

REFORMING LAND REGISTRATION IN CAMBODIA

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ABSTRACT

It is clear that the overriding problem and the one with a high contribution to poverty in Cambodia is lack of land tenure security and restricted access to common property resources. Symptoms of the problem are clear from the rising number of landless due to forced or distressed sales and the high numbers of land disputes clogging the judicial and other institutions for resolving land conflicts.

The Royal Government of Cambodia (RGC) has embarked on a State Reform agenda that impacts on the land sector. The State Reform objectives are sustainable economic and social development, poverty reduction and good governance, and land reform is seen as an important means of achieving those objectives.

The draft new Land Law, which is a legal framework for land management and land administration, is now discussed in the National Assembly. Meanwhile, Ministry of Land Management Urban Planning and Construction (MLMUPC) is preparing several sub-decrees that will complement the revised Land Law and once the law (probably in mid 2001) is passed the work on sub-decrees will be accelerated. On June 1999 a National Commission for Resolving Land Issues and Provincial Land Dispute Resolution Commission have been established. They are charged with the responsibility for setting up effective mechanism for resolving lands conflicts out of court. On March 2000 the sub-decree on the procedure of establishing cadastral index map and land register has been adopted.

The German Government through the GTZ and the Finnish Government are supporting Cambodia in the comprehensive reform of Systematic and Sporadic Land registration. Methods are being developed, professional capacities strengthened and projects implemented in five provinces. Based on the positive experiences and results of Bilateral Technical Cooperation provided by the German and Finnish side we are currently collaborating with the World Bank for Financial Cooperation to formulate a comprehensive land policy framework and to formulate a National program for Systematic Land Registration. The pressing related to land have been identified and the prioritized areas to be focused on and addressed immediately are (I) land administration, (ii) land management and (iii) land distribution.

1. INTRODUCTION

Cambodia is one of the poorest countries in Asia. It has a total area of 18.1 million ha (including rivers and lakes) and it is estimated that, in 1998, 2.7 million ha were cultivated. In administrative terms Cambodia consists of 21 provinces, 3 municipalities

1600 communes 13 000 villages. Cambodia people have been suffering from civil war for all most 3 decades. The political regime has changed several times. Between 1975 to 1979 under the Khmer Rouge regime, there were no land ownership rights, land belonged to the state. Between 1979 to 1989 after the Khmer Rouge regime collapsed and the People Republic of Kampuchea replaced, all land remained State property but people had a right to work the land. 1989 the Constitution was amended by changing the name of People's Republic of Kampuchea to State of Cambodia. Later on in the same year, there was an amendment to the Constitution that provided ownership and possession right to people-ownership rights for residential land and possession right for agriculture land. In 1992, the Land Law was adopted reflecting change in government policy from planned market economy to a free market economy. One of most worrying consequences that has accompanied the transition to market economy is loss of access to land for many poor families. At a national level, access to land is determined by the size of population, the total area of potential land in the country, the legal regime governing ownership of land, and the land market. In Cambodia 's case, all four dimensions point toward an increasing concentration of land in the hands of a few and an increasing number of land less people, land grabbing and land disputes.

The key factors describing "land problems" in Cambodia are:

- (i) An inadequate land law
- (ii) A general situation of weak governance in provinces
- (iii) Wholesale privatization of common property forest and wetland
- (iv) Weak capacity of land titling and administration
- (v) Distress sales of land often relating to defaulting on loans
- (vi) Use of outdated information for land use classification and planning
- (vii) Lack of legal framework to cover the management and use of state land and real estate.

"The government action plan" recognizes the effort solving land issues as one of the most important issue to alleviate poverty and lay the foundation for an environment conducive to the emergence of good governance in the use of Cambodia's most important resources. The overriding issue is rural poverty. 85% of the population is living in rural area. Over one-third population lives below the poverty line, ninety percent of them in rural area. Gaining equitable and secure access to land and developing it sustainable are the key to the reduction of rural poverty and to checking rural-urban migration which has led to major problem in urban area.

Addressing the following sector issue will alleviate this overriding issue:

- (i) The lack of clear, coherent and consistent set of land policies and legislation with adequate resources for implementation.

- (ii) Weak capacities of land titling and administration and inability to carry out the National titling program.
- (iii) the problem of land grabbing, landlessness, escalating land dispute and misuse of natural resources.
- (iv) The high incidence of land dispute and inadequate capacity to deal with them.

2. STATE REFORM

The RGC has embarked on a State Reform agenda that impacts on the land sector. The State Reform objectives are sustainable economic and social development, poverty reduction and good governance, and land reform is seen as an important means of achieving those objectives for the reasons summarised below.

Sustainable Economic and Social Development

The Royal Government of Cambodia's (RGC) platform for its Second Term singled out strengthening of State institutions and good governance as the main elements of that strategy. A cross-cutting theme of both these elements was the expressed intention of "Allocating investment to priority areas and improving agriculture". The intention is to provide a conducive framework to facilitate investment in high potential sites such as urban and peri-urban areas and to improve the productivity of agriculture in rural areas in order to build up a solid foundation for economic growth. The ways identified to achieve this include combating land grabbing and landlessness and the development and implementation of a sound land tenure and land use policy and environmental protection.

The RGC's Interim Poverty Reduction Strategy Paper suggests that its land reform policies be specifically directed at overcoming the lack of opportunities created by landlessness and lack of access to land. There is a core program identified as:

- Development of national land policy (framework)
- Improved management of national land stock
- Commencements of systematic land titling
- Establishment of a legal framework to enforce property rights
- Establishment of territorial master plans and zoning rules
- Development of rural housing

A new medium to long term action plan is specified based on adoption and enforcement of the new Land Law, implementation of National Systematic Land Registration Program and developing a land use classification system.

Land Distribution, land tenure and land access are also seen as law enforcement issues to be overcome so that exclusion - another important element of poverty - can be reduced by generating empowerment. The agenda identified here includes:

- Strengthening the regulatory and enforcement capacity
- Effective and competent dispute settlement processes
- Identification of the status of landless people
- Expansion of agricultural land
- Prevention of illegal occupation of land
- Preventing concentration of unused land by individual owners

Good Governance

The Governance Action Plan as presented to donors in Paris in May 2000 identified two categories of governance reform, which are likely to be critical to Cambodian reform. These are Judicial and Legal reforms with specific reference to strengthening the judiciary and law enforcement, passing of key basic laws including the Civil Code and the Land Law and reduction in the use of sub-decrees and Civil Administration and Decentralisation and De-concentration reforms which note the importance of improving local governance.

To adapt to ever changing situation of land sector in Cambodia, as the cornerstone for our sustainable development, we are now addressing immediately the following action plan:

- Strengthening the role of the Ministry of Land Management, Urban Planning and Construction (MLMUPC), which has only be established in 1999, in its mission to lead, coordinate and manage the affairs of land in the Kingdom of Cambodia.
- Elaboration of a comprehensive land policy framework under the guidance of the Council for Land Policy, which was nominated in December 2000.
- Application and dissemination of the new land law after passing the National Assembly (expected in a few months), application of sub-degrees and new land-related regulations and law enforcement
- Strengthening the provincial commissions for the regulation of land conflicts
- Strengthening the central and provincial offices for land administration and land management.
- Strengthening the decentralization process by defining commune boundaries definitely, support commune development planning and new regulations on land tax.
- Speeding up the land registration process (systematic land registration) and strengthening the sporadic land registration.
- Establishing a systematic inventory and management system for state land
- Strengthening the mechanisms for effective co-operation with all stakeholders, (national institutions, Bilateral and Multilateral institutions, NGO's) and inter-institutional co-ordination.
- Building up the human resources and technical capacities at all levels

The draft of land law is discussed and amended by the 7th committee of National Assembly in order to be submitted to the plenary session and expected to passe soon. The comprehensive new land law will provide a legal framework to enforce private and state property right and facilitate the proper management of land. The new land law will

also provide a legal base for a policy of land distribution through social concession and also through regulation for land the distribution of demind area.

3. THE PROCEDURE FOR LAND REGISTRATION

A sub-decree has been established for applying the procedure of producing cadastral index maps and land registers through the systematic adjudication and registration.

Systematic land registration

At the present Cambodia has two land registration approaches for land right: sporadic land registration and systematic land registration only commenced recently and is applied in a number of projects in five provinces. In terms of the good result of the systematic land registration pilot projects, Cambodian government is now preparing for the national land registration program. The systematic parcel by parcel land registration applies area by area, village by village and parcel by parcel approach with one visit per parcel principle stressing publicity and participation. The technologies involved the work stages develop are kept as simple as possible relying on the orthophotography and locally available solutions. The result are cadastral index map showing accurately the parcel boundaries and the parcel number and land register data showing rights and restriction, right holders' identification. The system consists of the following components: public information, adjudication, demarcation, surveying, documentation, public display, confirmation of the record and delivery the title.

Public Information

It is widely recognized that almost the most important factor behind a successful systematic land registration is the public information campaign. It is primarily needed to gain support from the public and secondarily for organizing the entire process. Normally the public information commences with a national program explaining the aims, needs and benefits of the whole process. A regional and a local program are required before the systematic registration can start.

A properly planned local public information program first defines and a right media for reaching the landowners. Often in developing countries, the right media is the natural leaders themselves. The best results are achieved during discussions with the natural leaders, who then will explain the process to the landowners. Special attentions has to be paid to the weak groups. In many developing countries for example women, as landholders are potentially weaker in terms of security of tenure to men. Other groups in a vulnerable position might be poor, disabled, illiterate etc. An ignorant registration procedure might encourage stronger groups to take advantage over the weaker and register all land to them. The main protection against this is maximum publicity of the process leaving little space for corruption and or other violations of rights.

The public information campaign should be carried on parallel to the registration throughout the exercise. The surveyors have to bear in mind that when they carry out fieldwork and talk to the people, they are actually the most important public informers. Therefore, it is essential that all staff carrying out the process fully understand the process themselves.

Adjudication

The adjudication is the first stage in the introduction of registration of title. It is a process whereby existing rights in parcels of land are finally and authoritatively ascertained. The adjudication does not alter existing rights in land and it does not create new rights. It establishes what right exists, by whom they are exercised and to what limitations they are subject. In result, it produces certainty and finality into land records. The core question of the adjudication is "Who owns what?"

The main internationally recognized methods of adjudication are the sporadic and the systematic adjudication. The principle of the sporadic adjudication is that the process takes place "here and there, now and then". So whenever and where ever there is a demand to or other reason to determine the precise ownership of an individual parcel then the process is executed. Th sporadic method is much cheaper in the short run because in principle those who need a title pay for it. It is a completely voluntary process based on the immediately need only.

Systematic Adjudication

In the systematic land adjudication all land is adjudicated, area by area, parcel by parcel. It will be cheaper in the long run per parcel and that method only enables all expected benefits of the land registration. In terms of individuals' rights, it is safer than sporadic as it is executed with maximum publicity. The register data becomes very accurate as data is investigated in the field and checked by all adjoining parties. It is a compulsory process where usually those who fail to claim for their rights or refuse to cooperate with the process will loose them.

Demarcation

The demarcation as a part of the systematic parcel by parcel land registration is the process where the boundaries are delineated on orthophotomap for rice field and agreed upon with the adjoining owners or other interest parties. For build up area, where orthophotomap cannot use, the corner mark has to survey. For the landholders, this is the most concrete part of the whole exercise and therefore it plays a major role for the overall success. The most common boundary system relies in fixed boundaries (for example Torrens), where boundaries accurately surveyed, corners marked, lines legally protected and they only changed via legal document. The other main system of boundaries is called General Boundaries. The lines itself are not precisely known. Often boundaries then follow permanent structures and move together with the structures over the years. Only way of clarifying a boundary dispute would then be based on field inspection while in a fixed boundary system usually graphical evidence exist and they remain same no matter what happens to permanent structures.

Surveying

Surveying as part of the systematic parcel by parcel land registration literally means the process whereby the cadastral map is surveyed. Where each parcel is a give coordinate. A modern cadastral surveying system tries to be cheap and effective. Therefore,

demarcation and surveying has to happen simultaneously. The systems that require separate field teams for ground surveys are old fashioned and have always proved to be too costly for a developing country to maintain.

Documentation

The documentation as part of the systematic parcel by parcel land registration literally means the process where the land register and the Cadastral Index Map get their physical appearance and a system for their storage and updating. In practice, it often means the setup of the both graphical and text databases together with wide selection of soft-and hardware combinations. One has to always bear in mind that the main thing is rather efficiency and security of land tenure than too high accuracy and high technology. Consequently, a replacement of an existing manual system with a completely automatic system is not always advisable. It is better to maintain an old, perhaps clumsy, system in place than a modern system that is not executed due for example high investment requirements of lack of skilful staff. In conclusion, in the documentation phase the inputs and outputs of the register are designed and, very importantly, the maintaining and updating of the register is planned.

Public Display of the Records

A public display of the records, including the cadastral index map and the list of owners, will take place for 30 days in a prominent and relevant place for public investigation in the village or area where the adjudication area is located. During the public display period it is possible to make an objection against the record or part of it to the Administrative Commission. The Commission shall try to resolve any disputes, and if this is not possible, sent the dispute to be decided by the commission for resolving land dispute. During the display period, it is also possible to correct an error or omission in the record as well as to make other alteration accepted by the persons whose interests are affected.

Confirmation of the adjudication record and delivery the title

The next stage of the procedure is the confirmation of the adjudication record, which literally means that the Administrative Commission officially completes the procedure as far as undisputed parcels are concerned by signing the record. After the confirmation and completion of the settlement procedure, the record shall be delivered to the local office of Land Management, Urban Planning Construction and Cadastre for inspection of technical quality control and final confirmation by the Ministry of Land Management, Urban Planning and Construction.

The output of the systematic adjudication is the adjudication record, which includes all necessary information on physical appearance and legal relations of every parcel in the adjudication area. After the validity of record, information will be entered in the registers of immovable property. After this, the owners will get the certificates proving their title on registered parcels.

The systematic registration of about 45 000 parcels in recent time has shown positive and increasing productivity and performance.

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