all decision-making processes. Other rights, especially collective land rights, in regard to indigenous communities, need to be considered.

Land demarcation has also led to many technical problems that work to the advantage of rich and powerful individuals. Donor organizations have reported that many demarcation projects are conducted all over the country using different technical systems of mapping and demarcation.

The registration process has proceeded too slowly, and has tended to concentrate on non-disputed areas, when it should be prioritizing areas where land grabs and illegal operations have been reported. ELCs are allegedly prioritized over SLCs, which benefit the poor, and the former are sometimes allotted in areas that should be awarded to indigenous peoples through a collective title.

The parallel and overlapping operations of the Cadastral Commission, the court, and the National Authority for Land Dispute Resolution (NALDR) have resulted in many legal ambiguities. At the eighth meeting of the Government–Donor Coordination Committee in October 2006, the then Ambassador of Germany, Pius Fischer demanded that “[NALDR’s] relationship and jurisdiction vis-à-vis the cadastral commissions and the courts be clarified, as the lack of clarity is causing general legal

concerns.” The NGO Statement on the Monitoring of CG Indicators (June 2006) also raised the concern that the NALDR might be undermining “the capacity of existing judicial institutions mandated to resolve land disputes”.

Other problems indicative of poor land governance are as follows:

- Inconsistencies between different state demarcation and registration processes;
- Slow and difficult process of identifying land for community forestry to be covered by social land concessions (SLCs);
- Lack of transparency in the allocation and monitoring of ELCs by the Ministry of Agriculture, Forestry and Fisheries;
- Overlapping categories and uses of land, forestry, and fishery resources in the Tonle Sap; and
- Lack of clarity on the status of state land which has been grabbed by rich individuals.

INSUFFICIENT IMPLEMENTATION of the LAND LAW

There is general agreement on the “progressive character” of the Land Law of 2001. However, this law and its supporting sub-decrees have yet to be fully implemented. NGOs in Cambodia report that only 10% to 20% of the law has been enforced.

For example, Article 5 of the Land Law provides protection against eviction and, where eviction is unavoidable, fair compensation for the evictees. In 2005, more than 70 families were illegally and forcibly removed from Koc Pich Island, Phnom Penh, in the Tonle Bassac River. The island would be developed as a “satellite city”, with the land valued at \$25 per square meter. After a long negotiation, the island’s residents agreed to sell their land at \$5.25 per square meter, and thereafter left the island. Other families were able to get \$12 per square meter.

Article 18 and 19 of the Land Law set a ceiling of 10,000 ha for concessions. However, the government continues to grant ELCs for areas that are beyond the mandated ceiling.

Another sub-decree of the Land Law yet to be adopted by the government is that which recognizes and provides for the registration of the land rights of indigenous peoples.

Lack of Access to Land AS A Determinant of Poverty

Farming households that own a hectare of land, or less, are unable to earn enough income for subsistence. In Cambodia, 45% of households own less than 0.5 ha.

Women and female-headed households are especially vulnerable to poverty. Women make up half of Cambodia’s agricultural workforce. The Land Law of 2001 provides that land titles be put under the name of both spouses, and that land sales must be approved by husband and wife. However, such legal protections often prove to be ineffectual in a patriarchal society which subjugates women’s rights to those of the men. Hence, portions of jointly owned property are routinely sold without the woman’s knowledge or assent.

In addition, the Land Adjudication Guideline was created in 2004 in response to the challenges implied by joint ownership in the case of separation, abandonment and divorce. For instance, according to the guideline, the land registration officer should record the land in the name of the spouse who lives on and takes care of the land, even if this was acquired together. However, the guideline is not clear in terms of timeframe and also comes into conflict with a provision in the Constitution—therefore thwarting its effective implementation.¹⁰

The increasing incidence of landlessness and near-landlessness among the rural poor, combined with the latter’s diminishing access to common property resources, especially forests, which are awarded to private interests through a concession, have reduced many of Cambodia’s poor to dire straits. Chronic starvation is a real concern. Female-headed households used to be able to fend for their families by gathering snails, shellfish, firewood, weeds and other non-timber forest products. Today, because of the concessions, this alternative source of livelihood has been closed to them.



Legal AND Policy Framework FOR Access TO Land AND Tenurial Security

LAWS

Constitution of the Kingdom of Cambodia (1993)

- Provides that “all persons, individually or collectively, shall have the right to ownership. Legal private ownership shall be protected by law. The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law, and shall require fair and just compensation in advance” (Article 44);
- Provides that the control, use, and management of state land should be protected by law. (Article 58); and
- Declares the Kingdom of Cambodia’s adherence to the United Nations Charter, the Universal Declaration of Human Rights, Article 17(2) which states that, “No one shall be arbitrarily deprived of his property”.

Land Law of 2001

- Guarantees the inalienability of land, which is recognized by Cambodia’s Constitution;
- Creates a status of registerable ownership of land, which specifically puts women on an equal footing with men (Article 168);
- Establishes the legal framework for a collective ownership arrangement, which is specifically designed for the protection of indigenous land and traditional ways of life (Articles 23–26); and
- Provides for a land distribution policy to benefit the rural poor, specifically through the grant of social land concessions (SLCs) (Article 17).

Forestry Law of 2002

- Provides the framework for forest classification;
- Provides for the creation and management of community forests, such that communities are granted an area within the Permanent Forest Reserve to manage and derive benefit from;
- Guarantees the entry rights of local communities into forest concessions (Article 15,40);

CASE STUDY #4

Village Lost to Land Grabbers

The community living in the village of Knal Roveas, in Khun Riem Commune, Banteay Srei District, Siem Reap Province, is composed largely of former members of the Khmer Rouge army who came down from the mountains in 2000 and settled in Knal Roveas.

Knal Roveas is the poorest village in Banteay Srei, and is, in fact, not yet officially registered with the Ministry of Interior; thus, it gets no support from the government. At certain times of the year, the community runs out of food. During the dry season, water is a problem. There is a small lake located some distance from the village, but it is dirty, and mosquito-infested. Dengue

fever and malaria are common ailments among the residents.

Despite these conditions, the villagers are determined to stay, and have applied for official titles to their land. So far, none of them has been granted proof of land ownership.

In Tim, 45, and her husband grow rice on about a hectare of land. During the Khmer New Year in 2007, soldiers evicted In Tim and her family, along with 32 other villagers, to build a camp and private houses on the land. While Knal Roveas is a poor village, its land is highly prized because it is fertile and because it is located along a newly constructed road that connects Siem

Reap to Thailand.

Since the soldiers grabbed their land, In Tim’s husband, like the other men in the village, have been left with nothing to do. He has started drinking and, when drunk, would pick fights. He and the other villagers make some money by cutting down trees in the forest for a private company.

In Tim’s husband wants to leave the village and to go to Thailand to find a job. Other families have left already. Because they could not earn enough to pay for their living expenses, some couples have divorced and gone back to their birth families. One family reportedly had to give a baby away. ■

- Prohibits the logging of certain trees valuable to local communities, such as resin producing trees, or trees likely to produce resin; as well as trees and areas of cultural or religious significance, such as spirit forests (Article 45); and
- Mandates the sustainable logging of natural and plantation forests (Article 10).

SUB-DECREES of the LAND and FORESTRY LAWS

Sub-Decree on Social Land Concessions of 2003

- Puts large tracts of wasteland to productive use for the benefit of the poor through the award of Social Land Concessions (SLCs). SLCs could serve as a tool to develop remote areas, provide homes for the urban and rural poor, encourage the relocation of workforces on ELCs; and provide land for displaced people or families of war veterans and casualties.
- Problems in implementation:
 - ➔ The commune councils (CCs) are responsible for submitting the local SLC plan. In the absence of mechanisms for independent monitoring of CCs, the system has been marred by corruption and nepotism;
 - ➔ The process of allocating land for SLCs has been too slow. Donors have attempted to put pressure on the government to hasten the process by making the release of funds contingent on the issuance of a target number of SLCs, but donors have relented anyway despite the lack of progress in this regard.

Sub-Decree on State Land Management of 2005

- Describes the principles and mechanisms for the identification, registration, and classification of state land, including regulations on its allocation, management and re-classification. Determining which are state lands is necessary for the allocation of SLCs and ELCs.
- Problems in implementation:
 - ➔ Many government agencies are involved in the various steps for identifying, mapping, and demarcating land. Hence, progress, especially in demarcating land, has been slow. Unless lands are properly demarcated, the process of

determining which lands could be awarded as concessions will take longer. Civil society groups believe that once land has been completely demarcated, disputes concerning concessions will be significantly reduced.

Sub-Decree on Economic Land Concessions of 2005

- Provides the criteria for awards of ELCs, and sets a ceiling of 10,000 ha on ELCs;
- Defines what purposes ELCs could serve, for example:
 - ➔ Intensive agro-industrial production;
 - ➔ Job creation;
 - ➔ A magnet for foreign direct investment (FDI);
 - ➔ Other revenue generating activities for the state.
- Requires public consultation with the local community prior to the grant of ELCs (Article 35);
- Requires the concessionaire to comply with safety measures, such as environmental impact assessments, etc. (Article 4);
- Problems in implementation:
 - ➔ Despite the legally mandated ceiling on the size of ELCs, the government continues to grant ELCs beyond the maximum allowable size, and inside protected areas, without consideration of the social and environmental impact. Because any activity could be portrayed as having the potential to earn revenue for the State, the grant of an ELC is like giving the concessionaire a blank check to do with the land as he wills.
 - ➔ While the sub-decree requires public consultation prior to the award of concessions, the community is invariably represented at such consultations by the CC members, who are frequently corrupt. In any case, the high literacy requirements for candidates to the CC effectively exclude certain groups, such as indigenous groups and the poor, who are often short of education.
 - ➔ Provisions for compliance with safety measures in the ELCs are routinely ignored with impunity.

Sub-Decree on Community Forestry of 2003

- Establishes the procedures through which local communities could be granted temporary control of forest resources on which their livelihood depends.



Sub-Decree on Land and Property Acquisition and Addressing Socio-Economic Impacts Caused by State Development Projects [draft as of November 2007; has not been passed]

- Outlines the legal procedure for the acquisition of land by the state for the purposes of state development projects;
- Lays down the procedures for the conduct of environmental and socio-economic impact assessments for all cases of expropriation, and the mechanisms for compensating the displaced persons;
- Problems in implementation:
 - ➔ Although the intent of the law is to protect persons against unlawful eviction, the breadth of allowable reasons for state appropriation of land (i.e., in the general public interest) could make such action highly arbitrary. Only indigenous peoples are specifically protected against involuntary acquisition, through their veto power which only the Prime Minister can revoke (Article 10[e]).
 - ➔ The law does not provide for mechanisms to ensure that displaced persons are fairly compensated. It is not even clear which persons are considered as eligible for compensation.

DEVELOPMENT PLANS

Royal Government of Cambodia's Rectangular Strategy for Growth, Employment, Efficiency and Equity

- Launched in 2004 and updated in 2008, it is now in its second phase;
- Focuses on four growth “rectangles”, one of which is “Enhancement of Agricultural Sector”. This covers:
 - ➔ improved productivity and diversification of agriculture; land reform and clearing of mines; fishery reform; and forestry reform.

In the chapter on land reform and mining, the government promises to strive for the implementation of the Land Law as well as land distribution for the benefit of the poor. It sets forth the aim of “strengthen[ing] an equitable and efficient system of land management, distribution, and utilization, including land registration and distribution, land

tenure security, eradication of illegal settlements and land grabbing, and the control of land ownership concentration for speculative purposes.” It also gives priority to the strengthening of the land tenure rights of people who need small lots for settlement and family production within the SLC framework.

The chapter on forestry reform emphasizes sustainable forest management, protected area management, and community forestry.

Cambodia Millennium Development Goals (CMDGs)

- Goal 1 of the CMDGs is the eradication of extreme poverty. However, as updated by the government in 2005, Goal 1 does not directly include pro-poor redistribution of land.

INTERNATIONAL CONVENTIONS

The Universal Declaration of Human Rights (UDHR) [directly incorporated into the Cambodian Constitution]

- Declares that “everyone has the right to own property...No one shall be arbitrarily deprived of his property.” (Article 17);
- Compliance by the government: Both urban and rural Cambodians have been deprived of their property in a manner which could be considered as arbitrary.

International Covenant on Economic, Social and Cultural Rights (ICESCR) [ratified in 1972]

- Provides that “in no case may a people be deprived of their own means of subsistence.” (Article 1.2);
- Compliance by the government: The allocation of ELCs in indigenous peoples’ land and outright land grabs, particularly by the military, contravene this provision.

The Ramsar Convention on Wetlands (RCW) [ratified in 1999]

- Aims to protect wetlands and waterfowl, and requires signatory countries to choose which of their wetlands would be included in the RCW protection list. The wetlands would then be protected as national parks.
- Compliance by the government: Efforts to demarcate protected land are hindered by the government’s

failure to delineate state public and state private land. State public land is land which has a public interest use, while state private land is neither state public land nor privately or collectively owned land. The distinction is important because only state private land could be awarded as ELCs or SLCs.

International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) [ratified in 1992]

- Requires that “husband and wife shall enjoy the same rights...in respect [to] the ownership, acquisition, management, administration, enjoyment, and disposition of property...” (Article 16[1]);
- Compliance by the government: While the Land Law of 2001 (Article 168) provides for joint ownership by spouses of property, this is often ignored especially in remote rural areas.

Actors Facilitating OR Impeding Access TO Land AND Tenurial Security

CIVIL SOCIETY and NATIONAL and INTERNATIONAL NGOs

National Civil Society Organizations (CSOs)

According to the NGO Statement to the 2007 Cambodian Development Cooperation Forum, Cambodia’s civil society groups are concerned with the following issues:

- The forced resettlement of people to make way for commercial interests. In particular, the urban poor, who hold land titles, are removed from their homes and resettled in places where they have no access to basic services, such as water and sanitation.
- The allocation of ELCs without regard for regulatory standards that are intended to protect local communities, especially indigenous peoples living in Cambodia’s northeast region, from land alienation.
- The insecurity of land tenure of rural dwellers, their loss of access to natural resources on which their livelihood depends, and the lack of alternative income sources.

National CSOs have called on international donors to use their influence with the Cambodian government to address these issues. With roughly half of the national budget coming from international aid, donors carry a lot of clout with the government. However, while the government makes declarations of implementing the necessary reforms prior to donor meetings, these come to naught afterward and the government goes back to “business as usual”. Yet the pressure that international donors could bring to bear on the government is real enough and national civil society groups intend to continue to take advantage of it.

National civil society groups acknowledge that they have less power and influence than international organizations, and that they need to augment their financial and human resources and expand their geographical presence in order to get the government’s attention. Nonetheless, they still provide an important service to groups involved in land disputes, particularly by performing the role of negotiator between the affected people and high-ranking officials and the private sector. Civil society groups are also able to elevate local issues to the national level through their membership in national networks.

The National NGOs in Cambodia include Cambodian Human Rights and Development Association (ADHOC), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), and Legal Aid of Cambodia. The network organizations are NGO Forum on Cambodia, STAR Kampuchea, and the Cambodian Human Rights Action Committee (CHRAC). Buddhist monks are also involved in the political affairs of the country.

INTERNATIONAL DONORS

In 2004, the international donor community issued guidelines which the Cambodian government must comply with in order to receive the promised funding support. The guidelines have yet to be implemented, yet every year international donors increase their funding support to the government. In 2006, international donations to Cambodia amounted to \$601 million, excluding support given by China. The World Bank has frozen some of these funds following reports of misuse, yet in 2007 its own funding support to Cambodia rose to \$689 million.

International donors have resisted calls by national CSOs to use their power to keep the government in check. However, donors did acknowledge the importance of preserving the country's biodiversity and natural resources, as well as the significant contribution of agriculture to the Cambodian economy. International donors do most of their work through Technical Working Groups (TWGs) on agriculture, water, forestry, and natural resources.



CASE STUDY #5

Private Interests vs. Local Needs

In January 2000, Pheapimex, the local partner of the Chinese company, Wuzhishan LS Group, was granted two successive 70-year economic land concessions (ELCs) on over 300,000 hectares of land in order to grow eucalyptus trees and to operate a paper mill. The concession area is located in Pursat and Kampong Chang provinces in west-central Cambodia.

Local villagers only became aware of the concession when Pheapimex began its preliminary operations. As a result of an advocacy campaign led by the affected communities, who sent petitions to local authorities, national and international organizations and institutions, the company's activities were suspended in late 2000 and villagers were allowed to remain on the land. During a follow-up visit to the site by the Office of the High Commissioner on Human Rights (OHCHR) Cambodia Country Office in May and July 2003, it was found that the company was still not operating in either province.

In November 2004, the company restarted its activities after securing a permit from the Ministry of Agriculture, Forestry and Fisheries. Once again, the

affected residents were not informed by the company or by the local government of the resumption of Pheapimex's operations.

Protest marches, including a blockade of National Highway 5, were undertaken by the communities. The conflict came to a head when a grenade was thrown at a group of 600 protesters who had taken refuge in the compound of the local mosque. Yet, in spite of continued police harassment, the protesters kept up their campaign.

Meetings were set with government officials and company representatives, but neither showed up. At the beginning of 2005, the incidence of violence was reduced. An opposition political party declared their support for the villagers. The community members also appealed directly to the King for his intervention. The King forwarded the complaint to the Prime Minister, but the latter took the side of Pheapimex, saying that its operations would be beneficial to the area and to its residents, and chided the protesters for allowing themselves to be used for propaganda purposes by the opposition party.

In March 2005, the village resumed its protest, but this time adopted the

strategy of active non-violence. Following this, Pheapimex's operations suddenly stopped.

A resolution calling for the establishment of a community forestry group among the affected communities has been submitted to the provincial office in Pursat. The resolution was formulated with the help of STAR Kampuchea and the Civil Society Advocacy Coordination Alliance (CACA), and the commune council.

This case highlights four important aspects. Firstly, companies make decisions without consulting the affected communities, and often despite opposition from the latter. Secondly, companies make only token efforts to resolve a conflict¹¹ (including public dissemination of relevant information). Thirdly, government officials, at all levels, tend to ignore even the most obvious violations committed by private companies.¹² Fourthly, affected people and villagers need the help of NGOs to develop their advocacy skills, to utilize non-violent resolution mechanisms, and to increase their awareness of their rights. ■

Donors also work with relevant government ministries, but pay little attention to NGOs.

Among the international development organizations working in Cambodia are the United Nations Development Programme (UNDP), UN Office of the High Commissioner on Human Rights (UNOHCHR), World Food Programme (WFP), the World Bank, and Asian Development Bank (ADB).

World Vision, Plan, Oxfam GB, GiZ, and Danida are a few of the international donors with a presence in Cambodia. Other groups include international media organizations, as well as the embassies and consulates of foreign governments.

THE PRIVATE SECTOR

Private sector groups are concerned with resolving land disputes only to protect their investments. Public and private sector interests are frequently at odds with each other. Private sector groups are also disinclined to negotiate directly with affected communities and leave the task of conflict resolution to public authorities.

NATIONAL and LOCAL GOVERNMENT

The following line ministries and government offices have a direct influence on land issues:

- **Ministry of Land Management, Urban Planning and Construction**

Responsible for land management, including the development of the policy and regulatory framework, and coordination of land use planning and land registration and administration;

- **Ministry of Agriculture, Forestry, and Fisheries**

Responsible for organizing and operating development policies in the agriculture sector, including monitoring and management of natural resources, promoting the development of technical skills and knowledge, and improving the work of concerned professional organizations, NGOs, and other associations involved in the agriculture sector;

- **Ministry of Rural Development**

Responsible for integrating all rural development work at household, village, and commune levels, focusing on poverty alleviation through rural infrastructure improvement.

Prime Minister Hun Sen has declared that the Cambodian government has made significant progress toward developing legal frameworks required for land reform.¹³ However, the government has also acknowledged that the majority of rural farmers have yet to benefit from the country's economic growth (8.4% per year from 1994 to 2006), and that building tenurial security is the first step toward improving the economic conditions of the poor. Although the agricultural sector contributes an estimated 29% to the country's GDP, it employs about 80% of the workforce.

Hun Sen has also announced the tightening of criteria for granting ELCs and cited the need to allocate land to the landless by allocating SLCs. He blamed the country's politicians for abetting the illegal occupation of state or privately owned land for political ends, and thus for hindering the process of SLC distribution.¹⁴ He also pointed to the difficulty in identifying the genuinely landless households.

On 6 March 2007, Hun Sen declared a "war on land grabbers", and outlined strategies to deal with them. He expressed concern that continued land grabbing by rich and powerful land speculators would lead to a farmers' revolt against the government. Taxes have been imposed on unused land to discourage land speculation.

The Prime Minister has acknowledged that "poor land reform along with the failure to address falling fish stocks and rampant illegal logging" have been the three biggest political mistakes he has made. He has said that once these problems have been addressed, corruption in the country would be reduced.

However, even on prodding by donors, the government is still loathe to release information concerning the allocation of concessions to private interests and the

military, thus raising doubts about the sincerity of Hun Sen's declarations.

JOINT MONITORING INDICATORS

Joint monitoring indicators (JMIs), previously called "benchmarks", are targets agreed between the government and the donor community during the annual Consultative Group (CG) and Cambodian Development Cooperation Forum (CDCF) meetings. These sector-based targets are divided into actions the government must achieve before the next CDCF meeting and are considered to be a good indication of progress made within the relevant sector. Indicators have generally concentrated on good governance and reform implementation. Among the specific targets are: the government's adoption of strategy and regulations for indigenous peoples' land rights; public disclosure of information on ELCs and other concessions (mining and military development zones); establishment of SLCs; forest and protected area demarcation; implementation of a community forestry program; systematic land titling; and successful land conflict resolution. According to the 2006 Joint NGO Statement, majority of the JMIs have not been comprehensively met.

IMPACT of GOVERNMENT POLICIES

NGO network representatives have acknowledged that the Prime Minister holds the real power in the country. He has a strong incentive for resolving land disputes in favor of the poor, but he often fails to do so because of a poor governance structure. The ministries exercise little authority in comparison to the Prime Minister, but they are ultimately responsible for implementing government

policy and drafting laws. However, because not all of them are involved in land disputes, the ministries are regarded as "neutral" vis-à-vis land issues. Furthermore, even if they should choose to intervene in favor of the poor, the ministries are often powerless to act, and have to defer to higher-ranking officials. The courts have much more power, but are generally viewed as anti-poor.

Land Partnerships in Cambodia

Several land partnerships between NGOs and the government have been established in Cambodia. These are described as follows:

LAND ACTION NETWORK for DEVELOPMENT

The Land Action Network for Development (LAND) is modeled after the Land Law Implementation Network (L-LIN), and was formed following the National Workshop on Land Intervention Strategy held in Siem Reap in 2005. LAND aims to enable NGOs to cooperate in influencing government and donor policies and practices, and also to strengthen relationships and improve cooperation among NGOs working on land issues toward the betterment of poor communities.

The National Secretariat is run by the NGO Forum of Cambodia, which acts as a central contact point for NGOs working at the national level as well as a liaison between the NGOs and the LAND Steering Committee. The national level network is divided into three main groups: (i) technical NGOs [legal assistance and education]; (ii) operational NGOs [legal assistance and community development]; and (iii) supportive NGOs [international organizations]. Feeding into these national groups are five regional networks, each of which comprise at least three provincial networks. Regional secretariats act as contact points for all provincial NGOs, allowing them to take the concerns of the communities they represent to higher levels of the organization.

LAND is highly appreciated by Cambodian NGOs and is often cited as a successful example of partnership between NGOs. However, LAND's effectiveness is hampered by the refusal of government representatives to



attend its meetings. The infrequency of LAND meetings also works against sustaining the commitment of international NGOs.

LAND MANAGEMENT and ADMINISTRATION PROJECT

The Land Management and Administration Project (LMAP) is a multi-donor funded project implemented by the Ministry of Land Management, Urban Planning and Construction (MLMUPC) from 2002 to 2009. It was spearheaded by the World Bank, and jointly funded by GiZ (then GTZ) and the Government of Finland. The Canadian International Development Agency (CIDA) later joined the project, infused additional funding, and extended the project's timeframe by two more years (from 2007 to 2009). LMAP was carried out in 11 provinces, and is credited with the issuance and registration of one million land titles under the systematic titling process, as well as the reinforcement of land administration staff at the provincial and national levels.

Stakeholders have acknowledged the LMAP's contribution toward making the process of land titling more systematic and transparent, and less expensive. However, the first phase of the LMAP has tended to concentrate on communities that are accessible and has shirked areas with big land conflicts.

LAND ALLOCATION for SOCIAL and ECONOMIC DEVELOPMENT PROJECT

LASED—or the Land Allocation for Social and Economic Development Project—is a joint effort between the World Bank and GiZ, to be implemented from 2007 to 2012. Its objective is to distribute land to at least 10,000 landless households.

TECHNICAL WORKING GROUPS

TWGs are partnerships between the government and international donors with some civil society representation. There are 18 TWGs covering different development priority areas, including TWG–Land.

The TWG–Land had helped to ensure that the sub-decrees on ELCs and State Land Management were developed in consultation with TWG members and the

public. However, the private sector is not represented in the TWG, despite its increasingly influential role in land concerns. In addition, NGO and civil society representatives in the TWG have so far played only a limited role. Coordination within and between the different TWGs also needs improvement.

NATIONAL AUTHORITY on LAND DISPUTE RESOLUTION

NALDR was created by the government in March 2006 to complement the work of the courts, and to resolve land disputes beyond the jurisdiction or capacity of the Cadastral Commission. Civil society groups have declined to join the NALDR for fear that the institution is biased, that they would be exploited by the government and would lose their independence. NALDR, made up of high ranking officials has been criticized as unsuitable for resolving sensitive land dispute cases as these usually involve police and military officials.¹⁵

As an alternative to formal membership in the NALDR, the NGOs would provide support and act as an independent monitor. However, since the NALDR was formed, its representatives have not met with the NGOs, despite the latter's request. The institution also creates a parallel level of bureaucracy without a clear mandate or terms of cooperation with the Cadastral Commission. This has undermined the role and rule of the courts and the Cadastral Commission in adjudicating land cases.

Opportunities, Risks AND Challenges

OPPORTUNITIES

- **NGOs' Acknowledgment of the Importance of Land Partnerships**

There is general interest among NGOs in establishing partnerships to improve people's access to land. There are calls for the formation, initially, of regional or local partnerships that prioritize project implementation and specific cases. This would benefit from the effectiveness of lower levels of administration in resolving land disputes.



- **Donor Interest in Working with the Government**

According to the Paris Declaration on Aid Effectiveness (2005), building long-term partnerships with the government is the core strategy of international and development organizations. All donors also acknowledge the government's ownership of development projects and strive to harmonize efforts.

RISKS and CHALLENGES

- **Lack of Equitable and Effective Land Partnerships at the National Level**

This bears strongly on local level decision-making and must be addressed as a priority concern.

- **Limits and Constraints to Progress of Land Partnerships in Cambodia**

In order to promote land partnerships in the country, strong networks and linkages among NGOs need to be established. Dwindling sources of funding are forcing NGOs to compete rather than cooperate. NGOs need to understand the benefits of networking and partnerships, find ways to support each other, and even to recognize which among them is best able to represent their sector in dealing with the government.

A number of existing partnerships of NGOs do not have clear goals, or have goals that overlap with those of other institutions or partnerships. Other partnerships have also been criticized for focusing too much on “talking” and too little on “doing”.

NGOs perceive themselves as being at a strong disadvantage when dealing with the government. Important government information continues to be inaccessible, and the government often ignores recommendations put forward by NGOs. Partnerships with the government have not been effective because the political environment precludes transparency on the part of the state, and largely because of this, there is no trust between the two groups. The government has little regard for NGOs and often tries to intimidate them and restrict their rights.

A clear example of the government's unwillingness to work with NGOs is its lack of interest in joining the land partnership study conducted by STAR Kampuchea and the NGO Forum of Cambodia. These

two networks believe that government's reluctance to participate in the study epitomizes the current problems of lack of communication and trust, which hinder opportunities for partnership on land issues.

- **Disharmony between Donor and Government Programs**

While international donor organizations declare their intent to work in harmony with the government, the uncoordinated donor support for different methods of land use mapping in Cambodia is proof to the contrary.

- **Political Apathy of Donors**

International donor and development organizations are primarily oriented toward providing technical support. The majority of them avoid getting enmeshed in controversial or political issues. They have never used their political clout to pressure the government to improve its human rights record, and observers believe they will not become land advocates anytime soon.

- **Constraints to Strengthening NGO–Donor–Government Relationships**

Firstly, there is a power imbalance between national NGOs and international development and donor organizations, and this is tilted against the former. Secondly, donors feel that the inherent mistrust between the government and NGOs restricts progress for tripartite cooperation in regard to land and natural resources management, and believe that land distribution would be more effective if the government and the private sector were to team up instead. Thirdly, donors and development organizations question the legitimacy of NGOs to represent affected communities and vulnerable groups, since the latter do not normally elect which NGOs would speak on their behalf. Donors prefer increased direct representation and organization by affected peoples. Donors are also concerned that a number of NGOs are not genuinely interested in empowering people, but operate more as private enterprises concerned with turning a profit.

Endnotes

- ¹ Cristina Mansfield, *Advocacy in Cambodia: Increasing Democratic Space*, 2002, Phnom Penh, Cambodia
- ² See NGO Forum on Cambodia: Rethinking Poverty Reduction to protect and promote the rights of indigenous minorities in Cambodia: A Human Rights approach to land and natural resources management. April 2005, p. 7.
- ³ STAR Kampuchea's Land Partnership Study, conducted from October 2006–March 2007.
- ⁴ Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Yash Ghai, February 2006, Paragraph 39.
- ⁵ NGO Forum on Cambodia.
- ⁶ Cambodian Development Resource Institute. 2008.
- ⁷ CDRI. 2008
- ⁸ STAR Kampuchea and Ngo Sothath. Land Monitoring Report: Cambodia, September 2011.
- ⁹ This increase of 14 percentage points can be attributed to the Land Management and Administration Project (LMAP), which sought to issue one million titles to Cambodians.
- ¹⁰ Asian Regional Workshop on Women and Land Rights. 2010.
- ¹¹ It was reported to STAR Kampuchea interviewers that the company once approached the communities with an offer to settle the growing dispute but residents refused.
- ¹² Due to the large size and nature of the land it can be concluded that the concession must have been decided by the National Government and not only by the Ministry of Agriculture.
- ¹³ Prime Minister Hun Sen, "Address at the First Cambodia Development Cooperation Forum," Phnom Penh, 19 June 2007: paragraph 38.
- ¹⁴ Prime Minister Hun Sen, "Address at the First Cambodia Development Cooperation Forum," Phnom Penh, 19 June 2007: paragraph 40.
- ¹⁵ STAR Kampuchea, in cooperation with Ngo Sothath, Consultant. Land Monitoring Report: Cambodia. September 2011. Phnom Penh.

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