

Nagoya University
Graduate School of Law

The Implementation of Cambodia's Laws on Land Tenure

A Dissertation submitted in fulfillment of the requirements for the degree of
Doctor of Laws

Name of the Student: HAP Phalthy
Course: LL.D. (Comparative Law) Special Program
in Law and Political Science
Student ID Number: 430704135
Academic Supervisor: Frank George Bennett
Sub-supervisors: Yasutomo Morigiwa
Hiroki Nakaya
Date of Submission: June 25, 2010

Acknowledgements

The achievement of this dissertation was made possible by the good offices of many people. Great dependence was placed on legal resources from government agencies of the Kingdom of Cambodia and NGOs working on land issues, and the Government of Japan provided the scholarship that allowed me to examine that material in the pursuit of doctoral studies. Special thanks also go to Nagoya University, especially the Graduate School of Law, for a comfortable academic research environment. My sincere thanks also go to the Royal University of Law and Economics in Phnom Penh and the Ministry of Education, Youth and Sport of Cambodia for allowing me to pursue my doctoral studies.

I would like to express my deep thanks to my academic supervisor, Associate Professor Frank Bennett for his best advice, support, encouragement, and crucial comments. Without his invaluable and tireless help in steering my work, I would not have so enjoyed the process of research or the completion of the dissertation. I owe an academic debt also to my sub-supervisors, Professor Yasutomo Morigiwa and Professor Hiroki Nakaya for their strong comments and constructive advice during the finalization of this dissertation. Special thanks go to the international student advisor of the Graduate School of Law at Nagoya, Assistant Professor Saori Okuda for her kind attention to my living circumstances in Nagoya at the University. Also, I would like to thank the library staff of Nagoya University, especially the Graduate School of Law Library for their excellent service in support of this research.

At more personal level, I would like to thank all friends who have provided encouragement and emotional support to me in the road to this dissertation. My thanks go to Sovann Kin and my cousin Thy Chap for their English check of my early draft of historical background. Thanks also go to my younger god brother Hoeun So, and to my niece Maneth Khim for providing me legal resources and other relevant documents. I would like to thank Meta Yoib, Chamrong Chuon, Sras Hem and my former high school teacher Narim Thim for providing me relevant materials. My sincere thanks go to H.E. Hor Lim, Under-Secretary of State of the Ministry of Land Management, Urban Planning and Construction of Cambodia, for spending precious time with me in telephone interviews. Particularly, my thanks also go to Penghuy Ngov for his crucial discussion about things to be improved at my home university, during the early stage of the doctoral course. Special thanks go to Mav Khun and Kanharith Nop for sharing experience with me during the later stage of my course. I would like to express my gratitude to Dr. Peng Hor for his support and consultation. My thanks also go to Phomsouvanh Philachanh for sharing his experience and information with me. My life in Japan cannot be comforted without the recreational activities supported by Brother Hang Kimlorn Tep and Sister Mara Khim including their families.

My heartfelt thanks go to brother Ngoy Yuok for his support in finding needed materials and facilitating an important interview with a government official. I would like to express my greatest gratitude to my parents, parents in law, my aunt Kim I Leang, my uncle Engly Leang, my aunt Leng Chap, brothers and sisters for their feeding and support of my life. My academic life in Japan cannot exist without my former Professor Tateo Nomoto of Mie University for his kindness, goodness and full support of me during my three month stay in Mie Prefecture in 2002. Last, the patience and emotional support from my wife and kids have contributed to the completion of this important step in my career. I appreciate them very much, first and foremost.

Abstract

The purpose of this dissertation was to discover possible shortcomings in the land registration processes and to identify minimal adjustments for a successful land registration initiative in Cambodia. The enjoyment of collective ownership from 1979 to 1989 witnessed the failure of this system and therefore the country signaled a need of a new property system. Consequently, Cambodia introduced land privatization in 1989 in which Cambodian citizens could have a right of ownership over residential land and a right of possession over agricultural land. The government simultaneously attempted to register all landholdings by issuing the Instruction on the Implementation of Land Use and Management Policy dated on June 3, 1989. More remarkably, Cambodia adopted two subsequent land laws in 1992 and 2001. The latter aims at providing full ownership rights for Cambodian citizens through a system of land registration. However, land registration has remained a serious work for the government.

Methodologically, this research examined the transitions of the implementation of the land laws and legal regulations from the inception of land privatization in 1989. The research used materials and data from published sources such as NGOs and government agencies as bases for analytical input. The interview of the Chief of the Department of Land Registration under the Ministry of Land Management, Urban Planning and Construction in Phnom Penh in December 2008 was another source of information to fulfill the analysis. Furthermore, this research looked on a comparative view of the success of Japanese land registration when the Meiji land tax reform started in 1873 as a tool for a proposed reform for Cambodian land system.

The result of this research revealed that land registration system in Cambodia has remained unsuccessful. The centralized power to finalize land registration through sporadic land registration has made the system more convoluted, time-consuming and costly procedures thereby deterring landholders from participating in land registration. Moreover, the failure to introduce land taxation has shown that competent authorities do not have incentives to perform the duties. Resulting from such a failure, land tenure has remained uncertain thereby making more land grabbing and land disputes.

Following the above findings, this research proposed several considerations. District authorities in cooperation with commune authorities should be the sole government agency to be responsible for sporadic land registration. Also, a law on land taxation should be urgently considered so that landholders are able to contribute their interest in land to the state. With regard to land taxes, the government in return is able to provide basic needs for social development. Amending necessary legal provisions of the 2001 Land Law and other relevant regulations in order to facilitate the implementation should also be necessarily taken into account.

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Abbreviations

CDRI:	Cambodia Development Resource Institute
MLMUPC:	Ministry of Land Management, Urban Planning and Construction
NALDR:	National Authority for Land Dispute Resolutions
NGO:	Non-Governmental Organization
PDLMUPCC:	Provincial Department of Land Management, Urban Planning, Construction and Cadastre

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Chapter 1: The Cambodian Land Problem

Security of property rights and the ability to draw on local or national authorities to enforce those rights are keys to increasing incentives for investment and for productive land use. A wide range of options, from full formal title to legally-backed mechanisms at the community level, can result in higher levels of tenure security.¹

1.1 Problem: Failing Land Registration Process

Experience has witnessed that centralizing the power at the national authority has slowed down the process of sporadic land registration. From the inception of land privatization in 1989 to 1994, district authorities were responsible to issue sporadic registration certificates with regard to possession rights over agricultural land while provincial authorities issued sporadic registration certificates concerning ownership rights over residential land. As a result, 448,277 sporadic registration certificates were issued as of 1995.² In September 1994, the government required the Department of Cadastre under the Ministry of Agriculture, Forestry and Fisheries to sign sporadic registration certificates.³ More remarkably, in October 1995 the government transferred the Department of Cadastre to be under the supervision of the Office of the Council of Ministers attempting to have better land administration.⁴ However, the output of land registration has been far from expected. Consequently, only 70,357 sporadic registration certificates were issued during the period of five years from 1995 to 2000.⁵

The Ministry of Land Management, Urban Planning and Construction established in 1999 was a hope to cope with land management and administration in the whole country. However, following the 2001 Land Law and relevant legal regulations, the sporadic land registration processes still require the power of provincial authorities and national authority to issue land certificates. District authorities just fulfill the cadastral work such as demarcation, survey and adjudication but do not have authority to finalize the registration. Reasons may come from limited cadastral knowledge of district cadastral staff and therefore

¹ International Development Assistance (IDA), "Land Policy: Securing Rights to Reduce Poverty and Promote Growth," (World Bank, July 2009): 2, http://siteresources.worldbank.org/IDA/Resources/IDA-Land_Policy.pdf, last visited March 15, 2010.

² Sophal Chan et al., *Land Tenure in Cambodia: A Date Update*, Working Paper No. 19 (Phnom Penh: Cambodia Development Resource Institute, October 2001), 30.

³ The Form for Filling Certificates of Immovable Property "New Certificates" by the Department of Cadastre, dated September 7, 1994.

⁴ Sub-decree on the Transfer of the Department of Cadastre of the Ministry of Agriculture, Forestry and Fisheries to be under the supervision of the Office of the Council of Ministers, No.58ANK, October 03, 1994.

⁵ *Supra* note 2 at 30.

the Ministry of Land Management, Urban Planning and Construction has done the registration attempting to make a qualified land certificate.⁶ Again, the output of sporadic land registration has been remarkably in low number achieving only 71,569 sporadic registration certificates from 2001 to November 2008.⁷ This inefficient cadastral work has consequently resulted in several drawbacks.

The cause of slow sporadic land registration processes has a serious impact on land tenure security. The attempt of the Ministry of Land Management, Urban Planning and Construction to produce a qualified sporadic registration certificate has not much responded to the needs of society. As a result, land disputes arising from uncertain land tenure have rampantly occurred. According to the NGO's reports, collective land disputes consisted of 140 cases in 2001⁸ and increased to 306 cases in 2008.⁹ Remarkably, the disputes happened between powerful people and groups of ordinary people or between rich people and groups of ordinary people. Powerful and rich people usually benefit from such a current land system because they are able to obtain land certificates while ordinary people are not. If such a situation continues, social turmoil will be unavoidable causing a serious social impact. Therefore, it is necessary that the government speed up the sporadic land registration so that all landholders have legal evidence to their landholdings.

Noticeably, the output of sporadic land registration processes does not always ensure the qualified land certificates. It should be aware that two types of land certificates have been issued in current Cambodian land system. The first is "systematic registration certificate" which means absolute title and the second is "sporadic registration certificate" which is a kind of weak title. Technically, the difference between the two certificates is that a systematic registration certificate shows accurate boundaries with exact coordinates and is registered in a land register while a sporadic registration certificate does not necessarily show accurate boundaries meaning no coordinates and is registered in an immovable register. Practically, a systematic registration certificate can be obtained through systematic land registration while a sporadic registration certificate can be obtained through sporadic land registration. In actual practice

⁶ Interview with Hor Lim, Under Secretary of State of the Ministry of Land Management, Urban Planning and Construction of Cambodia (May 25, 2010).

⁷ As of November 25, 2008, only 589,827 sporadic registration certificates were issued. See Department of Land Registration, *Summary of the Result of Sporadic Land Registration from 1989 to November 25, 2008*, by Vanna Siek, Chief (Phnom Penh: General Department of Cadastre and Geography, Department of Land Registration, November 25, 2008).

⁸ The Cambodian Human Rights and Development Association, *Human Rights Situation 2006* (Phnom Penh: The Cambodian Human Rights and Development Association (ADHOC), March 2007), 33 under note 47.

⁹ The Cambodian Human Rights and Development Association, *Human Rights Situation 2008* (Phnom Penh: The Cambodian Human Rights and Development Association (ADHOC), January 2009), 28.

however thing can be different. For example, Phnom Penh Governor together with the signature of the Phnom Penh Capital Department of Land Management, Urban Planning, Construction and Cadastre issued a systematic registration certificate under sporadic land registration. The form of the certificate itself was wrongly designed. Moreover the technical error with sporadic index map shown in the systematic registration certificate evidenced that the Phnom Penh Governor is not an appropriate agent to issue land certificates because he just provides the signature on the certificates but does not examine the correctness of land documentation.

1.2 The Role of Private Property

1.2.1 Basic Concepts of Property

Property has conceptually been considered as one element of the natural rights which requires strong protection from a government. From the inception of the second treatise, John Locke clearly declares the remarkable theme of his political theory that in order to preserve public good, the central function of government must provide the protection of the private property.¹⁰ John Locke also raises that each individual has a “property in his own person,”¹¹ and may enjoy exclusive access to what is proper to him or her. To this extent, even the state “cannot take from any man any party of his property without his own consent.”¹² Since Locke’s political theory has been famous throughout Europe and then influenced worldwide,¹³ his conception of property has also influenced government policies throughout the world. For this reason, it is therefore required that the rule of law be highly respected and all laws and regulations in accordance with the rule of law be strictly implemented in all levels of government bodies.

Property is a fundamental resource for capital development. The good economic system of capitalism depends on the functional policy of the government in each country. Property itself is not the core quality of assets, but the legal expression of economically meaningful consensus about assets.¹⁴ From a strictly economic point of view, the real purpose of property right is not to benefit the property right

¹⁰ John Locke, *The Second Treatise of Government and a Letter Concerning Toleration*, ed. J. W. Gough, Chapter 1, Section 3 (Oxford: Basil Blackwell, 1956), 4.

¹¹ *Ibid.*, 15.

¹² *Ibid.*, 71.

¹³ Alan Ryan, *Property and Political Theory* (Oxford: Basil Blackwell, 1984), 16-20.

¹⁴ Hernando de Soto, *The Mystery of Capital* (New York: Basic Books, 2000), 157.

holders but to provide them the incentive to increase the value of their assets by various means which would have beneficial results for society.¹⁵ The government in this sense plays an important role in protecting property right holders. The fifth amendment of the U.S. Constitution ratified in 1791 contains a provision that the government cannot take away a citizen's property unless it is for public use and the citizen is paid just compensation. Similar language is also found in Article 29 of the 1947 Japanese Constitution which states that "[p]rivate property may be taken for public use upon just compensation therefor." The same legal intention was also found in the 1993 Cambodian Constitution which also guarantees legal private property and assures that the deprivation of the private property can be done only for the public interest with fair and just compensation in advance.

The right to private property is necessary to protect the human person's needs and enable to provide his or her subsistence and entertainment through multiple activities. In the nineteenth century, property rights were separated from a political authority and relocated in the private legal persons.¹⁶ Today, clear remarks of international law unequivocally state the right to private property. Article 17 of the Universal Declaration of Human Rights stipulates that "[e]veryone has the right to own property alone as well as in association with others" and that "[n]o one shall be arbitrarily deprived of his property." Also the European Convention for Protection of Human Rights and Fundamental Freedoms states that "[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."¹⁷ Similarly, the African [Bangul] Charter on Human and People's Rights stipulates that "[t]he right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."¹⁸ While the American Convention on Human Rights holds that "[e]veryone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest

¹⁵ Hernando de Soto, *The Other Path: The Economic Answer to Terrorism* (New York: Basic Books, 1989), 159-160.

¹⁶ Hernando De Soto and Francis Cheneval, *Realizing Property Rights* (Zurich : Ruffer&Rub, 2006), 12.

¹⁷ "European Convention for the Protection of Human Rights and Fundamental Freedoms," (ETS No. 5), 213 U.N.T.S. 222, entered into force September 3, 1953, Protocol 1 on 'enforcement of certain rights and freedoms not included in Section I of the Convention, March 20, 1952.

¹⁸ "African [Banjul] Charter on Human and People's Rights," adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, art. 14.

of society. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.”¹⁹ The concern of international community makes therefore the strong protection of right to property.

Understanding the correct meaning of the word “property” in legal concepts is important in order to determine its scope. In common usage, when ordinary people use the word “property” or if ones look up this word in a dictionary, the definition of property refers to “something owned or possessed.” In legal concepts, however, lawyers, law professors, and law students use a different definition of the word “property” which means that a collection of legal rights that a person has in some item of value that is guaranteed or protected by the state. In Black’s Law Dictionary, the first meaning of property is “the right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership.”²⁰ The property can be simply considered as a bundle of rights which represents various legal rights that an owner or other person may have. The property consequently places emphasis on a legal right a person has, but not on a thing or physical object as it may be understood by the ordinary people.

Property law refers to rights to things in which things can be tangible or intangible. Tangible property can be movable (personal) or immovable (real).²¹ A definition of immovable property or real property is rights to land and things attached to the land such as buildings, trees, fences, plants, and rights under the land and rights over the land as well as rights in land of another. Movable property or personal property on the other hand is simply defined as anything that is not real property. Intangible property is property which is not a tangible property. Copyright, patent right, trademark, stock are typical examples of intangible property. The topic of this dissertation however focuses on only immovable property involving its ownership which is the greatest right one can have. Property law also deals with legal rights which are enforced by law of a country. Therefore, property law is about relationships between people and things, and also between people since it protects someone’s right against another. One is an owner of property when one has all the legal rights in connection with the property. A tenant of a rice field has some legal rights

19 “American Convention on Human Rights,” O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

²⁰ Bryan A Garner, *Black’s Law Dictionary*, 8th ed. (St. Paul, Minn: West Group, 2004), 1252.

²¹ Errol Meidinger, “Property Law for Development Policy and Institutional Theory: Problems of Structure, Choice, and Change,” *Legal Studies Research Paper Series, Paper No. 2006-001* (2006): 18. <http://ssrn.com/abstract=876467>, last visited January 8, 2008.

such as right to use and right to possess for the time being but does not have the right to sell or dispose of the property. The owner of that rice field on the other hand has all the legal rights involved although during tenancy the owner does not have the right to possess or use, this right will fall to the owner when tenancy will terminate.

1.2.2 Methods of Ownership Acquisition

The exigencies facing the market economy and democratic society in the early 1990s made Cambodia prepare the new constitution providing private ownership rights to the whole Cambodian citizens. This became a strong impetus to create a new land law which led to an adoption in 2001 in order to be in accordance with the 1993 Constitution. Since then, there is a clear provision directing how to legally acquire ownership of immovable property and how property rights can legally protect the owners in their everyday life necessities. Despite the removal of temporary possession in the new land law, the 2001 Land Law retains some connections related to the 1992 Land Law and other former regulations. Although ownership acquisition which requires to be possessed at least five years of possessions prior to the effective date of the law, all legal possession which was less than five years is allowed to continue until five years in order to establish the foundation for a definitive systematic registration certificate.²² This flexibility of law seems to cover a wide range of legal possessors even, for instance, those who just bought land a few days before the date of determination and fulfilled the old law and regulations. Under the 2001 Land Law as well as the 2007 Civil Code, the acquisition of ownership can be available through social land concessions, sale contracts, exchange, succession, and gift.

Land acquisition could be obtained by social land concessions²³ which contribute to daily life of landless people. Landless people are able to obtain residential land or agricultural land for their subsistence through social land concessions. The requirements to obtain systematic registration certificates are a good means for landless people to make use of land. For the residential land, within the period of 3 months after receiving the land, the concession holders are required to permanently reside at least 6 months a year. As

²² Land Law of Cambodia, NS/RKM/0801/14, August 30, 2001, art. 31 [hereinafter the 2001 Land Law].

²³ Sub-decree on the Social Land Concessions, No.19ANK/BK, March 19, 2003. Article 2 states that “social land concession is a mechanism to legally transfer state private property with respect to social purpose to the poor lacking residential land or/and family agricultural land.” For more information about social land concessions see Sub-section 2.1.2.2 “Land Concessions.”

for the agricultural land, the recipients are required to cultivate land within the period of 12 months after receiving the land. All concession holders must fulfill the social land concessions for 5 years in order to request for a definitive systematic registration certificate.²⁴ The policy of social land concessions is therefore a good means to reduce landlessness providing suitable resources for Cambodian citizens.

Land ownership can also be acquired by sale contracts. Article 65 of the 2001 Land Law states the validity of a sale contract in which the sale contract must be registered by the competent authority certified subsequently by the lower level of authority. Article 69 requires that the price of selling be included in the sale contract. The selling price is important in order to determine how much transfer tax is to be paid via transactions. Thus, the contract which does not contain a selling price is considered to be null and void. Article 69 also requires that the transfer tax be paid before the registration is allowed. The sale contract without registration is not sufficient to pass ownership.²⁵ The requirements of sale contracts therefore encourage the buyers to register the property they have bought in order to avoid a future claim and thereby prevent land disputes.

Another form of acquisition of ownership is by way of exchange. According to Article 70 of the 2001 Land Law, the conditions of a contract for exchange of immovable property are the same manner as a sale of immovable property.²⁶ This remains a critical discussion reflecting Article 69 which requires the record of property price in the contract. The law does not state who has the right to evaluate the price of the property for the exchange. If the parties of the contract are to write down the price, they are likely to write down the price below market price thereby biasing the proper market price which leads to the reduction of the state income taxes. It is necessary, to this extent, for the government to create a market price valuation committee in each cadastral administration for a fair valuation of property exchange price.

Transfer by succession is another way of acquisition of ownership. Article 71 of the 2001 Land Law refers to the transfer by way of succession in which whether the deceased has left a will or not. The

²⁴ Sub-decree on the Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 18.

²⁵ There are some exceptions of sale contracts although they are in the authentic form. Article 66 of the 2001 Land Law states the invalid sale transactions can be done toward: a person who is not the owner of the property offered for sale; an owner of an undivided property without the consent of the other owners; a person whose immovable property is the subject of seizure; a guardian; a curator; a judge; a government officer; and a person whose property is under foreclosure. Article 67 also states the invalidity of sale contracts between spouses; The Civil Code of Cambodia, No.NS/RKM/1207/030, December 8, 2007, arts. 515-565 [hereinafter the 2007 Civil Code].

²⁶ Exchange is also stated in the 2007 Civil Code, Articles 566-567.

law is silent on the process of registering a transfer of immovable property by way of succession which is different from a transfer by sale or a transfer by exchange. However, it is presumable that if the transfer is by way of intestate succession,²⁷ the court will be involved in distributing the deceased's assets into any other parts of the estate. A court order which acknowledges the party entitled to the new part of the immovable property could be filed with the cadastral administration to effect the change in the land register noting new successors. In case of testate succession,²⁸ the procedure necessary to officially register the transfer is not addressed making unclear that whether the court order requires to confirm the validity of the will as a registered asset or not. The 2007 Civil Code, as acknowledged in Article 79 of the 2001 Land Law, states the partition of immovable property by succession but fails to clarify taxes from succession. It consequently contributes to a loss of state income when succession taxes are not collected.

It is also possible to acquire ownership of immovable property by gift. Articles 80-84 of the 2001 Land Law state the effectiveness of the gift whenever it is in the form of a contract. Article 81 requires that a contract be in an authentic form and registered with the cadastral administration. Naturally, donees do not bear any consideration when they receive a gift. However, an accepted gift is irrevocable.²⁹ The law again does not state whether taxes need to be paid before the transfer is registered with the cadastral administration. Thus, such a flaw in law also causes a great loss of state tax income.

1.3 Five Roles of Land Registration

In Cambodian law, land registration supports the land system in five ways, by: assuring land tenure security, stabilizing transfers, providing an objective basis for expropriation, supporting land-based borrowing, and providing a foundation for land taxation. These connections can be seen in legal provisions, as follows.

With respect to tenure security, Article 1 of the 2001 Land Law guarantees ownership rights and other relevant rights in accordance with the 1993 Cambodian Constitution. The Sub-decree on the

²⁷ The 2007 Civil Code, arts. 1156-1167.

²⁸ The 2007 Civil Code, arts. 1168-1229.

²⁹ The 2001 Land Law, art. 84. It is however unclear whether oral acceptance is irrevocable or not. Albeit this ambiguous provision, it is advisable that the donee register the property soon after the gift is made.

Procedure of Land Registration of Indigenous People also aims at guaranteeing land tenure security.³⁰ The strengthening of tenure security can be found in the Government Statement on Land Policy dated July 1, 2009. One of the goals of land administration in the government statement is that the registration of ownership rights and other rights is to strengthen land tenure security.

Regarding land transfers, Article 63 of the 2001 Land Law states that “the transfer of ownership of immovable properties between private persons by sale, exchange, gift or succession shall be implemented in accordance with the provisions of the law.” From Article 64 to Article 84 of the 2001 Land Law explain the valid process of transfers of immovable properties by sale, exchange, succession and gift in which the properties need to be registered. All unregistered contracts of transfers are invalid. Another goal of the Government Statement on Land Policy also attempts to provide a formal transfer of rights. The Sub-decree on the Management and Use of Co-ownership Buildings dated August 12, 2009 has the goals to register private ownership of co-owned buildings in which the transfers of private part are required to be paid for cadastral services and transfer duties to the state.³¹

In the area of expropriation, the Cambodian Constitution states that “[t]he right to confiscate ownership 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.”³² This provision of the constitution is followed by the 2001 Land Law stipulated in Article 5. Remarkably, the Law on Expropriation promulgated on February 26, 2010 aims to “define an expropriation in the kingdom of Cambodia by defining the principle, mechanism, procedures of expropriation and fair and just compensation for any construction and rehabilitation, and public physical infrastructure expansion project for the public and national interest and development of Cambodia.”

In support of finance, the 2001 Land Law provides an opportunity for lending agencies to offer loans to owners of the properties by securing the payment of a debt via a mortgage, antichresis and gage.³³ From Article 199 to Article 224 describe legal processes of security interests. It should be noted that in order to proceed with full security interests, all properties are required to be registered. The Sub-decree on

³⁰ Sub-decree on the Procedure of Land Registration of Indigenous People, No.83ANK/BK, June 9, 2009, art. 2.

³¹ Sub-decree on the Management and Use of Co-ownership Buildings, No.126 ANK/BK, August 12, 2009, arts. 1 & 21.

³² Constitution of the Kingdom of Cambodia, 1993, art. 44.

³³ The 2001 Land Law, art. 198.

the Management and Use of Co-ownership Buildings has the goals to facilitate co-owners to secure interests through a mortgage and antichresis.³⁴

With regard to taxation, Financial Law for 2010 dated December 16, 2009 stipulates that immovable properties other than agricultural land are required to pay taxes based on value.³⁵ Interestingly, the Proclamation on the Collection of Tax on Unused Land dated July 5, 1996 requires all unused land be paid taxes. Only official documents issued by the cadastral units or local authorities from commune level upward are tools to collect unused land taxes

1.4 Current Framework

The Ministry of Land Management, Urban Planning and Construction plays an absolute role in land registration in the whole Kingdom of Cambodia. However, although the ministry sets branches at the district and provincial levels, the branches have not been empowered to finalize the registration. The district authorities have just done cadastral work such as survey, demarcation, and adjudication. After finishing the field work, the district authorities record land parcels in sporadic index maps and send land documents to the provincial authorities for further examination and approval. The provincial authorities record land parcels in land registers. Lastly, provincial authorities who receive signature delegation from the Ministry of Land Management, Urban Planning and Construction issue sporadic registration certificates while provincial authorities who have not received signature delegation from the ministry send the documents to the national authority (the General Department of Cadastre and Geography of the ministry) for issuing sporadic registration certificates. This current process, consequently, makes land registration more complicated and time-consuming.

1.4.1 Land Use Control

The use of land is necessarily forced by the government so that landholders make use of the land. The administration network in Cambodia is clear that all governmental policies can proceed with all levels

³⁴ Sub-decree on the Management and Use of Co-ownership Buildings, No.126ANK/BK, August 12, 2009, art. 2.

³⁵ Financial Law for 2010, No.NS/RKM/1209/026, December 16, 2009, art. 13 (stating that the property to be taxed has the value of no less than 100,000,000 Riels (equivalent to USD25,000 in June 2010) and its tax rate is 0.1 percent).

of authorities. The decentralized power through democratic development has been diffused to local levels. Commune councils were established in 2002 in order to develop the commune territory.³⁶ More remarkably, the councils of a capital and provinces, hereinafter called provincial councils, and the councils of municipalities, districts, and *khans*,³⁷ hereinafter called district councils, have existed since 2009 in order to develop the governed territory.³⁸ In order to make sure that land is in use, the government should issue legal regulations to enforce landholders to make use of their land. To achieve this goal, the government is necessary to empower commune, district and provincial authorities to implement the government legal regulations for efficient land use. Imposing taxes on land which exceeds 2 hectares and enforcing unused land taxes are also needed.

In response to accentuated policy for efficient land use, landholders should be required to cultivate their land as much as possible. A commune authority which stays very close to the commune people plays a pivotal role in examining the availability of land use. The commune council representing the commune authority is entitled to appoint village chiefs in order to facilitate the work.³⁹ Village chiefs have very crucial duties to implement a commune policy in order to develop economy and to suggest to the commune council the issues relating to interests of people in the village.⁴⁰ This administration network is feasible to implement government land use policy effectively. With this regard, it should be necessary that the government adopt a regulation requiring all landholders to report the type of land use to the village chief every year. Any landholdings which are not reported their use to the village chief should be considered as unused land. Therefore, if a commune council receives all yearly reports from the villages, the commune council is able to realize the landholders who don't make use of their land.

Provincial and district councils are other legal entities at the local level which provide more

³⁶ Law on Commune Administration, No.NS/RKM/0301/05, March 19, 2001. Commune councils were elected at the first time on February 3, 2002 and at the second time on April 1, 2007.

³⁷ *Khan* is an administrative division under the capital. The capital is divided into *khan* equalizing district. As of May 22, 2008, there are 8 *khans* which are located in Phnom Penh Capital. Under the amended Cambodian Constitution in 2008 allowing the Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans, No.NS/RKM/0508/017 dated May 26, 2008 divides Cambodia into Capital which is Phnom Penh and Provinces. The capital is divided into *khans* while the province is divided into municipalities and districts (arts. 4-5). Under this law, Cambodia is now composed of one capital and 23 provinces.

³⁸ Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans, No.NS/RKM/0508/017, May 26, 2008, [hereinafter Law on Provincial and District Administrative Management]. It is noted that the provincial council and district council were elected on May 17, 2009.

³⁹ Law on Commune Administration, No.NS/RKM/0301/05, March 19, 2001, art. 30.

⁴⁰ Law on Commune Administration, No.NS/RKM/0301/05, March 19, 2001, art. 31.

transparency for the development. Unlike a commune council in which a commune chief is a member, provincial and district councils do not include boards of governors. However, this two-tier system of management is likely to provide an opportunity for checks and balances. The boards of governors implement the decisions made by the councils⁴¹ while the councils monitor the activities and performance of the boards of governors.⁴² Remarkably, the councils may request to terminate the governors if the governors commit wrongdoings.⁴³ This provision is to ensure good governance thereby enforcing governors to work in accordance with the rule of law. With this regard, for efficient land use policy locally controlled by commune councils, district and provincial councils should confirm whether the work done by the commune councils is according to the law or not. In case that a commune council cannot fulfill the basic and necessary duties albeit with support from the district council, the district council can report immediately to the Ministry of Interior in order to provide assistance to those authorities for fulfilling the duties.⁴⁴ Therefore, the government policy with regard to efficient land use can be effectively enforced by district and provincial authorities.

Another government policy to enforce efficient land use is land taxation. An attempt to create land registration system through cadastre is an applicable way to reach a land tax purpose. It is important to note, however, that Cambodia is one of the poorest countries in the world where the poverty rate in 2004 was 35 percent of the total population.⁴⁵ More remarkably, according to Social-Economic Survey in 1999, 15.8 percent of the total families are landless, 66.7 percent have less than 2 hectares of land accounted for 50.8 percent of the total agricultural land, and the remaining 17.5 percent have more than 2 hectares of land accounted for the rest of agricultural land.⁴⁶ According to these data, therefore, imposing land taxes on landholdings which exceed 2 hectares does not affect the poor people. In contrast, land taxation improves the efficiency of land use.⁴⁷ This policy contributes to a great deal of state revenues which the government

⁴¹ Law on Provincial and District Administrative Management, art. 155.

⁴² Law on Provincial and District Administrative Management, art. 157.

⁴³ Law on Provincial and District Administrative Management, art. 152.

⁴⁴ Law on Provincial and District Administrative Management, arts. 103-104.

⁴⁵ World Bank, *Cambodia Halving Poverty by 2015?: Poverty Assessment 2006, Report No. 35213-KH* (World Bank, February 7, 2006), i. See also UNDP Cambodia, *Land and Human Development in Cambodia*, Discussion Paper No. 5 (Phnom Penh: UNDP Cambodia, 2007), 5.

⁴⁶ *Supra* note 2 at 49.

⁴⁷ Richard M. Bird and Enid Slack, "Land and Property Taxation: A Review," (March 2002), 12, <http://www1.worldbank.org/publicsector/decentralization/June2003Seminar/LandPropertyTaxation.pdf>, last visited May 27, 2009.

can use to develop irrigation and road infrastructures as well as other necessities for rural development.

Enforcing legal regulations pertaining to unused land taxes remains a sustainable way to obtain an efficient land use. Cambodia has a great vision toward unused land, requiring that all unused land be taxed. Although the government has so far tried to issue legal regulations relating to unused land taxes,⁴⁸ no strict measures to record unused land have been used thereby making unused land tax collection feeble. As mentioned earlier, only a commune authority through village chiefs as secretaries is vital to record all unused land in the commune territory. The clear data on availability of unused land contribute to the enforcement of the efficient land use. More importantly, this strategy also prevents land speculation.⁴⁹ Unused land also necessarily applies to the unused land in economic concession land. With this regard, the 2001 Land Law does not fine economic land concessioners who don't use land within one year, but just to cancel the contract.⁵⁰ Consequently, economic concession land is largely unused.⁵¹ Therefore, the amendment of this land law to make a proper measure to impose extra taxes on unused land covered by economic land concessions is necessary.

1.4.2 Land Concessions

Under the 2001 Land Law, land concessions propose a crucial technique aiming to provide a fair land distribution and to improve economy through the equitable use of natural resources. Rights of concessions are quite different from rights of ownership and possession as well as limited property rights. A land concession is a legal right provided by a competent authority with regard to its discretion for any natural person, legal entity or group of persons to occupy land and exercise thereon the rights set forth by law.⁵² Basically, the state provides state private land⁵³ for a specific purpose of land concessions in which a land concession holder must engage an activity contingent on state approval and subject to the terms of the

⁴⁸ Proclamation on the Collection of Tax on Unused Land, No.224/PK/SHv/BD, July 05, 1996; Circular on the Instruction for Enforcement of Taxation on Unused Land, No.017SRN/KSH/T, December 01, 1999; Notification on the Management of the Collection of Tax on Unused Land, No.010SHV/PK/BD, June 06, 2007.

⁴⁹ UNDP and Ministry of Planning, *Cambodia Human Development Report 2007, Expanding Choices for Rural Poor People* (Phnom Penh: UNDP, 2007), 47.

⁵⁰ The 2001 Land Law, art. 62.

⁵¹ UNDP Cambodia, *Land and Human Development in Cambodia*, Discussion Paper No. 5 (Phnom Penh: UNDP Cambodia, 2007), 3.

⁵² The 2001 Land Law, art. 48.

⁵³ The 2001 Land Law, arts. 17, 58.

concession contract. Concessions must be in accordance with public order and can be deprived by an administrative decision when legal requirements are not fulfilled. All concessions have to be registered.

More interestingly, land concessions cannot affect roadways, reserved land, and land necessary for maintenance, as well as waterways, ponds, and water reserves which are useful for the daily life of Cambodian people.⁵⁴ This forbiddance tries to avoid disorder arising from public affect. It should be noted that the 2001 Land Law restricts concession land to no more than 10,000 hectares. As such, all concession land exceeding this amount although provided before August 30, 2001 is subject to the reduction unless strong disadvantages arise.⁵⁵ The main difference between the 2001 Land Law and the 2007 Civil Code is the term of concessions. Article 61 of the 2001 Land Law stipulates that the maximum duration of the land concession cannot be longer than 99 years and is silent about the renewal of the concessions. On the contrary, the 2007 Civil Code may be interpreted that the term is the same as stipulated in the 2001 Land Law, but the renewal is permitted. This flaw in law is necessary to be stipulated clearly in the future amendment of the 2001 Land Law.⁵⁶

Three types of concessions granted under the 2001 Land Law aim at contributing to the economic development and thereby improving the daily life of every citizen. The first type is social land concessions which respond to a social purpose and allow concession holders to build a residence or to cultivate state private land for their subsistence. The second type of concessions is economic land concessions which respond to an economic purpose and allow concession holders to clear land for industrial agricultural exploitation. The other type is development or exploitation concessions such as mining concessions, port concessions, airport concessions, industrial development concessions, and fishing concessions.⁵⁷ The third type is not however covered by the provisions of the 2001 Land Law.

Social land concessions focus on the equitable distribution of state private land to poor families and other targeted people in accordance with the purpose of social land concessions.⁵⁸ Sub-decree on the Social Land Concessions dated on March 19, 2003 corresponding to the 2001 Land Law divides social land

⁵⁴ The 2001 Land Law, art. 58.

⁵⁵ The 2001 Land Law, art. 59.

⁵⁶ The 2007 Civil Code, art. 247.

⁵⁷ The 2001 Land Law, art. 50. This dissertation does not focus on the third type of concessions. For more information, see Law on Concessions, No.NS/RKM/1007/027, October 19, 2007.

⁵⁸ Sub-decree on the Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 3.

concession programs into local and national social land concession programs. The difference between the two types of programs is the way they are initiated. The former is initiated at the local level from the commune authorities to the provincial authorities. Each authority level consists of each land concession committee which is responsible for land distribution in their competent territory. The latter is managed at the national level by the national social land concession committee which is responsible for the nationwide land distribution.

Only social land concessions are gratuitously granted with strict conditions as mentioned in subsection 1.2.2 “Methods of Ownership Acquisition” of Chapter 1 and limited amount of land. The size for residential land cannot exceed 3,600 square meters and the size for agricultural land is limited to no more than 5 hectares to any extent.⁵⁹ Unlike the other concessions, social land concessions may be converted to full ownership thereby requiring all concession holders to fulfill social land concession requirements. Yet, successors are also allowed to continue fulfilling those requirements in case original land concession holders die. However, during the 5 year concession period, concession holders cannot sell, exchange, lease or donate the concession land to any other persons.⁶⁰ This policy is a good means to encourage land concession holders to make use of concession land.⁶¹

Economic land concessions on the other hand focus on providing state private land for concession holders in order to exploit agriculture and industrial agriculture through a specific concession contract for economic development purposes.⁶² Unlike social land concessions, land for economic concessions cannot be converted to ownership and cannot be granted for free.⁶³ Remarkably, the law does not restrict foreigners from obtaining economic land concessions. However the law specifically prohibits the same concession holder regardless of different legal entities from enjoying the excess amount of various economic land concessions to more than 10,000 hectares.⁶⁴ The concession holders may not alter the land to affect concession purposes.⁶⁵ The concession holders can be changed only by the creation of a new

⁵⁹ Sub-decree on the Social Land Concessions, No.19ANK/BK, March 19, 2003, arts. 16-17.

⁶⁰ Sub-decree on the Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 18.

⁶¹ For more information, see sub-section 3.3.1.2 “Social Land Concessions” on pages 130-141.

⁶² For more information, see sub-section 3.3.1.3 “Economic Land Concessions” on pages 141-153.

⁶³ The 2001 Land Law, arts. 51-52.

⁶⁴ The 2001 Land Law, art. 59.

⁶⁵ The 2001 Land Law, art. 56.

concession contract. Yet, economic land concessions can be transferred to the lawful successors of the original concession holders in case of their death.⁶⁶

A strict condition concerning the validity of all economic land concessions is a good impetus to encourage concession holders to start up their business without any delay. Within 12 months from the date of a concession being issued, the exploitation of concession land is required to begin otherwise it will be null. This duration requirement is also applied to all economic land concessions previously issued from the date of the 2001 Land Law came into effect.⁶⁷ The Sub-decree on Economic Land Concessions responding to Article 60 of the 2001 Land Law requires concession holders to prepare a concrete plan and announce the capital for the concession plan.⁶⁸ The sub-decree also requires that all economic land concessions increase work forces aiming at improving people's living standards and reducing to the minimum social impacts including environmental impacts. Only two entities of the government authorities are authorized to issue economic land concessions. The Ministry of Agricultural, Forestry and Fishery is responsible for issuing the economic land concessions with the capital more than 10,000,000 Riel (equivalent to US\$ 2,500) or a size in land more than 1,000 hectares while the provincial or municipal governors are responsible for less than that amount.⁶⁹ However, the latter would not be authorized from September 2008.⁷⁰

The third type of concessions which is not covered by the 2001 Land Law is very different from the other concessions in terms of their scope. Development or exploitation concessions allow the state to use state land with uncertain period.⁷¹ These concessions allow private individuals or legal entities to acquire state land for the purpose of exploiting the land for a particular purpose which is not necessary to fulfill public service. However, a normal purpose of this type of concessions is to assist the state by developing a particular enterprise or site that the state requires to do so. A typical example is the concession granted to a private international company to develop Phnom Penh International Airport. This concession allowed the concession holder to construct airport facilities and get profit from the service charge for a

⁶⁶ The 2001 Land Law, art. 57.

⁶⁷ The 2001 Land Law, art. 62.

⁶⁸ Sub-decree on the Economic Land Concessions, No.146ANK/BK, December 27, 2005, art. 12.

⁶⁹ Sub-decree on the Economic Land Concessions, No.146ANK/BK, December 27, 2005, art. 29.

⁷⁰ Sub-decree on the Amendment of the Sub-decree on Economic Land Concession, No.131ANK/BK, September 15, 2008.

⁷¹ The 2001 Land Law, arts. 15, 16 & 50.

period of 25 years.⁷² This is therefore another means for the state to be able to encourage private companies to contribute to developing the country.

1.5 Outcomes of Registration Policy in Cambodia

Understanding the structure of the organization of local administration is crucial to see how land issues are managed. Before May 26, 2008, Cambodia was divided into 20 provinces, and 4 municipalities which have equal power to that of the provinces. However, thereafter, the country has been divided into one capital that is Phnom Penh Capital and 23 provinces. In this dissertation, the word province also refers to former municipalities before May 26, 2008 and the present capital. A province is divided into districts, *khans*, and municipalities. It should be noted that the municipality which was named after May 26, 2008 and *khan* have the same authority as that of the district. Only Phnom Penh Capital is divided into *khans*. As such, in the whole dissertation, the word district is also used to refer to *khan* and municipality.⁷³ The Ministry of Land Management, Urban Planning and Construction has the competence to govern and administer land and other related work unless otherwise provided by the government.⁷⁴ This central authority has branches at the provincial⁷⁵ and district⁷⁶ levels. These branches play a role as a secretary of the ministry and have not been solely empowered to administer the land in their territory.

In the early inception of land privatization in 1989, it is tremendously noted that local authorities played a crucial role in certifying land possession and landownership. Limited resources including human, financial and technical resources had been much difficult for serving the needs of society. After 2 years from the start of application reception announcement in June 1989, drastically huge land possession applications were requested for land certificates making local authorities unable to issue land certificates on

⁷² Matthew Rendall et al., *Land Law of Cambodia: A Study and Research Manual* (Phnom Penh: East-West Management Institute, Inc., November 2003), 153.

⁷³ Constitution of the Kingdom of Cambodia, amend. February 15, 2008, arts. 145-156; Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans, No.NS/RKM/0508/017, May 26, 2008.

⁷⁴ Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction, NS/KRM/0699/09, June 23, 1999, art. 2; Sub-decree on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK, July 20, 1999, art. 2.

⁷⁵ Provincial Department of Land Management, Urban Planning, Construction and Cadastre.

⁷⁶ District Office of Land Management, Urban Planning, Construction and Land.

time.⁷⁷ The issuance of land certificates has been remarkably lingering. As of 2000, approximately 518,258 sporadic registration certificates equivalent to about 12 percent of the total 4.5 million land applications were issued.⁷⁸ This number has unremarkably increased to 589,827 until 2008.⁷⁹ This slow pace of registration has resulted in a great deal of uncertain land tenure since most of landholders do not have land certificates. It should be noted that the peak of issuing sporadic registration certificates was 1995. Since then, the number of issued certificates has decreased. It may come from the fact that after having seen problems arising from irresponsible relevant competent authorities with regard to land tenure, the co-prime ministers required the issuance of land certificates to go through the Council of Ministers. This newly reformed administration resulted in more time-consuming and costly procedures thereby deterring landholders from being eager to have sporadic registration certificates.

1.5.1 Land Documentation

Land reform cannot be successful if land documents are not managed well. Ironically, no evidence of land documents remained after the collapse of the Pol Pot regime in 1979. So the early land reform in 1989 was necessary to establish newly formed land documents. Until 2001, receipts of land applications were nationwide recognized as land documents although the attempt of the land reform was to create a registration system by issuing sporadic registration certificates and certificates of land ownership. After August 30, 2001, all of the land documents recognized by the 1992 Land Law or other regulations are again required to make new forms of certificates through sporadic land registration and systematic land registration. Public awareness of legal land documents is necessary to be highly promoted because without the participation of landholders in registering land, the success is far to come.

Legal land documents in Cambodian land system refer to sporadic registration certificates and systematic registration certificates. Receipts of land applications in the early introduction of land privatization in 1989, however, remain available and some of people are under the erroneous conclusions

⁷⁷ Until 1991, the land possession applications reached 4.5 million. See also Nicholas Hartman, "Cambodian Land Law: Its Impact on Current Trends in Landlessness and Land Inequality," (2007): 116.

⁷⁸ *Supra* note 2, at 30.

⁷⁹ Department of Land Registration, *Summary of the Result of Sporadic Land Registration from 1989 to November 25, 2008*, by Vanna Siek, Chief (Phnom Penh: General Department of Cadastre and Geography, Department of Land Registration, November 25, 2008).

that they have their land certificates when they applied for possession and ownership rights.⁸⁰ An application receipt mainly consists of the type of land whether the land belongs to agricultural land or residential land and its size with the signature of the chief of District Agricultural Office. With regard to the size of land written in the application, it depends on the applicant's record. All data of the land size have been believed to be inaccurate because the certification of the receipts based on the paper only. Application receipts have been afterward used as active tools in land transactions. These receipts also become one of the important evidence for the land registration required by the 2001 Land Law. The uncertainty of application receipts may consequently lead to land disputes or land grabbing since those who have a chance to register their land first prevail those who register their land later.⁸¹

Legally speaking, before August 30, 2001 while the second land law of Cambodia came into force, only residential land was allowed to have ownership rights and agricultural land was allowed to have possession rights. According to the 1992 Land Law, the right of ownership had to be registered in a real-estate ownership register and the right of possession was registered in a real-estate possession register.⁸² The 1992 Land Law seemed to recognize the imperfection of the registration system since there was no cadastral index map and technical equipment.⁸³ However, commune authorities played an important role in recording all land in real-estate ownership registers and real-estate possession registers. On the account of the uncertainty of the procedure of land registration provided by the 1992 Land Law, the accurate land registration system is needed. With this regard, the 2001 Land Law appears to fill in the defect in the 1992 Land Law. The 2001 Land Law therefore attempts to prepare cadastral plans and land registration system providing that definitive systematic registration certificates cannot be contested if registered.⁸⁴

Public awareness with regard to the land laws of Cambodia and other legal regulations is very crucial to prevent complexity and disputes during the course of land registration. As mentioned above, still

⁸⁰ Boreak Sik, *Land Ownership, Sales and Concentration in Cambodia: A Preliminary Review of Secondary Data and Primary Data from Four Recent Surveys*, Working Paper No. 16 (Phnom Penh: Cambodia Development Resource Institute, September 2000), 12 (stating that applicants of 84 percent of 4.5 million applications received only application receipts until now).

⁸¹ Sovannarith So, et al., *Social Assessment of Land in Cambodia: A Field Study*, Working Paper No. 20 (Phnom Penh: Cambodia Development Resource Institute, March 2002), 17.

⁸² Land Law of Cambodia, No.100K, October 13, 1992, arts. 205 & 207 [hereinafter the 1992 Land Law].

⁸³ The 1992 Land Law, art. 214.

⁸⁴ The 2001 Land Law, art. 40.

many landholders did not apply for land possession and ownership.⁸⁵ So these people will not have evidence to support their land occupation and thereby will feasibly lose their land. In order to avoid such hassle, the role of local authorities in disseminating all legal norms is necessary. A widespread lack of public awareness about right to land may be a good example of the cause of landlessness. This is easily evidenced when the government considered expropriating land without compensating the landholders.⁸⁶ Therefore, the failure to educate the public fundamental rights to land and the failure to implement the law appropriately lead to lasting consequences for many landholders especially in the case where the court system is still weakening.

1.5.2 Formal Land Transactions

Since the introduction of private ownership in 1989, Cambodian people could enjoy their rights to land via various means. One of them, which allows landholders to sell their land freely, is land transactions. It should be noted that the formal land transactions happened since the early 1990s and burgeoned rapidly in 1996. The formal transactions are the transactions which follow all procedures set forth by law and legal regulations. Therefore, it is important that every landholder be aware of crucial duties provided by law with regard to their land. For example, the recognition of the procedure of land transactions is necessary that landholders follow all steps in the procedures when they sell their land. Also the maintenance of land transaction records by competent government authorities are vital to verify the state income resulting from the transfer tax. However, the pro and con of formal land transactions should be carefully taken into account so that the improvement of land transaction procedure will be available.

It is noted that all land transactions have to be in an authentic form.⁸⁷ The transfer of rights to land is valid when the sale contract is registered and fulfilled with stamp duties.⁸⁸ According to the Law on the Establishment of the Stamp Duties in 1991, the stamp duties of the transfer of houses and residential land

⁸⁵ According to the Instruction on the Amendment of Instruction No.03SNN dated June 03, 1989 of the Council of Ministers, No.03SNN, December 08, 1990, 30 percent of applicants did not apply for land possession and ownership.

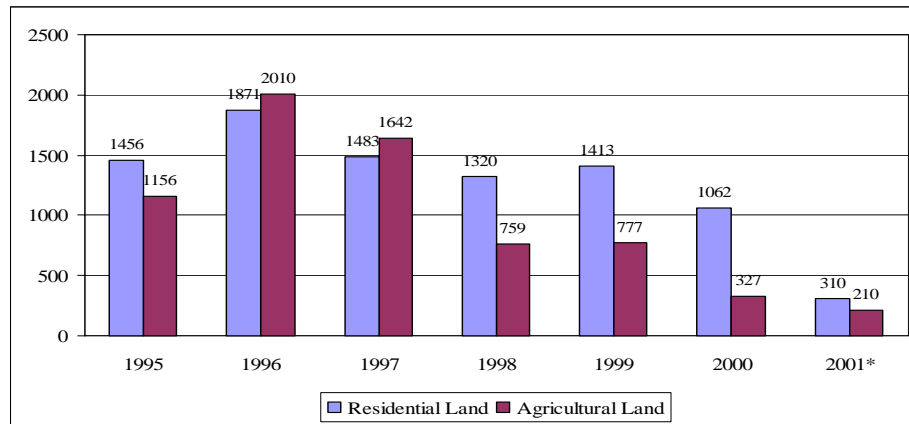
⁸⁶ Nicholas Hartman, "Cambodian Land Law: Its Impact on Current Trends in Landlessness and Land Inequality," (2007): 121.

⁸⁷ The 1992 Land Law, art. 179; The 2001 Land Law, art. 65.

⁸⁸ The 1992 Land Law, art. 182; The 2001 Land Law, art. 69.

were 6 percent of the total sale value. However, since 1995, 4 percent of the total sale value has required to be paid for any kind of registration duties of the transfer of ownership rights and possession rights.⁸⁹ The landholders who are involved in land transactions should be required to fulfill such significance of the stamp duties. Moreover, a village chief and a commune chief play a vital role in certifying the true landholder whose name is written in a land transaction contract. The information that is to be filled in the transfer registration form includes the addresses of the sellers and buyers, the size of land and its price. Then the district chief signs on the transaction form before passing to the Provincial Tax Department in order to pay 4 percent of transfer tax. With a transaction agreement authenticated by the Provincial Department of Land Management, Urban Planning, Construction and Cadastre, the transfer form along with the attached certificate is submitted to the General Department of Cadastre and Geography for final approval.⁹⁰

Figure 1.1: The Number of Land Transactions from 1995 to 2001.



Source: Cambodia Development Resource Institute, Working Paper No. 22
 (* Data collected as of June 30, 2001)

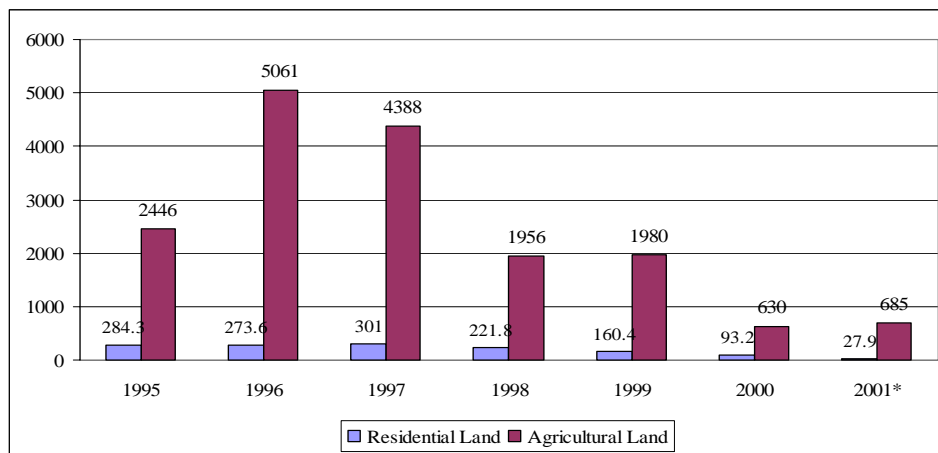
Formal land transactions provide full protection to the buyers. Therefore, it is necessary that all land transactions be in accordance with the requirements of law. However, according to the data collected from the Ministry of Land Management, Urban Planning and Construction, the formal land transactions

⁸⁹ Law on Finance for 1995, No.11/NS/94, December 31, 1994, art. 40.

⁹⁰ Sophal Chan and Sarthi Acharya, *Land Transactions in Cambodia: An Analysis of Transfers and Transaction Records*, Working Paper No. 22 (Phnom Penh: Cambodia Development Resource Institute, July 2002), 34.

still remain in low number. Only 15,796 land transactions in all provinces, excluded Phnom Penh Municipality, were recorded and maintained at the General Department of Cadastre and Geography of the Ministry of Land Management, Urban Planning and Construction (see figure 1.1). These data show that residential land accounted for more transactions than agricultural land (56 percent of the total), reflecting that there were more needs in residential land. It is more remarkably noted that both residential and agricultural land transactions were relatively large in 1996, just one year before the episode of political turmoil in July 1997. Since then, the number of formal land transactions fell down.

Figure 1.2: The Area of Land Transactions from 1995 to 2001 (hectares)



Source: Cambodia Development Resource Institute, Working Paper No. 22
 (* Data collected as of June 30, 2001)

However, the area of agricultural land transacted was relatively larger than the area of residential land transacted. As a result, agricultural land transaction area was 17,146 hectares accounted to 93 percent of the total area compared to 1,362.2 hectares of residential land (see figure 1.2). The amount of area of agricultural land transacted in this half decade is just approximately 0.08 percent of the total agricultural land in the 1990s.⁹¹ It therefore remains relatively in low rate of formal agricultural land transactions. Yet, there was no survey on the land use availability of the agricultural land already transacted. Consequently,

⁹¹ In 1998, the total area of agricultural land is 2.095 million hectares. See Bhargavi Ramamurthy, et al., *Cambodia 1999-2000: Land, Labour and Rural Livelihood in Focus*, Working Paper No. 21 (Phnom Penh: Cambodia Development Resource Institute, December 2001), 18.

the purchase of agricultural land may not contribute to the economic growth through agricultural sector.

A formal land transaction has a great deal of benefit. The transfer of right to land transacted is valid if the sale contract is registered at the cadastral unit.⁹² The registration is a good means to make sure that all land subject to the transaction has a true owner, thereby avoiding land disputes. The full protection by law when the land transaction follows all necessary procedures is a strong impetus to encourage people involved in to make a formal land transaction. More importantly, this transaction which requires that the tax of the transfer be paid contributes to the national income. A local authority with this regard plays a pivotal role in facilitating land transactions in the governed territory. It is also necessary that the land obtained from transactions be productive.

As mentioned above, the complicated procedure of land transactions may be a hindrance for landholders to follow all steps in the procedure. The landholders who want to sell their land are likely to escape from such a complicated procedure. For instance, land transaction documents have rarely passed through the district authority, for they do not want to pay transfer tax. Since the land transaction documents can be signed by the commune authority, the landholders may intend to stop their procedure only at the commune level. Consequently, the state loses national income because of impossibility of collecting transfer taxes. It is therefore important to consider preparing a simple procedure of land transactions. A commune authority with this regard is an appropriate entity to be responsible for the transactions. All necessities are to be confirmed by the commune authority and thereby require people involved in to fulfill the requirements of land transactions at the commune level. The commune authority then has to report and submit the land transaction documents to the district authority for final signature. In order to avoid unmet result, the procedure should determine the period for completing the whole transaction.

1.5.3 Informal Land Transactions

Principally, under collective ownership no land transactions were allowed,⁹³ for all land belonged to the state. In actual practice, however, informal land transactions were available as early as 1985 although

⁹² The 2001 Land Law, art. 69.

⁹³ Sub-decree on the Management of the Use of Agricultural Land, No.06ANK, May 06, 1985, art. 1.

no land market really existed.⁹⁴ This tendency reflects the real needs of society in which human relations are always involved in such kinds of transactions. The way of making sale contracts is fundamentally important for expanding advantages therefrom. From economic point of view, Hernando de Soto refers contracts as “means of organizing and transferring property rights, for they enable parties to pool human and material resources in order to produce goods or services which can then be used to maximum advantage.”⁹⁵ Only a good law with an accurate implementation can be an appropriate mechanism to ensure such outcomes. In contrast, Cambodia where contracts of informal land transactions abound may be difficult to receive fruits from the contracts. Therefore, identifying informal land transactions and finding out the reasons and disadvantages thereof are needed in order to seek way for improvement.

The intricate procedure of formal land transactions is possible to make people involved in avoid following such a procedure. In the aftermath of the influx of foreign money arising from the arrival of the United Nations Transitional Authority in Cambodia (UNTAC), the remittance of currency by overseas Cambodians, and foreign direct investment, informal land transactions became popular in Cambodia. According to the Cambodia Development Resource Institute (CDRI), informal land transactions include: “i) Transactions with or without contractual agreement between the parties, in that the transaction is made without informing any local authorities at all; ii) Transactions with agreement of the village level authority; iii) Transactions with agreement up to the commune level; and iv) Transactions with agreement up to the district or provincial level.”⁹⁶ Only the first and second kinds of informal transactions have been taken place more. It may be impossible for local authorities to prevent such occurrence because many plots of land have no certificates.

Although no data of informal land transactions are shown throughout Cambodia, it is believed that considerable informal land transactions have been available. For example, approximately 200 parcels of rice land had been informally sold in one commune surveyed by CDRI.⁹⁷ It is therefore important to know the reasons having such informal transactions. As mentioned in the previous paragraph, the complicated and time consuming procedure is an obstacle for land transaction makers to neglect the whole procedure. In

⁹⁴ Supra note 90, at 27.

⁹⁵ Supra note 15 at 163.

⁹⁶ Supra note 90, at 35.

⁹⁷ Ibid.

addition, slow access to land registration makes it impossible for landholders to formally transact their land. Also, the defect in law which fails to encourage landholders to register their land and thereby to prevent the landholders from having informal land transactions provokes seriously a bad image on land transactions, for the landholders try to avoid paying transfer tax if they can. Therefore, it is necessary that the state find a possible way to make a feasible procedure which ensures that all transaction makers can follow.

The failure to prevent informal land transactions causes social disadvantages. Existence of nationwide informal land transactions gives an illusion of ownership rights, for those people may think they will consider the contracts arising from the informal transactions as a legal tool for their ownership protection. With this regard, land disputes are therefore possible to abound. In this sense, not only do landholders challenge those difficulties, the state also faces social turmoil. Moreover, the failure to pay transfer taxes makes the state lose more national income. Another bad impact arising from the informal land transactions is to provoke significant land speculation. In this respect, the Cambodian government is necessary to pay much attention to land transactions by simplifying the mechanism in order to allow every person to be able to follow the complete procedure. Local authorities play an important role in achieving this goal with the rule of law.

1.6 Costs of Failure

Efforts of the Cambodian government to manage land have been witnessed by a number of laws and regulations relating to land issues. However, the true achievement of land management does not necessarily mean that only adequate laws and regulations can work. Thus, without a proper implementation of those laws and regulations, law does not mean anything to the society. As already mentioned, the demand of land through the movement of land transactions has emerged drastically since the introduction of free market economy system. With this regard, land grabbing has coexisted resulting from the act of the powerful and rich people. Even the government also recognized that land grabbing is one of the challenges required the enforcement of regulations against land grabbing.⁹⁸ It is therefore necessary to find out the causes leading to land grabbing. The rampant land grabbing may arise from a lack of land tenure security

⁹⁸ Royal Government of Cambodia, *National Strategic Development Plan 2006-2010*, December 22, 2005, 15.

which provides a good opportunity for the scramble for land. Land grabbing consequently results in social welfare problems and land disputes.

1.6.1 Lack of Tenure Security

Land tenure in Cambodia has been strengthened remarkably by government policies since the inception of land privatization in 1989. Huge applications during the private ownership propaganda were just a mess since the procedure of registration was not ready and therefore land certificates were not successfully issued. Consequently, more seriously land certificates accounting for only 12 percent of the total applications⁹⁹ were issued. So the remaining was uncertain leading to unsecure land tenure. With this regard, the 2001 Land Law attempts to solve such problems by providing an opportunity for landholders to register their land through sporadic land registration and establishing new systematic land registration. The systematic land registration is to be conducted by the government agencies through the land management and administration project (LMAP) which started since 2002 for a 15 year project. Albeit these efforts, only 1,913,279 certificates receiving from both registration systems were issued as of April 2010.¹⁰⁰ So it takes much longer time to complete the total parcels of land which were estimated approximately 10 million parcels. The slow work may arise from the poor public awareness, time-consuming and costly procedures, and a lack of incentive. It should be wary that a lack of tenure security is possible to lead to land grabbing.

Poor public legal awareness is impossible to make landholders focus on land titling thereby causing unsecure land tenure. A widespread lack of public knowledge regarding rights to land and a lack of accountability and transparency among competent authorities have undermined public viewing about land titling. A public legal awareness campaign may play an active role in disseminating necessary fundamental rules with respect to land issues. In particular, indigenous people who are not able to speak and read Khmer language¹⁰¹ can benefit much from the campaign. Frequently, landholders who do not have title to land readily lose their land. Poor public legal awareness may also lead to land disputes. For example, companies who make contracts with the government to invest in land and are not aware of the local land control

⁹⁹ There were 4.5 million land applications during the period of 2 years after first receiving applications in 1989.

¹⁰⁰ Letter of the Ministry of Land Management, Urban Planning and Construction to the Royal University of Law and Economics, No. 498 DNS/SDP dated June 16, 2010.

¹⁰¹ Supra note 81 at 49.

system cause conflicts with the villagers.¹⁰² Such an intricate consequence results in land grabbing. The government should therefore consider disseminating necessary legal fundamentals with respect to land.

The time-consuming and costly procedures of land registration are a hindrance to make landholders apply for land certificates. The Ministry of Land Management, Urban Planning and Construction issued a decision determining the period of time for procedures implementing land registration (both systematic and sporadic) from the date of data collection to the date issuing certificates.¹⁰³ The decision however fails to mention the period from the date of submitting applications to the date of receiving certificates. This may provide an opportunity for competent authorities to delay the time to collect the data after receiving land applications. But this decision also fails to mention punishment concerning officials who take bribe for registration work. As such, the titling and registration process consumes too much time to complete and therefore is prone to the corruption by the all levels of competent authorities.¹⁰⁴ Thus, it is necessary that the government make sure that all competent authorities have to follow the rules strictly.

A lack of incentives from the government is another cause to discourage landholders to apply for land certificates. As mentioned earlier, a lack of knowledge of legal necessities with regard to land discourages landholders to concentrate on land certificates but to hold their land in the traditional way. Landholding tradition has deepened into the heart of Cambodian landholders very long time by realizing the boundary among the neighbors.¹⁰⁵ This practice however does not respond to modern society where property law necessarily conforms with rules and regulations. Facing much illiteracy of landholders, the government should have an incentive policy for those who apply for land certificates. The incentives may include national loans for land development for those who have title to land. Moreover, the certainty of the certificate itself which guarantees landholders' rights is a good incentive for the landholders to apply for land certificates. As such, the government should encourage landholders who do not have land certificates to follow sporadic land registration.

A lack of tenure security leads to land grabbing. As already mentioned, most of Cambodian people

¹⁰² Supra note 2 at 23.

¹⁰³ Decision on Providing Cadastral Services, No.51SSR, December 21, 2006.

¹⁰⁴ Supra note 81, at 25.

¹⁰⁵ Supra note 2 at 27.

do not have title to their land. This lack of tenure security leaves the people vulnerable to the land grabbing and encroachment.¹⁰⁶ For example, it is worst in case of economic land concessions where boundary demarcation of concession land is not made while concession contracts are already approved. Apparently, as of December 31, 2001, demarcation was made only for 10 economic land concession contracts out of 25 permitted by the government.¹⁰⁷ This remains clear that when the concession contracts start without proper boundary demarcation, disputes arising therefrom always exist. The companies complain that local people grab the concession land, but in contrast, the local people accuse that the companies encroach their land. For example, in Snuol District of Kratie Province, the commune authority recognized that the villagers have held the land since 1979,¹⁰⁸ but when the concession contract was made, the land was claimed to state property thereby affecting villagers' right to land. Therefore, landholders who do not have land certificates may face land grabbing when the government is planning to develop their areas.

1.6.2 The Scramble for Land

Land is a fundamental resource for economic development in agrarian society like Cambodia. However, without fair and proper use of land, the development will never be experienced. The concentration of land in the hands of a few people without accurate investment causes terribly miserable society. With this regard, the Cambodian government in his Millennium Development Goals 2003 also recognizes that it is necessary to strengthen competent government institutions in order to help poor people who are facing land grabbing exercise their rights effectively.¹⁰⁹ Yet, the aftermath arising from the actual commitment is still miserable. Perpetrators of land grabbing are involved miscellaneously in powerful officials, military, and companies.¹¹⁰ This scramble for land may arise from the problem of land administration and the impact of development. Poor land administration is likely to allow the rich and

¹⁰⁶ Ministry of Planning, *Cambodian Human Development Report 2007: Expanding Choices for Rural People* (Phnom Penh: Ministry of Planning, 2007), 11.

¹⁰⁷ Bruce McKenney and Tola Prom, *Natural Resources and Rural Livelihoods in Cambodia: A Baseline Assessment*, Working Paper No. 23 (Phnom Penh: Cambodia Development Resource Institute, December 2002), 25.

¹⁰⁸ *Reportage: A Company Clearing up Villagers' Plants* (RFA radio broadcast Aug. 9, 2008) (evening session, in Khmer language) (stating that Growest Building Trading Company made a contract with the government July 18, 2008 with total area of 7,000 hectares in Snuol District).

¹⁰⁹ Royal Government of Cambodia, *Cambodian Millennium Development Goals 2003*, 16.

¹¹⁰ LICADHO, *Land Grabbing and Poverty in Cambodia: The Myth of Development* (Phnom Penh: LICADHO, May 2009), 7.

powerful people to grab land. Such wrongdoings will aggravate the poor's livelihoods. Therefore, it is necessary that the government consider eliminating such a matter.

Government efforts concerning land issues have been witnessed by considerable laws and land-related regulations as well as institutional reforms. However, commitment to such rules is still feeble thereby resulting in social problems such as land grabbing and land disputes. The government should urgently pay attention to the root causes of those problems. The misuse of power and negligence of the implementation of law committed by all levels of competent authorities are necessary to be fixed. As mentioned earlier, many landholders who already applied for land certificates did not receive land certificates. A lack of prevention to this issue affects more seriously future Cambodian society. Evidence from the past 6 years is adequate because a total of 53,758 families collected by one of the Non-governmental Organizations in Cambodia show the drastic increase in victim families concerning land grabbing, forced eviction and property destruction in only 13 provinces out of 24 provinces from 2,626 families in 2003 to 16,462 families in 2008.¹¹¹

The word "development" which is required land for development purposes remains hot issues in Cambodian society in this twenty-first century. Although the 1993 Constitution and the 2001 Land Law assure that private right is protected by law and the requisition of ownership is allowed only for public interest with fair and just compensation in advance,¹¹² various development plans seem to violate these laws and thereby exacerbating livelihoods of the affected people. Again this impact arises mainly from a lack of legal evidence to identify right to land such as land certificates. Thus, the government can claim that the area of the development target belongs to the state property and therefore people who are dwelling on it are illegal. As such, those people are prone to forced eviction. In 2008, for instance, there were 25 eviction cases which affected 10,526 families equivalent to 46,095 people.¹¹³ The government fails to provide an appropriate solution in order to take land for the development planning, but takes the people away from their living place to a more miserable one.

Land grabbing by the rich and powerful is nationwide recognized. The Prime Minister also

¹¹¹ LICADHO is an NGO working for human rights in Cambodia has offices in 13 provinces including Phnom Penh Capital. See Ibid, 5.

¹¹² Constitution of the Kingdom of Cambodia, 1993, art. 44; The 2001 Land Law, art. 5.

¹¹³ Supra note 9 at 33.

recognizes this problem and considers it as one of the challenging social impacts. However, no successful measures have so far been used to stop the land grabbing. Concerns of land grabbing have deepened into the heart of Cambodian people and civil societies. While land administration is still feeble, meaning that landholdings of the poor cannot be secured on the account of impossibility to speed up land registration, the rich and powerful people take advantages to overcome the situation. For example, in Vealsbov Commune of Kandal Province, the villagers occupied land since 1979, but the company claimed that the land belongs to the company and more remarkably the company has a land certificate. In fact, some villagers sold the land to the company since 1992 but not all.¹¹⁴ So when the company develops the land, it affects the nearby land which does not belong to the company. This situation seems to happen rampantly throughout the country.

Land grabbing by any means aggravates poor people's livelihoods. The poor people especially rural ones mostly depend on land for their subsistence. As such, if they lose their land, they are prone to poverty. In Oral District of Kampong Speu Province, for instance, indigenous people suffer from poor living standards, for the investment company which was allowed by the government occupies their season land causing inadequate land for cultivating.¹¹⁵ The government fails to find a policy to increase indigenous cultivated land but encourages investment which does not benefit those vulnerable people. Also, in Baphnom District of Preyveng Province, the rice land of villagers is affected by an irrigation plan to expand the ditch with 25 meter wide. The plan itself is good, but the way to do it is terrible because the affected people were not informed in advance causing destruction of crops already grown and no compensation was provided thereby worsening their livelihoods.¹¹⁶

1.6.3 Social Welfare Problems

In a society where land grabbing abounds, the problems of social welfare unavoidably emerge. It is noted that albeit government efforts to administer land through laws and legal regulations, land grabbing

¹¹⁴ *Reportage: Land Dispute in Vealsbov* (RFA radio broadcast April 5, 2007) (evening session, in Khmer language) (mentioning that Vealsbov Commune's chief, Mr. Uy Sath, confirms that the company did not buy all land).

¹¹⁵ *Reportage: Suoy Ethnic and Khmer People are Lacking Foodstuff* (RFA radio broadcast September 6, 2008) (morning session, in Khmer Language).

¹¹⁶ *News: People of Baphnom District were affected by an Irrigation Plan* (RFA broadcast, Jun2 15, 2008) (evening session, in Khmer language).

and disputes have happened rampantly. It possibly reflects that the implementation of those laws and regulations is feeble and thus it can be said that the rules exist only in paper. Without a clear commitment and political will, the government is hardly successful in governing the land by rule of law. With this regard, only a few rich and powerful have more opportunities to benefit from the society while the other remaining people suffer. Land grabbing which is always involved with the rich and powerful people provokes disadvantages to the society. When people lose land, they intend to migrate from one place to another to find jobs in order to continue their way of life. The jobs of those vulnerable people are insecure, for they have a lack of technical knowledge or are uneducated. Another impact from migration resulting from landlessness is the problem of their children's education.

One of the serious social welfare problems arising from land grabbing is migration. When the land is grabbed, the landholders become landless. Then these landless people will migrate¹¹⁷ from one place to another causing more problematic in the society. Landless people, who usually migrate from one place to another, look for an available vacant place where a new condition of living can be found. This tendency may become a huge impetus for migrants to settle on vacant land and the duration of their stay can be more than five years without any violence. Those people are then called squatters. With this regard, it seems that the vacant land is not held by any people, however, when that area is required for development, the conflicts between the true owners and new squatters come into existence and sometimes demonstrations and violence take place. The government should therefore pay an urgent attention to this issue in order to prevent serious future problems in Cambodian society.

Vulnerable migrants from landlessness may face work insecurity. As mentioned earlier, those people don't have any skill and therefore cannot find good jobs. Moreover, the place where those people live which is not secure also leads to unstable work. The vast majority of relocated families face hardships and deeper impoverishment in the aftermath of forced resettlement, for more terribly diminished access to employment opportunities in the remote newly resettled areas is hardly met. Following personal interview in 2008 and 2009 with 149 people who were resettled to suburban areas of Phnom Penh, 21 percent of all the interviewees lost jobs while others have unstable jobs. As 80 percent of the total land in Cambodia

¹¹⁷ Sophal Chan and Sovannarith So, *Cambodian Labour Migration to Thailand: A Preliminary Assessment*, Working Paper No. 11 (Phnom Penh: Cambodia Development Resource Institute, June 1999), 4.

belongs to the state, the government should consider strengthening fair land redistribution through social land concessions which will be discussed in Chapter 3. It is also necessary to find way to prevent land grabbing by all means in order to avoid future problems.

Another social welfare problem arising from landlessness is children's schooling. With insecure settlements of parents, the children cannot be sent to school permanently. Experience has shown that the shock of eviction makes resettled people feel more miserable and family members undergo disconnection. For example, husbands live in the city for work while wives live in the newly relocated plots. Some children who were also sent to the Non-Governmental Organizations (NGOs) in order to maintain their study lost a chance to be under the care of their parents.¹¹⁸ However some children who followed their parents to stay in the new area could not continue their study because of impossibility to access schools. If children are illiterate, their future will be worse causing more social impacts such as poverty and social insecurity. Therefore, it is necessary that the government prepare an accurate policy which ensures that all children of resettled people can fully access schools.

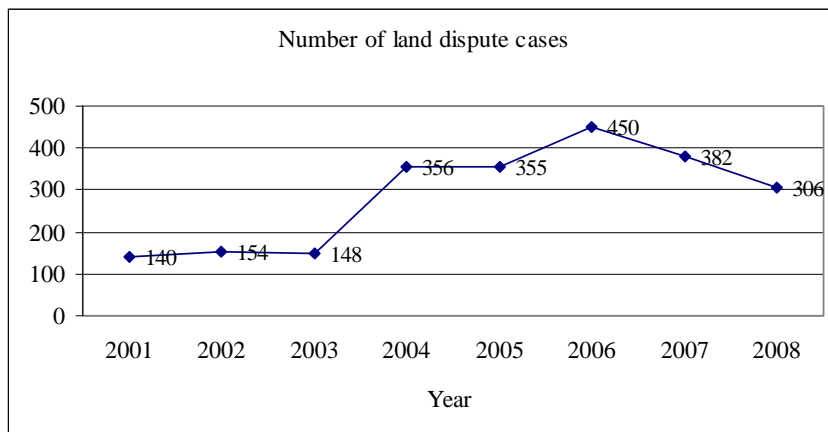
1.6.4 Land Disputes

When Cambodia was under a closed economy and there was no land market, only very few land disputes were vulnerable. Those land disputes mainly happened between individuals and rarely happened between groups of people or between authorities. However, when land market was available and land prices have gradually increased, land disputes also started boosting rampantly which have been involved with the rich and powerful people. The government tried to create various institutional mechanisms in order to resolve land disputes. Also legal regulations have been issued by the government in addition to the land laws attempting to manage land in a better way. Albeit these efforts, poor land administration and weakness of judicial system cannot prevent land disputes. It is necessary to find out the causes of land disputes in order to seek an appropriate way to resolve the disputes and prevent future occurrence because reported land disputes have increased drastically. Urgent prevention of land disputes is therefore needed. The disadvantages of land disputes have a bad impact on social development.

¹¹⁸ Loran Leguonvich, "A Camp of Evicted People from Bassac Area: A Glance of a Photograph," *Samné Thmei* (Phnom Penh), 3-9 July 2006, p. 6.

The root causes of land disputes have arisen from remarkable factors. As already mentioned, the slow registration work permits only few people to obtain definitive systematic registration certificates which are fully protected by law. Moreover, unclear landholdings during the period of non-existence land market have remained critical issues. For example, landholders left their land vacant for some period of time then other people occupied and harvested that land for a long time. When the original landholders claimed for their land, the disputes happened. Another cause of land dispute arises from irresponsibility of authorities. A lack of responsibility of commune chiefs who certified any documents indicating land status has caused intricate disputes. Also, social insecurity during the civil war is another cause of land disputes. Some people left their living place in order to escape from fighting among the government forces and the guerrilla, after a peaceful situation, the original landholders came to their land but unfortunately it was occupied by another thereby causing conflicts. A lack of political will to prevent anarchical landholdings and insufficient necessary legal awareness are also the causes of land disputes.

Figure 1.3: The Number of Land Dispute Cases Complained to ADHOC from 2001 to 2008



Source: ADHOC Annual Human Rights Reports 2001-2008.

Land disputes which have increased dramatically provoke serious concerns among Cambodian civil societies and ordinary citizens. Cases of land disputes which requested ADHOC, a Non-Governmental

Organization in order to help solve the cases with relevant authorities show remarkable increase in number from 140 cases in 2001 to 450 cases in 2006. However, from 2006 while the National Authority for Land Dispute Resolutions (NALDR) was created, the cases drop to 382 in 2007 and to 306 in 2008 (see figure 1.3). This reduced number of land dispute cases may reflect that some cases complained to NALDR. As of December 31, 2007, about 2 years after the creation of NALDR, this authority received 755 land dispute cases but remarkably resolved 34 cases accounted to 4.5 percent of the total cases while others were sent to relevant institutions for resolutions. As will be discussed in Sub-section 2.1.3 “Institutional Reform” of Chapter 2, this authority is not necessary and therefore strengthening the cadastral commission and court system is adequate.

It should also be noted that since the cadastral commission launched a full function in 2003, land disputes have been slowly resolved by this commission. For example, as of March 2006, the cadastral commission succeeded in resolving only 1,022 cases accounted to approximately 27 percent of the total 3,763 cases.¹¹⁹ The slow pace of resolutions is possibly from an inadequate number of cadastral officials and a lack of budget for investigations and resolutions.¹²⁰ Moreover, the disputes happened between powerful persons affect commission’s decisions, for commission officials are scared of being removed from the post by their superiors. This situation may happen the same thing to the judges while disputes coming from high rank officials. Therefore, the government necessarily considers strengthening this commission so as to follow the rule of law and thereby resolving land disputes effectively.

Bad impacts of land disputes cause hardships for social development. For example, myriad land demonstrations made by affected people show bad image for society as a whole. Human rights activists who provide advice for vulnerable people involving land disputes were threatened by the government agencies via accusation of the cause of incitement.¹²¹ The continuation of this trend leads to poor human rights protection and therefore the country is criticized by national and international communities. The dominant feature of rich and powerful people regarding land disputes makes court system and relevant

¹¹⁹ Chhunlim Im, “Santeakrakatha thleng knong pithy bet veak sekhasala ampi karpphaspdou batpisort ney kardohsray viveat deithly,” (Speech at the Closing Workshop on the Exchange of Experience in Land Dispute Resolutions) (Kampong Cham: Cambodia, 27 April 2006) (photocopy of transcript), p. 2.

¹²⁰ The Cambodian Human Rights and Development Association, *Human Rights Situation 2005* (Phnom Penh: The Cambodian Human Rights and Development Association (ADHOC), March 2006), 46.

¹²¹ *Supra* note 9 at 2.

institutions weak thereby leading to social turmoil. When this trend becomes strong enough, land disputes cannot be resolved by any means even in the intervention from the king, national assembly, senates, ministers and the National Authority for Land Dispute Resolutions.¹²² Moreover, land disputes exacerbate vulnerably affected poor people's livelihoods which become a serious social burden for the government.

1.6.5 Extralegal Landholdings

Land privatization requires an effective government measure in order to prevent unanticipated land grabbing causing serious social turmoil. The attempt of the Cambodian government to provide land certificates since the introduction of private land ownership has been ideally good. However, the actual practice has been far from the real policy paper. Inadequate resources and a lack of accountability of every level of authorities may result in unsuccessful output. It is noted that the rise in land market leads to informal land transactions and land grabbing thereby causing rampant land disputes. If the government continues to have no preventive measure with an effective implementation, farmer revolution may be predictive. Therefore, the prevention of informal land transactions is very necessary to avoid extralegal landholdings. Also the prevention of unused land is a key tool to ensure that all private land is in use. Furthermore, the strict prevention of illegal land occupation in accordance with the 2001 Land Law is vitally needed.

Prevention of informal land transactions and other relevant uses as collateral is crucial to ensure good land management. Land which may fall into a transaction and security goal for human beings to develop their living standards requires a legal formality from the government in order to serve social needs. Although land is permanent, landowners are able to change their property ownership. The land certificates, in this context, must be secured by the government, especially when the land is transacted or used as collateral. As secure land certificates are positive tools for economic development, it is vitally needed that local authorities provide formal approval to all transactions and relevant use of land certificates. Local authorities, with this regard, play a crucial role in ensuring that land certificates are always used in accordance with the law. As already mentioned in Sub-section 1.5.2 "Formal Land Transactions", simple

¹²² Ibid, 30-31.

procedures of land transactions are necessary so that people involved in the transactions will not escape from the procedures.

Enforcing landowners to effectively make their land productive is a good strategy in preventing unused land. Although land is taxed, the enforcement of land use¹²³ brings several advantages to the country such as increasing productivity and providing information necessary to identify land tax payers and punish owners of unused land. If land taxes are strictly imposed, tax collectors require landowners to record types of land use. If landowners do not invest in land, they should be punished to pay extra tax. Also within a determined period of time when the owners fail to pay land taxes, the land should be considered free and open. Commune authorities in cooperation with village chiefs are the most appropriate authorities who can control the use of all private land. It is expected that extralegal landholdings do not exist when all land is used. By so doing, there is no available vacant land for people looking for squatting in thereby contributing to prevention of social burden.

Another prevention of extralegal landholdings is to hinder all illegal forms of land occupation. Interestingly, the 2001 Land Law prevents ownership acquisition from illegal occupation in which illegal occupants have to face punishment. The new occupants who occupy public land or private land without systematic registration certificates must face not only the eviction but also punishment both civil and criminal charges.¹²⁴ As state public land is not the subject of acquisition of ownership, any individuals who occupy that land and invest in it will have a serious damage because they have to face not only the immediate eviction and punishment, but also the loss of what they have spent to invest in land.¹²⁵ Local authorities should be required to implement all legal regulations concerning illegal land occupation especially state land occupation. Since the government recognizes land grabbing¹²⁶ by powerful people, an enforceable prevention measure toward powerful people is needed so that local authorities are not appalled by those powerful people.

1.6.6 Environmental Impact

¹²³ Land use can be assumed as an economic activity and it is determined by economic forces. See also A.S. Mather, *Land Use* (Hong Kong: Longman Group, 1986; reprint, 1989), 26 (page citation is to the reprint edition).

¹²⁴ The 2001 Land Law, arts. 34 & 35.

¹²⁵ The 2001 Land Law, art. 43.

¹²⁶ Circular on the Illegal Occupation of State Land, No.02SR, February 26, 2007.

Land use can be worth beneficial if sustainable environment is maintained. It should be noted that issues on sustainable environment have become serious concerns of world communities since the early 1970s.¹²⁷ The world concerns mainly focus on climate change aiming at a reduction of greenhouse gases. Yet, the prevention of the use of agrarian land which will also cause a bad impact on environment has been slightly done. Cambodia has paid attention to environmental impact caused by industrial, agricultural, tourism, and infrastructure sectors. Remarkably, for the agricultural sector only big companies with more than 500 hectares are required to assess environmental impact. In order to maintain sustainable environment, it is necessary to restrict chemical use for agricultural sectors to all land users. Past experience may be good evidence that Cambodia should learn from. More legal regulations are needed to ensure that land use has to be in an appropriate way. Local authorities play a vital role in achieving this goal.

Recognizing the past experience of the serious destruction of environment caused by land users is crucial to avoid future occurrence. The use of chemical fertilizers and insecticides among Cambodian land users has remained problematic. As most of Cambodian farmers are illiterate, they have little knowledge of the impact of chemical fertilizers thereby causing the land barren. For instance, in Prekanhchanh Commune of Mukkampung District in Kandal Province, farmers use chemical fertilizers for planting corns and several years later the corns could not be grown well because the land became more barren. Furthermore, clearing inundated forest surrounding lakes for agricultural purposes has destroyed ecosystem very seriously. Although the government prohibits from clearing such land, such activities have rampantly occurred throughout the country. Consequently, the lakes dry up in dry seasons thereby making fish and other animals die. Therefore, the government is necessary to pay an urgent measure to prevent such occurrence.

A lack of laws and legal norms to regulate the use of land in a sustainable way remains problematic for environmental protection. The Royal Decree on the Creation of Natural Protected Areas issued in 1993 just intends to cover specific areas for national protection not for the prevention of improper

¹²⁷ Peter F. Dale and John D. McLaughlin, *Land Administration* (Oxford: Oxford University Press, 1999), 82; see also Jonathan Verschuuren, *Principles of Environmental Law: The Ideal of Sustainable Development and the Role of Principles of International, European, and National Environmental Law* (Baden-Baden: Nomos Verlagsgesellschaft, 2003), 20.

use of land impacting on environment.¹²⁸ In 1996, the Law on the Environmental Protection and Natural Resource Management has the main purpose to improve environmental quality by referring to the activities of projects or companies only.¹²⁹ It does not mention the prevention of the activities of all land users affecting the environment. Again, in 2008, the Law on Natural Protected Areas covers specific areas which are protected by the government.¹³⁰ Article 87 of the 2001 Land Law states that “[t]he owner of immovable property may plant, develop and construct anything he wishes, unless it is prohibited by law.” Apparently, ordinary land users have full rights to use any chemical fertilizers if law does not prohibit. As mentioned earlier, such usage will cause serious environmental destruction thereby requiring the state to pay much attention on this issue by making laws and relevant legal regulations for protecting environment.

The protection of sustainable environment needs strong participation from local authorities. Commune authorities who stay closest to the local people are the most appropriate authorities to encourage land users to use all chemical fertilizers and insecticides in a correct way. Commune authorities in cooperation with village chiefs can educate people how to make land more fertile by use of natural fertilizers or appropriate chemical fertilizers. Insecticides can also cause a bad impact on both the users and product consumers. As such, it is necessary to provide technical trainings for both land users and commune authorities. The prevention of clearing inundated forest also needs attention from the commune authorities. Village chiefs can play a vital agent in preventing all means of clearing such forest. Therefore, local authorities play an important role in controlling the proper use of land as well as in preventing their local people from clearing forest land if power is delegated to the local authorities properly.

1.7 Registration and the Land Problem

This chapter has shown that the failure of registration in Cambodia has many negative side effects. The objective of land policy and the private ownership system is to assure land tenure security, so that land will be used and so that landholders have incentives to improve their land. These objectives are in the law, but as the problems described in this chapter show they are not fulfilled currently. To improve this situation, a successful land registration system is important, but the problem is complex and there are many factors.

¹²⁸ Royal Decree on the Creation of Natural Protected Areas, dated November 01, 1993.

¹²⁹ Law on the Environmental Protection and Natural Resource Management, NS/RKM/1296/36, December 24, 1996.

¹³⁰ Law on Natural Protected Areas, NS/RKM/0208/007, February 15, 2007.

To understand how the current system can be improved, it is necessary to understand how it has failed, so that the weak points can be improved. The next chapter examines the historical background of the current system, and compares the experience of Cambodia with the experience of Japan, which also introduced a land registration system in the Meiji era and has a successful land registration system today. From this some hints about the factors that are important to a successful land registration system will be shown.

Issues to Be Addressed

Efforts of the government to register land have not been successfully completed. Since the start of land registration until April 2010, approximately 1.9 million land certificates were issued. The large number of unregistered properties has undermined the functioning of law in each area as mentioned in Section 1.3 “Five Roles in Land Registration” above.

With regard to land tenure security, it is important to distinguish between relations between disputes between occupants of unregistered land local residents and outsiders in which one party registers an interest and the other does not. In both cases, failure to register land can be a cause of disputes, but the legal positions in the disputes are not the same. Disputes between neighbors and others within a village over rights to land that is unregistered can be resolved through local methods in the same way as other local disputes. Local persons such as the village chief and other members of the village can play a role in resolving these disputes. For disputes where only one party has registered, these disputes can be ones where an outsider registers for ownership even though there is an occupant of the land who is not registered. This is a kind of preemptive registration. For example, in Kandol and Prek Ho communes of Kandal Stung district in Kandal province, a company bought land about 2 square kilometers in 1994 and obtained a sporadic registration certificate in 1995 but the villagers did not know.¹³¹ Consequently, approximately 200 people had a dispute with the company. Unfortunately, the villagers in this case did not have sporadic registration certificates and the court decided the case depending on the certificate obtained by the company. It is not clear that this was the correct result, in terms of actual use and expected rights in the land. Court

¹³¹ *Information: Company Bought Land in Kandal Stung district of Kandal province and Then Obtained a Possessory certificate While People Did not Know* (RFA radio broadcast January 18, 2009) (morning session, in Khmer Language).

decisions of this kind encourage outsiders to take advantage of confusion and the possible corruption of distant authorities, and to pursue similar “preemptive” registrations from time to time.

Concerning transfers of title, only 15,796 formal land transactions were made from 1995 to 2001.¹³² This number does not reflect the real number of the total land transactions because the number of informal transactions remains unknown. Also, no data of the number of land parcels with regard to gifts and successions have been available. Remarkably, even when there is an initial registration, it does not necessarily result in stable, registered transactions. Anecdotal evidence suggests that the original land certificate can be used for informal transactions after registration. When this happens the land registration system is not fulfilling its role for stabilizing transfers. This practice seems to be comfortable to the people because of the large number of unregistered properties, so it seems like normal practice. Expropriation is another area that is affected by the large number of unregistered properties. Usually, when the government plans to develop any areas, the development plans affect the basic rights of Cambodian citizens in and nearby those development areas. Since the expropriation law supports only those who have registered land certificates to receive just and fair compensation, a large number of landholders who do not have land certificates are subject to a different process of “policy” negotiation. While the Expropriation Law provides for compensation on the basis of land value, so-called “policy” negotiations provides personal compensation on the basis of the number of members of the household. The base level of such compensation is low, because the occupants do not have evidence of a legal property right. On the other hand, the number of household members can be inflated by records at the local level. This can undermine respect for law. With respect to lending and security, it is naturally possible to register land in order to receive a bank loan secured by a mortgage. If landholders want to borrow money from the bank, they can file applications for land certificates in order to secure the debt through security interests. Loans that are based on informal transactions have no legal basis, and can provoke serious problems for landholders. For small-scale lending, the cost and time required for initial registration is necessarily a factor in promoting such informal lending transactions.

In the area of taxation, the effect of the large number of unregistered properties is clear. According the telephone interview with the Under Secretary of State of the Ministry of Land Management, Urban

¹³² Supra note 90 at 27.

Planning and Construction, land taxation based on value required by the Law on Finance for 2010 is unlikely to be realized because the ministry does not have cadastral information for tax collection. Consequently, the government will strengthen unused land taxes, as an alternative measure. The aftermath of the implementation of the Law on Finance for 2010 will show hardship of law implementers because of unregistered properties. The success of land registration has a firm connection with the enforcement of land taxation. Cambodia has witnessed the failure of land registration since the early start of land privatization due to no enforcement of land taxation under the 1992 Land Law.

Current land registration processes have run slowly and therefore require changes. In order to obtain possessory certificates, land applications have to go through several layers from district to provincial authorities and lastly to national authority for final examination and approval. This requirement makes the procedure more time-consuming and complicated thereby deterring landholders from participating in the system. Moreover, district authorities who are close to landholders do not have ultimate power to issue sporadic registration certificates making these authorities weak and less responsible. The examination of provincial and national authorities is just based on the opinion of the district authorities and then these authorities just sign the documents for approval. Therefore, such a formality is not much useful for the system.

Corruption is one of the causes of discouragement of the participation in land registration. While registration involved with many competent authorities, in the case of corrupt system, high bribe will be predictable because the bribe goes from one layer to another until the final one. If reducing the number of competent authorities involved, the bribe in some layers is eliminated thereby lessening the amount of the total bribe.

Institutions responsible for land administration in Cambodia have experienced in failing land registration processes. The branches of the Ministry of Land Management, Urban Planning and Construction at each local level have so far received limited power with land registration. More remarkably, the idea of creating several institutions to solve land issues has exacerbated one another. Therefore, it is necessary to consider strengthening the existing government institution or agency rather than creating another new one which may cause unclear function or less effectiveness.

Chapter 2: Factors in Establishing Registration

“Land policy is a very important determinant of land distribution, allocation and use in any country.”¹

This chapter begins with an overview of the steps in the establishment of the current land registration system in Cambodia. The situation of the country in the early stage of land policy was difficult, and there were some problems. The lawmaking or rulemaking processes were not always clear or carefully planned, and some decisions were made from necessity and were not ideal. It is necessary to learn from the mistakes of the early stage, but it is also necessary to build on the foundations that exist today. After the overview of current Cambodian registration and land law, this chapter turns to Japan, which can offer some hints for the Cambodian situation, because the Japanese land registration system today is successful. Also, the land system of Japan was made in the Meiji era in a short period of time, and there were problems in Japan as well. The problems suffered by Japan will help suggest priorities for successful reform of the Cambodian land system.

2.1 Cambodian Registration Laws and Institutions

2.1.1 Historical Background

Historically, Cambodia’s land was owned and governed by the king. The king was ultimately the sole owner of the land.² People could freely cultivate as much land as they so desired. However, due to the limited means of agricultural production, no more than 1-3 hectares of land could be cultivated by each family.³ The right of possession was sustained if land was cultivated in a continuous and public manner.

¹ T. M. Konyimbih, “Major issues of Smallholder land Policy: Past Trends and Current Practives in Kenya,” in *Land Reform: Land Settlement and Cooperatives*, ed. P. Groppo (Rome: Rural Development Division, FAO, 2001/2), 55.

² M. C. Ricklefs, “Land and the Law in the Epigraphy of Tenth-Century Cambodia,” *the Journal of Asian Studies* 26, No. 3 (May 1967): 411. See also Bory Say, “Cambodian Legal and Judicial Systems before 1975” (Lecture taught at the Nagoya University Graduate School of Law on 7 February 2007), p. 6 (on file with author); Sovannarith So et al., *Social Assessment of Land in Cambodia: A Field Study*, Working Paper No. 20 (Phnom Penh: Cambodia Development Resource Institute, November 2001), 10; Matthew Rendall et al., *Land Law of Cambodia: A Study and Research Manual* (Phnom Penh: East-West Management Institute, Inc., November 2003), 19.

³ Sovannarith So et al., *Social Assessment of Land in Cambodia: A Field Study*, Working Paper No. 20 (Phnom Penh: Cambodia Development Resource Institute, November 2001), 10.

Since the population was small and there were no land market, farmers could move freely from one village to another and cultivate land as they needed. Landholders had an exclusive right to possess, use and inherit cultivated land without any formal requirements, but they had to pay royalties to a royal committee. Royalties which were considered as taxes, but not land taxes, were collected based on only the amount of crops produced every year.⁴

The king played an important role in resolving land disputes as well as other disputes. The king had supreme power so he legislated, ruled and judged all necessary things in the whole territory.⁵ The king's court, also known as the sacred court, was represented by royal officials who held land cases. Noticeably, high officials including the representatives of the king and district chiefs were not exempt from the judgments of the sacred court.⁶ Consequently, high officials were fined if they were found guilty. For example, the royal minister was ordered to compensate individuals for the violation of their land rights.⁷ This so-called traditional form of legal judgment existed in Cambodian history a long time ago.

This sub-section is divided into five periods. The first period describes the Cambodian land situation under French colonization from 1863 to 1953. The second period elaborates how Cambodian property progressed after Cambodia received its independence from France in 1953. The third period briefly talks about the property in the darkest period of Cambodian history, under the Khmer Rouge regime from 1975 to 1979. The fourth period demonstrates how the remaining survivors managed the property after the collapse of the Khmer Rouge regime. The last period mainly describes new land policies which had developed under a democratic society after the birth of coalition government in 1993.

Colonial Period (1863-1953)

There had been land management and use difficulties in Cambodian history. On August 11, 1863, King Norodom of Cambodia signed a treaty with French governor, De la Grandière, putting Cambodia

⁴ Matthew Rendall et al., *Land Law of Cambodia: A Study and Research Manual* (Phnom Penh: East-West Management Institute, Inc., November 2003), 20. See also *Ibid*, 10.

⁵ Bory Say, "Cambodian Legal and Judicial Systems before 1975" (Lecture taught at the Nagoya University Graduate School of Law on 7 February 2007, pp. 1-2 (on file with author).

⁶ M. C. Ricklefs, "Land and the Law in the Epigraphy of Tenth-Century Cambodia," *the Journal of Asian Studies* 26, No. 3 (May 1967): 417. 411-420.

⁷ *Ibid*, 417.

under French protectorate known as French colonization.⁸ During this period, the French administration tried to introduce land registration regulations several times, but to no avail. Remarkably, King Norodom tried to distribute royal property to the people in 1884. In 1906 King Sisowath, successor of King Norodom, announced to provide private ownership of land to those who requested.⁹

Attempts were made to achieve the goal of a privatization policy by the government. On February 22, 1896, the Department of Cadastre was established. In 1908, this department was renamed Cadastral and Topographical Service which was then renamed the Department of Cadastre and Land Bureau.¹⁰ In 1925, the Land Conservation Service was also established under the Ministry of Finance and then it was integrated into the Department of Cadastre and Land Bureau.¹¹ The Department of Geography was also established in order to conduct geodesy and topography. Therefore, in 1925, the government announced to accept application forms for immovable registration throughout the country.¹²

In 1920, the first Civil Code of Cambodia was promulgated with a very close connection to the French Civil Code. The property rights in this code stated the distinction between movable and immovable property, the private ownership and public ownership, the definition of ownership, and the right of possession. Private ownership was defined as the right to enjoy and dispose of property unless otherwise stated in law.¹³ The code also clarified that state public property could not be alienated or transferred to another person.¹⁴ However, if the public property did not serve the interest of the public, it would become the state private property which could be alienated.¹⁵ This concept of ownership still exists. The first Cambodian constitution which was established in 1947 also recognized the absolute and exclusive right of ownership.¹⁶

It is noticeable that the concept of possession remained the same as in ancient Cambodian law that was understood in the expression of the legal principles found in the 1920 Civil Code. Possession in this code referred to the recognition of a person's right to land. Ancient Cambodian law recognized the

⁸ Samoth Sakou, *Kampuchea: Kavivath ney challana noyobay* [Cambodia: The Evolution of Political Movement] (Paris, 2000), 107.

⁹ Vaon Lim, "Roborb deithly nov Kampuchea" [Land Regime in Cambodia] (July 2006) TMs (photocopy), p. 2.

¹⁰ Royal Decree No.101NS, July 16, 1948.

¹¹ Royal Decree No.101NS, July 16, 1948.

¹² Supra note 9 at 3.

¹³ The 1920 Civil Code of Cambodia, art. 638.

¹⁴ The 1920 Civil Code of Cambodia, art. 640.

¹⁵ The 1920 Civil Code of Cambodia, arts. 641 & 642.

¹⁶ The 1947 Cambodian Constitution, art. 7.

possession of land when the land was cultivated, cleared out, and fenced.¹⁷ Therefore, it can be assumed that the term “possession” recognized by ancient Cambodian law was used to interpret related provisions of the 1920 Civil Code.

The 1920 Civil Code attempted to introduce a cadastral registration system throughout the country. Registration of the land would provide evidence of various rights such as rights of ownership, rights of possession and rights to mortgages.¹⁸ However, the implementation of registration systems was not attained in the whole territory. In some districts, the rule was well implemented but in other places, landowners processed the transactions at the commune level where the requirements of the law needed the involvement of a district authority.¹⁹

After Independence

Efforts of the Cambodian people under the mastership of King Sihanouk Norodom made Cambodia become independent in 1953. However, all legal sources existing during the colonial period remained in use. For example, the constitution which was promulgated in 1947 remained valid. The 1920 Civil Code which contained the provisions relating to property rights also remained applicable. Land system which had taken place during the French colonization continued to develop, but the success of land privatization and commercialization were rather limited.²⁰

More remarkably, Cambodian land system became deteriorate while the development policy was interrupted by the civil war after the coup d'état on March 18, 1970. In the aftermath of the coup d'état, started by General Nol Lon, instability in several parts of the country came to existence. Besides a newly adopted constitution, all other legal systems remained applicable until 1975. Concerning land issues, land tenure was not strengthened since people were busy moving from one place to another in order to escape from insecure places where people suffered from American bombing.

Democratic Kampuchea (Pol Pot regime)

¹⁷ Matthew Rendall et al., *Land Law of Cambodia: A Study and Research Manual* (Phnom Penh: East-West Management Institute, Inc., November 2003), 22.

¹⁸ Ibid.

¹⁹ The 1920 Civil Code of Cambodia, art. 945.

²⁰ Supra note 3 at 10.

The Democratic Kampuchea also known as the Pol Pot regime²¹ (1975-1979) which put Cambodia into the regime of slavery destroyed all legal systems. Urban people were evacuated brutally to rural areas and started working as farmers. Under the new policy of this regime, Cambodian people were required to eat food at the common kitchens, usually one village one kitchen. Eating alone without the permission from polity (a party leader also known as *Angkar*) was forbidden and seriously punished. Each individual had no belongings except clothes. All records of land and administrative system were then destroyed²² and almost all of cadastral officers were killed.²³ Immovable property including means of production was considered as collective property and no private ownership was allowed.²⁴

People's Republic of Kampuchea and State of Cambodia

Important milestones have remarkably existed in Cambodian history after the collapse of the Pol Pot regime in 1979. Cambodia was then renamed the People's Republic of Kampuchea. Most surviving people returned to their villages and cities with debilitation, the loss of family members, and without means of production after approximately four year absence. The newly formed government of Cambodia found that an appropriate way to revive those people was to form solidarity groups for farming. Thus the Department of the Agricultural Economic Policy Management was established under the supervision of the Ministry of Agriculture. This department had responsibilities to prepare and organize solidarity groups for farming in order to mutually help the members in their group.

It should be noted that soon after the fall of the Pol Pot regime, there were no laws governing land. In cooperation with the Vietnamese government,²⁵ Cambodia succeeded in making a new constitution in 1981. This constitution following the communist system introduced only a planned economy in which no

²¹ Democratic Kampuchea also called the Khmer Rouge regime or Killing Field was let by Pol Pot for 3 years 8 months and 20 days. This period is considered as the darkest era of Cambodian society.

²² Supra note 17 at 22; Supra note 9 at 7.

²³ Supra note 9 at 7 (stating that before 1975, there were approximately 1,000 cadastral officials and after 1979, only 50 remained alive).

²⁴ Constitution of Democratic Kampuchea, 1976 (stipulating in Article 2 that all important common means of production belonged to "the collective property of the people's State and the common property of the people's collectives" and all daily life necessities retained the private property. But in reality, even dishes, pots, pans, etc. were collected to the common kitchen for collective use. More remarkably, when people brought to be killed, their clothes were then distributed to other people).

²⁵ Evan R. Gottesman, *Cambodia after the Khmer Rouge: Inside the Politics of Nation Building* (New Haven: Yale University Press, 2003), 3.

private ownership was allowed.²⁶ However, in response to the urgent needs of society, the government used sub-decrees, decisions, instructions, and government policies to manage all property in the governed territory. In 1985, the Sub-decree on the Management of the Use of Agricultural Land was adopted in order to define agricultural land and determine the function of solidarity groups for farming and other state institutions.²⁷ This sub-decree did not refer to the ownership interest in land but introduced the residential land and agricultural land for subsistence to each family. If the family stopped farming in agricultural land or moving from one place to another, the land had to be returned to the commune authority for another family's use. The government, however, considered providing only the compensation on plants and buildings on the land.²⁸ The sub-decree also reserved some land for the needs of each level of authorities and determined land for schools, pagodas, natural lakes and ponds besides the fishing limits, pasture, and vacant agricultural land.²⁹

With regard to vacant agricultural land, there were interesting methods of managing such land from the state. In order to expand agricultural production, the state had to facilitate solidarity groups for farming, state's farms, state's institutions, and urban people to rehabilitate vacant agricultural land and to clear new land. The state encouraged those who applied for rehabilitating and clearing more land without paying any contribution. The period of the use of such land was 3 to 5 years depending on the labor force and production expense. It is also noticeable that one village could borrow land from another village in order to cultivate.³⁰ For example, Kongchey Village borrowed some land from Kohe Village,³¹ the neighboring village in the same commune, for cultivating plants. Yet, the state did not mention the way to maintain the records of such a practice.

After 1987, the government policy with regard to solidarity groups for farming was likely to be ineffective. Since then the government planned to improve the economic policy and to shift from planned economy to free market economy. On April 22, 1989 the state decided to provide homeownership to all

²⁶ Constitution of the People's Republic of Kampuchea, 1981, arts. 11-20.

²⁷ Sub-decree on the Management of the Use of Agricultural Land, No.06ANK, May 6, 1985.

²⁸ Sub-decree on the Management of the Use of Agricultural Land, No.06ANK, May 6, 1985, art. 5.

²⁹ Sub-decree on the Management of the Use of Agricultural Land, No.06ANK, May 6, 1985, arts. 6-11.

³⁰ Decision of the 9th Party Central Conference Concerning the Management and Use of Agricultural Land, No. 255SRMChh, August 3, 1984; Sub-decree on the Management of the Use of Agricultural Land, No.06ANK, May 5, 1985, art. 14.

³¹ These two villages are in Prekkoy Commune of Kangmeas District in Kampong Cham Province.

Cambodian people who had stayed and been recognized by the commune authority.³² Each house owner was required to pay land rent on the lot where residence was located. The sale or gift of a house had to be registered and pay 10 percent of the total house value to the state. Also, all houses or buildings for business purposes were required to pay taxes.³³ However, for those who were living in public buildings were not entitled to obtain homeownership.

In June 1989, the state changed land administration remarkably causing a large impact on land distribution. The needs of social development made Cambodia consider amending the constitution in order to introduce a mixed economy.³⁴ Under this new constitution, the People's Republic of Kampuchea was renamed the State of Cambodia. The local administration of the State of Cambodia was divided into three layers: Provincial People's Committee, District People's Committee, and Commune People's Committee. Under the implementation policy, residential land and cultivated land were treated differently. On June 3, 1989, the government adopted the Instruction on the Implementation of Land Use and Management Policy in which the state recognized only the right of ownership over residential land and the right of possession over cultivated land. The right of ownership was issued by Provincial People's Committee while the right of possession was issued by District People's Committee. This instruction also provided the right of land concessions with the ability of each family and this right was issued by the Ministry of Agriculture. The size of residential land under the instruction was no more than 2,000 square meters; the size of cultivated land was no more than 5 hectares; and the size of land concession was greater than 5 hectares. Remarkably, all land granted by the state could be inherited.

Following the milestone of the land reform in 1989, land-related documents had been produced.³⁵ The state did not reshuffle and reallocate the land which has been possessed since 1979. From June to December 1989, all landholders were required to submit possession application forms to the district office through the chief of the village and commune.³⁶ In return, the applicants received receipts for possession

³² Sub-decree on Granting Homeownership to Cambodian Citizens, No.25ANK, April 22, 1989.

³³ Sub-decree on Granting Homeownership to Cambodian Citizens, No.25ANK, April 22, 1989, art. 7.

³⁴ The Constitution of the State of Cambodia, 1989, art. 12.

³⁵ Proclamation on the Use of Land-Related Documents, No.2746PK/KSK, August 02, 1989. Article 1 announced to use possession application forms, receipts for possession application forms, register of receipts for possession application forms, land registers, and certificates of possession. These documents were printed by the Ministry of Agriculture.

³⁶ Instruction of the Implementation of the Land Use and Management Policy, No.03SNN, June 3, 1989.

application forms in order to confirm that they have already applied for land possession. This policy clearly motivated people to fulfill the requirements of possession. The policy stated that after the deadline of December 1989, the land where a holder did not submit a possession application form was considered free and open. Albeit the determination of the deadline for receiving possession application forms, the actual deadline was officially extended to June 30, 1990³⁷ due to the real situation of the country. According to the data from the Council of Ministers in December 1990, only 3.7 million (approximately 70 percent) possession application forms were applied.³⁸ This number of possession application forms would increase further because of the open deadline in another government instruction.³⁹ Yet, the data of issuance of sporadic registration certificates remained unknown.

Necessarily, a sound land management cannot function well if public property is carelessly maintained. The state also considered maintaining state property which required each local authority to be responsible for.⁴⁰ The District People's Committee was entitled to lend state land to people if the increase in more production was required. The lending contract was no more than three years, but it could be renewed unless the state needed land for other purposes. The state however failed to require all local authorities to record all kinds of land in the territory and therefore did not direct how chronological records should be retained in the hierarchical levels of authorities.

A good method was made in order to validate all kinds of transfers. Collection of the stamp duty was applied to the transfer of rights or homeownership rights.⁴¹ Such a transfer had to be made in a written contract and the stamp duty had to be paid within 30 days after the contract was made. The state did not recognize all transfers in which the stamp duties were not paid. The state also fined those who received

³⁷ Instructive Circular on the Policy of Land Administrative and Use, No.131KSK/SRNN, April 10, 1990). The extension of period of receiving application forms was until June 30, 1990. However, the extension was still available under the Instruction on the Review of Instruction No.03SNN dated June 3, 1989. See also Letter of the Office of the Council of Ministers on the Request to Delay the Acceptance of Land Applications, No. 94SCN/KS, January 17, 1990.

³⁸ Instruction on the Amendment of Instruction No.03SNN dated June 3, 1989 of the Council of Ministers, No.03SNN, December 8, 1990.

³⁹ Instruction on the Amendment of Instruction No.03SNN dated June 3, 1989 of the Council of Ministers, No.03SNN, December 8, 1990.

⁴⁰ Instruction of the Implementation of the Land Use and Management Policy, No.03SNN, June 3, 1989.

⁴¹ Law on the Establishment of the Stamp duties, No.21K, February 15, 1991; Sub-decree on the Collection of the Stamp duties, No.20ANK, September 21, 1991.

rights of transfers without paying stamp duties after the period of 30 days.⁴² More remarkably, for competent authorities who certified the rights from all kinds of transfers such as sale contracts without paying stamp duties had to be fined triple the amount of the due stamp duties. The state revenues resulting from collection of stamp duties could strengthen the implementation of this policy very well because every relevant authority had to fulfill role correctly otherwise they had to be fined and punished.⁴³

In 1992, the first land law in Cambodian history was promulgated, hereinafter called the 1992 Land Law, in accordance with the 1989 Cambodian Constitution. Most of the provisions in the law however were stipulated according to the previous legal regulations made by the government and some provisions were found in the 1920 Cambodian Civil Code. Acquisition of ownership could be recognized through succession, will, gift, contract of sale, and actual possession. This law recognized only ownership rights over residential land and possession rights over non-residential land. The law required all landowners and land possessors to register their land.⁴⁴ Noticeably, unregistered land within five years was considered as state private property while registered land whose owners failed to pay land taxes or rent within five years subsequently were also considered as state private property.⁴⁵ This strategy made landowners or land possessors pay attention to respecting law. Also all transfers of rights had to be registered otherwise they were not recognized by the law.

The 1992 Land Law had crucial provisions concerning way to retain state public property. The law forbade all private rights over forestry and fishery reserves, irrigation reservoirs, mines, cultural and historical patrimonies, pagodas, schools, cemeteries, public parks and hills, former state buildings, reserved land for roads and railways, rivers, and seas.⁴⁶ The law clearly stated that state public property could not be sold unless it served the public interest.⁴⁷

Although the applicable land law was available, in reality, several problems affecting the implementation of the law remained remarkable. Systematic registration certificates were not successfully issued and numerous people especially in urban areas took de facto possession since a number of people

⁴² Sub-decree on the Collection of the Stamp duties, No.20ANK, September 21, 1991, art. 13. One day late in paying stamp duty must be fined 1 percent of the total stamp duties.

⁴³ Sub-decree on the Collection of the Stamp duties, No.20ANK, September 21, 1991, arts. 16-18.

⁴⁴ The 1992 Land Law, arts. 205 & 207.

⁴⁵ The 1992 Land Law, art. 8.

⁴⁶ The 1992 Land Law, art. 5.

⁴⁷ The 1992 Land Law, arts. 15 & 17.

were illiterate. Moreover, migration of people in the early 1990s made it difficult to realize the accessibility of certain areas of the country thereby affecting the implementation of law. Land tax requirements by the law also caused a problem with claims for ownership of land based on possession since the people were not sufficiently informed that they had to regularly pay land taxes for their possession. Legitimate documents with regard to land tenure remained problematic since not all people had sporadic registration certificates or systematic registration certificates.⁴⁸ Thus, the disputes with regard to uncertain ownership were inevitably avoided.

Kingdom of Cambodia

In the early 1990s, efforts of Cambodian politicians, under the support of the United Nations and other countries, reached a peace agreement in 1991 in Paris. This Peace Agreement conducting general election in 1993 transformed Cambodia's government into a coalition government known as the Kingdom of Cambodia. The new constitution allowing free market economy was promulgated in September 1993, hereinafter called the 1993 Constitution. Article 44 of the 1993 Constitution surrenders private ownership rights to land to all Cambodian nationals. However, the 1992 Land Law remained valid. Unclear provisions of the 1992 Land Law resulted in ambiguous ways of interpretation causing intricate land disputes, nearly throughout the country. As a result, a huge number of representatives of rural communities began protesting against land grabbing, in Phnom Penh in front of the National Assembly and the Prime Minister's residence. Yet, the resolution of those disputes was not sufficient enough and thereby eventually led to the establishment of the National and Provincial Land Dispute Resolution Commissions in March 1999. These commissions were supposed to resolve all land disputes in Cambodia.

The incompatible provisions of the 1992 Land Law to the 1993 Cambodian Constitution, and the evidence of land grabbing problems had shown that a replacement for this law was needed. The process of replacing this land law would take several years with very critical and tense discussions. The first draft mainly based on the 1992 Land Law was prepared by the Cadastral Department (later transferred to the General Department of Cadastre and Geography under the Ministry of Land Management, Urban Planning,

⁴⁸ Some people had house statistic receipts, house and land sale contracts, title transference contracts, family record books, identity cards, and house-repairing requests and receipts for possession application forms.

and Construction) from 1996 and was then presented to the Council of Ministers in October 1998.⁴⁹ Considerable objection to the draft existed and a need of new draft was essential. The second draft of the land law was prepared in French in April 2000 hereinafter called the April 2000 Draft Land Law. After analyzing the draft and consulting with NGOs and stakeholders, the Council of Jurists modified the April 2000 Draft Land Law.

A new version of the Land Law was drafted in Khmer, French, and English in August 2000 hereinafter called the August 2000 Draft Land Law. The draft had difficulties in consistency between the English and Khmer versions. However, this draft was submitted to the Council of Ministers for approval and then to the National Assembly. The draft again faced numerous comments and questions by Parliamentary Commission Number 7 of the National Assembly and thereby required responsible drafters, the General Department of Cadastre and Geography, to attend the Parliamentary Commission's hearings and to revise the draft according to the suggestions and comments proposed during the hearings.

After efforts made by the Ministry of Land Management, Urban Planning, and Construction, the revised version of the August 2000 Draft Land Law was available in Khmer, French and English in November 2000 hereinafter called the November 2000 Draft Land Law. Also Asian Development Bank prepared a "Draft Review and Commentary on Draft Immovable Property Law" which contained commentaries and proposed modifications to the August 2000 Draft Land Law for the Ministry of Land Management, Urban Planning, and Construction. This document of Asian Development Bank dated January 1, 2001 was available in English and then in Khmer and French.

After the final stance of the Ministry of Land Management, Urban Planning, and Construction toward the draft law, the November 2000 Draft Land Law was submitted to Parliamentary Commission Number 7 of the National Assembly. In March 2001, the Commission resumed hearings on the analysis of the November 2000 Draft Land Law. The draft had finally been modified pursuant to the commentaries and proposed modifications contained in the "Draft Review and Commentary on Draft Immovable Property Law" of Asian Development Bank dated January 1, 2001. Then, Parliamentary Commission Number 7 concluded the hearings and released a new version of the draft in July 2001 hereinafter called the July 2001

⁴⁹ Interview with Vanna Siek, Chief, Department of Land Registration of the Ministry of Land Management, Urban Planning and Construction in Phnom Penh (December 3, 2008).

Draft Land Law. On July 20, 2001, the National Assembly adopted the July 2001 Draft Land Law and then it was submitted to the Senate. The Senate reviewed and approved it on August 13, 2001. The ratified new land law was finally promulgated by the king on August 30, 2001 and the law came into effect immediately, hereinafter called the 2001 Land Law.

More remarkably, in 1998, under the legal assistance of Japanese government cooperated by Japan International Cooperation Assistance (JICA), the Code of Civil Procedure and the Civil Code had been codified in order to manage civil issues including immovable properties. The Code of Civil Procedure was promulgated on July 6, 2006 and entered into force in July 2007. This code aims at instructing procedures relating to civil actions such as the scope of execution against immovable property and methods of attachment. The Civil Code was promulgated on December 8, 2007, stipulating provisions concerning property rights which may override some of those in the 2001 Land Law and providing detailed provisions which are not included in the land law. To this extent, it is believed that property rights in Cambodia may be enough to be governed by the rule of law. However, as of the date of writing this dissertation, it is not known yet when the Civil Code will be applicable.⁵⁰

2.1.2 Land Reform

Cambodia experienced collective ownership under communism approximately two decades after 1975. Since creating wealth by the communist government did not work,⁵¹ the Cambodian government then considered changing from planned market to private market where the reform of land was necessary. Land reform, in a broad sense, can be defined as “agriculture policies designed to improve productivity and profitability of small farms.”⁵² Every family of Cambodians was entitled to have their own land so that they could invest in the land. The reason of land reform in Cambodia could arise from the impetus of free market economy. The collective ownership was required to go away and then land privatization became necessary for the reform. Pro and con of land reform cannot be avoided. The complementary measures of

⁵⁰ Article 1305 of the 2007 Civil Code requires another law to determine the date of application.

⁵¹ Bernard H. Siegan, *Property and Freedom: The Constitution, the Courts, and Land-Use Regulation* (New Brunswick; London: Transaction Publishers, 1997), 6.

⁵² Kevin D. Jones, “Land Privatization and Conflict in Central Asia: Is Kyrgyzstan a Model?” in *In the Tracks of Tamerlane: Central Asia’s Path to the 21st Century*, ed. Daniel L. Burghart and Theresa Sabonis-Helf (Washington: Center for Technology and National Security Policy, July 2004), 260, under note 5. <http://www.ndu.edu/ctnsp/tamerlane.htm>, last visited February 23, 2009.

land reform are necessary to be taken strictly into account so as to ensure that the sustainable development receiving from land reform is available.

The introduction of free market economy possibly became a big impetus leading to Cambodian land reform. A close market system with collective ownership made Cambodian people hard to improve their way of life. As a result, in the 1980s, Cambodian people could not have enough food⁵³ receiving from their agriculture. Since landholders did not have ownership rights so whenever they moved from one place to another, their land had to be returned to the village so that the village chief could distribute it to another land-user. Landholders were entitled to use and inherit their land.⁵⁴ Such a practice of land-use however did not prevent land transactions. Interestingly, although land was considered as collective ownership and there was no real land market, informal land transactions as early as 1985 were available.⁵⁵ Local authorities, especially village chiefs and commune chiefs also involved in such transactions of land albeit wrongdoing. The failure of land policy through collective ownership and open economy exigency became a focus for land privatization in 1989.

The amendment of the 1981 Cambodian Constitution in April 1989 renaming the People's Republic of Kampuchea to the State of Cambodia required dismantling of collective ownership. In April 1989, the government of Cambodia firstly granted homeownership to Cambodian citizens and two months later, the privatization of land emerged. Differently from the land privatization in Kyrgyzstan in which the reason of the privatization arose from the fear of the accumulation of land in the hands of foreigners and wealthy people,⁵⁶ the land privatization in Cambodia came from the change of market system. The collective ownership was an ineffective goal for economic development therefore the government considered privatizing land through which each family had a right of ownership over residential land and a right of possession over agricultural land. Although it was restricted to the amount of land owned and possessed, it was believed that people who received land used the land as effectively as they could.

Although land reform was expected to fairly distribute land to every Cambodian citizen, difficulties remains cumbersome. Unclear statements in the government instruction on the implementation

⁵³ Supra note 3 at 15.

⁵⁴ Instruction on the Implementation of Land Use and Management Policy, No.03SNN, June 03, 1989.

⁵⁵ Sophal Chan and Sarthi Acharya, *Land Transactions in Cambodia: An Analysis of Transfers and Transaction Records*, Working Paper No. 22 (Phnom Penh: Cambodia Development Resource Institute, July 2002), 27.

⁵⁶ Supra note 52 at 264.

of land use made it opaque to local authorities to decide how fairly to distribute the land to their villagers. For example, the state did not reshuffle and reallocate the land occupied since January 7, 1979, but allowed the right of ownership over residential land of no more than 2,000 square meters and the right of possession over agricultural land of no more than 5 hectares. For those who had residential land over 2,000 square meters could receive the right of possession to the excess amount. This may reflect that for those who did not occupy the land since 1979 may not receive any land. In Preal Commune of Kanhchreach District in Preyveng Province, for example, new coming villagers did not receive land because village land was occupied by those who owned land before the Pol Pot regime in 1975.⁵⁷ The gap between the rich and the poor therefore is aggravated by the inequalities of land distribution⁵⁸ and land conflicts arise when there is an ambiguous legal system.⁵⁹

Advantages arose when first land reform was made. The receipts of applications of 3.7 million land parcels⁶⁰ for residential landownership and agricultural land possession accounting for approximately 70 percent were available only one year after the start. This number increased to 4.5 million over the next two years from the start.⁶¹ Although the Department of Cadastre responsible for managing land was overwhelmed by huge applications, the receipts of the applications were still issued. These receipts became useful tools for local authorities to recognize their land. As a result, the receipts and land certificates were recognized by the first ever 1992 Land Law. The 1992 Land Law did not abolish the past legal regulations but required that the land be registered⁶² and used.⁶³ More importantly, land possessors and land owners had to pay for land taxes.⁶⁴ The duties of the landowners and land possessors were possible to prevent land disputes because the tax payment was possibly used as the evidence for continuous land occupation. This provision moreover contributed to creating state revenues. Commune authorities with this regard had to be

⁵⁷ *Reportage: People's Complaint about Landlessness* (RFA radio broadcast February 11, 2007) (evening session, in Khmer language).

⁵⁸ Bhargavi Ramamurthy, et al., *Cambodia 1999-2000: Land, Labour and Rural Livelihood in Focus*, Working Paper No. 21 (Phnom Penh: Cambodia Development Resource Institute, December 2001), 36.

⁵⁹ *Supra* note 3 at 13.

⁶⁰ Instruction on the Amendment of Instruction No.03SNN dated June 03, 1989 of the Council of Ministers, No.03SNN, December 08, 1990.

⁶¹ Nicholas Hartman, "Cambodian Land Law: Its Impact on Current Trends in Landlessness and Land Inequality," (2007): 116.

⁶² The 1992 Land Law, art. 59.

⁶³ The 1992 Land Law, art. 76.

⁶⁴ The 1992 Land Law, arts. 18 & 66.

responsible for the certification of the use of land and thereby played a pivotal role in local land administration.

Scrupulous measures for land reform provide sustainable development. As already mentioned, the early stage of land privatization in Cambodia did not arise from the fear of collection of land from the wealthy people, without concrete measures to manage land possibly lead to serious land issues such as land conflicts, landlessness, and land speculation. Village and commune authorities in this regard may work well in order to ensure that the land reform provides benefit to everyone and thereby fulfills the land development policy. Since a village chief stays very close to the villagers living in his or her territorial villages, therefore it is more convenient to give responsibilities to the village chief to distribute land to all villagers. If inadequate land in his or her village, the village chief is required to report to the commune authority to inform that more land is needed. In this case, the commune authority can consider availability of land in other villages. This implementation may be done the same in commune, district, and provincial levels respectively. Land privatization does not however necessarily mean that everyone receiving land can make use of his or her land unless he or she has enough tools and ability to use it. It is therefore necessary that the state provide capital loans for those who want to invest in land if landholders lack financial resources.

Temporary Possession

Cambodia has so far experienced a great deal of land tenure which remains intricate issues in present Cambodian society. As mentioned in “People’s Republic of Kampuchea and State of Cambodia” of Sub-section 2.1.1 “Historical Background,” all administration including land administration seemed to revive after 1979. Interestingly, soon after the collapse of the Pol Pot regime in 1979, people could have free choice to live wherever they felt comfortable. Cambodia, then under socialism, introduced a collective ownership by which people worked in group (solidarity group or solidarity group for farming) and received shared products. Although the word “ownership” was used, no clear legal clarification was available at that time. In each village, a village chief was authorized to lead solidarity groups to cultivate common fields. Yet, each family could receive residential land and family economy land as well as other land which was

allowed to use by a local authority.⁶⁵ In 1989, the land reform initiatives changed remarkably with regard to private right. Ownership rights over residential land were provided to families whose occupation of houses was recognized by the local authority, while cultivated land was recognized as only possession rights.⁶⁶ The reform also attempted to create the Department of Cadastre to proceed with land grants. Since the implementation of the policy was not strictly done, the land grant processes were not completely successful⁶⁷ and thereby caused ubiquitously no legitimate documents, unclear boundary, and low state income.

Remarkably, apart from collective ownership, Cambodian people just used land as they could to fulfill their living standards without paying attention to necessary requirements for being legitimate land users. Such so-called physical possession⁶⁸ continued booming from the outset of land privatization in 1989, making many problems remain cumbersome for Cambodian citizens regarding legal possessions. The initial property allocation was embedded in community knowledge. Albeit no records concerning how successful land allocation was, the community could be considered as jury for community property allocation. Yet the imperfect implementation of local authorities affected the possession after 1989. Some commune authorities recognized the possession before 1979 thereby preventing other people from having any possession.⁶⁹ Consequently, those people could never submit the possession application forms to the district office since they did not obtain possession of land. This caused a great flow of resettling on someone's land for a long period of time without any legal documents.

Difficulties in getting legal forms of possession or ownership remained convoluted throughout the country. Although landholders having possessed land more than one year were required to submit possession application forms to the district office in order to obtain sporadic registration certificates, in reality not all could do that. Also, difficulties in communication in the whole country made it impossible

⁶⁵ Sub-decree on the Management of the Use of Agricultural Land, No.06ANK, May 6, 1985, art. 5.

⁶⁶ According the 1992 Land Law, Article 61 stated that "possession is a state of being which refers to the act of holding a thing to the exclusion of all others and the fulfillment of requirements as the owner's." In order to get a possession right, a possessor (legitimate possessor) must register the possession in an immovable register. The word "possession" in this dissertation refers to "legal possession" in which all legal requirements were fulfilled.

⁶⁷ See page 55 (3.7 million (approximately 70 percent) possession application forms) above.

⁶⁸ Physical possession here means the act of possessing something without fulfillment of legal requirements.

⁶⁹ *Reportage: People's Complaint about Landlessness* (RFA radio broadcast February 11, 2007) (evening session, in Khmer language) (mentioning that in Preal Commune, Kanhchreach District, Prey Veng Province, the land was not redistributed after 1979. Although solidarity groups had been in process in the early 1980s, the previous owners still functioned mainly on distributing the produce. Therefore, after the disappearance of the solidarity groups, the former owner took their own possession and thereby caused more landless people).

for local authorities to perform their duties very well. For instance, roads from countryside to provincial towns or district towns were not constructed or paved thereby becoming obstacles for communication since much time was spent to travel from one place to another. More noticeably, the implementation of the state regulations through local authorities continued unabated. Consequently, as of 2000, land certificates equivalent to approximately 12 percent of the total of 4.5 million applications were issued.⁷⁰

The continuation of physical possession may result in unclear boundaries leading to land disputes. Traditionally, Cambodian people always recognized their land ownership on a mutual basis among the neighbors. The boundary is not demarcated well. Landowners sometimes recognized their land boundary through bushes or trees.⁷¹ Therefore, when the bushes or trees are destroyed, the owners often have problems with the boundaries.

The physical possession having no legal evidence decreases the state income. Under the 1992 Land Law, temporary possessors were required to submit their possession application forms to the commune chief and to pay land taxes.⁷² The loose management of the authority toward those who used land without fulfilling legal requirements made people neglect their duties. Moreover, it has certainly been true in the period of Cambodian legal history starting in 1989 that government officials would do nothing so weighty as certifying possession or ownership of land without being paid bribes.⁷³ Mr. Bun Chhoeun Uk declared in the late 1980s that the corruption was similar to that during the previous regime, the Khmer Republic regime (1970-75), leading Cambodia to face “a war of houses and a war of land.”⁷⁴ Such tradition will also lead to long lasting intricate issues in Cambodian land dispute resolutions. The corruption and the avoidance of paying land taxes result greatly in inadequate state income.

The experience of temporary possession in Cambodian legal history lasted in 2001 when the new 2001 Land Law aiming to provide full ownership was promulgated. On account of the strong comments

⁷⁰ Sophal Chan et al., *Land Tenure in Cambodia: A Date Update*, Working Paper No. 19 (Phnom Penh: Cambodia Development Resource Institute, October 2001), 30.

⁷¹ Citizens in Kohe Village, Prek Koy Commune, Kang Meas District of Kampong Cham Province usually recognize their land boundary through bushes or trees.

⁷² The 1992 Land Law, art. 66.

⁷³ George W. Cooper, “The Cambodia Portion of an Eight-country Study by the North-south Institute for the World Bank,” in *Land Policy and Conflict* (World Bank, March 20, 2002), 2?, <http://info.worldbank.org/etools/docs/library/35466/LAND%20POLICY%20AND%20CONFLICT.pdf>, last visited May 4, 2008.

⁷⁴ Evan Gottesman, *Cambodia after the Khmer Rouge: Inside the Politics of Nation Building* (New Haven: Yale University Press, 2003), 320, cited under note 15.

from NGOs, some strict requirements of possession in the old 1992 Land Law was not necessary in the new land law. For instance, under the old 1992 Land Law, possessors were required to request the commune chief for land possession and paid land taxes.⁷⁵ The elimination of these strict requirements of possession would be supposed to benefit millions of poor land occupants⁷⁶ who had no rights to land according the previous land law because they failed to fulfill the requirements.

Right to Land

A prelude of land privatization made Cambodian people experience some limitation of right to land. The state attempted to achieve the realization of right to land through land privatization in the late 1980s. One of the government instructions in 1989 allowed Cambodian citizens to enjoy three kinds of right to land that is a right of possession over agricultural land, a right of ownership over residential land, and a right of land concessions. It should be noted that the 1992 Land Law did not mention land size limitation leaving ambiguous for local authorities whether to certify a larger land size than that stipulated in previous regulations thereafter. The attempt to stop recognizing any right of possession was successful while the 2001 Land Law came into effect on August 30, 2001. This newly adopted land law imposes no limit on the amount of land owned. Also the reform retains the 10,000 hectare limit on economic land concessions but removes restriction on the minimum threshold size.

Broad recognition of the right to land over agricultural land in the late 1980s was a right of possession. All agricultural land therefore was recognized as possessory land which means that the land that the state exclusively provides for peasant families to use for agricultural production or exploitation and to inherit. The possessory land could not exceed 5 hectares and it was not considered as possession when the land was not in use.⁷⁷ This was a good policy to encourage all land possessors to use land in order to take benefit from the land. Agricultural land was defined as “paddy fields, plains, rice field plateaus, hills, authorized forest land, farm land, land along the riverside, islands, natural pastures either cultivated or not, as well as lakes, ponds and dams which are outside fishing territory.”⁷⁸ Albeit this definition, it is widely

⁷⁵ The 1992 Land Law, art. 66.

⁷⁶ Supra note 73 at 18.

⁷⁷ Instruction on the Implementation of Land Use and Management Policy, No.03SNN, June 03, 1989.

⁷⁸ Sub-decree on the Management of the Use of Agricultural Land, No.06ANK, May 06, 1985, art. 1.

understood that only land which was available cultivated at that time was distributed. There were no cadastral index maps and technical tools to survey land, commune authorities were therefore required to classify the records of possessory land differently from ownership land.⁷⁹ More remarkably, all possessory land had to be registered during the period of 3 months after October 13, 1992 otherwise the land possessors had to be fined to pay taxes and other duties over the land.⁸⁰ This requirement was important because the possessory land was required to be recognized by the commune authorities.

The right of ownership over residential land has been recognized since the state declared land privatization. Dissimilarly to possessory land, residential land was not defined in any legal documents. The loci of each village were not the same, some had narrow space, and others had much space which made local authorities ambiguous to have an exact image of residential land. Since the residential land was restricted to no more than 2,000 square meters, some villages tried to distribute several parcels of land considered as residential land. Naturally, other parcels of land were surely for cultivation, but a village chief tried to distribute those land parcels in order to get approximately 2,000 square meters.⁸¹ This ambiguity may arise from the failure of defining residential land and the distribution procedure. Consequently, in a village where some families obtained a large house location, others who received a narrow house location would be provided more several parcels so that each residential land size was acceptable to all villagers in the same village.

The concept of ownership rights has been developed remarkably until 2001 in Cambodian land system thereby requiring the newly promulgated land law. This is the reason why the 2001 Land Law emerged and came into effect on August 30, 2001. In this respect, a right to land concerning residential land and agricultural land was not distinguished. The state starts recognizing full land ownership without restriction to the amount of land owned. This attempt protects all landowners by guaranteeing ownership rights and other rights related to immovable property. This reform requires that all past land and relevant land documents be in accordance with the 2001 Land Law. No taxes on land in this new land law are stipulated. This flaw in law remains cumbersome for land issues and leads to land speculation. Also there

⁷⁹ The 1992 Land Law, art. 214.

⁸⁰ The 1992 Land Law, art. 224.

⁸¹ In Kohe Village of Prekoy Commune in Kangmeas District of Kampong Cham Province, some families have a few parcels of land considered as residential land.

are no provisions to require all land to be in use thereby making it difficult to encourage land owners to make use of their land. Unlike the early stage of land privatization in 1989, the 2001 Land Law does not force landholders to register their land thereby causing huge future land problems.

The other right to land which is recognized in Cambodian land system is a right of land concessions. In the early stage of land privatization in 1989, the right of concessions was recognized to agricultural land which was more than 5 hectares and there was no restriction to the maximum amount of land. The attempt of land concessions may be to improve the national economy. There were no concrete procedures to provide such concessions until December 2005 while the Sub-decree on Economic Land Concessions adopted. Therefore, this policy allowed some companies to receive much concession land which had resulted in unsuccessful use of land and ineffective land concessions. Also the land concessions may affect the right to land of ordinary villagers. For example, Phea Pimex Company received 176,065 hectares of concession land in Kampong Chhnang Province from the Ministry of Agriculture, Forestry and Fisheries to plant cashew trees although the provincial authority suggested reducing to 140,000 hectares in order to avoid affecting public pasture.⁸² This leads to more convoluted land problems in the future. The detailed discussions of economic land concessions will be depicted in Sub-section 3.3.1.3 “Economic Land Concessions” of Chapter 3.

Land Distribution

Understanding the fact of land distribution in late 1989 is crucial to find out the connections which lead to recent land problems. Although before 1989, land was considered officially as collective property which was not allowed to be owned by every individual, each family was able to use it in different ways. Some used land personally for their subsistence; others used it with solidarity groups for farming. The land which was used by a solidarity group was broadly understood as collective land. The land which was used by each family was considered as de facto possession land. The government instruction on the implementation of land use and management policy on June 3, 1989 was supposed to fairly distribute land to every Cambodian citizen. However, challenges of land distribution occurred while actual land

⁸² Special Representative of the Secretary-General for Human Rights in Cambodia, *Land Concessions for Economic Purposes in Cambodia: A Human Rights Perspective* (Phnom Penh: Cambodia Office of the High Commissioner for Human Rights, November 2004), 14.

distribution did not follow the government instruction correctly. The aftermath of land distribution remains cumbersome and therefore requires a consideration for land redistribution.

The government instruction on the implementation of land use and management policy on June 3, 1989 was the first legal norm to allow Cambodian people to enjoy their parcels of land as landownership and land possession. A chief of Provincial People's Committee was authorized to issue systematic registration certificates over residential land while a chief of District People's Committee was entitled to issue sporadic registration certificates over possessory land.⁸³ The instruction required that a Provincial People's Committee divide local authorities into two committees that is district central committees⁸⁴ and commune committees.⁸⁵ District central committees were responsible for receiving and collecting applications in all communes while commune committees had to survey the land and submit reports to the district central committees. These committees were supposed to have a fair distribution of land at that time. The instruction did not require reshuffling and reallocating land occupied after 1979 thereby leading to various challenges.

Based on government regulations in the 1980s, the Cambodian people were presumed to access land both residential and agricultural land. However, in reality, evidence has emerged that it is not the case because just about a decade later after 1989, at the local level, there was extensively unsatisfactory land distribution which led to landlessness and land inequality. For example, the majority of people who returned from the border camps (Cambodia-Thailand) after 1989 did not receive any land.⁸⁶ Moreover, some village chiefs allowed their villagers to continue occupying their land owned before 1975 although that land was used by solidarity groups. So when the solidarity groups were dismantled, the land belonged to the original owners⁸⁷ thereby making new comers landless. The result of Protracted Emergency Target

⁸³ Instruction on the Implementation of Land Use and Management Policy, No.03SNN, June 03, 1989.

⁸⁴ District central committee is composed of the chief of District People's Committee, chief of Agricultural District Office and all commune chiefs.

⁸⁵ Until December 1990, the commune committee was composed of chief of Agricultural Commune Office and all village chiefs, but after December 1990, the committee was composed of commune chief, officer of Provincial Cadastral Office, officer of Agricultural District Office, village chief in the commune and two elders according to the Instruction of the Revised Instruction No.03NN dated June 3, 1989 of the Council Ministers.

⁸⁶ *Supra* note 61 at 118.

⁸⁷ *Reportage: People's Complaint about Landlessness* (RFA radio broadcast February 11, 2007).

Survey conducted in 1998⁸⁸ showed that 43 percent of 1,040 household respondents acquired land through relatives or friends while only 28 percent received land from local authorities, and 11 percent acquired land through purchase.

Land distribution in the late 1980s depended on the family size. With this regard, for those who were born later than the determined date of land distribution would never receive any land. Moreover, the requirement of land tax payment and no land market were the causes of losing land because some families did not pay land taxes and did not care about retaining their land. They sometimes moved from one place to another where they could not receive land any more and therefore were vulnerable to the loss of land in the previous village where they already received the land.⁸⁹ The rapid population growth has also contributed to the increase in land holding subdivision because farmers shared their land with their newly-established-child families in order to support those families' livelihoods thereby reducing the size of land for cultivating or sometimes having no cultivated land.⁹⁰ The dawn of land market price and the lack of clarity in actual practice have led to informal land transactions thereby increasing landlessness.⁹¹ This is true that the landless rate became increasingly high over 20 percent⁹² ten years after the first land distribution in 1989.

A well-known government mechanism to resolve landless problems is stated clearly in the 2001 Land Law requiring social land concessions through a sub-decree. This is also known as the strategy of land redistribution in the early twenty first century in Cambodian land system. Although it is expected that landless people are able to get fruit from the 2001 Land Law, the actual practice is even inextricable. Two years after the law came into force, the Sub-decree on Social Land Concessions and the relevant ministerial proclamations exist, instructing detailed procedures of how people receive social concession land. The implementation of social land concession policy first started in early 2009 with two-province target,

⁸⁸ Boreak Sik, *Land Ownership, Sales and Concentration in Cambodia: A Preliminary Review of Secondary Data and Primary Data from Four Recent Surveys*, Working Paper No. 16 (Phnom Penh: Cambodia Development Resource Institute, September 2000), 9 & 11.

⁸⁹ Ibid, 12.

⁹⁰ Sophal Chan and Sarthi Archarya, *Facing the Challenges of Rural Livelihoods: A Perspective from Nine Villages in Cambodia*, Working Paper No. 25 (Phnom Penh: Cambodia Development Resource Institute, December 2002), 10-11.

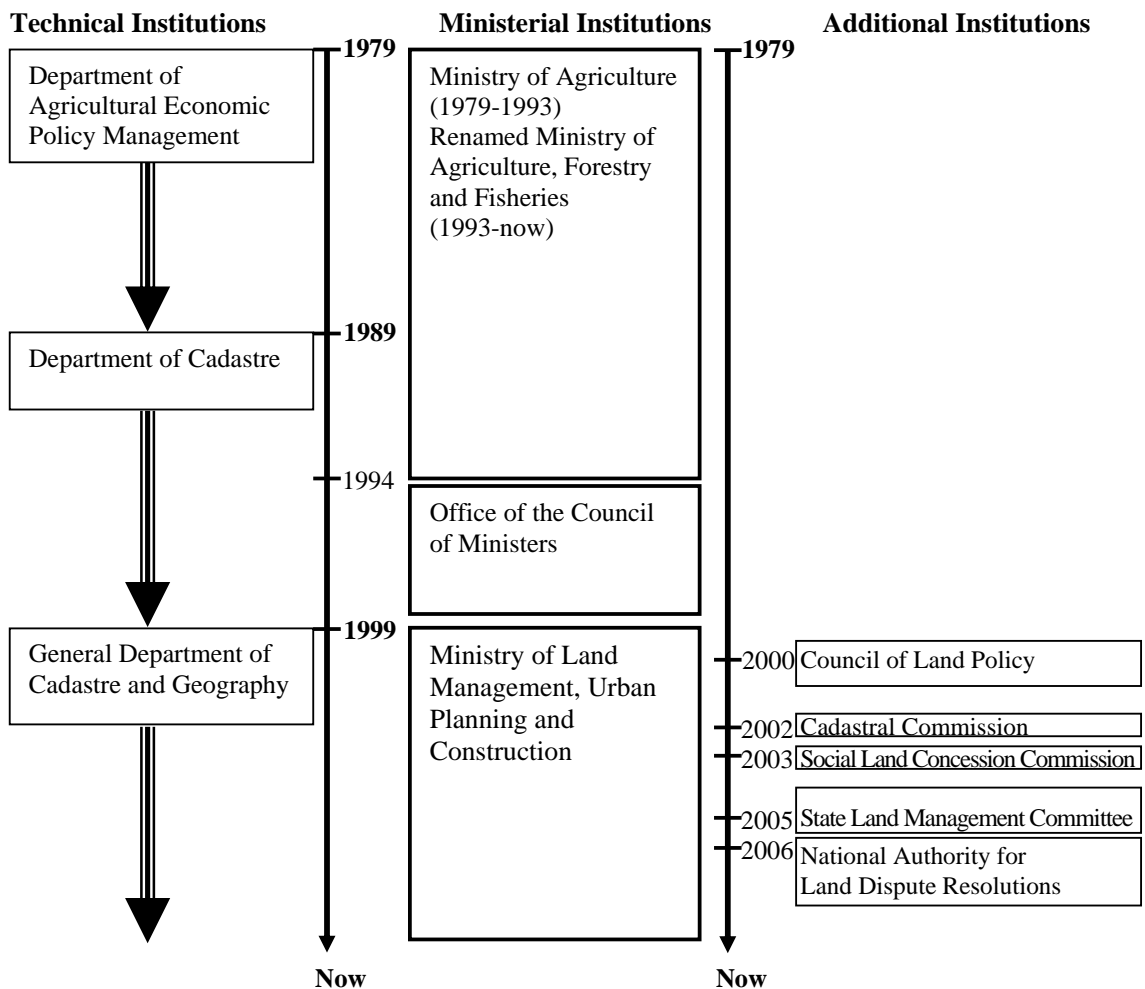
⁹¹ Supra note 89 at 1; Supra note 55 at 19.

⁹² Supra note 89 at 26.

Kampong Cham and Kratie Provinces. The transparent and fair selections of people who apply for social concession land however are needed so that landlessness reduction will be successful.

2.1.3 Institutional Reform

Figure 2.1: Timeline with Responsible Institutions for Land Management



Cambodia has made efforts to manage land by creating responsible institutions for land issues. Remarkably, soon after the collapse of the Pol Pot regime in 1979, all land belonged to the state and people were able to enjoy using land in a different way from one place to another depending on the local

authorities' management. Under the supervision of the Ministry of Agriculture, the Department of Agricultural Economic Policy Management established in 1979 for preparing and managing solidarity groups for farming. Later in 1989, this department was renamed the Department of Cadastre having main duties for land registration. In 1994, the Department of Cadastre was transferred to be under the supervision of the Office of the Council of Ministers aiming at strengthening land administration. Lastly, the Ministry of Land Management, Urban Planning and Construction was established in 1999 having the full competence in governing and administering the field of land management, urban planning and construction. Yet, additional institutions with regard to land issues have been remarkably established since 2000. For the timeline with responsible institutions for land management, see figure 2.1.

Ministry of Agriculture

The Ministry of Agriculture, now known as the Ministry of Agriculture, Forestry and Fisheries, was the responsible institution in managing the use of land in the early 1980s. An urgent measure which the government needed to do after 1979 was to focus on agricultural work in which people were encouraged to work together as a solidarity group for farming aiming at sharing labor forces and agricultural means of production in order to receive shared produce from their agricultural work. The Department of Agricultural Economic Policy Management had an important role in fulfilling this goal. However, ten years later, the needs of society witnessed that the work of solidarity groups for farming became weak thereby requiring the reform of land. Privatization of land emerged needing the Department of Cadastre to implement a clear policy of land management. Since there was still a lack of cadastral human resources and technical tools to prepare a smooth land registration system, land registration was not successful and therefore land disputes have increased dramatically.⁹³

To respond to the needs of Cambodian society in early 1979, one of the main policies of the Cambodian government was to provide an opportunity for people to help each other through creating a system of solidarity groups for farming. The Department of Agricultural Economic Policy Management under the supervision of the Ministry of Agriculture had the main role in preparing and administering the solidarity groups for farming. There were three kinds of solidarity groups for farming. Solidarity group 1,

⁹³ Supra note 70 at 30; Supra note 2 at 3.

cultivated rice and crops in the farm together by sharing farming production tools and received the produce in accordance with the number of labor force. Solidarity group 2 cultivated rice and crops in the farm together by dividing into small teams in which each small team contained from 3 to 5 families. Produce was shared among the small teams. Solidarity group 3 distributed most of the farm to each family in the group and used a small part of the farm for common work of solidarity groups. Each solidarity group received land proportional to the number of persons in each family.⁹⁴

The common work could not guarantee that everyone involved in would satisfy it. The distribution of the produce arising from the work of solidarity groups did not necessarily relate to the same amount of labor force, but to the number of labor force. People who worked hard might feel jealous of those who worked less. Consequently, solidarity groups for farming were strengthened until 1983 and since then they became exacerbated. Solidarity group 1 decreased while solidarity group 3 increased. In 1987, solidarity group 1 almost disappeared.⁹⁵ This trend made the government consider shifting from sole planned market economy to mixed economy requiring the reform of land management as well as the responsible institution. It is remarkable that under the system of solidarity groups for farming, there was no land registration because all land belonged to the state.

The privatization of land providing a right of ownership over residential land and a right of possession over agricultural land required an institution responsible for land registration. The Ministry of Agriculture had a main duty in receiving land applications and accomplishing land registration. Since then the Department of Agricultural Economic Policy Management was renamed the Department of Cadastre.⁹⁶ Under the supervision of the Ministry of Agriculture, this department had a main role in land management and use throughout the country. The department aimed to create a nationwide accepted consistent system and had the right to administer and control all cadastral units from central to local level.⁹⁷ The Provincial Cadastral Offices and District Land Offices were also established in order to assist the department at the

⁹⁴ The number of the persons in each family during the land distribution for solidarity groups included an alive-just-born baby. However, a baby who was born a day after the land distribution did not receive any land portion.

⁹⁵ Vaon Lim, "Roborb deithly nov Kampuchea" [Land Regime in Cambodia] (July 2006) TMs (photocopy), p. 8.

⁹⁶ Sub-decree No.131 dated June 14, 1989.

⁹⁷ Proclamation on the Appointment and Activity of the Department of Cadastre, No.111PK/KSK, October 31, 1989.

local level. All land applications and land registration made at the local level had to be reported to the Ministry of Agriculture through the Department of Cadastre.

As mentioned above, a huge number of land applications within the period of two years after 1989 made the responsible institution hard to respond to the urgent task. Moreover, the Department of Cadastre suffered many hardships from inadequate human resources in the field of cadastre and a lack of technical equipment for cadastral work. For example the instruction on the issuance of certificates of land possession and the establishment of related documents were made two years after land applications started. It necessarily means that officers involved in land application reception did not issue any certificates until the date of issuance of this instruction. Consequently, there were no data or reports relating to the number of land certificates issued since the application campaigns ended. Apparently, some villages did not receive land certificates but only receipts of applications until now.⁹⁸ Under the inextricable land management and due to the transitional period of political reform from 1991 to 1993, the opportunity for land grabbing is certain to abound. Therefore, land disputes also recognized by the government⁹⁹ emerged remarkably since the early 1990s.

Office of the Council of Ministers

The fledgling of the land management at the outset of land privatization made it very difficult to prevent widespread social ramifications in the long term future. Slow recognition of the complexities of the procedures to issue land application receipts caused less efficient work thereby remaining many unfinished tasks.¹⁰⁰ Moreover, the tumultuous political situation in the early 1990s made more convoluted land problems such as land grabbing and land disputes. In 1994, one year after the national election, the government has been trying to consider the way to prevent land grabbing and other land problems by

⁹⁸ In Korng Chey Village and Korhe Village, all villagers who applied for land possession and land ownership received only application receipts until the date of writing this dissertation.

⁹⁹ On December 24, 1992, the Council of Ministers issued Instructive Circular on the Measure toward the Public Land Grabbing Activities recognizing that there were people who grabbed state public land by staking the land grabbed or establishing buildings in. On August 16, 1993, the Department of Cadastre realized that the slow pace of issuing certificates led to land issue anarchy.

¹⁰⁰ More than two years after the start of land privatization, the Ministry of Agriculture recognized the hardship of the procedures of land registration through Letter No.504KSK dated February 8, 1992 of the Ministry of Agriculture to the chiefs of Provincial-municipal People's Committee to reduce some procedures of land registration.

shifting the supervision of the Department of Cadastre from the Ministry of Agriculture to be under the supervision of the Office of the Council of Ministers. Land issues hence became apparently involved in more political involvements. Therefore, more land disputes abound arising from the inefficiency of land management because local authorities were dependent upon politicians.

The shift of the supervision of the Department of Cadastre to be under the Office of the Council of Ministers has been understood as the aim of preventing land grabbing. However, this shift remained suspicious why it was necessary to shift from the Ministry of Agriculture to the Office of the Council of Ministers. On October 3, 1994, the government issued a sub-decree transferring the Department of Cadastre of the Ministry of Agriculture, Forestry and Fisheries including the staff, immovable and movable property to be under the supervision of the Office of the Council of Ministers.¹⁰¹ This sub-decree was issued one month after the actual practice because one legal norm¹⁰² issued by the Department of Cadastre was under the supervision of Office of the Council of Ministers on September 7, 1994. The rule of law was not then apparently respected. While the country was busy focusing on national coalition policy, land grabbing and land anarchy coexisted making more intricate land issues for the responsible institution. It was therefore understandable that the Office of the Council of Ministers had stronger power than the Ministry of Agriculture, Forestry and Fisheries thereby being expected to resolve such land issues.

However, political involvement to land issues cannot guarantee that land disputes can be avoided if a responsible institution is not strictly enforced. Yet, the government did not try to find way to make the responsible institution strong enough to enforce the existing laws and regulations. With this regard, Cambodian people are not confident in resolving their land disputes with local authorities and national authority, but with the Prime Minister, especially in the case of land disputes involving powerful people. Consequently the Prime Minister became busier resolving such things rather than focusing on other main national policies. In order to avoid such problems, the government is necessary to resolve land disputes by rule of law through enforcing competent authorities. The failure to strengthen competent authorities creates more land disputes especially between higher rank officers and ordinary people, for higher rank officers did

¹⁰¹ Sub-decree on the Transfer of the Department of Cadastre of the Ministry of Agriculture, Forestry and Fisheries to be under the supervision of the Office of the Council of Ministers, No.58ANK, October 03, 1994.

¹⁰² Form for Filling Certificates of Immovable Property "New Certificates" issued by the Department of Cadastre dated September 07, 1994.

not respect the competent authorities. Moreover, land disputes relating to politics are always resolved with bias to the interest of those who are in the same political clans.

Land disputes did not stop increasing since the government transferred the Department of Cadastre to be under the supervision of the Council of Ministers in 1994. Remarkably, the procedure of land possession applications in which land possession applications were accepted by the Council of Ministers was slower than before. The slow procedure leads to more intricate land issues. Large demonstrations to protest land grabbing witnessed that various land disputes abound.¹⁰³ Therefore, in 1999, civil societies discussed in a national workshop on the institutional cooperation for resolving land disputes in Cambodia trying to study land disputes and their resolution at the local level.¹⁰⁴ The study showed that at the local level, there was a lack of operational funds and limited dispute resolution capacity. During the period that the Department of Cadastre was under the supervision of the Office of the Council of Ministers, land disputes consequently increased because of the incapability of land dispute resolution mechanisms and strong influence of powerful people toward landholdings.¹⁰⁵

Ministry of Land Management, Urban Planning and Construction

The attempt to reduce land disputes by allowing the council of ministers to be involved in all land tenure applications was unsuccessful. While large land disputes emerged arising from the defect of land management, the government again intended to establish another institution responsible for all land management. This may be a reason why the Ministry of Land Management, Urban Planning and Construction was established in 1999¹⁰⁶ attempting to have a better land management. Various general departments relating to land management, urban planning and construction were established to be responsible to the ministry. In this respect, the Department of Cadastre was promoted to the General

¹⁰³ Pact Cambodia, *Advocacy in Cambodia: Increasing Democratic Space*, (Phnom Penh: Pact Cambodia, May 2002), 55.

¹⁰⁴ *Ibid*, 56.

¹⁰⁵ *Ibid*.

¹⁰⁶ Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction, NS/KRM/0609, June 23, 1999.

Department of Cadastre and Geography supervising other five departments.¹⁰⁷ Moreover, at the local level, the reform of provincial and district offices working for land issues were also established to be under the supervision of the Ministry of Land Management, Urban Planning and Construction.

Efforts of the government toward land issues under the supervision of the Ministry of Land Management, Urban Planning, and Construction are expected to overcome difficulties. The Ministry of Land Management, Urban Planning and Construction aims to administer all land management, urban planning and construction throughout the whole country.¹⁰⁸ This institution can be considered as a technical institution for land because land issues would no longer go through the council of ministers. Various duties given to the ministry are presumably believed that land will be well managed. Apparently, the most important duties of this ministry are to create cadastral index maps by use of computer system and to issue land certificates via land registration system. The ministry also tries to seek out legal regulations relating to land use management through informatics system.¹⁰⁹

Under the Ministry of Land Management, Urban Planning and Construction, four general departments were established for fulfilling the ministry duties. The General Department of Administration has the main duties to prepare legislation concerning land and the relevant issues. It also seeks to create the investment and economic development projects in accordance with the policy of land management, urban planning and construction.¹¹⁰ The General Department of Land management and Urban Planning has a crucial role in instructing, observing, examining, and encouraging the implementation of land management and urban planning policy. This general department also examines the request of construction proposals.¹¹¹ The General Department of Construction has main duties to improve architecture for national and modern construction. It also tries to find out technical rules for construction and architecture for the whole

¹⁰⁷ Sub-decree on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK, July 20, 1999, arts. 4 & 21. See also Phalthy Hap, "The Implementation of Cambodia's Laws on Land Tenure: Squatters on Private Land" (Master's thesis, Nagoya University, 2007), 19.

¹⁰⁸ Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction, NS/KRM/0609, June 23, 1999, art. 2.

¹⁰⁹ Sub-decree on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK, July 20, 1999, art. 2.

¹¹⁰ Sub-decree on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK, July 20, 1999, art. 7.

¹¹¹ Sub-decree on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK, July 20, 1999, art. 13.

country.¹¹² The last general department responsible mainly for conducting survey, preparing cadastral index maps and issuing land certificates is the General Department of Cadastre and Geography.¹¹³ This general department aims to produce a complete land registration system for a definitive land certificates. Moreover, other units are also created under the supervision of the Ministry of Land Management, Urban Planning and Construction in order to guarantee that the ministry is able to work successful. It is therefore believed that land issues are well systematized and all land problems will probably decrease remarkably.

The reform of local offices to be under the supervision of the Ministry of Land Management, Urban Planning and Construction attempts to make a good mechanism for land management. At the provincial level, the Provincial Cadastral Office was renamed the Provincial Department of Land Management, Urban Planning, Construction and Cadastre while at the district level, the District Land Office was renamed the District Office of Land Management, Urban Planning, Construction and Land.¹¹⁴ The main duties of the Provincial Department of Land Management, Urban Planning, Construction and Cadastre are to prepare land maps, issue construction permits, and manage all land. Whereas the District Office of Land Management, Urban Planning, Construction and Land has a very vital role in disseminating legal regulations relating to land, surveying land, and registering immovable property in the territorial district and commune. It is therefore believed that from the local level, all land and other related issues will be well managed thereby reducing land disputes.

Additional Institutions

Reforming institutions responsible for land issues in order to find way to manage land well does not necessarily mean it is the ultimate way to lead to the success of land management. Although it is believed that the Ministry of Land Management, Urban Planning and Construction has an adequate role in managing all land in the territory of Cambodia, the government attempted to establish other institutions to

¹¹² Sub-decree on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK, July 20, 1999, art. 17.

¹¹³ Sub-decree on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK, July 20, 1999, art. 21.

¹¹⁴ Proclamation on the Appointment and Activity of the Department of Cadastre, No.111PK/KSK, October 31, 1998; Proclamation of on the Function, Duty and Structure of Provincial/Municipal Office of Land Management, Urban Planning, Construction and Cadastre; and on the Function, Duty of Subordinate Offices, No.76PK, September 02, 1999.

be involved in land issues. Apparently, the Council of Land Policy including only politicians as members was established in 2001¹¹⁵ in order to focus on efficient land work. The Cadastral Commission required by the 2001 Land Law¹¹⁶ was also created in 2002 in order to resolve unregistered land disputes. Yet, National Authority for Land Dispute Resolutions is another institution for resolving all land disputes. A Social Land Concession Committee was formed in 2003 in order to find a possible way to distribute state private land for social land concessions. Furthermore, State Land Management Commission was also established in 2005 in order to classify and manage state land properly.

Efforts of the government to create the Ministry of Land Management, Urban Planning and Construction in order to administer all land in Cambodia have not ended yet. The Council of Land Policy involved in land policy was established in 2001. This council is composed of politicians ranging from ministers to secretaries of state. It is therefore presumable that the decision of this council may prevail that of the general departments under the Ministry of Land Management, Urban Planning and Construction. This council has one secretariat which obtains somehow overlapped duties with the general departments of the Ministry of Land Management, Urban Planning and Construction. The creation of this council and secretariat however would increase national expenses, therefore a critical question occurs when the government does not attempt to strengthen the general departments but to create such a council and secretariat. Since the Ministry of Land Management, Urban Planning and Construction is believed to fulfill all land policy for the government through responsible general departments. As such, it is not necessary to create the Council of Land Policy, for such a creation causes more burden of the national expenses.

More interestingly, since the establishment of the Cadastral Commission in 2002¹¹⁷ the court has become the last resort for cases relating to unregistered land disputes while the Cadastral Commission has been the first. The idea of creating the commission tries to alleviate the court cases on the one hand but the image of the creation implies the weakness of the court system on the other. The cadastral commission is divided into three levels that is the District Cadastral Commission, Provincial Cadastral Commission and National Cadastral Commission. All unregistered land disputes are required to be submitted to the District

¹¹⁵ Sub-decree on the Establishment of the Council for Land Policy was issued on December 1, 2000, but the actual work of this council was available in 2001. See also Supra note 9 at 12.

¹¹⁶ The 2001 Land Law, art. 47.

¹¹⁷ Sub-decree on the Organization and Functioning of the Cadastral Commission was issued on May 31, 2002, but the actual work of the commission started in 2003.

Cadastral Commission for the first instance. If the resolution is unsatisfied, the case can be passed to the Provincial Cadastral Commission and then to the National Cadastral Commission respectively. At the district and provincial levels, the resolutions cannot bind the parties to any extent, but at the national level, if 30 days after the decisions are made, the resolutions will bind the parties involved. However, within the 30 days, the parties unsatisfying can put a file with a court for the question of law.¹¹⁸ It may be an appropriate solution if the cadastral commission works well because the parties can start their cases in the district where the district court is not available yet. However, if the commission does not work well or is corrupt, it is a waste for the parties involving in the cases.

Basically, the cadastral commission can be strengthened well from the local level to the national level for all unregistered land disputes; however, political tendency requires another institution to resolve all kinds of land disputes in the whole territory of Cambodia. The National Authority for Land Dispute Resolutions was then created in 2006 after the end of political turmoil in early 2006. It remains questioned why the government did not try to enforce the cadastral commission if intending to have an effective mechanism to resolve land disputes. In fact, it should be noted that the Prime Minister was also doubtful about this newly created authority whether it violates the constitution¹¹⁹ stipulating that any legislative or executive body cannot receive judicial power.¹²⁰ In practice, however some power violation has occurred. Although the constitution assures that only judiciary is authorized to adjudicate all law suits, the National Authority for Land Dispute Resolutions through 2-year report, 2006-2007, resolved the dispute which was already decided by the Supreme Court.¹²¹ It is therefore unnecessary to maintain this authority otherwise the authority exacerbates the judiciary and thereby weakens the rule of law.

Reallocation of state land to poor people for social purposes requires a good mechanism with appropriate procedures to achieve an effective and fair distribution of social concession land. With this regard, in 2003, the social land concession mechanism encompassing a National Social Land Concession

¹¹⁸ Sub-decree on the Organization and Functioning of the Cadastral Commission, No.47ANK/BK, May 31, 2002, art. 23.

¹¹⁹ On June 1, 2006, three months after the existence of the National Authority for Land Dispute Resolutions, the Prime Minister wrote a letter to the chief of the authority identifying his concern about the question of law towards the creation of this authority.

¹²⁰ Constitution of the Kingdom of Cambodia, amend. February 15, 2008, art. 130.

¹²¹ Notification issued by the Council of Ministers, No.588SCN dated May 03, 2007 abrogated the judgment by the Supreme Court, No. 231 dated August 08, 2006.

Committee, a Provincial Land Use and Allocation Committee, a District Working Group and a Commune Council, was designed to assure successful social land concession project with transparent and effective land distribution.¹²² It is expected that through Social Land Concession Committees, poor people especially those who are landless will receive land to support their daily life. One of the most important criteria for the social land concession project is to provide a complete infrastructure such as roads, water supply, electricity, schools, markets, health care centers, and other necessary tools for developing land. Without these basic facilities, the goal of the social land concession project has hardly been achieved.

An attempt to manage land has not ended yet with the above mentioned. State Land Management Committees, under the Sub-decree on State Land Management, have been formed in order to mainly classify, identify and map state land.¹²³ The mechanism of identifying and mapping state land includes Provincial State Land Management Committee and District State Land Working Group. A Provincial State Land Management Committee requires one secretariat as secretary in order to help administrative and technical affairs. A District State Land Working Group is under the administrative instruction of Provincial State Land Management Committee and the technical instruction of the Ministry of Land Management, Urban Planning and Construction. Referring to the components of the Provincial State Land Management Committee and District State Land Working Group are not necessarily different from those of Provincial Land Use and Allocation Committee and District Working Group in the Sub-decree on the Social Land Concessions respectively. Therefore in order to reduce extra expense and overlapped members in the committee, the provincial committee is necessary to be combined into one committee fulfilling the purpose of the Sub-decree on the Social Land Concessions and the Sub-decree on the State Land Management. Similarly, it is also possible to combine into one district working group at the district level.

2.1.4 Land Registration

Two major classifications of land registration system have been worldwide used. The first system is registration of deeds which is also called land recordation in the United States. This system involves registering or recording of documents concerning interests in land. The second system is registration of title

¹²² Sub-decree on the Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 19.

¹²³ Sub-decree on the State Land Management, No.118ANK/BK, October 07, 2005, art. 25.

which was originated in Australia by Sir Robert Torrens in 1858. This system necessarily shows the actual state of ownership not just evidence of ownership.¹²⁴ It was developed in the United Kingdom and is available in various Anglo-Saxon countries and other countries with such influence.¹²⁵ This dissertation refers to only registration of land certificates which has been developed since the inception of the land privatization in Cambodia in 1989.

Cambodia has tried to introduce land registration system in order to administer land although there were inadequate tools to run a complete system. Therefore this subsection shows how land registration has worked so far. The first part of this sub-section depicts the historical background of land registration and its evolution until the present situation when an attempt to make a complete land registration has reached. The second part of this sub-section elaborates the sporadic land registration where each landholder is able to apply for a land certificate. The third part requires more efforts from the government authority with international donors in order to generate systematic land registration projects. The last part of this sub-section mentions the complementary land registration where a landowner who failed to cooperate during the systematic land registration and then reapply for a land certificate.

Historical Background of Land Registration

Land registration has a great deal of advantages in various purposes. The important task in order to conduct land registration is to identify clearly private land and state land. Moreover, it requires highly technical tools, technical staff, time, budget, and laws and legal regulations in this field. The main purpose of land registration is to provide a legal recognition to the owners so that they can be easily required to bear duties over their land. With this regard, Cambodia faced the hardship arising from a lack of cadastral technical staff remained after the Pol Pot regime in 1979. Moreover, inadequate technical tools for cadastral field made the responsible institution difficult to prepare a complete registration system. As such, in the beginning of land privatization, although the state provided a right of ownership over residential land and a right of possession over agricultural land, only certificates of land occupancy and use, which is known as sporadic registration certificates, were issued. Also, only real estate registers were used to cover real estate

¹²⁴ Tim Hanstad, "Designing Land Registration Systems for Developing Countries," *The American University International Law Review* 13 (1998): 650-651.

¹²⁵ Citynet, *Municipal Land Management in Asia: A Comparative Study* (Citynet, United Nations, 1995): ch. 8.

ownership registers and real estate possession registers. However, two past decades witnessed remarkable efforts to improve registration system in Cambodia as a whole.

It has been a time fraught with difficulties since the early stage of introducing land registration system because of a shortage of cadastral technical staff. After 1979, the number of cadastral technical staff remaining alive was less than 50¹²⁶ and those people's work was not mainly involved in registering land until 1989, for Cambodia enjoyed collective ownership with solidarity groups for farming. As mentioned in Sub-section 2.1.3 "Institutional Reform," the Department of Cadastre was just created soon after the introduction of land privatization making it difficult for the staff to work on the cadastral field.¹²⁷ Therefore, the training on land documentation was made simultaneously so that knowledge in cadastral field would enable cadastral staff to work with land.¹²⁸ This hardship would be possible to lead to the defect in legal recognition of right to land since the start of land privatization in Cambodian land history.

It is remarkable that land registration mainly requires a cadastral index map and a land register in order to make sure where a parcel of land is located in and what encumbrances the right to land bears. Yet, it was hard for Cambodia to have such things when there was a lack of cadastral technical equipment and other technical resources. No complete cadastral index map was available until the commencement of the systematic registration system project in 2002. After the land privatization was introduced in 1989, it is noted that there were no adjudication, demarcation, and survey officers, instead commune and village chiefs were assigned to survey and demarcate in their governed territory. In fact, there was no accurate measure for the amount of each parcel of land size or sometimes this amount was just assumed on the paper.¹²⁹ The state consequently used real estate registers instead of real estate ownership registers and real estate possession registers, for there were no cadastral index maps and cadastral technical tools.¹³⁰

¹²⁶ Supra note 9 at 7.

¹²⁷ Land privatization was realized by the Instruction on the Implementation of Land Use and Management Policy, No.03SNN dated June 03, 1989 while the Department of Cadastre was available on June 14, 1989. Moreover, the Proclamation on the Appointment and Activity of Cadastral Department was issued by the Ministry of Agriculture on October 31, 1989.

¹²⁸ Letter No.2856KSK/M/RB dated October 30, 1989 of the Ministry of Agriculture (referring to the training on the preparation of land documentation); see also Instructive Circular on the Policy of Land Administration and Use, No.131KSK/SRNN, April 10, 1990; Notification on the Acceptance of Land Applications and Subsequent Measures, No.3451KSK/SCN, July 21, 1990.

¹²⁹ The village chief Prek Anhchanhleu, Prek Anhchanh Commune, Mukampul District, Kandal Province mentioned this issue on March 22, 2009 during my interview.

¹³⁰ The 1992 Land Law, art. 214.

More interestingly, although the state recognized a right of ownership over residential land and a right of possession over agricultural land, only certificates of land occupancy and use equalizing sporadic registration certificates were issued to recognize all kinds of rights to land¹³¹ until 1995. The name of certificates of land occupancy and use was changed to a new form naming certificates of immovable property, which are also equal to sporadic registration certificates, after 1995.¹³² This newly named certificate does not affect the old certificate as well as the procedure to apply for the certificate. Until the date of writing this dissertation, it is nationwide recognized in Cambodian land system that for those who apply for land certificates individually can receive only certificates of land occupancy and use or certificates of immovable property which are not guaranteed as definitive systematic registration certificates. However, all landholders in areas under systematic land registration projects which have been working since 2002 can receive definitive systematic registration certificates.

Efforts of the land-related institutions such as Ministry of Land Management, Urban Planning and Construction especially the General Department of Cadastre and Geography in order to improve land registration system should not be ignored. Various notifications to remind and explain the Provincial Departments of Land Management, Urban Planning, Construction and Cadastre how to conduct a national land policy have been issued subsequently. Lastly, under the support of World Bank, German Government through GTZ, and Finnish Government through FINNMAP, Cambodia can run the Land Management and Administration Project (LMAP) for 15 year project of systematic land registration throughout the country. The financial support for this 15 year project is 100 million dollars for only estimated 6 million land parcels. The government will face more difficulties in order to complete systematic land registration in the whole country because another estimated number of land parcels may be approximately 10 million.¹³³

Sporadic Land Registration

Before studying how sporadic land registration in Cambodia works, one should understand the meaning of this technical term. In Cambodian land system, the term “sporadic land registration” was firstly

¹³¹ Instruction on the Implementation of Land Use and Management Policy, No.03SNN, June 03, 1989.

¹³² The Form for Filling Certificates of Immovable Property “New Certificates” dated September 07, 1994. See also “Land Registration” for URDSE-Conference on June 11, 2007, p. 2.

¹³³ Supra note 49.

found in the 2001 Land Law and then subsequent legal regulations. Although it is so, there is no real definition of this term. However, it was nationwide understood that sporadic land registration means voluntary land registration in which each landholder applies for a land certificate when he or she needs it. With this regard, from the inception of land privatization in 1989, sporadic land registration has been available. As of November 2008, only 589,827 land certificates have been issued through sporadic land registration.¹³⁴ This number shows a slow pace of sporadic land registration. Therefore it is necessary to know clearly how sporadic land registration procedure works and what advantages result from such a registration. It is necessary to study the defect of sporadic land registration which may discourage landholders from registering their land through sporadic land registration. However, it is vital that the government find a possible way to successfully motivate landholders to voluntarily register their land.

It is necessary to know briefly the land registration procedure before 2002 when the Sub-decree on Sporadic Land Registration existed. It was obligatory for landholders to apply for land certificates within a total fixed period of 1 year after June 1989. Each landholder submitted land applications to the district authority through the commune authority and village authority. There was no detailed procedure determining the number of days that the applicants could receive land certificates from the date of filing applications. Consequently, huge number of landholders applied for land certificates making it difficult for the responsible authority to issue the certificates. As mentioned in Chapter 1, only 12 percent out of 4.5 million land applications was issued certificates while the remaining received only application receipts of which applicants have retained until now. Remarkably, after May 2002, a detailed procedure of sporadic land registration (see figure 2.2) was available allowing any landholder who intends to receive a land certificate can apply for.

Sporadic land registration has several advantages. For those who wish to have their land certificates can apply for the certificates at any time. Although the state does not oblige landholders to apply for land certificates, landholders realize the importance of right to land which is registered, for registered land is protected by law. More importantly, it is necessary for those who want to transact their land if they have registered land certificates. If landholders apply for land certificates through sporadic land

¹³⁴ Department of Land Registration, *Summary of the Result of Sporadic Land Registration from 1989 to November 25, 2008*, by Vanna Siek, Chief (Phnom Penh: General Department of Cadastre and Geography, Department of Land Registration, November 25, 2008).

registration, cadastral service fees obtained therefrom will increase state income. Furthermore, the procedure of sporadic land registration which requires that land disputes be resolved before issuing land certificates makes it clear that the areas where all landholders have land tiles will not have land disputes.

Although advantages arising from sporadic land registration exist, the defect thereof is necessary to be taken into consideration. No laws or other legal regulations determine the period of obtaining land certificates in sporadic land registration system from the date of application. Moreover, the Decision on Providing Cadastral Services issued on December 21, 2006 determines only the period from the date of collecting data to the date of issuing land certificates, but it fails to mention how much time the cadastral administration has to respond to land applicants from the date of filing applications. The decision also fails to punish the cadastral administration if period stated in the decision is not followed. This flaw in law may result in corruption especially in the case that landholders want to receive their land certificates within a short period of time, they may bribe cadastral administration. Therefore, it is necessary that sporadic land registration include the available period of time for its whole procedure.

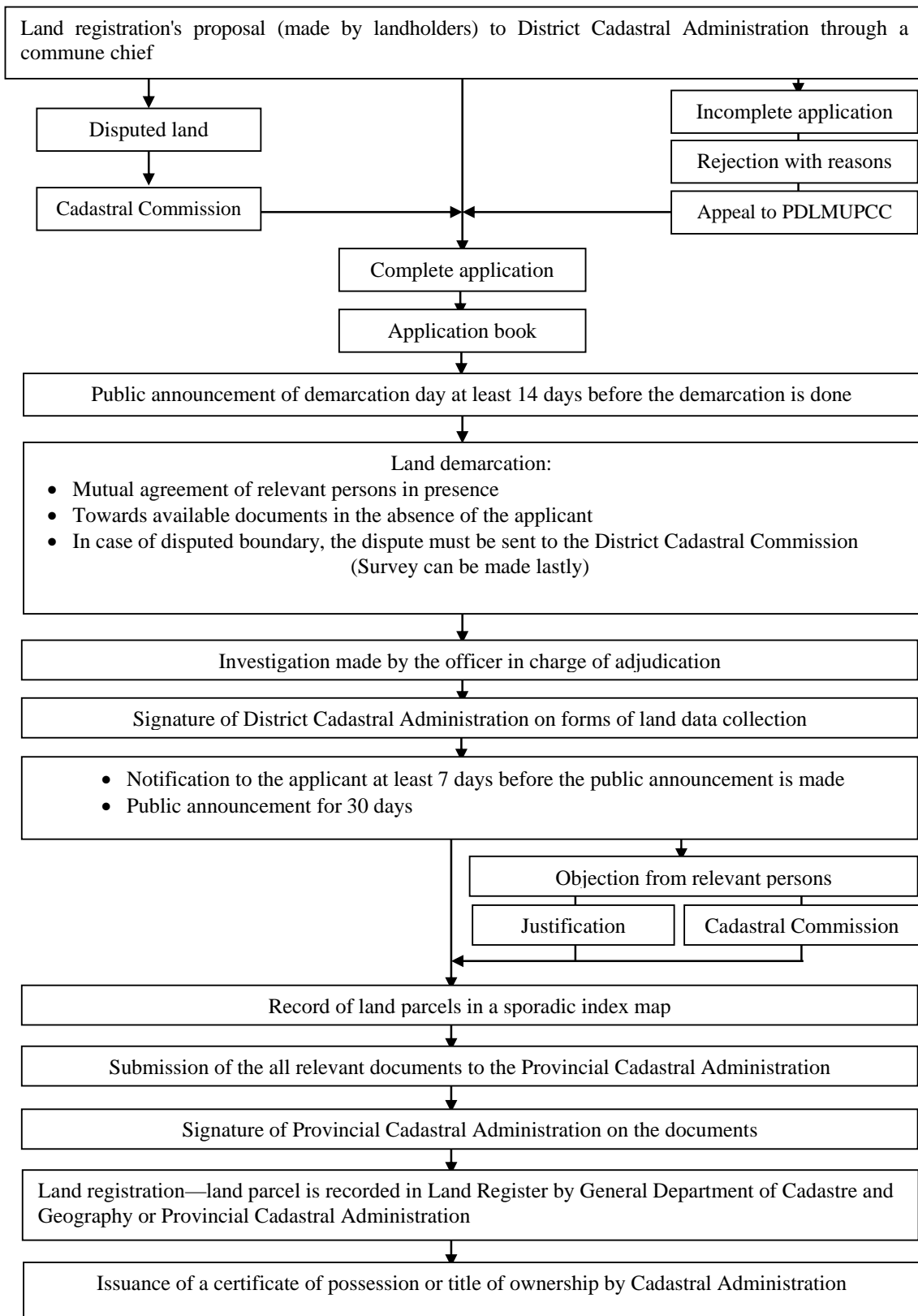
Albeit imperfect recognition of land certificates through sporadic land registration,¹³⁵ landholders should be encouraged to register their land through sporadic land registration. An attempt of the 2001 Land Law is to provide a definitive certificate of land ownership which cannot be contested if registered.¹³⁶ As such, only systematic land registration, in which cadastral index maps and land registers can be available, can provide such a definitive certificate known as an owner certificate for immovable property equivalent to a systematic registration certificate. Sporadic land registration can usually provide a certificate of immovable property equalizing a sporadic registration certificate.¹³⁷ Since the systematic land registration (discussed more detail in “Systematic Land Registration” below) takes a long time to complete, it is therefore necessary that landholders register their land through sporadic land registration. So when the systematic land registration project arrives at their areas and if land parcels are confirmed, they can change their certificates of immovable property to owner certificates for immovable property with free of charge.

¹³⁵ The chief of Department of Land Registration under the General Department of Cadastre and Geography of the Ministry of Land Management, Urban Planning and Construction said that land certificates issued through sporadic land registration are not 100 percent recognized, but just around 90 percent (my interview on December 3, 2008).

¹³⁶ The 2001 Land Law, art. 40.

¹³⁷ Sub-decree on Sporadic Land Registration, No.48ANK/BK, May 31, 2002, art. 11.

Figure 2.2: Sporadic Land Registration



Systematic Land Registration

It is unforgettable that financial and technical support from international donors involving in land issues has considerably contributed to Cambodian land system. Apparently, a lack of legal tools to identify landholders is bound to have widespread social ramifications of land disputes. This is a great impetus to motivate international donors to focus on land management and administration project encompassing the systematic land titling program since 1995.¹³⁸ In March 2000, an outcome resulted from the international support led to the Sub-decree on the Procedure of Establishing Cadastral Index Maps and Land Registers aimed at registering land through systematic land registration.¹³⁹ The 2001 Land Law requires this sub-decree to be slightly amended. Consequently, the newly amended sub-decree was made on May 31, 2002.¹⁴⁰ Regarding land disputes which cannot be resolved by administration commission, the newly amended sub-decree requires that the cases be submitted to the national cadastral commission while the old one to the court. Therefore, it is necessary to know how the new sub-decree directs the procedure of systematic land registration and how the project under the support of the international donors works. Challenges arising from systematic land registration are also necessarily discussed.

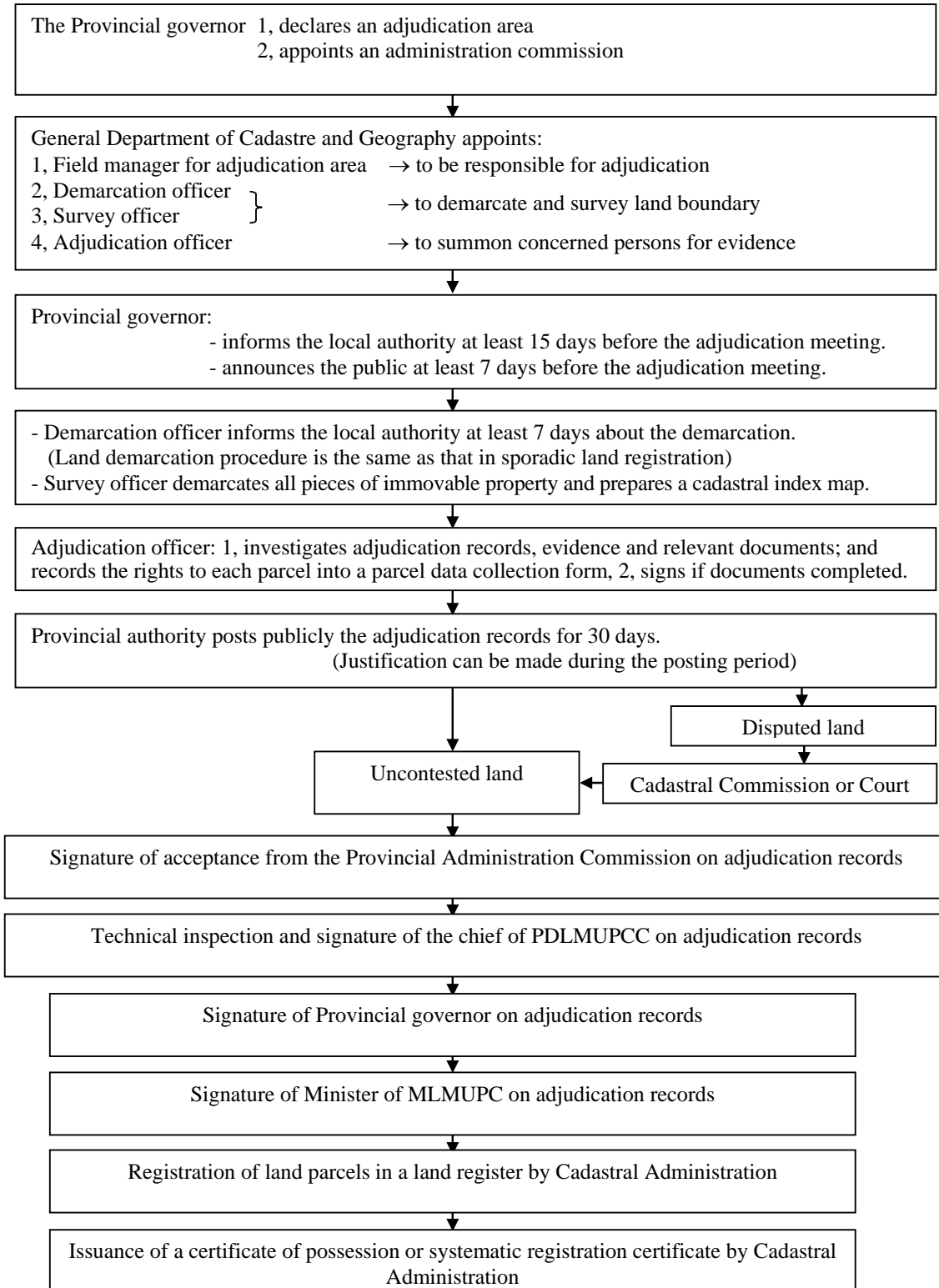
The Sub-decree on the Procedure of Establishing Cadastral Index Maps and Land Registers describes the procedure of systematic land registration clearly. Unlike sporadic land registration, systematic land registration requires that the action be made by the government's side. It also requires highly technical equipment and technical staff to conduct land registration in the areas which are determined by provincial governors. Consequently, the support from international donors is very much needed in order to proceed with systematic land registration well. Yet, the cooperation of landholders in the determined areas for systematic land registration is also very necessary. The systematic land registration provides landowners and land possessors with trustworthy land certificates which are registered in land registers. The simplified chart of systematic land registration is shown in figure 2.3.

¹³⁸ Seta Sek, "Land Registration to Improve Security, Transparency, Governance and Sustainable Resource Management" (presented at regional workshop on land issues in Asia, Phnom Penh, Cambodia, 4-6 June 2002).

¹³⁹ Sub-decree on the Procedure of Establishing Cadastral Index Maps and Land Registers, No.46ANK/BK, May 31, 2002, art. 12.

¹⁴⁰ Sub-decree on the Procedure to Establish Cadastral Index Maps and Land Registers, No.11ANK/BK, March 22, 2000, art. 12.

Figure 2.3: Systematic Land Registration



Systematic land registration witnessed the cooperation of international donors in Land Management and Administration Project (LMAP) as a remarkable Cambodian land history in this twenty first century. Since 2002, four partners including the Royal Government of Cambodia, World Bank, German and Finnish Governments made a 15 year project for conducting systematic land registration. With financial support of 100 million US dollars from the World Bank, the project would work in 3 phases in which each phase tends to achieve 1 million land parcels to be registered with the limited budget approximately 34 million US dollars. It is noted that the assumption of the number of total land parcels was only 6 million but in fact the actual number of land parcels may reach approximately 10 million. In the aftermath of this project, as of September 2008, only 902,968 systematic registration certificates were issued and distributed to the landowners.¹⁴¹ The project has so far focused on 11 provinces out of 24 provinces with approximately 700 cadastral staff. In 2009, however, this project would extend to other 4 provinces required approximately 100 cadastral staff. It is therefore expected that within the second phase, 2007-2012, the number of registered land parcels will remarkably increase. However, the fact has shown that the registration pace is still slow. As of April 2010, only 1,316,971 systematic registration certificates were issued.¹⁴²

Although international donor cooperation has contributed to a great result of systematic land registration, challenges cannot be neglected. Difficulties in receiving budget in order to run the project have been complained by the Cambodian side. Moreover, cadastral staff's allowance is limited with a strict condition that if the work is done more slowly than the project's plan, the allowance is reduced to half of the total amount per month.¹⁴³ When extending to other 4 provinces, the project would lack more technical staff. Technical knowledge is also one of the major problems in systematic land registration. Furthermore, unclear commune territorial boundary makes it more difficult to adjudicate in each unit of systematic land registration which covers one commune.¹⁴⁴ It is necessary to increase the number of cadastral staff and

¹⁴¹ *Report of the Outcome of Land Registration System from the Start until September 2008*, by Land Management and Administration Project, No.0894 LMAP (Phnom Penh: Land Management and Administration Project, Ministry of Land Management, Urban Planning and Construction).

¹⁴² Letter of the Ministry of Land Management, Urban Planning and Construction to the Royal University of Law and Economics, No. 498 DNS/SDP dated June 16, 2010.

¹⁴³ Mr. Vanna Siek, in the interview with the author on December 3, 2008, said that each staff received USD180 per month. If the work is done slowly, the allowance is reduced to USD 90 per month.

¹⁴⁴ One unit of systematic land registration previously covered one village.

budget in order to conduct systematic land registration project within appropriate period of time otherwise it will take one century to overcome the plan or the plan will never be completed.¹⁴⁵

Complementary Land Registration

Remarkably, the 2001 Land Law fails to stipulate complementary land registration. Only two types, as already discussed that is sporadic land registration and systematic land registration, are stipulated in the 2001 Land Law. The two types of land registration are completely different from one to another. In the systematic land registration, it may be supposed that all landholders are present during the occurrence of systematic land registration projects while the sporadic land registration focuses on the areas is not yet systematically registered. In practice, however, still landholders are absent during the systematic land registration projects and thereby are not able to register their land. It is noted that the attempt of systematic land registration is to provide full ownership by means of registering land in land registers with accurate cadastral index maps. With this regard, landholders who failed to register their land during the systematic land registration projects are required to apply for land certificates through complementary land registration, which is not stipulated in the 2001 Land Law, in order to receive full ownership. Therefore, it is necessary to know how the procedure of this complementary land registration works and what impact arises therefrom.

It should be noted that 4 years after the date of issuing the Sub-decree on Sporadic Land Registration and the Sub-decree on Systematic Land Registration, actual practice needs another regulation for complementary land registration. In May 2006, the Ministry of Land Management, Urban Planning and Construction issued the Instructive Circular on the Principles and Procedures of Complementary Land Registration aiming to provide full ownership¹⁴⁶ for landholders who failed to register their land in the systematic land registration areas. The procedure of complementary land registration is similar to that of sporadic land registration. Thus, for more detailed procedure, see figure 2.2. The main difference between

¹⁴⁵ See Global Youth Connect, "Cambodian Program Report, Human Rights Delegations for Young Leaders, July 16-August 15, 2006," (New York: Global Youth Connect, n.d.): 6 (indicating that the current rate of systematic registration would take 50 years to complete all Cambodia's land. This may refer to the total of 6 million estimated land parcels).

¹⁴⁶ Instructive Circular on the Principles and Procedures of Complementary Land Registration, No.06SNN, May 05, 2006.

the two registration types is that in complementary land registration, the areas have already been recorded in cadastral index maps which are fully protected by law¹⁴⁷ while in sporadic land registration, the areas are recorded in sporadic maps which are not fully accurate.

The complementary land registration plays an important role in facilitating landholders who failed to register their land during the process of systematic land registration projects. However, similarly to the sporadic land registration, the failure to determine the period of receiving a land certificate from the date that an applicant files the application may lead to corruption or the unforeseen delay of land certificate issuance. It is necessary that the state encourage landholders to apply for formal land certificates, to discourage corruption and to protect against the loss of evidence over time. In addition, requiring those landowners to apply for land certificates through complementary land registration may contribute to state revenues.

2.1.5 Registration Institutions

Cambodian land administration has met very critical changes since the introduction of land privatization in 1989. The poorly designed legal necessities made it impossible to overcome the actual implementation. This is true that the Instruction on the Implementation of Land Use and Management Policy which was issued on June 3, 1989 required another amendment just about one and a half year afterward.¹⁴⁸ Albeit this amendment, district and commune authorities played a pivotal role in certifying land tenure in both government instructions. Remarkably, 4.5 million land applications were received by the district authorities through commune authorities until 1991.¹⁴⁹ This result shows that local authorities who stay very close to local people could perform their duties very well. The chief of district People's

¹⁴⁷ The 2001 Land Law, arts. 238-239.

¹⁴⁸ Instruction on the Implementation of Land Use and Management Policy, No.03SNN, June 03, 1989 stated that at the district level, District Central Commission which was assigned by the provincial authority consisted of Chief of District People's Committee, Chief of District Agricultural Office and Chiefs of all Commune People's Committees. This committee had the main responsibility to accept land applications and endorse the approval of the land applications. While at the commune level, Sub-commission for Direct Survey and Implementation in each Commune consisted of Chief of Commune Agriculture and Village Chief. This sub-commission had the main duty to survey in actual places. These two committees had not been performed because the Instruction on the Amendment of the Instruction No.03SNN dated June 03, 1989 of the Council of Ministers, No.03SNN, December 08, 1990 amended that District Central Commission consisted of Chief of District People's Committee, Chief of Land Bureau, and Chief of Commune People's Committee while Sub-commission consisted of Commune Chief, Cadre of Provincial Cadastral Office, Cadre of District Agricultural Office, Relevant Village Chiefs and Elder People in the Village.

¹⁴⁹ For more information, see Chapter 1 on page 18.

Committee was entitled to sign land certificates.¹⁵⁰ For the transfers of land rights, however, the chief of Provincial Cadastral Office was entitled to sign land certificates of these new rights.¹⁵¹ Because of a large number of land applications, the issuance of land certificates was really hard to meet the needs.

After the coalition government in 1993, the government's attempt to manage land well emerged in several strategies. Since then, it is noted that land administration has been mainly involved with national level. The effort has been evidenced that the Department of Cadastre was transferred to be under the supervision of the Office of the Council of Ministers in 1995 and the Cadastre of Department was required to sign the new form of land certificates.¹⁵² However, rampant land disputes between ordinary people and authorities have been pervasive which led to intricate resolutions. As such, the First Prime Minister, Prince Ranarith Norodom wrote a letter to the Second Prime Minister, Samdech Sen Hun to suggest that all applications for land tenure have to go through the Office of the Council of Ministers.¹⁵³ Consequently, with acceptance of the Second Prime Minister, since July 1995, all land applications were passed to the Office of the Council of Ministers for examining and approving land applications.¹⁵⁴ Albeit these subsequent land administrative reforms, land disputes have remained very intricate issues in Cambodian society.

The hope of the government for the reduction of land disputes through various land administrative reforms has been far from successful. The failure to follow all legal regulations by relevant authorities such as Provincial Cadastral Office and District Land Bureau was not taken into consideration. A lack of capacity building of competent authorities was the mainstream malfunction. However, the government did not consider empowering those competent authorities, but reduced their responsibility with regard to land by entitling national authorities to be involved in land documentation and to sign land certificates. It is because of the fact that the government believed that the national authorities have strong power to overcome the cases involving high rank government officers. This procedural reform made a very slow

¹⁵⁰ Instruction on the Issuance of Certificates of Land Possession and Establishment of Related Documents, No.116SD/SNN, April 11, 1991.

¹⁵¹ Instruction on Movement of Conventional Act in Regard to Immovable Transfer, No170SD/SNN, July 07, 1992.

¹⁵² The Department of Cadastre under the Office of Council of Ministers issued the Form for Filling Certificates of Immovable Property "New Certificates" dated September 07, 1994.

¹⁵³ Letter of First Prime Minister to Second Prime Minister Requested that the Applications of Land Possession Should be Passed to the Council of Ministers, No.918KhT/94, June 16, 1995; Letter of Second Prime Minister to First Prime Minister on Agreeing with Letter No.918KhT dated June 16, 1995, No.97Kh/2-95, June 22, 1995.

¹⁵⁴ Letter of the Council of Ministers on the Land Conflict Issues between Authorities and People, No.1052SCN/SR, July 05, 1995.

pace of issuing land certificates since the procedures became more complicated, time-consuming and costly. In 1999, the government recognized the encroachment of forest land under the form of military development areas and warned to punish or move from the position.¹⁵⁵ Yet, land disputes abound remarkably thereby leading to the establishment of Land Dispute Resolution Commissions in provinces throughout the country on June 10, 1999.¹⁵⁶ Consequently, the Ministry of Land Management, Urban Planning and Construction, which was believed to administer land in the whole country, was established in July 1999.¹⁵⁷ Also new land law was apparently needed.

The 2001 Land Law which is expected to protect ownership rights and other relevant rights requires the Ministry of Land Management, Urban Planning and Construction to be responsible for cadastral administration and the issuance of land certificates throughout the country. In accordance with the 2001 Land Law, registration system has been formed into sporadic land registration and systematic land registration. As already discussed, district authorities are not entitled to sign land certificates but the Ministry of Land Management, Urban Planning and Construction. Provincial cadastral administration which receives delegation power from the Ministry can sign land certificates. Until November 2008, only 16 provinces out of 24 received the delegation power from the Ministry. However, as of 2009 only 2 provinces, Pailin and Mondul Kiri provinces did not receive signature delegation from the ministry. So far, only systematic land registration can provide full rights of ownership which cannot be contested because this type of registration creates a cadastral index map and land register with modern equipment.

The government's effort to concentrate central power in order to strengthen land administration cannot ensure the accuracy of land certificates. One apparent case which happened in Phnom Penh shows that the signature of higher position authority gives only formality to the document. This is true that the owner certificate for immovable property also known as a systematic registration certificate which consists of number PP 27520¹⁵⁸ was issued wrongly by the chief of the Phnom Penh Department of Land

¹⁵⁵ Proclamation on the Management and Elimination of Anarchy in Forest Sector, No.01PK, January 25, 1999.

¹⁵⁶ Decision on the Establishment of Land Dispute Resolution Commissions in Provinces/Municipalities Throughout the Country, No.47SSR, June 10, 1999.

¹⁵⁷ Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction, NS/KRM /0699/09, June 23, 1999; Sub-decree on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK, July 20, 1999.

¹⁵⁸ A friend of the author allowed the author to publish her name concerning the residential land dispute between her and her sister who was adopted daughter of her parents. However, the author, for a security reason, would show her anonymously. Her sister secretly applied for a land certificate and received an ownership certificate in

Management, Urban Planning, Construction and Cadastre and the Phnom Penh Governor in January 2005. Even the form of the certificate was wrongly made because actually, the Phnom Penh governor is not required to sign the certificate, but just certified on cadastral documents.¹⁵⁹ More seriously, the area where that land is located has not been conducted by a systematic land registration project and thereby should not receive a systematic registration certificate. Consequently, the dispute between people of the family members involved arose. The case was sent to the court and is currently waiting for court proceedings.

2.1.6 Interests Subject to Registration

2.1.6.1 Forms of Ownership

It is necessary to be aware of one important aspect of ownership in which more than one owner owns a piece of immovable property so that every owner is able to realize his or her right to the property. The 2001 Land Law stipulates three forms of ownership that is indivisible ownership, co-ownership¹⁶⁰ and adjoining ownership which describe the characteristic of each form of ownership and the obligation of each owner. This section shows different types of ownership and raises some defect in law which should be necessary to be amended. The stipulation of indivisible ownership and adjoining ownership in the 2007 Civil Code is also discussed in this section.

Indivisible Ownership

Before going into detailed explanation of indivisible ownership, it is necessary to understand its meaning. Indivisible ownership stipulated in Article 168 of the 2001 Land Law refers to “the ownership of one property by several persons,” while in Article 202 of the 2007 Civil Code refers to “[a] state of more people sharing ownership in accordance with personal shares amounting to the number of shares over a

January 2005 signed by Phnom Penh Governor. The disputed land is in Boeng Trabek Commune of Chamkarmon District.

¹⁵⁹ Instructive Circular on Implementation of Procedure of Sporadic Land Registration, No.01DNS/SD, March 19, 2004.

¹⁶⁰ The terms are used differently in Cambodian laws. For instance, the 1992 Land Law (Articles 36-44) mentioned indivisible ownership and the use of word “co-owner” referring to owner of indivisible ownership which is quite different from co-owner stipulated in the 2001 Land Law. While the 2007 Civil Code does not mention co-ownership. It is noted that the English version available for this Code uses the word “co-ownership” which means the same as indivisible ownership stipulated in the 2001 Land Law. All parts of this dissertation use the same terms mentioned in the 2001 Land Law. However, the term “undivided owner” which is the direct translation from the 2001 Land Law will be used in this dissertation as “owner of indivisible ownership.”

single property.” The main important characteristic of indivisible ownership is that each owner of indivisible ownership is entitled to use every part of the property. Moreover, every owner has a common interest in the entire property not an individual interest in a separate specific part of the property. The concept of indivisible ownership is also possible to apply for shareholders in a business such as buying a building for business transactions. The share of each owner is presumed to be equal unless otherwise divided. Therefore, it is necessary that each owner of indivisible ownership be aware of what rights, responsibilities and obligations that owner should have.

It should be noted that the owners of indivisible ownership have the right to jointly administer the property. Each owner has the duties to normally manage the property such as to repair, maintain and cultivate unless otherwise stated by the majority of the owners.¹⁶¹ Also all owners are responsible for expenses arising from the management, taxes, and other charges from indivisible property in proportion to each share.¹⁶² However, the change of planting crops and major repairs are necessarily decided by the majority of owners with more than 50 percent of the property value.¹⁶³ With this regard, the law is silent about the indivisible ownership with only two owners because it is impossible to find the majority of owners. In this latter case, the decision of party with more than 50 percent of ownership remains discussable. The law should therefore reveal this uncertainty. Yet, transferring property, creating right in rem over the property, or changing the purpose of the property is required the consent of all owners.¹⁶⁴ It is also noted that the 2001 Land Law does not raise a measure against the owner of indivisible ownership who fails to preserve and administer the property. Fortunately, this flaw in law is fulfilled by the 2007 Civil Code in which the owner who bears preservation, administration or other charges in relation to the indivisible property is entitled to demand satisfaction out of the portion that is to accrue to the other owners and even demand the court to sell the property portion if necessary.¹⁶⁵

The owner of indivisible property has the rights to enjoy and use the property to the extent that does not infringe the rights of other owners.¹⁶⁶ With regard to violation of rights made by any owner of

¹⁶¹ The 2001 Land Law, art. 170; the 2007 Civil Code, art. 206.

¹⁶² The 2001 Land Law, art. 172; the 2007 Civil Code, art. 209.

¹⁶³ The 2001 Land Law, art. 170; the 2007 Civil Code, art. 208.

¹⁶⁴ The 2001 Land Law, art. 171; the 2007 Civil Code, art. 207.

¹⁶⁵ The 2007 Civil Code, art. 213.

¹⁶⁶ The 2001 Land Law, art. 171; the 2007 Civil Code, art. 205.

indivisible ownership, the law again remains silent. It is necessary to provide a mechanism to prevent violation of the right among owners. It may be interpretable that the court has discretion over this case. But it is still open to the court because no fundamental rules stipulated making the court face difficulties in deciding. For example, if *A* violates the right of *B* and *C*, it is unclear that whether *A* should be responsible for the compensation to *B* and *C* or *A* should be out of the indivisible ownership. Therefore, it is vital that such defect be stipulated in the law.

Similarly to individual private ownership, each owner of indivisible ownership has the right to sell or make contracts relating to his or her own share which is subject to the foreclosure by the creditor.¹⁶⁷ Yet, no legal procedures concerning how each share can be sold or transferred have been available causing unclear implementation because each owner does not have individual certificate of indivisible ownership. More problematically, the registration of certificate of indivisible ownership has not been instructed in any legal regulations. Although the Ministry of Land Management, Urban Planning and Construction issued the Instruction on the Principle, Procedure and Formula of Inscription Relating to a Co-owner or an Owner of Indivisible Ownership on December 6, 2006, this instruction does not refer to legal title to each share, but aims at collecting stamp duties. Therefore, it is difficult for each owner of indivisible ownership to use legal tools to transfer his or her rights. Moreover, the law does not require the consent from other owners whenever any owner wants to sell or transfer his or her rights.

It is remarkable that the foreclosure of each owner's share by the creditor remains unclear. As already explained, each owner has the right to use the entire property not any specific part, so the foreclosure of the share may affect the entire property because the entire property is also still in use by other owners. Moreover, the law does not require the owner who transfers his or her right to inform the other owners.¹⁶⁸ Once the owner's share is mortgaged, for example, the creditor has the right to claim the sale of such immovable property in court on the due date of the debt. If court decides to sell the share, meaning the whole property because the share cannot physically be divided, it will be subject to the alienation of the property which is required by the consent of all owners.¹⁶⁹ As such, these two ideas are really conflicting. It may be interpreted that the foreclosure of the share means taking the proceeds arising

¹⁶⁷ The 2001 Land Law, art. 169; the 2007 Civil Code, art. 204.

¹⁶⁸ The 2001 Land Law, art. 169; the 2001 Civil Code, art. 204.

¹⁶⁹ The 2001 Land Law, art. 171; the 2007 Civil Code, art. 207.

from the share to the creditor. However, if the other owners do not know the creditor, how they can share the proceeds to the creditor. Therefore, the law should state clearly the procedure of selling or transferring of any share of the owner of indivisible ownership.

Interestingly, no owner of indivisible ownership is enforced to remain in indivisible ownership. The law allows each owner to demand a division of property as he or she wishes because the law does not require the term of indivisible ownership. The law does not mention the sound reason of those who wish to leave indivisible ownership. This flaw in law may affect other owners more seriously especially in the case that indivisible property produces high income and one owner wants to leave the indivisible ownership unreasonably while the other owners' livelihoods depend on that property. Although the law says that owners of indivisible ownership can temporarily maintain a state of indivisible ownership for no more than 5 years unless otherwise renewed. This provision again does not provide a clear understanding that when one owner wishes to leave indivisible ownership whether the other remaining owners or all owners are entitled to temporarily maintain it for 5 years. Moreover, a new agreement to continue the state of indivisible ownership remains ambiguous whether it requires the agreement from all owners.

Co-ownership

Another form of ownership is co-ownership which refers to the ownership of immovable property in which different parts are privately owned and others are commonly owned.¹⁷⁰ Remarkably, this form of ownership is stipulated only in the 2001 Land Law while the 2007 Civil Code adopted 6 years after the 2001 Land Law says nothing about co-ownership. This exclusion may arise from the idea that co-ownership contains some parts which fall under indivisible ownership and therefore it is not necessary to mention again. It may be true that the 1992 Land Law used the term indivisible ownership and co-ownership interchangeably. However, these two terms stipulated in the 1992 Land Law means indivisible ownership in the 2001 Land Law. As such, the 2001 Land Law tries to distinguish it clearly. Co-ownership usually occurs in an apartment block situation with different people. These people are called co-owners and the building block is called co-owned property. It should be noted that although each co-owner owns a

¹⁷⁰ The 2001 Land Law, arts. 10 & 175.

separate part of the building, they all have rights and responsibilities over common parts of the building block.

More interestingly, co-owners are entitled to prepare an internal rule fulfilling the interests of all co-owners. This by-law determines the management method and maintenance rules as well as the co-owners' obligations especially with regard to common parts.¹⁷¹ Co-owners are then required to follow the internal rule. If no internal rule is made, all co-owners' obligations fall under the provisions of the 2001 Land Law.¹⁷² Similarly to privately owned property, private parts of co-owners can be transferred, leased out, created as a usufruct, provided as the right of use and habitation, and used as collateral. The law however prohibits co-owners from creating easement.¹⁷³ Dissimilarly to indivisible ownership, there are legal regulations to allow cadastral administration to issue certificates of private part of co-ownership to each co-owner.¹⁷⁴ So the co-owner can use his or her title for any purposes. Article 179 of the 2001 Land Law states all common property which are supposedly known by co-owners thereby avoiding the violation of other co-owners' rights.

It is necessary for co-owners to be aware of the punishment toward infringement of common parts of the property. Article 180 of the 2001 Land Law requires co-owners, who violate the common parts of a building or land by changing for the purpose of private use or sale, to restore to the original state. In addition, those co-owners are subject to be fined from 1,500,000 Riel to 9,000,000 Riel.¹⁷⁵ The law also imposes penalties on competent authorities who partake in issuing certificates for any persons who grab common parts other than co-owners. All illegal occupation on common parts even before the 2001 Land Law came into effect is subject to be evicted by authorities. Yet, the law does not state specific authorities whether police authorities or commune authorities.

More remarkably, the common parts of co-ownership are considered as indivisible ownership.¹⁷⁶ It can be implied that the transfer of rights, creation of rights in rem, and change of property purposes are

¹⁷¹ The 2001 Land Law, art. 176.

¹⁷² The 2001 Land Law, arts. 177-185.

¹⁷³ The 2001 Land Law, arts. 177.

¹⁷⁴ Instructive Circular on the Registration of Buildings and Parcels of Co-ownership Land, No.01DNS/AKKD/SRNN, September 21, 2005.

¹⁷⁵ The 2001 Land Law, art. 257. 1,500,000 Riel is equivalent to US\$ 375 and 9,000,000 Riel is equivalent to US\$ 2,250 in June 2010.

¹⁷⁶ The 2001 Land Law, art. 181.

necessarily accepted by all co-owners in accordance with public order. This idea may be the reason why the 2007 Civil Code does not stipulate the concept of co-ownership in order to avoid redundancy. However, the stipulation in the 2001 Land Law makes it clear that fundamental differences are really needed. For instance, unlike indivisible ownership, if a co-owner sells his or her private part, this co-owner will not maintain the rights over common parts, but the buyer will receive those rights instead. Interestingly, co-owners can establish management board or/and management committee responsible for co-ownership work.¹⁷⁷ This management entity is able to make decisions concerning maintenance or other requirements which need respect from all co-owners. Therefore, a co-owner who refuses to comply with the decisions is subject to be sued for fulfilling the obligations.

Some uncertainty with regard to co-ownership stipulated in the 2001 Land Law remains problematic. The law is silent whether the co-owner can abandon the right over common parts. However, Article 180 of the 2001 Land Law implies that all co-owners have obligations to pay for maintenance cost in respect to common parts proportionally to the value of each private part.¹⁷⁸ Co-owners who refuse this payment or do not respect public order are subject to be fined 500,000 Riel to 3,000,000 Riel.¹⁷⁹ It is again silent how to value the private part.¹⁸⁰ It may be unfair for co-owners who pay more depending on the value of their private parts because all co-owners have the same rights to enjoy common parts. Moreover, the law fails to mention the distribution method of the profits which may arise from the common parts.

Adjoining Ownership

Adjoining ownership is another form of ownership which refers to indivisible joint ownership over walls or ramparts such as ditches, dikes and fences.¹⁸¹ It should be noted that the structures and concept of adjoining ownership stipulated in the 2001 Land Law are found similarly in the 2007 Civil Code. It can be therefore implied that all concepts of adjoining ownership in the 2001 Land Law are imported into the 2007 Civil Code with only one main change. It is necessary however to be aware of the responsibilities of any

¹⁷⁷ The 2001 Land Law, art. 184.

¹⁷⁸ The 2001 Land Law, art. 185.

¹⁷⁹ 500,000 Riel is equivalent to US\$ 125 and 3,000,000 Riel is equivalent to US\$ 750 in June 2010.

¹⁸⁰ The 2001 Land Law, arts. 185 & 258.

¹⁸¹ The 2001 Land Law, art. 186; The 2007 Civil Code, art. 215.

persons who have adjoining ownership. The defect in law with regard to adjoining ownership is also discussed so as to provide some considerations for the future amendment.

Responsibilities of those who have rights over party walls are necessary for the repair and reconstruction of the party walls. The owners who have rights over party walls are required to pay for the repair and reconstruction of the party walls proportionally to their rights. Except the party walls supporting the buildings, owners can abandon their rights to party walls thereby avoiding charges arising therefrom.¹⁸² Remarkably, concerning the rights to perforate into a party wall, the 2007 Civil Code allows each owner of adjoining ownership to place a beam or girder into the party wall within a half depth of the wall width while the 2001 Land Law allows each owner to do so only in case other owners intend to use the same place otherwise each owner is entitled to perforate up to 5 centimeters from other side. However, because the 2007 Civil Code prevails over the 2001 Land Law, it can be interpreted that from the effective implementation date of the 2007 Civil Code, only a half depth of perforation into a party wall is allowed.

One main difference between the 2001 Land Law and the 2007 Civil Code concerning adjoining ownership is that the 2007 Civil Code provides a better solution over perforation disputes. Both laws do not require each owner to inform another owner for perforation work unless the perforation causes destruction of the party wall. However, if the perforation work destroys the party wall and the other owner does not agree with such a work, the 2001 Land Law requires an expert arbitrator to decide while the 2007 Civil Code requires the court.¹⁸³ Since the 2001 Land Law does not provide any instruction concerning the procedure of choosing the expert arbitrator, the 2007 Civil Code seems to provide a better way by choosing court.

Another interesting point for discussion concerning abutters is the rights to claim for a party wall. With this regard, both the 2001 Land Law and the 2007 Civil Code allow owners of immovable property adjacent to the wall of another owner to claim the rights of adjoining ownership over that wall with the obligation to pay for the cost of the construction plus half land price built that wall.¹⁸⁴ The law requires the owner who intends to upgrade the party wall with sole responsibility of the construction payment. If land is needed for upgrading expansion, that owner must use his or her land. The owner who does not contribute to

¹⁸² The 2001 Land Law, art. 187; The 2007 Civil Code, art. 217.

¹⁸³ The 2001 Land Law, art. 188; The 2007 Civil Code, art. 219.

¹⁸⁴ The 2001 Land Law, art. 190; The 2007 Civil Code, art. 220.

upgrading the party wall and later on needs that wall as the party wall, he or she must pay for the construction cost plus land price for expansion.¹⁸⁵ The law is silent whether land which is paid for the party wall will automatically belong to the new owner or not. Although it may be interpreted that this land will belong to the paid owner, no registration procedures have so far mentioned about this issue, meaning it cannot be implemented. The law should therefore stipulate such provisions clearly.

Similarly to the party wall, an owner can waive adjoining ownership over ditches, dikes and fences if he or she wants to avoid maintenance fees. However, if the ditches or dikes are places for flowing water, that owner cannot waive his or her rights to adjoining ownership.¹⁸⁶ This provision is crucial because it prevents the bad impact on the property belonging to the owner who intends to waive his or her rights. Remarkably, both the 2001 Land Law and the 2007 Civil Code fail to mention the enforcement provisions with regard to the owners who refuse to pay the repair and maintenance fees arising from the adjoining ownership.

Unlike party walls, an owner whose land adjacent to the ditches, dikes or fences which are not adjoining ownership is not entitled to claim them for adjoining ownership.¹⁸⁷ With this regard, it is difficult to realize that a person benefits or does not benefit from the fences which are adjacent to boundary. For example, a piece of cultivated land is surrounded by three-angle fences which are not adjoining ownership, the owner of that land builds another fence in the fourth angle attempting to protect the crops in his or her land. However, if that owner wants to contribute to the fence construction fees, the law remains silent, meaning that owner benefits from the neighbor's fences as unjust enrichment.

2.1.6.2 Leases

Interestingly, the 2001 Land Law and the 2007 Civil Code stipulate the leases, which were not available in the 1992 Land Law. A lease is created by way of a lease contract. A definition of leases set forth in Article 106 of the 2001 Land Law refers to a contract by which the owner of immovable property allows another person to use it and in return the owner receives regular payment of rental in proportion to the time of use. Two kinds of lease contracts stipulated in law are indefinite period and definite period. A

¹⁸⁵ The 2001 Land Law, art. 193; The 2001 Civil Code, art. 222.

¹⁸⁶ The 2001 Land Law, art. 194; The 2007 Civil Code, art. 224.

¹⁸⁷ The 2001 Land Law, art. 195; The 2007 Civil Code, art. 225.

lease with a definite period can be a short lease and a long term lease of no less than 15 years. Leases have to be made in writing. Remarkably, the 2007 Civil Code considers a lease without writing as a lease with indefinite period which can be terminated at anytime by providing a prior notice period equal to the period of rental payment.¹⁸⁸ The 2001 Land Law does not require leases be registered, but stipulates that cadastral administration is responsible for registering long term leases¹⁸⁹ and land registers cover encumbrances including long term leases.¹⁹⁰ It should be noted that formalities of leases need a sub-decree which has not been adopted yet. However, the 2007 Civil Code requires that long term leases be registered.¹⁹¹

2.1.6.3 Security Interests

In a business transaction, very few people can afford to buy immovable property without borrowing money from other persons. To this extent, security interests can play an important role in securing the performance of the obligation of the party involved. A security interest is a property interest which can be created by agreement or by operation of law over assets to secure the performance of the obligation which provides the security interest holder certain preferential rights in relation to the assets. One of the most crucial functions of immovable property in free market societies is the ability to use the property as security to obtain funds or credits. Security interests as widely recognized allow lending institutions such as banks, mortgage companies, and savings and loan associations to confidently offer loans to borrowers knowing that they are able to exercise the rights with regard to the property when a problem with repayment arises. The lenders can file a claim for the sale of the borrowers' property in order to satisfy the debt when the borrowers fail to repay the loans. Under Cambodian law, the concept of security interests relating to immovable property is also introduced in order to run a smooth free market.

This dissertation describes the elements of security interests which are found in the 2001 Land Law and the 2007 Civil Code. The discussion of this part tries to explain the words "mortgage", "antichresis", and "gage" which are mentioned in the 2001 Land Law and the 2007 Civil Code. Also differences which exist in available translation materials are also discussed.

¹⁸⁸ The 2007 Civil Code, art. 599; The 2001 Land Law, art. 109.

¹⁸⁹ The 2001 Land Law, art. 229.

¹⁹⁰ The 2001 Land Law, art. 238.

¹⁹¹ The 2007 Civil Code, art. 206.

Mortgage

A mortgage¹⁹² is one of the forms for immovable property security that is recognized in the 2001 Land Law and the 2007 Civil Code. It is designed to provide creditors with a valuable form of security for loans. A mortgage is a legal right or interest in property granted by a debtor or a borrower known as a mortgagor to a creditor or a lender known as a mortgagee that allows the mortgagee to sell the property of the mortgagor when the mortgagor fails to repay the owed amount of loans. The right to sell the property expires while the debt is repaid. The mortgagor retains the right to possess the property during the term of the mortgage while the mortgagee is entitled to have the right to claim the sale of the property. The mortgage is a just security device, not a transfer of possession. The mortgagee cannot force the sale of the property by himself but by filing a claim with a court to have the property sold and to receive the proceeds arising from the sale as debt repayment.

Article 198 of the 2001 Land Law defines the word “mortgage” as “a surety in rem which allows the creditor to claim the sale of the immovable property in court on the due date of the debt, irrespective of whose possession the immovable property belongs to, so that the proceeds from the sale can repay the debt in privilege and preference to other creditors, without dispossessing the immovable property from the owner [mortgagor].” While the 2007 Civil Code does not define the word mortgage itself, but just entitles the mortgagee to obtain satisfaction of his claim in priority to other creditors out of immovable property that has been furnished as security by the debtor or a third party without transfer of possession in the event of failure to perform on the debt.¹⁹³ The 2007 Civil Code, in addition to the 2001 Land Law, allows a perpetual lease and usufruct to be the subject of the mortgage.¹⁹⁴

The definition provided by the 2001 Land Law is very typical of how mortgages work in most legal jurisdiction in the world. A very important aspect of a mortgage is that the mortgage is a right in rem in which the right of the mortgagee is attached to the land where the mortgagee is entitled to claim for the

¹⁹² The word “mortgage” can be available for the translation from the 2001 Land Law while the word “hypothec” from the 2007 Civil Code. Though the translation may be found in different words, the same Khmer word is used in these two laws. The pronunciation of the word “mortgage” in Khmer is “hy-po-tek”. In this dissertation, only word “mortgage” is used through out the text to refer to the word “hy-po-tek” in both the 2001 Land Law and the 2007 Civil Code.

¹⁹³ The 2007 Civil Code, arts. 843 & 853.

¹⁹⁴ The 2007 Civil Code, art. 843.

sale of the land, no matter who owns it, in the event that a mortgagor fails to pay back a loan. Therefore, if the mortgagor offers land as a mortgage and then transfers it to someone else, the mortgagee can still force the sale of the land if the performance of the contract is defaulted. As such, whoever owns or buys the land subject to the mortgage must realize the obligation of the mortgage and can lose the land if the debt that is secured by the mortgage is not repaid.

Realizing effects of mortgages is crucial for the parties involving the mortgages. A mortgage has an effect on things attached to the land as well as other part of land including buildings on the land even after the creation of the mortgage.¹⁹⁵ However, this effect does not extend to the buildings belonging to the third party who has a lease and usufruct over the land being subject to the mortgage.¹⁹⁶ The law requires that a mortgage contract be in a written authentic form and be registered at the Land Registry.¹⁹⁷ This opens a clear message for people who may be involved in lending financial loans to understand the real status of the property subject to the mortgage and thereby decide in the right way for their business transactions. Purchasers on the other hand are required to confirm at the Cadastral Office whether the land is subject to the mortgage therefore have no reason for unknowingly buying land that is subject to the mortgage. The registered mortgage contracts are recognized in the priority order depending on the time order of their registration.¹⁹⁸ It may be a good impetus for the mortgagors to pay their attention to fulfilling legal requirements otherwise they will face the loss in their transactions. The 2001 Land Law specifies clearly that only registered property can be the subject of the mortgage,¹⁹⁹ except the property encumbered with the antichresis.²⁰⁰ As such, owners of immovable property are encouraged to register their property in order to be sure that their property is legally protected and can be widely used in secured transactions.

It is remarkable that a submortgage which is not available in the 2001 Land Law is stipulated in the 2007 Civil Code. A mortgagee is entitled to use his mortgage as security in order to secure his debt or another's debt. The law allows the submortgagee to receive full satisfaction of his claim from and to the extent of the amount to be apportioned to the mortgagee whenever a mortgaged thing is sold by compulsory

¹⁹⁵ The 2007 Civil Code, art. 846.

¹⁹⁶ The 2007 Civil Code, art. 847.

¹⁹⁷ The 2001 Land Law, art. 201 & The 2007 Civil Code, art. 845.

¹⁹⁸ The 2001 Land Law, art. 203 & The 2007 Civil Code, art. 851.

¹⁹⁹ The 2001 Land Law, art. 199.

²⁰⁰ The 2001 Land Law, art. 205.

sale.²⁰¹ If the claim of the submortgage is not due yet, the submortgagee can demand that the amount of the debt be officially deposited. The law is however silent about the priority of the submortgage compared with the mortgage when the due date of the submortgage has come earlier than the due date of the mortgage. If the submortgagee is entitled to claim for the sale of the property belonging to the original mortgagor while the performance of the obligation is defaulted, it may violate the right of the owner of the property. The law should therefore state the extent of the submortgage when the performance of the obligation fails to perform.

Interestingly, the 2007 Civil Code recognizes the disposal of mortgages in addition to the 2001 Land Law such as the transfer and waiver of mortgages as well as the transfer or waiver or change of the rank of mortgages.²⁰² The disposal of mortgages must be in an authentic form and requires registration otherwise the disposal is not valid.²⁰³ This requirement provides an opportunity for involved people in order to make a correct decision in secured transactions. Similarly to the rank of the mortgage belonging to the mortgagor, if the mortgagee disposes of his or her mortgage right for the benefit of two or more persons, the rank of priority of the right of the persons benefiting from such disposal is determined by the order of entries in the registration of the mortgage.²⁰⁴

The written authentic form of a mortgage contract is a contract form issued by the competent authorities. The form of the mortgage contract must include the state of property, its nature, any easements or charges over the property as well as its value.²⁰⁵ The law requires a sub-decree to determine the competent authorities in order to create a form of mortgage contracts and the registration procedure. However, so far the sub-decree has not yet been made thereby leaving uncertainty for the formality of the mortgage contracts. More problematic, there is no land valuation which makes business transactions difficult to determine the price of the property.

More remarkably, a creditor is not allowed to become the owner of the mortgaged property. This means that although the mortgagor agrees with the creditor or mortgagee to take the ownership of the mortgaged property while he fails to pay debt, the mortgagee still cannot obtain ownership of the property

²⁰¹ The 2007 Civil Code, art. 859.

²⁰² The 2007 Civil Code, arts. 860 & 861.

²⁰³ The 2007 Civil Code, art. 862.

²⁰⁴ The 2007 Civil Code, art. 863.

²⁰⁵ The 2001 Land Law, art. 202.

directly.²⁰⁶ Therefore, any provision in a mortgage contract stating that the mortgaged property falls into creditor's ownership on default of the debt would be invalid. The law seems to prevent those who are in financial shortage from losing their ownership. Also it prevents the creditor from easily benefiting from the poor via unjust enrichment. Moreover, it requires that all people involving in business transactions respect the rule of law.

Antichresis

Another form for immovable property security which is stipulated in the 2001 Land Law and the 2007 Civil Code is antichresis.²⁰⁷ An antichresis as defined by law is a contract in which a creditor has the right to possess the secured property until the debt is repaid.²⁰⁸ Similarly, the Black's Law Dictionary defines antichresis as "a mortgage in which the mortgagee retains possession of the mortgaged property and takes the fruits (such as rents) of the property in lieu of interest on the debt."²⁰⁹ Slight difference has been found with regard to the definition of antichresis. The 2001 Land Law seems to restrict the right to enjoy fruits from the property to the extent of the right written in the antichresis contract²¹⁰ while the 2007 Civil Code allows the creditor to enjoy the fruits in accordance only with ordinary use of the property.²¹¹ However, the creditor is entitled to claim for the sale of the property in order to repay the debt by privilege and in preference to other creditors who have lower priority of secured property.²¹²

Similarly to the mortgage, a contract of antichresis can be valid and enforced if it is made in a written authentic form and is registered at the cadastral unit.²¹³ The registration of antichresis may be aimed at giving information to those who wish to buy the property to be aware of the encumbrance concerning that property. Therefore, if one who decides to buy land encumbered with an antichresis, he or she may face the loss of the land in case that land is in the enforcement of the compulsory sale. With this regard,

²⁰⁶ The 2001 Land Law, art. 200.

²⁰⁷ The 2001 Land Law stipulates antichresis which means only pledge of immovable property while the 2007 Civil Code states the word "pledge" which can apply to both immovable and movable property in general. For application to only immovable property, the civil code uses the word "pledge of immovable property" which means the same as antichresis in the 2001 Land Law. In this dissertation, the word antichresis refers to pledge of immovable property both in the land law and the civil code.

²⁰⁸ The 2001 Land Law, art. 206 & The 2007 Civil Code, art. 834.

²⁰⁹ Bryan A Garner, *Black's Law Dictionary*, 8th ed. (St. Paul, Minn: West Group, 2004), 102.

²¹⁰ The 2001 Land Law, art. 212.

²¹¹ The 2007 Civil Code, art. 834.

²¹² The 2001 Land Law, art. 206.

²¹³ The 2001 Land Law, art. 207.

however, the law does not forbid the purchase of the property being the subject of the antichresis. The law may therefore leave room for any person to make his or her own decision where he or she should buy the property subject to an antichresis or not.

Another similarity with the mortgage is that the creditor or pledger, to any extent, is not allowed to become the owner of the property.²¹⁴ Any provisions in which the owner of the property agrees to offer the property directly to the creditor when the debt is not repaid are invalid. If such provisions are allowed by law, capable persons may be encouraged to lend loans to the poor and in return easily obtain the ownership of the property without court intervention. The law in this context seems to protect the poor from losing their ownership. If the debtor fails to repay the debt, the creditor can only claim the sale of the property in court and receive the proceeds from the sale to repay the debt in priority by privilege and preference to other creditors.²¹⁵ However, the law allows the creditor to buy the secured property during the term of an antichresis contract. But the purchase contract is required to be registered at the cadastral unit otherwise it is void and unenforceable.²¹⁶

With regard to the priority of the debt repayment, the law remains unclear how priority can take an effect over the secured antichresis claim. It is more interesting to note that the property encumbered with antichresis does not seem to have more than one antichresis creditor. No provisions allow a debtor to have his or her property encumbered with several antichresis contracts. Article 819 of the 2007 Civil Code does not allow a pledger to retain direct possession of a thing pledged. Moreover, Article 205 of the 2001 Land Law forbids the property subject to antichresis to be mortgaged. This is a big difference between the antichresis and the mortgage due to the fact that the law allows a mortgaged property to have more than one mortgagee. In contrast, Article 223 of the land law allows the debtor to retain, manage, and use his or her property unless the property value decreases. From this provision, it may allow the property subject to a mortgage to be encumbered with an antichresis. So this property may become the last chance to be furnished as the antichresis by the debtor. Consequently, this antichresis creditor does not have priority to other creditors if the secured property is in compulsory sale. However, the civil code allows an antichresis creditor to have sub-antichreses but this is not the case that the priority method can be applied due to the fact that the sub-

²¹⁴ The 2001 Land Law, art. 210; The 2007 Civil Code, art. 827.

²¹⁵ The 2001 Land Law, arts. 206 & 211.

²¹⁶ The 2001 Land Law, art. 211.

antichresis creditor can claim for the debt to the extent of the amount of debt that the antichresis creditor has when the property is in compulsory sale.

Another main difference between an antichresis and a mortgage is that the law imposes existing duration of antichresis. To this extent, the different concept has been found in the 2007 Civil Code and the 2001 Land Law. The land law refers to time limitation which makes the creditor lose security interests. This law allows the creditor to demand payment of the debt within 10 years from the contract date or from the due date of payment otherwise the creditor will lose the security interest in the property.²¹⁷ The 2001 Land Law does not determine the duration of the existing antichresis while the 2007 Civil Code on the other hand limits the duration of the antichresis to 5 years.²¹⁸ Moreover, the 2001 Land Law requires that antichresis contracts created for a longer period be reduced to 5 years. But the 2007 Civil Code allows the renewal of an antichresis contract to no more than 5 years²¹⁹ while the 2001 Land Law is silent about this. The determination of the duration of antichresis is crucial because a debtor may turn his or her attention to focusing on paying the debt since 5 years is not a long period of time.

More interestingly, an encumbered property as an antichresis according to the 2001 Land Law may become unencumbered. If a creditor fails to force the compulsory sale of the property within 10 years, the creditor loses his or her antichresis and then the registration of the antichresis will be removed from the cadastral records and the property will be classified as an unencumbered property.²²⁰ The debtor in this case does not necessarily request for the cancelation of the antichresis, for the inscription of cancelation can be automatic. Eventually, if the creditor enjoys a lot of fruits from the property, he or she may be willing to continue to enjoy the fruits without claiming to force the sale of the property. Thus the law prevents such incident.

Unlike the mortgage, the extinguishment of the antichresis is stated clearly by law. The debtor is required to fill in a form indicating the amount of the debt paid and signed by the chief of commune along

²¹⁷ The 2001 Land Law, art. 209.

²¹⁸ The 2007 Civil Code, art. 838, para. 1. It should be noted that Article 360 of the Japanese Civil Code limits the duration of the antichresis to 10 years. The difference in Cambodian Civil Code may be made by the Cambodian counterparts during the preparation of the draft of the Cambodian Civil Code.

²¹⁹ The 2007 Civil Code, art. 838, para. 2.

²²⁰ The 2001 Land Law, art. 209.

with two witnesses.²²¹ This requirement seems ambiguous because all encumbrances are required to be registered at the cadastral unit which is available only at the district level. The law does not mention whether the form signed by a commune chief is kept as records at the commune level or district level. Therefore, it seems to have no connection between the registration of the antichresis contract and the signed form after the debt is repaid. The extinguishment of the antichresis should be necessarily inscribed at the land register so that property can be released from the encumbrance.

A change is made between the 2001 Land Law and the 2007 Civil Code with regard to tax liability of the persons involved. The 2001 Land Law requires the debtor to pay all the duties, taxes, or levies pertaining to the secured property unless otherwise agreed by the debtor and creditor.²²² The 2007 Civil Code on the contrary is silent about this but requires the creditor or the pledgee of immovable property to bear both maintenance fees and other charges pertaining to such property.²²³ This approach may reduce the burden of the debtor.

The creditor cannot retain the property subject to the antichresis when the debt is repaid, although the debtor may owe another debt with different secured property which is due. However, the law allows a debtor to create several debts over one secured property as an antichresis to one creditor. In this case, the creditor can maintain the possession of the secured property although the first debt is repaid. Furthermore, the debtor can enforce his or her rights under the antichresis against the successor or assignees of the creditors while the creditor on antichresis dies.²²⁴ The law in contrast does not mention how the involved parties shall do when the debtor dies. It may be interpretable, in this case, that the creditor can use his or her right over the property secured.

Gage

The other form of immovable property security is a gage which is stipulated in the 2001 Land Law. A gage as defined in the law is a contract which is created in order to assure the debt in which the debtor does not deliver the creditor his or her property but the ownership certificate of the property inscribed at the

²²¹ The 2001 Land Law, art. 216.

²²² The 2001 Land Law, art. 217.

²²³ The 2007 Civil Code, art. 835.

²²⁴ The 2001 Land Law, art. 218.

land register.²²⁵ Similarly to an antichresis and mortgage, a gage contract needs to be in the authentic formula and be registered with the cadastral administration.²²⁶ The requirement of this contract tends to provide adequate information to those who are involved in the transaction with regard to the secured property. It seems however that buyers or lenders of debt related to security such as gages must be responsible to the risk of the loss of secured property if the property is in compulsory sale enforced by another priority lender.

Quite similar to the other forms of security, a creditor of a gage cannot become the owner of the secured property in any default cases made by a debtor. The gage creditor can only claim for a compulsory sale of the immovable property in court and receive the proceeds from the sale for the amount of the debt in priority by preference and privilege to other creditors.²²⁷ Moreover, the creditor must return the secured property title to the debtor when the debt is repaid.²²⁸ The law requires the release of encumbrance inscription when the repayment of debt ends. But the law is silent how to release the inscription.

Similarly to a mortgage but differently from an antichresis, a debtor of a gage is required to retain, manage and use the property encumbered during the term of a gage. However, any conduct of the debtor which decreases the value of the property is forbidden.²²⁹ Because it is important to the creditor that the property retain its value for the duration of the gage contract so that the creditor is able to obtain the proceeds from the compulsory sale to cover the outstanding debt. The law however does not prohibit the gaged property to be in other forms of security. In this regard, the gaged property may be further used as a mortgage or an antichresis to secure another debt. So it is important for subsequent creditors to consider how to provide their appropriate debt to debtors with regard to the property already encumbered because they are not priority creditors.

More interestingly, successors of debtors and creditors have the same obligations and rights as their own debtors or creditors.²³⁰ The obligations and rights in this context can ensure the confidence of the parties involved in the transactions. For the creditors are sure that, in the absence of the debtors, the

²²⁵ The 2001 Land Law, art. 219.

²²⁶ The 2001 Land Law, art. 220.

²²⁷ The 2001 Land Law, art. 221.

²²⁸ The 2001 Land Law, art. 222.

²²⁹ The 2001 Land Law, art. 223.

²³⁰ The 2001 Land Law, art. 224.

successors of the debtors still continue the obligations and rights of the debtors so that the debt provided is secure. The law openly allows the heir or successor of the debtor as well as the family members to declare themselves as the co-owners²³¹ of the property secured by a gage and to receive the same obligations and rights as the original debtor. As such, it is good for the creditors in case the property is in a compulsory sale and the proceeds from the sale are not enough for repayment, the co-owners must bear the remained debt.

2.2 Japanese Experience

Learning experience of the concepts of land registration from other countries is worth proposing a better improvement for a Cambodian land system. Usually, a land registration system creates land certificates which provide improved access to credit. Witnesses have shown that land registration resulted in several benefits namely higher land values such as in Thailand, the Philippines, Indonesia, Honduras, Brazil and Peru; higher investment in land such as in Costa Rica, Brazil, Honduras, Jamaica and Ghana; and higher output and income such as in Costa Rica, Brazil, Ecuador and Paraguay.²³² The introduction of a land titling system will also create a better ground for land taxation and reduce disputes over land and boundaries.²³³ An improved land taxation system with this regard increases tax revenues, produces a fairer land system, and provides appropriate information to identify and punish land tax evaders.²³⁴ Interestingly, a well-designed land taxation system also contributes to curbing land speculators.²³⁵ Unlike other countries, the current land registration in Cambodia does not attempt to build a basis for land tax collection but just attempts to ensure land security and reduce land disputes.²³⁶

Before the Meiji Restoration in 1868, Japan enjoyed a property tax system under the collection of rice and crops depending on the amount of crops harvested every year. Since tax payment in kind had discouraged cultivators from making every effort to cultivate much because if they received less produce

²³¹ The 2001 Land Law, art. 225.

²³² Frank F. K. Byanugisha, "The Effects of Land Registration on Financial Development and Economic Growth: A Theoretical and Conceptual Framework" World Bank Policy Research Working Paper No. 2240 (The World Bank, November 1999): 1, at: <http://ssrn.com/abstract=636204>, last visited February 1, 2008.

²³³ Peter F. Dale and John D. McLaughlin, *Land Administration* (New York: Oxford University Press, 1999), 34.

²³⁴ *Supra* note 74 at 664.

²³⁵ Ministry of Planning, *Cambodian Human Development Report 2007: Expanding Choices for Rural People* (Phnom Penh: Ministry of Planning, 2007), 7.

²³⁶ Government Statement on Land Policy, No.27SCN/AK, July 01, 2009.

they would pay less tax.²³⁷ As such, in July 1873, the Meiji government introduced a new land tax reform in which tax base changed from crops to the value of the land.²³⁸ It is noted that the Meiji land tax reform first established modern private ownership of agricultural land in order to improve economic incentives through effective land allocation. The government undertook the assessment of all arable land, a process has not finished until 1880.²³⁹ Land tax reform had remarkably resulted in issuing 109 million certificates of landownership.²⁴⁰ Landowners, under the new land tax system, was careful to monitor cultivators with tenancy contracts because landowners were responsible to pay land taxes which were not calculated from the cultivation output but land prices. Therefore, private landownership with this regard induced higher national revenues.

The creation of land registration in 1873 by the Meiji government was to improve land tax collection. For example, land taxes consisted of 86 percent of the total national taxes in 1875 and 67 percent in 1884. As for the local level, land taxes contributed to 100 percent of the total local taxes in 1875 and 54 percent in 1884.²⁴¹ It should be noted that while the government depends mainly on agricultural sectors, land tax reform for agricultural land plays a vital role in increasing state revenues for other development purposes. After the completion of mechanisms of new tax collection method, the Meiji government was able to strengthen its military power and to encourage investments for bringing modern industry.²⁴² In the aftermath of the success of land tax reform, government encouragement of industry began as early as 1870 and continued to promote modernization in industry up to 1881. The success of land tax reform led to the success of industry development as noted by Niwa Kunio that “the development of private enterprise could not be achieved unless the system of land tenure which was the basis of the existence of the feudal lord class were broken up by the reform of the [land tax].”²⁴³

²³⁷ David Flath, *The Japanese Economy*, 2nd ed. (Oxford: Oxford University Press, 2005), 30.

²³⁸ “Introduction to the Japanese Tax System,” 1, http://www.mof.go.jp/english/tax/taxes2006e_b.pdf, last visited April 27, 2010.

²³⁹ *Supra* note 237 at 30.

²⁴⁰ “Ancient History of Asia: Before and after the Westerners Came,” www.olemiss.edu/courses/pol337/asiahist.pptc, last visited April 27, 2010.

²⁴¹ Niwa Kunio, “The Reform of the Land Tax and the Government Programme for the Encouragement of Industry,” in *The Developing Economies* ([December 1966]), 457, http://www.ide.go.jp/English/Publish/Periodicals/De/pdf/66_04_02.pdf, last visited April 27, 2010.

²⁴² *Ibid*, 465.

²⁴³ *Ibid*, 466.

The new in-cash tax system was successfully completed by the participation of local authorities. With this regard, the government empowered prefectural authorities to achieve global targets of assessing land value in respective governed territory. The implementation of land tax collection was enforced by district authorities in a better way as stated by Dore that “[in] some districts..., the tax burden was in fact lightened, but it was still calculated to amount, on rice land, to about 35 [percent] of the value of an average crop,” although government decrees required the government to impose land taxes equivalent to 3 percent of the land value as a temporary measure.²⁴⁴ Since the high rates of land taxes caused dangerous riots against the implementation, the government in 1878 then reduced to tax rates to 2.5 percent. Tax collection remained fixed in a five-year term for each revision of land value.

Remarkably, the Meiji land reform did not change the status of tenant-farmers. The relationships between tenants and landlords were mainly based on a traditional paternalism not a modern contractual principle.²⁴⁵ Tenant-farmers still continued paying rents in crops to landlords. More seriously, the land tax reform did not attempt to secure tenancy, but just required land taxes to be paid in cash with fixed rates. Since population density increased, rents tended to decline due to the fact landlords required higher rents. It should be noted that most of landowners had small landholdings thereby small tenant-farmers leased small pieces of land from a number of landlords. Also, large landlords leased separate landholdings to various tenants. Such a behavioral commitment of leasing of small land-strips remained important in the Japanese tenancy system.

The changes in the Meiji land reform finally brought some benefit to peasants with regard to their ownership of land. Peasant proprietors were able to freely sell or mortgage their land by title-deeds.²⁴⁶ Therefore, the land registration system during the Meiji land tax reform provided not only the opportunity for the government to tax land but also to freely transact the land as they wished. It should however be noted that under the reform, customarily recognized rights of permanent tenancy did not obtain legal protection which caused land disputes. However, the Civil Code adopted in 1898 protected rights of permanent tenancy as marketable property rights including long term leases.²⁴⁷ In the aftermath of the

²⁴⁴ R. P. Dore, *Land Reform in Japan* (London: Oxford University Press, 1959), 16.

²⁴⁵ *Ibid.*, iv.

²⁴⁶ *Ibid.*, 16-17.

²⁴⁷ *Ibid.*, 16.

reform, as of 1908, tenanted land covered 45 percent of the total cultivation land and this number increased to 46 percent in 1941.²⁴⁸ As such, landowners enjoyed rents from their land rather than cultivated that land themselves by means of hired labor.

Japan at the end of the Meiji era had a stable agricultural system, with well established landlord and tenant relations.²⁴⁹ This is a contrast with Cambodia, where the rights system was wiped away in the previous era, and the land system was established on the basis of actual use and occupation, without complex expectations. This makes the Cambodian situation simpler, in some way. The expectations of land occupants are less complicated, with fewer disputes over tenancy rights and more disputes over simple ownership or rights to possession. The more complicated Japanese property rights in the Meiji era also led to some problems in the registration system when the Civil Code was enacted in 1898. Only two rights for tenants were permitted under the Civil Code, one being a strong property right of superficies, and the other a weak right of lease, which was a contract right. Tenants wanted the strong right, because it could be registered. The Civil Code provided a one-year deadline for registering the superficies right, but the Immoveables Registration Act was not passed until a short time before the deadline. This led to confusion and disputes, because most tenants were unable to register the stronger interest. As a result, the government passed a law declaring that all tenants in occupation should have the stronger right, and be entitled to register.²⁵⁰ This is in some ways similar to the current Cambodian situation, although the failing of the Cambodia registration process is more fundamental. This experience tells us that special measures may be needed to establish trust in a system of rights, when the early attempts are unsuccessful.

The controversy over tenancies in the Meiji era is a sign that Japanese tenants and landlords were seriously concerned about the registered status of their interests. Remarkably, when the Meiji government granted land certificates in the first land reform, the survey covered 48 percent more land than previous surveys. This is a sign of the trust and the expectation of the people in the new system,

²⁴⁸ Ibid, 19.

²⁴⁹ Ibid, 8-16.

²⁵⁰ Frank G. Bennett, Jr., "Getting Property Right: 'Informal' Mortgages in the Japanese Courts," *Pacific Rim Law and Policy Journal*, vol. 18, 2009, 471 under note 65.

which permitted land owners to sell their land, which they could not do previously. This early success was important for another factor, the taxation system.

From Japan, experience has shown that giving officials at the local level of national authority the power to complete registrations and issue certificates is practiced, according to Articles 6 and 9 of the Real Property Registration Act. It is also seen that this power of local officials is combined with measures for discipline of officials by the courts or by higher levels of authority, as found in Article 67. Local branch offices make their own choices regarding administration, as shown by Articles 124, 125 and 130 of the Real Property Registration Act.

As mentioned above, the land tax system in Cambodia is not functional currently. There are surely many factors that contribute to this. Cambodia does not enjoy the high quality of excellent administrative staff that Japan enjoyed during the Meiji era, and the quality of administration is an important factor in the success of administrative system like taxation. However, to avoid controversies over unfair burdens and to prevent escape from the tax system, it is important that most properties be registered. As noted above, Japan was very successful in obtaining records of ownership of land, and later registered ownership when the registration system for transactions was established.

The situation of Cambodia contrasts in important ways with Japanese experience, but there are important hints for Cambodia. From the above points, it is possible to learn that there is a difference between registration failure when rights are ambiguous as in Cambodia today, and when the basic right of ownership is clear but the registration of other rights or details in the register suffers trouble, as in Japan in the Meiji era. Experience from the Cambodian case has shown that establishing full registration in the first stage is critically important. From the differing position of taxation in the registration projects of the two countries, it is also possible to infer that taxation and registration are connected. As noted above, later transfers of a property that becomes registered in Cambodia may not be registered in subsequent sales. This is possible because the tax system, which as noted above depends on full registration, is not functioning well, and the original owner is not confronted with tax burdens. If the taxation system is functioning well, the seller has a strong incentive to be sure that the transfer of the property is registered, to avoid further tax burdens. Japan with very good registration in

the early phase and a strong emphasis on taxation did not have this problem. In some situations, at the village level for example, this incentive is important to assure the continuing maintenance of registration activity. It is necessary to understand from this comparison that taxation, at some level, is a needed complement to support the success of registration processes in Cambodia.

Chapter 3: Issues and Constraints

Several circumstances ... suggest that improving land registration ... may be desirable: both rural and urban development is believed to be constrained by insecurity or uncertainty of land title; in many places there is a developing land market, a high incidence of land disputes, and growing demand for credit; and the stated desire exists to implement redistributive land reforms.¹

3.1 Hidden Costs of Registration

Discretionary power of higher authorities to finalize land registration provides an opportunity to ease rent seeking. Cambodia has poor-designed legal penalties which can encourage rather than discourage corruption. For example, the law does not determine the period of time to receive sporadic registration certificates from the date of submitting applications. The failure of stipulating this important point leaves room for competent authorities to delay performing the job and therefore if applicants want to get their applications done fast, they may pay a bribe. Moreover, the bribe may be consumed in every layer of competent authorities whose duties are to examine the documents. As such, hierarchical government structures are likely to be a source of corruption.² This is true as stated by Michael M. Calavan et al. that “[p]ayments go up the system, generally becoming larger as they are passed to a few senior leaders.”³ In this respect, the poor who depend on basic services provided by public sector will be affected mostly by such weak governance.⁴ Therefore, it is necessary to strengthen the governance by reducing the number of government layers for final approval.

It should be noted that the current livelihoods of competent authorities cannot depend upon the sole government salaries. When the salaries are low, competent authorities may find ways to supplement their low salaries in order to survive.⁵ The low salaries therefore may increase corruption. Albeit this fact, a

¹ Robin Mearns, *Access to Land in Rural India: Policy Issues and Options*, World Bank Policy Research Working Paper No. 2123 (World Bank, May 1999), 35-36, at <http://ssrn.com/abstract=636208>, last visited February 2, 2008.

² Toke S. Aidt, “Analysis of Corruption: A Survey,” *The Economic Journal* 113, no. 491 (November 2003): F644.

³ Michael M. Calavan, Sergio Diaz Briquets and Jerald O’Brien, “Cambodian Corruption Assessment,” Prepared for USAID/Cambodia, submitted August 19, 2004, (May-June 2004): 5, http://www.usaid.gov/kh/democracy_and_governance/documents/Cambodian_Corruption_Assessment.pdf, last visited November 30, 2006.

⁴ Clay Wescott, “Combating Corruption in Southeast Asia,” in *Fighting Corruption in Asia: Causes, Effects and Remedies* (2003): 244, http://www.adb.org/governance/combating_corruption.pdf, last visited October 5, 2006.

⁵ *Ibid.*, 246.

clear separation of discretion for finalizing land registration and other relevant work may be a possible way to reduce corruption as Aidt stresses “[t]he corruption reducing power of democratic institutions can in some cases be strengthened by separation of powers or by decentralization of provision of government services.”⁶ Therefore, a procedure which needs several layers to further examine and give a final discretion should be reduced to one layer in order to smooth sporadic land registration and the like.

3.2 Institutions and Personnel

3.2.1 Limited Legal Awareness

After the collapse of the Khmer Rouge regime in 1979, local authorities were assigned abruptly in order to serve the needs of society. A village chief, a person who gained much popularity in the village, was assigned among villagers in order to lead the village. This trend is similarly applied to a commune chief and a district chief. A provincial governor however was the person who had been involved in or honest with the revolution of the Cambodian People’s Revolutionary Party now known as Cambodian People’s Party liberating Cambodia from the Khmer Rouge regime on January 7, 1979. Consequently, those local authorities have been facing hurdles in land management since they lacked fundamental legal knowledge. Poor education makes it impossible for the local authorities to strictly implement national policies. Moreover, local authorities have limited legal trainings thereby making them difficult to implement the laws and regulations successfully. Yet, poor media with regard to dissemination of legal issues cannot diffuse the legal awareness to local authorities.

The poor education of local authorities is a major hindrance to the success of local governance. Village authorities generally have little knowledge, some of them did not finish primary school and others just can read and write in an easy way. As such, they do not have ability to deeper their understanding with regard to management skill. Moreover, if a problem happens in the village, a village chief cannot solve it very well. Similarly to the village chiefs, commune and district authorities have limited education making them difficult to fulfill the basic needs of society with creative work. It is difficult for the government to devolve some power to the local authorities because of their low knowledge ability. The reform of

⁶ Supra note 2 at 246.

commune authorities through the commune election in 2002 did not require the level of education of candidates for commune councils.⁷ Also, the reform of provincial and district administration through the provincial and district council election in 2009 failed to refer to the educational ability of provincial and district council candidates.⁸ Therefore, the reform of local authorities since 2002 has not intended to have better educated persons serving as local authorities.

Besides the poor educational background of the local authorities mentioned above, limited legal trainings are hard for the local authorities to implement the laws without fundamental legal knowledge. In the late 1980s, village chiefs were invited for trainings at district offices or provincial offices. The trainings were mainly focused on national policies. Remarkably, after the coalition government in 1993, local and international NGOs play a crucial role in disseminating legal awareness through workshops. However, such training workshops cannot provide an opportunity for all local authorities. Since 1993, trainings on administration at the Royal School of Administration within the period from 9 to 12 months have been available for government officials at the local levels. As of 2008, however, the total number of officials who have been trained is 2,574.⁹ This number is still limited, the government should, therefore, increase the number of trainees in order to best serve local people. It should be noted that it is good that the government open courses for students who complete their higher education for high ranking officials and low ranking officials. The total number of the trainees from 1995 to 2008 is 477.¹⁰ It is more important that the government use these human resources in an appropriate way for improving local governance.

Mass media play a very pivotal role in disseminating legal awareness. As already mentioned local authorities are not well educated and lack legal knowledge thereby making them difficult to implement the laws. With this regard, radio, television and newspapers are effective tools to disseminate legal issues with easy explanations. However, both public and private media do not mainly contribute to this necessary information for not only authorities to upgrade their knowledge in law but also ordinary people. The government should consider encouraging at least all public media to create legal sessions in order to diffuse all laws and legal regulations. The high participation of the relevant ministries is vital to achieve this goal.

⁷ Law on the Commune Election, No.NS/RKM/0301/04 dated March 19, 2001, art. 19.

⁸ Law on the Provincial and Districts Administration, No.NS/RKM/0108/017 dated May 22, 2008, art. 21.

⁹ Statistics provided by the Royal School of Administration, <http://www.era-rsa.org/index.php?l=en&s=8>, last visited July 6, 2009.

¹⁰ Statistics provided by the Royal School of Administration, <http://www.era-rsa.org/index.php?l=en&s=3>.

As such, it is necessary that the government require all relevant ministries and institutions to prepare simple explanations of laws and regulations for mass media.

3.2.2 Uncertainties of Laws and Legal Regulations

Laws and legal regulations are necessarily clear so that the implementers have no doubts to implement those laws and regulations correctly. With this regard, law-makers play a crucial role in avoiding some defect in law. Legal professions may contribute to the better preparation of law. In Cambodia, however, soon after the collapse of the Khmer Rouge regime it is really hard for law-makers to prepare law with clear provisions since the human resources remained very limited. As such, laws stipulated by the national assembly and legal regulations adopted by governments and ministerial institutions remain unclear for the implementation. Unclear provisions in laws and regulations concerning land issues provoke much problematic for local authorities. Therefore, this sub-section is to find out vital points which are stipulated unclearly in laws and legal regulations in order to show the cause of loose management of local authorities.

The 2001 Land Law which is the latest land law does not necessarily abolish the 1992 Land Law thereby remaining problematic for the implementation of law. It is noted that the main goal of the 2001 Land Law is to determine ownership regime of immovable property in Cambodia.¹¹ The understanding of the rights of possession is very important to be aware of the concept of the rights of ownership in present Cambodian land system. The glossary of the 2001 Land Law defines the word “possession” the same as its definition in the glossary of the 1992 Land Law as “the right under which one has over any property temporarily and incompletely.” Remarkably, the 2001 Land Law does not define “possession” in any provisions while the 1992 Land Law defined “possession” as “a state of being which refers to the act of holding a thing exclusively and fulfilling the duties as the owner has.”¹² Therefore, it remains dubious that whether the possession stipulated in the 2001 Land Law refers equally to that in the 1992 Land Law. More remarkably, the 2001 Land Law recognizes only the legal possession which can lead to ownership.¹³ Article 29 of the 2001 Land Law states that:

¹¹ The 2001 Land Law, art. 1.

¹² The 1992 Land Law, art. 61.

¹³ The 2001 Land Law, art. 6.

In the scope of reconstituting ownership of immovable property in Cambodia after the period of crisis from 1975 to 1979, and with no subordination to the general rules of prescription related to ownership of immovable property, on an exceptional basis, possession of immovable property which was recognized since 1989 may constitute a right in rem over immovable property and may lead to the acquisition of ownership by the holder of the property, in accordance with the conditions set by this law.

The phrase “the general rules of prescription related to ownership of immovable property” written here is not mentioned in what law and therefore it is unclear that what the general rules of prescription are. Moreover, this article refers to only possession recognized since 1989 leaving an unclear meaning for the possession which was not recognized. Because according to the fact as already mentioned in Sub-section 2.1.1 “Historical Background” of Chapter 2, as of 1991 only 70 percent of applications were submitted to district authorities thereby making unclear for the remaining 30 percent which were not applied for land certificates. However, the last part of the paragraph of this article states that the recognized possession since 1989 “may lead to the acquisition of ownership by the holder of the property in accordance with the conditions set by this law.” Yet, this law does not indicate these conditions clearly.

For another uncertainty, Article 30 states that “[a]ny person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful and uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive systematic registration certificate.” This article leaves a vague meaning concerning how can the phrase “that can lawfully be privately possessed” be identified. More seriously, the phrase “enjoyed peaceful and uncontested possession of immovable property” makes ordinary people as well as civil societies misunderstand Article 30 of the 2001 Land Law. In the aftermath of this uncertainty, for instance, in 1990 *A* requested *B* a piece of land in order to settle in. In 2002, *A* requested a definitive systematic registration certificate over that piece of land since *A* had stayed there for 12 years with a peaceful and uncontested manner. In fact, it is impossible for *A* to request a systematic registration certificate because that piece of land originally belongs to *B* and thereby cannot lawfully be privately possessed by *A*.

Similarly to Article 30, Article 31 which also refers to the fulfillment of conditions of possession with the period of less than 5 years until the 2001 Land Law comes into force, allows the landholder to pursue the possession until reaching the period of 5 years. Yet, the conditions of possession are not stated. With this regard, Article 38 as stated below seems to intend to refer to the conditions of possession but the

meaning of the first paragraph still remains ambiguous.

In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, notorious to the public, continuous, and in good faith.

The possessor shall occupy the land unambiguously means that, whether it is exercised by himself or by somebody else on his behalf, the possessor has to possess in his capacity as exclusive possessor acting on purpose for himself but not on the basis of some other rights. If the real possessor remains hidden behind an ostensible possessor, he cannot claim a certificate of possession allowing acquisition of ownership. His possession is null and void.

The possessor shall occupy the land non-violently means that any possession originated through violence is not considered conforming to the law. However, if violence is used against third parties that try to get the immovable property without right to do it, such violence does not interfere on the possession initially peacefully acquired.

The possessor shall occupy the land notoriously to the public means that the possessor has to possess without hiding himself to those who could want to contest his rights on the immovable property and are not able to see him or to determinate who he was.

The possessor shall occupy the land continuously means that the possessor has to act in a normal expected regular way during the required time to claim acquisition of ownership. The fact that occupation is interrupted for short periods of time or that the land is left uncultivated to recover fertility does not constitute an obstacle to acquisition of ownership.

The possessor shall occupy the land in good faith means that the possessor is not aware of any possible rights of third parties over the property that the possessor has been possessing.¹⁴

The first paragraph of this article fails to indicate the criteria of legal possession but refers to the requirements of ownership which are already mentioned in Articles 29, 30 and 31. Yet, Article 42 which mentions that “[a]ny person who, due to ignorance or negligence, failed to register his or her legal possession shall have the right to the protections of Article 29, Article 30, and Article 31 of this law,” seems to intend to support the possession before the 2001 Land Law comes into force. Again the existence of the word “legal possession” leaves an unclear meaning because no article in the 2001 Land Law determines this legal possession. However, it is possibly understood that legal possession refers to the possession which has followed the previous 1992 Land Law and regulations. As such, from Articles 62 to 68 of the 1992 Land Law stated clearly about legal possession which mainly required that the possessor request possession from a commune chief and regularly pay land taxes.¹⁵ In fact, Cambodian people did not pay land taxes because the Cambodian People’s Party announced during the first national election

¹⁴ The 2001 Land Law, art. 38.

¹⁵ The 1992 Land Law of Cambodia, art. 66.

propaganda in 1993 not to impose on land taxes if this party won the election. In the aftermath of the election, although this party failed, the sharing power from the winning party, FUNCINPEC Party, allowed the Cambodian People's Party to comply with its party tendency that is no land taxes have been imposed. Therefore, the criteria of legal possession in the 2001 Land Law should necessarily be clarified.

Realizing the early land-related legal regulations in 1989 is very important to see the impact of first land privatization to the present land issues. As mentioned earlier the remaining human resources soon after the collapse of the Khmer Rouge regime made Cambodia hard to prepare proper legal regulations with regard to land issues in order to serve the needs of society. One of the very crucial legal regulations is the "Instruction on the Implementation of Land Use and Management Policy" dated on June 3, 1989. This instruction is the first ever regulation leading to land privatization in Cambodia. The instruction stated that "state does not reshuffle and reallocate the land which has been held since January 7, 1979 until the date of issuing this instruction to the existence of the land law." It means that if a family held much land, then this family still maintained that land although the instruction attempted to distribute only 2,000 square meters for residential land as an ownership right and 5 hectares for agricultural land as a possession right. However, if a family held residential land over 2,000 square meters, the rest of the land remained as possession. Problematically, this instruction was silent if one family held the total amount of land over 5.2 hectares. The instruction also allowed the state to grant concessions over the land which exceeded 5 hectares.

In the aftermath of the uncertainties of the above instruction, various problems happened. For example, if a village lacked residential land for other families, the village chief was not able to take the remaining extra residential land to distribute to those families. If the family who had more than 2,000 square meters of residential land had held agricultural land for more than 5 hectares before June 3, 1989, the excess amount of land remained unclear. That is why some villagers could not receive any land.¹⁶ Moreover, if a village, after the distribution of both types of land, remained only 4 hectares of land, whether this remaining could be granted as a concession also remained ambiguous. Therefore, uncertainties in laws and legal regulations are a cause to make local authorities impossible to reach the success of land administration.

¹⁶ See also *Reportage: People's Complaint about Landlessness* (RFA radio broadcast February 11, 2007).

3.2.3 Lack of Legal Implementation Mechanisms

The existence of adequate laws and legal regulations relating to land issues cannot necessarily guarantee the success of land administration if the implementation of those rules is not appropriate. Since 1989, approximately 180 laws and legal regulations have been available for administering Cambodian land system. It seems to reflect the efforts of the government to intend to have a smooth land administration. In reality, however, land problems have happened remarkably since the inception of land privatization in 1989 because of the poor implementation of existing rules. A lack of legal dissemination system to local people is a main cause of improper implementation of law. Also, the poor voice of people makes it impossible to encourage competent authorities to follow the rule of law.

Poor legal dissemination is a hindrance for the implementation of laws and legal regulations exacerbating the whole legal system of the country. Royal Gazette is an official government agency which is required to publish all laws, legal regulations, government policies as well as judgments. A weekly compilation volume is available for any institution including NGOs for a basic charge. However, the nationwide publication of these useful legal resources is still limited due to a lack of financial support.¹⁷ For rural areas, the publication of these legal resources is however hardly reached. With this regard, it is difficult for ordinary people as well as local authorities to receive laws and legal regulations. If people do not know what necessary law is, it is hard for them to recognize the wrongdoings of the competent authorities. Therefore, the government is necessary to distribute laws and legal regulations to all government agencies so that the competent authorities can implement law correctly. As mentioned in Sub-section 3.2.1 “Limited Legal Awareness”, mass media also plays a vital role in disseminating such legal resources to people from all social strata.

People’s poor voice has also a great deal of impact on the implementation of law. The woes of people who have been affected from the wrongdoings by authorities are diffused throughout the country. The rueful voice arising from sufferance of people whose rights are violated has not become a pressure for

¹⁷ See Michael M. Calavan, Sergio Diaz Briquets and Jerald O’ Brien, “Cambodian Corruption Assessment,” prepared for USAID Cambodia in May-June 2004 submitted August 19, 2004): 8, http://www.usaid.gov/kh/democracy_and_governance/documents/Cambodian_Corruption_Assessment.pdf, last visited November 30, 2006.

those who violate the law. The government has not strengthened the voice of citizens in order to check whether their rights are violated. For example, if local authorities or other government agencies violate the law, how they can be punished. There is no mechanism to evaluate the output of the implementation of law thereby making law exist only in paper. Mass media can be a good means to bring messages to the higher competent authorities in order to control the work of the subordinate authorities. Unfortunately, in reality, media reporters usually face accusation or imprisonment when reporting the cases related to powerful people.¹⁸ Moreover, ensuring the safety of the person who informs the true wrongdoings of any authorities can be a good means to succeed in legal implementation.

3.2.4 Livelihood Shortages

Livelihoods of local authorities have a vital impact on local governance. It is nationwide recognized that the salary of Cambodian civil servants as well as local authorities and government members is relatively low. In contrast, the value of living standards is high. The imbalance between the income arising from the official work and the expense fulfilling the daily life makes it possible for government officials to look for other means in order to supply a lack of their family financial support. As such, it is impossible for the local authorities to fulfill their duties appropriately. Low salary therefore is an impetus to lead to the loose management of local authorities and corruption may arise rampantly. The government cannot enforce serious measures on the civil servants thereby exacerbating public confidence on the government because of the lack of responsibility of every government agency.

Low salary of local authorities provokes ineffective local management. Since the salary cannot support the daily life,¹⁹ local authorities do not concentrate much on implementing government policies and respecting the law. Instead, they focus on other jobs in order to survive. For example, rural local authorities are busy farming as other ordinary citizens other than focusing on the effectiveness of their management. If people need signature from the local authorities, they sometimes just sign without carefully seeing what the document is because they are not in the office. This action may be more serious especially in the case of signature on the document relating to land without checking carefully whether whom the land belongs to.

¹⁸ See also James Borton, "Sex, scandal and the Cambodian press," *Online Asia Times*, 13 September 2002, http://www.atimes.com/atimes/Southeast_Asia/DI14Ae02.html, last visited January 11, 2010.

¹⁹ The salary of a village chief is 40,000 Riel (approximately US\$ 10).

Land disputes possibly arise therefrom. The government is therefore necessary to consider increasing their salary in order to reach at least the daily life expense so that they do focus more on their official work making strong management.

Livelihood shortages of local authorities possibly lead to corruption. As mentioned earlier, local authorities try to work outside their official work in order to fulfill their livelihoods. However, some local authorities survive by their official work because they can receive some extra money from the work. For instance, local authorities request additional money when citizens need them for certifying any necessary legal documents. As for land issues, local authorities play a very crucial role in certifying the preliminary evidence of the document for higher ranking authorities. More terribly, if higher ranking officials ask lower ranking officials to sign on the necessary documents, those lower ranking officers always accept to do that. So the corruption can start from the lower level or the higher level of the authorities. Avoiding such incidence, the government is necessary to determine the accurate period of time for any official documents which go through the hierarchical level of the authorities. Yet, the mechanism to punish the authorities who do not fulfill their obligations correctly is very necessary.

Responsibilities of local authorities are influenced by the salary from their official work. If the salary is low and cannot fulfill their daily life expenses, local authorities must possibly be involved in other jobs in order to survive. As such, their management can always be poorly designed. For example, people come to stay on a river bank where the law prohibits, local authorities unleash them to stay there for a long period of time. Such a situation may attract a number of more poor people to dwell in and happens ubiquitously throughout the country.²⁰ Difficulties arise when the government plans to develop that area. If the local authorities have high responsibilities, those people had to be banned from staying at the early arrival. Moreover, the local authorities may be involved in corruption in order to fulfill their basic needs thereby exacerbating the responsibilities. This trend appears in both government and judicial institutions. High responsibilities of every government agency are necessarily taken into account if the government intends to strengthen the administration at all administrative levels.

²⁰ Boengkak Lake is a typical example where more than 4,000 families, account to 20,000 people, dwelled in this state public property for more than 5 years. According to the law, those families will always be considered as illegal settlers regardless of the period of their stay.

3.3 Authority and Responsibility

3.3.1 Capabilities of Local Authorities

3.3.1.1 State Land Management

Land is crucial for sustainable development if the management of land is transparent and the access to land is fair for every citizen. The goal of the government administration in land management is necessary to provide the policy and administrative framework to ensure the smooth operation of land management at all levels of competent authorities. Land reform in Cambodia has a clear image of ownership²¹ in which state land ownership requires assiduous protection and self-responsibility of competent authorities. Since 80 percent of the total land belongs to the state, the competent authorities therefore play a pivotal role in managing state land in order to maintain sustainable social development and environmental protection. This discussion suggests that local authorities clarify the land which belongs to the state so that any individuals avoid grabbing the land. The discussion in this sub-section proposes a useful measure to protect state land. The careful planning for the use of state land is also discussed. Lastly, the discussion suggests the punishment mechanism for competent authorities as well as any individuals who violate the laws and legal regulations.

Identification of State Land

The failure to establish a mechanism to protect state land, in the early land reform in 1989, has remained much problematic in the present Cambodian society. The absence of clarification of state private land and state public land makes it impossible for local authorities to inform their local villagers the right to specific state land. Consequently, both local authorities and ordinary people do not understand clearly the right to land which affects state land and therefore some people have occupied the land which belongs to the state. More seriously when the government plans to develop that land, those people will lose everything. As such, social development becomes more deteriorate. Therefore, urgent attention to demarcation of state land is important to ensure the protection and maintenance of state land. With this regard, it is necessary that local authorities inform their local people about the state land and encourage them to report to the

²¹ There are two main types of property ownership that is private ownership and state ownership. State property ownership divides into state private ownership and state public ownership.

authorities when seeing state land grabbing. The government should also pay much attention to speeding up the registration of state land.

Eviction is a well-known measure for the government toward those who have illegally occupied state land regardless of the length of stay. The unclear demarcation of state land makes it possible for any persons who are in need of land to squat in. Although the constitution and land law refer to state land, there has been no mechanism to make people realize the boundary of the state land until 2005 when the Sub-decree on the State Land Management was available. This sub-decree requires a mechanism of identifying and mapping state land in which provincial state land management committee and district working group are responsible for the administration work. This sub-decree also necessarily tries to make comprehensive identification and master plan of state land use through identifying and mapping, registering and classifying, distributing and managing, reclassifying state land, as well as establishing and maintaining state land data system.²² However, the sub-decree fails to mention the urgent measure which requires local authorities to roughly mark all state land in their territory within a short period of time. Consequently, state land grabbing has been still available since 2005.

Public announcement of state land made by local authorities plays a vital role in informing all local people to know where state land is and thereby avoiding state land grabbing. It should be noted that state land is divided into two types that is state private land and state public land in which the state can revoke only state public land at anytime without compensation.²³ In this regard, poor people are more vulnerable because when they see vacant land without any notice whether it is state public land, those people may come to settle in that land if the local authorities do not ban them in advance. The cooperation between local people and local authorities can be worth contributing to good state land management if local people are aware of state land and are able to inform local authorities those who grab state land. Therefore, in order to effectively protect state land, the government is necessary to create a mechanism in which local people can report about all illegal occupation of state land to local authorities for an urgent prevention measure.

Registration of state land can ensure the effective protection of state land if all land is required to

²² Sub-decree on the State Land Management, No.118ANK/BK, October 07, 2005, art. 1.

²³ The 2001 Land Law, art. 18.

be registered. The 2001 Land Law which provides a full legal protection through a registration system by attempting to build a trustworthy cadastral administration.²⁴ However, this law does not require all landholders to register their land within a limited period of time. This flaw in law may allow most of the landholders do not acquire land certificates. As such, it may produce a normal image to all ordinary people that there is no difference between those who are legal and illegal landholders since most of them do not have land certificates. This trend is more serious for those who have settled in state public land for a long period of time and have invested in land because they face eviction without compensation when the state needs the land for development. Although the effort of the government through systematic land registration tries to provide perfect system of land registration, it takes a long time to complete thereby making many problems in outside adjudicated areas where a huge number of people have not registered their land. Therefore the government should require all landholders to register their land and speed up the registration of state land in order to avoid state land grabbing.

State Land Protection

The protection of state land is vital for sustaining social development and maintaining environment. Since 80 percent of total land of Cambodia belongs to the state, the government is able to make a green environment policy through forest which is classified as state public land, and to redistribute state private land for poor people through social land concessions. However, experience has shown that state land grabbing is ubiquitous and rampant thereby becoming a serious concern for the government to prevent such incidents. As such, local authorities play a crucial role in protecting state land in their local territory. Having this role fulfilled, the government should disseminate legal awareness relating to state land to local people through local authorities. Also, prevention of all means of early land grabbing may be an effective measure to retain state land. Moreover, creating a system which strengthens the people's voice may be another effective measure for protecting state land.

Dissemination of fundamental legal understanding with regard to state land to local people is very important for the contribution to the state land protection. As mentioned earlier, local people are not aware of right to state land, so those people may not know whether they violate the right to state land or not. If

²⁴ The 2001 Land Law, arts. 238, 239 & 241.

this situation continues, rampant land problems arise making a more serious burden for the government to develop the country. Therefore, the government should consider educating ordinary people fundamental land rights so that they can easily cooperate with government for protecting state land. Local authorities are the main focus that can disseminate legal knowledge concerning land to their local people. Also, the mass media play a vital role in achieving this goal if the government encourages this sector to do so. Moreover, NGOs are another effective means to disseminate legal rights through opening workshops and providing trainings for local people. With this regard, however, the cooperation of every government agency with NGOs is needed.

Effective protection of state land is also necessary to have a mechanism with an urgent measure to prevent early land grabbing. Evidence has shown tremendously intricate land problems arising from squatting in state land without prevention made by local authorities from the early start point. Boengkak squatting is one of the apparent examples which happened in the central part of Phnom Penh where 4,252 families²⁵ have been living in. Boengkak is a lake which, according to the law, belongs to state public land where no one can claim ownership. In 2007, the government planned to develop this area. As such those people are required to leave the place with compensation through negotiated government policy. Legally, regardless of the legal procedure to develop the Boengkak Lake,²⁶ those people are not entitled to receive any compensation. However, negligence of the local authorities to allow them to live there makes more social problems if they are evicted without compensation. If the local authorities prevented them from the early arrival, the government easily plans to develop the area without spending extra compensation. Moreover, the government gains more human rights view because the planned areas for developing do not affect ordinary people. Therefore, the local authorities should pay more attention to preventing from squatting in state land in the early state of arrival.

Strengthening people's voice is another mechanism to protect state land from encroaching. In a

²⁵ Housing Rights Task Force, "Information about Communities in Phnom Penh Facing Eviction and Were Evicted in 2007, July 2008," TMs (photocopy), p. 3, Supported by Cooperative and Open Society Institution, Phnom Penh. See also *The Cambodia Daily* (Phnom Penh) 3 January 2008 (Khmer translated version) (reporting that 20,000 people who have been living in the Boengkak Lake).

²⁶ According to Article 18 of the Sub-decree on the Rule and Procedure of Transferring Public Property of the State and Public Entities dated on November 26, 2006, state public land cannot be rented over 15 years. As such, it is very controversial that Boengkak was rented to the company named SHUKAKU INC for the period 99 years. The contract was signed by the Phnom Penh Capital Governor on February 6, 2007. Yet, it was late that the government issued the Sub-decree on Transferring Boengkak to state private property, No.108ANK/BK dated August 7, 2008. This sub-decree should be issued before the contract was signed.

small scale of territory, such as a village, villagers usually know each other well. As stated above, all state land is required to be informed by local authorities making local people be aware of location of the state land. As such, if any villager or any other stranger grabs the state land, the villagers realize the action of that person as state land grabbing. With this regard, the creation of a village community to protect public interest in the village is also very necessary. The representative of the village community can serve the community interest. Anyone who knows that the state land is grabbed is encouraged to inform the representative of the village community in order to report to the local authorities. The local authorities should be required to investigate for further information. However, the safety of the reporters and the representative of the village community should be guaranteed by the state. This system therefore ensures that all early state land grabbing is promptly taken action against.

The Use of State Land

Effective use of state land contributes much to country development. Since 80 percent to the total land belongs to the state, the only protection of state land is useless if such land is not in effective use. As mentioned in “Identification of State Land” above, the clear identification of state public land and state private land is good for investors in order to prepare a master plan for investment. Investors may rent state public land for no more than 15 years. Yet, with state private property, investors can use it in the form of economic land concession contracts in which the period cannot exceed 99 years. Understanding the basic necessities of the use of state public land and state private land is vital for preparing a master plan for land use planning. It is necessary that local authorities prepare state land use information system in order to allow investors to easily access land use. Encouragement of land users from the relevant authorities is needed so that all state land is in use.

Local authorities play an important role in land use planning. Experience has witnessed enough that the rapid growth of urban population resulting from the inception of the industrialization mainly garment factories since the 1990s requires that the government take an urgent attention to land use planning.

It should be noted that world countries have also taken actions with land use planning²⁷ in order to avoid future impacts. With this regard, in the 1850s, local governments in Germany were delegated to “establish street alignments, regulate building construction, and control land use.”²⁸ In Cambodia, local authorities have not been given sole power to be responsible for land use planning, such as drainage, water supply, roads, reserved land for recreational facilities, rubbish tips and other amenities. Therefore, the government should consider providing such responsibilities for those local authorities in order to improve social development. Trainings on land use planning for local authorities are necessarily taken into account in order to achieve land use planning objectives.

State land use information system is also needed for developers or investors to easily access state land use. It is necessary that local authorities be responsible for this work. Remarkably, decentralization in Cambodia to the commune level first existed after the commune council election was made in February 2002. With this regard, the Law on the Commune Administration states that commune council must prepare, adopt and implement a development plan in the commune territory.²⁹ Also, a village chief is necessary to give comments to the commune council on issues relating to village interests.³⁰ This law however does not directly refer to land development thereby making the council ambiguous to make a state land use plan. Moreover, the Sub-decree on Economic Land Concessions which is expected to make use of state private land through economic land concessions does not mainly mention the role of commune councils with regard to the concessions. Since commune authorities is possibly aware of the geographical status of all land in their territory, the state land use information system is very important to be made from this local level because local people can also see whether state land use planning is appropriate or not so that those local people are able to provide comments in order to have a satisfied development plan.

In addition to the state land use information system mentioned above, encouragement of land users is an impetus to achieve state land development purposes. Experience has shown that the government does not make efforts to encourage local people who are able to invest in land in their communes. Interestingly,

²⁷ Peter F. Dale and John D. McLaughlin, *Land Administration* (New York: Oxford University Press, 1999), 75 (stating that London and Paris undertook ambitious urban renewal programs in their cities in 1850s. In North America, land use planning dates from the 1860s. In New Zealand enacted “Plans of Towns” legislation in 1875).

²⁸ *Ibid*, 75.

²⁹ Law on Commune Administration, No.NS/RKM/0301/05, March 19, 2001, art. 60.

³⁰ Law on Commune Administration, No.NS/RKM/0301/05, March 19, 2001, art. 31.

incentives for investors stipulated in Article 14 of the Law on Investment in 1994 states that:

Incentives and privileges shall consist of the followings:

1. A corporate tax rate of 9 percent except tax rate on the exploration and exploitation of natural resources, timber, oil, mines, gold, and precious stones which shall be set in separate laws.
2. A corporate tax exemption of up to 8 years depending on the characteristics of the investment and the priority which shall be mentioned in a sub-decree. Corporate tax exemption shall take effect beginning from the year the project derives its first profit. A 5-year loss-carried forward shall be allowed. In the case that profits are reinvested in the country, such profits shall be exempted from all corporate tax.
3. Non-taxation on the distribution of dividends or profits or proceeds of investments, whether transferred abroad or distributed in the country.
4. 100 percent import duties exemption on construction materials, means of production, equipment, intermediate goods, raw materials and spare parts shall fit one of the following conditions:
 - a. An export-oriented project with a minimum of 80 percent of the production set apart for export,
 - b. Located in a designated Special Promotion Zone (SPZ) listed in a development priority list issued by the Council for the Development of Cambodia;
 - c. Tourism industry;
 - d. Labor-intensive industry, processing industry, agro-industry; and
 - e. Physical infrastructure and energy industry.

These 100 percent exemption of duties and taxes mentioned above shall be in effect according to the terms of the agreement or specification document of the investment projects which will produce goods for export in minimum of 80 percent of overall productivities as stipulated in the above point (4)a and for investment projects located in Special Promotion Zone (SPZ) as in (4)b.

Besides the kinds of investment projects in the above points (4)a and (4)b the 100 percent exemption of duties and taxes shall only be authorized for the period of constructing enterprises, factories, buildings and the production operation of the first year.

5. 100 percent exemption of tax of export products;
6. the permission to bring into the Kingdom of Cambodia foreign nationals who are:
 - Management personnel and experts
 - Technical personnel
 - Skilled workers
 - Spouses and dependents of the above persons as authorized by the Council for the Development of Cambodia and in compliance with the immigration and labor laws.

These incentives are good strategies for the government to attract investors to invest in Cambodia. Yet, besides the incentives mentioned above, local investors who invest in land of the same commune are necessary to provide extra incentives. The extra incentives should include the priority of investment permission and extension of tax exemption. By so doing, it will prevent migration from rural areas to urban areas or other countries since work opportunities are available in their homeland.

Punishment Mechanisms

An appropriate mechanism to punish those who grab state land is crucial in order to protect state

property well. The Sub-decree on State Land Management which was issued on October 7, 2005 mainly focuses on identifying and mapping state land; and registering, classifying and reclassifying state land. This sub-decree does not state the mechanism to stop and punish state land grabbers. Albeit this failure of punishment mechanism inclusion, the government issued the Circular on Illegal Occupation of State Land on February 26, 2007 in order to provide guidance for state landholding authorities to have a measure against illegal state landholders. However, this circular does not provide responsibilities for commune authorities who stay very close to their commune land to prevent state land grabbing. This discussion proposes some more mechanisms which require that a commune chief prevent illegal state landholdings. It is also necessary to establish village community in order to inform the commune chief about illegal state landholdings or to make a claim in court.

Commune authorities can play a very crucial role in preventing and stopping illegal state land occupation. After the 2001 Land Law came into affect, it has been seen that the government issued a notification³¹ stating that all level of territorial authorities has to prevent and stop new occupation of immovable property. Yet, the government does not provide a complete guidance with regard to how every level of authorities should be responsible for the task although decentralization has been available for local authorities from commune authorities to provincial authorities.³² This loophole resulted in rampant land grabbing since the promulgation of the second land law on August 30, 2001. As mentioned earlier, commune authorities are able to prevent very early stage of illegal state landholdings. However, if commune authorities cannot evict illegal state landholders, the commune authorities should be required to make a claim in District Cadastral Commission or in court depending on land status.³³

As mentioned in “State Land Protection” above, a village community can serve not only the community interests but also public interests. For example, if the village community sees anyone who illegally holds state land, this community may inform the commune authority through a village chief. After

³¹ Notification on the Cessation of Acquisitive Possession on Immovable Property, No.43SCN/KBC, September 06, 2001.

³² The first commune council election was conducted on February 3, 2002 and the second one was on April 1, 2007. More remarkably, the first provincial and district council election was conducted on May 17, 2009. Albeit the attempt of the decentralization to those authorities, the existing laws and legal regulations do not provide full responsibilities of local authorities in order to protect state land grabbing.

³³ Disputes of land with a certificate will be sent to the court while disputes of land without a certificate will be sent to the Cadastral Commission. For more information see Article 47 of the 2001 Land Law, and see also Inter-ministerial Proclamation on the Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes, No.02PKN /03, November 26, 2003.

receiving the information of illegal state landholdings, the community authority should be required to investigate the case. It is also necessary to secure the village community providing the information so that there is no bad impact arising from the information provided. If finding that those landholders are illegal, the commune authority can request them to leave from the land. In case that those landholders refuse the proposal, the commune authority can make a claim in District Cadastral Commission or in court. Therefore, illegally state landholders will never be able to resettle in state land for a long time making convenient for removal.

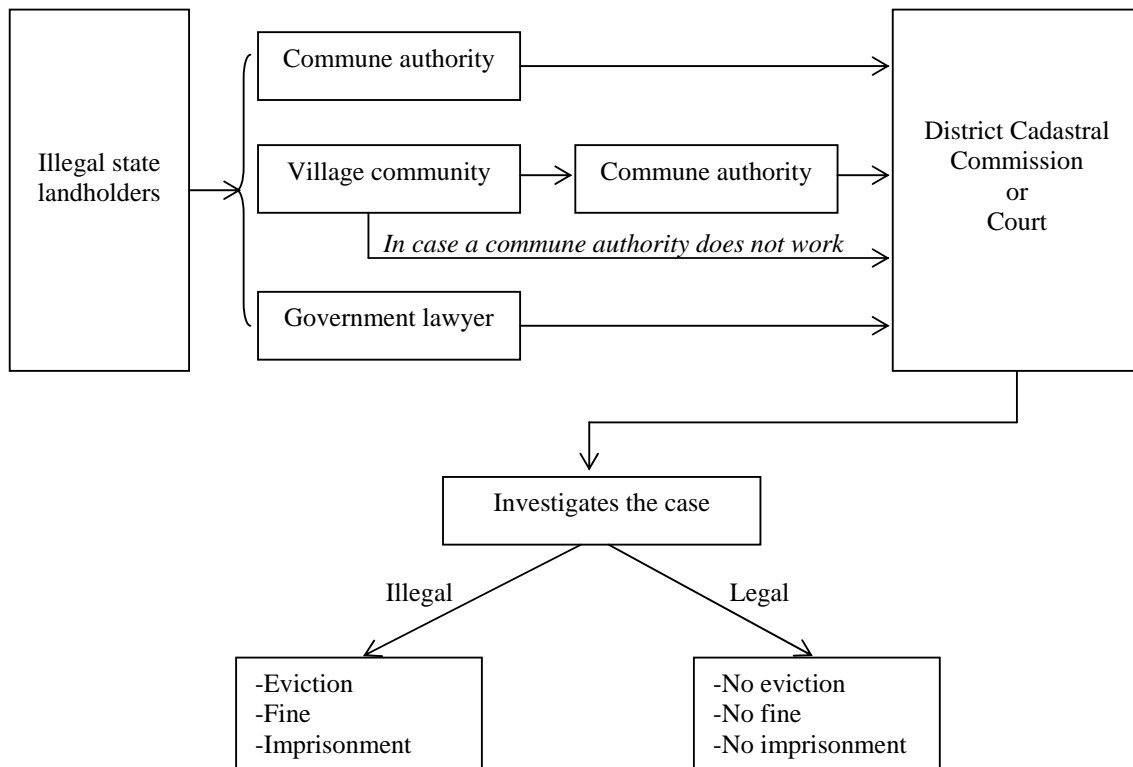
More interestingly, the village community can also make a claim directly in District Cadastral Commission or in court. In case that the commune authority receives information about illegal state land holdings from the village community but fails to investigate the case, this commune authority should be required to respond to the village community with an appropriate reason for a limited period of time. If the village communities are not happy with the response or the limited period passes, this community should be encouraged to make a claim in District Cadastral Commission. The commune authority should be responsible to the cadastral commission or court when the complain finds that there are illegal state landholders. It is also necessary to provide security for village community who informs District Cadastral Commission. As such, it is expected that village community will have an active contribution to preventing and punishing illegal state landholders.

The action made by government lawyers is another mechanism leading to punishment of illegal state landholders. Currently, the Royal Government of Cambodia has own lawyers in order to make a claim in court in the event that causes a bad impact on public interests. With this regard, it is vital that the government lawyers are required to make a direct claim in court when the lawyers find that there are illegal state landholders. Illegal state landholders cannot stay for a long time in state land since they are always feasible to be evicted and punished. This mechanism may deter other people from squatting or grabbing state land effectively.

When receiving a claim from all sources as mentioned above, cadastral commission and court should be required to investigate the case immediately. For District Cadastral Commission, when finding that the land is not registered yet, the case can be conducted. If there is no state land grabbing, so the state landholders can continue their enjoyment. Yet, if the case can be found that there is state land grabbing, the

state land grabbers are subject to eviction without any compensation. However, if the District Cadastral Commission finds that the land is already registered, the case will be submitted to the court. Following court procedures, all illegal state landholders are subject to a fine from 5 million Riel to 50 million Riel³⁴ or/and imprisonment from 1 year to 5 years. Also eviction of those illegal state landholders is necessarily made immediately without any compensation³⁵ (see figure 3.1 for the proposal of the diagram of punishment mechanisms). For those who remove, move, or destroy a cement marker, a topographic points and location of a cadastral sign have to be fined from 0.5 million Riel to 3 million Riel³⁶ or/and be imprisoned from 1 month to 6 months regardless of any damage caused therefrom.³⁷

Figure 3.1: Proposed Punishment Mechanism of Illegal State Landholders



3.3.1.2 Social Land Concessions

³⁴ 5 million Riel is equivalent to US\$1,250 and 50 million Riel is equivalent to US\$12,500 in June 2010.

³⁵ The 2001 Land Law, art. 259.

³⁶ 0.5 million Riel is equivalent to US\$ 125 and 3 million Riel is equivalent to US\$ 750 in June 2010.

³⁷ The 2001 Land Law, art. 260.

After the collapse of the Pol Pot regime in 1979, Cambodia has been nationwide known that the milestone of land privatization was first available in 1989 responding to the Constitution of the State of Cambodia.³⁸ Since then, most people were believed to receive a fair land distribution. The first Cambodian land law was promulgated in accordance with this privatization policy in 1992. Yet, political turmoil and fighting resulting from the existence of the civil war prevented most of the people returning from the Cambodian-Thai border camps in the early 1990s from receiving any land. In addition, demographic pressures have increased making newly formed families become landless because no more land was redistributed.³⁹ As a result, rural household landlessness has risen to 20 percent among the total number of rural households and it was believed that the rural landlessness may be increasing by 2 percent every year.⁴⁰ It is noted that landlessness tendency has impelled the government to include land redistribution in the form of social land concessions in the 2001 Land Law. It is believed that this second land law will allocate state property with a fair and equitable manner to poor landless people.

This sub-section mainly focuses on the experience of land redistribution and raises propositions for a future success of land redistribution. The first focus of this sub-section tells the reasons why social land concessions are needed, and then the second focus describes the mechanisms of land redistribution through social land concessions. The third focus necessarily refers to challenges arising from the social land concessions. The last focus proposes possible needs for successful social land concessions.

Purposes of Social Land Concessions

Land is a fundamental resource for poor landless people to develop their way of life. A lack of access to land as experienced in India is correlated with a high poverty rate.⁴¹ In Cambodia where the

³⁸ The Constitution of the State of Cambodia was promulgated on April 30, 1989 requiring a mixed economy while the Instruction on the Implementation of Land Use and Management Policy, No.03SNN dated June 03, 1989 provided private ownership to Cambodian citizens.

³⁹ Sophal Chan and Sarthi Acharya, *Land Transactions in Cambodia: An Analysis of Transfers and Transaction Records*, Working Paper No. 22 (Phnom Penh: Cambodia Development Resource Institute, July 2002), 5 (“The Oxfam Study on land shows that of the new families that were formed during the 15 years prior to 1999, about half were landless from the very beginning because there was no land to redistribute.”).

⁴⁰ Ministry of Planning, *Cambodian Human Development Report 2007: Expanding Choices for Rural People* (Phnom Penh: Ministry of Planning, 2007), 48.

⁴¹ *Supra* note 1 at 1.

poverty rate was 35 percent of the total population in 2004,⁴² a vigilant government policy in order to provide fair and equitable state property redistribution is urgently needed. With this regard, social land concessions equipped with basic infrastructures and necessary public services require a well-designed policy and applicable laws and regulations. Setting clear purposes of the social land concessions and fulfilling those purposes are the main task that the government should take into account. The 2001 Land Law which requires the Sub-decree on Social Land Concessions has the main purposes to improve social development through fair and equitable redistribution of state private land,⁴³ and to develop national economy by encouraging economic land concessions to build plantations. Sustainable environmental protection should also be taken into account.

One of the main purposes of social land concessions is to improve social development. Poverty alleviation is expected to happen when poor landless people have an opportunity to receive fair and equitable land redistribution. With this regard, the Sub-decree on Social Land Concessions issued on March 19, 2003 requires that social concession land be provided for non-residential poor families to build houses, poor families to conduct subsistence agriculture, displaced families caused by public infrastructure development to resettle in, families suffering from natural disaster, repatriate families, and demobilized families and dead or disable soldier families.⁴⁴ It seems that this sub-decree intends to share state property to every poor citizen. All affected people by the government's action such as infrastructure development or by natural disaster will be provided land for their daily life sustainability. As such, it is believed that social welfare will be improved if the Sub-decree on Social Land Concessions is implemented well.

Another purpose of social land concessions is to improve economic development. The 2001 Land Law attempts to develop national economy not only through economic land concessions, but also social land concessions. The Sub-decree on Social Land Concessions will distribute state private land for the purposes of facilitating economic development, facilitating economic land concessions by providing land parcels for plantation workers to build houses or conduct subsistence agriculture, and developing areas that

⁴² World Bank, Cambodia Halving Poverty by 2015?: Poverty Assessment 2006, *Report No. 35213-KH* (World Bank, February 7, 2006), i. See also UNDP Cambodia, *Land and Human Development in Cambodia*, Discussion Paper No. 5 (Phnom Penh: UNDP Cambodia, 2007), 5.

⁴³ UNDP Cambodia, *Land and Human Development in Cambodia*, Discussion Paper No. 5 (Phnom Penh: UNDP Cambodia, 2007), 15 (according GTZ survey in 2006, state private land consists of 14 percent of the total land).

⁴⁴ Sub-decree on Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 3.

have not been appropriately developed.⁴⁵ In Cambodia, it is remarkably known that there are a lot of remote areas which are not developed yet. The Sub-decree on Social Land Concessions allows the government to prepare a proper master plan for developing those areas. Also, the policy providing residential and subsistence agricultural land for workers of plantations in economic land concessions encourages large investors to invest more in remote areas because workers are always available.

Although the purposes of social land concessions stated in Article 3 of the Sub-decree on Social Land Concessions does not directly mention environmental sustainability, social and environmental impact is taken into account when social land concession programs are made.⁴⁶ More importantly, prevention measures of the social and environmental impact are also described in social land concession programs. This sub-decree therefore seems to provide harmonious life of social land concession holders. However, the sub-decree does not provide financial mechanisms to maintain environmental protection in social land concession areas.

Social Land Concession Mechanisms

Social land concessions are the sole government policy to redistribute state private land legally to poor and landless people for residential or/and subsistence agricultural purposes. Landlessness and land scarcity which are a major contributor to poverty and vulnerability in Cambodia would be expected to be resolved when the implementation of the Sub-decree on Social Land Concessions is effective. Yet, difficulties in identifying and registering state land may be an eminent hindrance for responsible authorities. The well-done implementation, however, depends foremost on the political commitment to release suitable land in order to respond to the urgent needs. It is noted that there are two main implementation mechanisms which consist of a national level and local levels. Remarkably, local levels are divided into provincial level, district level and commune level responsible for social land concession programs at the local levels. The success from the implementation procedures may however depend mainly on the real power of decentralization.

At the national level, the national social land concession committee is an institution determining

⁴⁵ Sub-decree on Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 3.

⁴⁶ Sub-decree on Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 9.

the national social land concession policy but it is under the control of the council of land policy. It is amazingly noted that the chief of the national social land concession committee and that of the council of land policy is same person, the minister of Land Management, Urban Planning and Construction.⁴⁷ Moreover, there is no clear provision to state the procedural control of the council of land policy. This complicated requirement may lead to time-consuming procedures of social land concessions at the national level. Not only the national social land concession committee has the duties to initiate national social land concession programs, other ministries or institutions also have the right to initiate the concession programs. In this respect, the Sub-decree on Social Land Concessions requires that the social land concession programs be submitted to the national social land concession committee for the examination. However, the sub-decree is silent whether the committee has the right to reject the plan. It looks a bit tricky to say that the national social concession committee can initiate national social land concession programs but this committee does not hold state private land. Therefore, it is necessary that all national social land concession programs be done at the only one responsible institution that is the national social land concession committee in order to ease the national social land concession programs.

At the provincial level, the provincial land use and allocation committee is the institution determining the provincial social land concession policy. It is however seen that this provincial committee has the duties only to accept or reject or revise the social land concession programs proposed by commune councils. The Sub-decree on Social Land Concessions does not provide the power to the provincial committee while the social land concession programs are beyond the authorities of commune authorities and district authorities. For example, in case the number of applicants for a social land concession program in one commune is too much, the selection criterion is needed to select the applicants in order of priority.⁴⁸ The remained unselected applicants can propose to the provincial land use and allocation committee for social concession land. The sub-decree does not give a clear instruction how those applicants can be decided by the provincial land use and allocation committee since this committee is not entitled to initiate the social land concession programs.

⁴⁷ Sub-decree on Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 21; Sub-decree on Revising Article 4 of Sub-decree No.68ANK/BK dated October 18, 2004 on the amendment of Article 4 of Sub-decree No.88ANK/BK dated December 1, 2000 on the Establishment of Council of Land Policy, No.35ANK/BK, February 06, 2009, art. 1.

⁴⁸ Sub-decree on Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 11.

At the district level, the district working group has main duties to provide technical assistance for commune councils in order to identify, classify and plan land use as well as to select social land concession holders and implement the social land concession programs.⁴⁹ District working groups are also required to ensure effective and transparent distribution of local social concession land. However, the Sub-decree on Social Land Concessions has no guidance how these working groups fulfill the task. Moreover, how district working groups provide technical assistance for commune council remains unclear. As such, district authorities may have poor capacity and resource availability compared to the role mentioned in the sub-decree. At least, it should be stated that district working groups have the right to allocate social concession land where it is beyond the capacity of commune council. Clear guidance on the role of district working groups, together with capacity building, will be required.

At the commune level, a commune council has the role to initiate and implement local social land concession programs. The council is also responsible for the selection of social land concession applicants and the fair and effective land allocation.⁵⁰ Interestingly, the local social land concession program initiated by the commune council has to be submitted to the provincial land use and allocation committee through the district working group for approval. The approval by the provincial land use and allocation committee is not an ultimate decision; the local social land concession program must be submitted to the national social land concession committee for revising or rejecting that concession program within 60 days.⁵¹ Noticeably, whether the submitted documents considered to be approved or not, if no response from the national social land concession committee after the period of 60 days, remain unclear. Therefore, in order to benefit from the decentralization, it is necessary that local social land concession programs be made and responsible only at the local levels.

Challenges of Social Land Concessions

The outcome of social land concessions has so far been a dream for poor and landless people in terms of their poverty alleviation. Legal tools to implement the Sub-decree on Social Land Concessions dated March 19, 2003 have not entitled local authorities to fully benefit from the decentralization in order

⁴⁹ Sub-decree on Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 26.

⁵⁰ Sub-decree on Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 28.

⁵¹ Sub-decree on Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 6.

to achieve the purposes of social land concessions. The final decision in order to create social land concession programs from local to national must be approved by the Council of Land Policy⁵² under the supervision of general council of state reform.⁵³ The long bureaucratic legal procedures lead to slow pace of social land concession programs. Also low living standards of concession holders will never be improved through social land concessions because of the uncertain role of responsible competent authorities. Moreover, the abandonment of new relocated places is a sign to show that the relocation areas are not yet ready for living places. With this regard, it can be seen that school dropout rate of concession holders' children is high making more future misery. Poor land management also leads to booming informal sales which cause future landlessness again.

Slow pace of land redistribution to poor and landless people through social land concessions remains much problematic.⁵⁴ A lack of clarity on the legal procedures and intricate approval processes are the main causes. Moreover, accompanying guidelines and relevant regulations make it impossible to match the current urgent needs. For example, the Sub-decree on Social Land Concessions states a vague definition of social concession land⁵⁵ thereby causing commune councils or the national social land concession committee uncertain to prepare social land concession programs. In 2005, the Sub-decree on State Land Management requires that state land subject to social land concessions be registered. Yet, the way to speed up the registration process of state land whether through sporadic land registration or systematic land registration remains silent in this sub-decree. As such, the competent authorities have nothing to do with social land concession programs if state private land remains unregistered. More remarkably, systematic land registration projects under the support from World Bank, German and Finnish governments have been done slowly. In addition, the Proclamation on Financial Criteria of Social Concession Land Applicants was issued in July 2007 making competent authorities impossible to select social land concession applicants although state land was already registered before 2007. Therefore, many poor and landless people remain everywhere in Cambodia.

It is noted that the livelihoods of social land concession holders have so far been miserable. The

⁵² Joint Circular on Mechanism to Provide Agricultural Dissemination Services for Social Land Concession Peasants, No.507PK/KSK, December 26, 2006.

⁵³ Sub-decree on the Establishment of the Council of Land Policy, No.88ANK/BK, December 01, 2000, art. 3.

⁵⁴ Circular on the Illegal Occupation of State Land, No.02SR, February 26, 2007.

⁵⁵ Social concession land is "the land subject to social land concessions."

purposes of social land concessions are not fulfilled due to the fact that actual implementation has not followed the rule of law. Displacement had been made before the existing necessary legal procedures concerning social land concessions leading to the implementation without complete requirements. For example, the Sub-decree on Social Land Concessions requires that the possibility of basic infrastructures be evaluated in order to implement the concession plans,⁵⁶ but the basic infrastructures have not been established in actual practice.⁵⁷ Without basic infrastructures, it is hard for people to communicate from one area to another, thereby exacerbating business transactions. Moreover, the government does not make more efforts to create job opportunities in the relocation areas making displaced people jobless. It is impossible for people to live in one place without having jobs to support their livelihoods.

Abject livelihoods arising from the failure of displacement policy lead to the abandonment of relocation places.⁵⁸ Personal interview made in November to December 2008 and March 2009 showed that 20 percent out of 149 respondents became jobless in the new relocation areas which are far from the central city⁵⁹. More remarkably, 42 percent of them remain sellers in the new places where their sales cannot fulfill the basic needs because the clients are only the poor. As such, some of them leave their houses for some period of time for one day, one week or one month in order to find new jobs. Also, for those who work in the former places rented rooms nearby those places for continuing their work, as such they leave their new houses in relocation areas for a long period of time. When time permits, they come to their houses like visitors only. Poverty continues when relocation areas are far from job centers.⁶⁰ These long-distance areas are also the cause of expenses for communication from those areas to market places and work places thereby discouraging them from living in those areas.

School dropout of the children of relocated people is a bad impact on social development. As

⁵⁶ Sub-decree on Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 9.

⁵⁷ It can be seen that relocation areas, such as Trapaing Anhchanh Village, Trapaing Andong Village and Damnak Trayeung Village are the relocation areas which are not equipped with basic infrastructures when displacement is made. Although passable roads in Damnak Trayeung Village were established, but drainage system, water supply and electricity were not fully available.

⁵⁸ The Cambodian Human Rights and Development Association, *Human Rights Situation 2008* (Phnom Penh: The Cambodian Human Rights and Development Association (ADHOC), January 2010), 2 (stating that 70% of forced eviction victims have either abandoned or sub-let their relocation houses outside the city in order to return to Phnom Penh where they can look for work and access schools for their children).

⁵⁹ The new relocation areas are usually 20-25 kilometers from the former places. See Appendix 2 for more information.

⁶⁰ Bernadette Atuahene, "Legal certificate to Land As an Intervention Against Urban Poverty in Developing Nations," *George Washington International Law Review* 36 (2004): 1111.

already mentioned, relocation areas, which are far from central city, always face a lack of schools. So children have difficulties in going to farther schools thereby feasibly giving up those schools. Moreover, when relocated people are facing poor livelihoods, they do not concentrate on their children's schooling. With this regard, children with absence of education are likely to be persuaded to commit bad things. Consequently, the future families' livelihoods become more miserable since when the children becoming adult cannot financially support their families. The government should pay more attention to the education of relocated people's children, otherwise the government will face a more serious future burden.

Another challenge of social land concessions is informal sales of the land parcels which have just been received. The Sub-decree on Social Land Concessions prohibits social land concession holders from selling, exchanging, renting, or donating the social concession land during the first 5 year implementation period because the social land concession holders can only claim for ownership certificates after 5 years of their enjoyment.⁶¹ The sub-decree also indicates that all social land concession holders who fail to follow necessary requirements, their land must be returned to the state. This policy prevents landlessness soon after concession landholders receive the land. In actual practice, however, concession landholders still sell their land although the sale contracts are informal. It is unclear for the future whether the buyers of social concession land can claim for ownership if time of their occupation passes for more than 5 years. Yet, the continuance of this practice arising from the poor land management will have social problems in the future because landless people will avaiably abound. The government should therefore take an urgent action against with this wrongdoing.

Needs for Successful Social Land Concessions

A vigilant plan which ensures the fulfillment of all legal procedures leads to successful social land concessions.⁶² Albeit the slow pace of social land concession programs in accordance with the Sub-decree on Social Land Concessions, displacement of people arising from development projects has been done long time before the existence of the sub-decree. The aftermath of the displacement, which is considered to be

⁶¹ Sub-decree on Social Land Concessions, No.19ANK/BK, March 19, 2003, art. 18.

⁶² For the success of displacement through the development plan by the government, see Phalthy Hap, "The Implementation of Cambodia's Laws on Land Tenure: Squatters on Private Land" (Master's thesis, Nagoya University Graduate School of Law, 2007), 35-36.

under the social land concession policy, has remarkably exacerbated the livelihoods of the relocated people. It can be therefore said that social land concession programs have so far failed to improve the daily life of the social land concession holders. Experiencing from this failure, the establishment of basic infrastructures before starting social land concession programs is necessary. Also, professional trainings in order to allow social land concession holders to make their businesses by themselves are of fundamental importance. The creation of jobs in or nearby relocation areas is another way to provide an opportunity for the social land concession holders to sustain their livelihoods. Providing long term loans is also crucial for starting up businesses. The social land concession policy should include the children's schooling in order to maintain future social development.

Basic infrastructures are vital for poverty alleviation in relocation areas leading to successful social land concessions. Experience has evidenced enough that fast-track resettlement plan is flawed because relocated people will not be provided with basic infrastructures necessary for their daily life needs. The perpetuity of poverty exists when access to basic infrastructures is not granted for social land concession holders.⁶³ For example, several relocation areas such as Trapaing Andong Village, Trapaing Anhchanh Village, and Anlung Krangan Village have not been developed yet. Those areas look like squatter areas because shanties are in a mess and flood-prone with sewage. Yet, in Damnak Trayeung Village although flats have been built, sewer pipes are very poorly established and there is no sewage reservoir to receive the sewage from that place causing flooded especially during rainy seasons. Moreover, water and electricity has not been provided before the relocation was made. Also, schools, health centers and markets are not available, making relocated people deter from living at the new relocation areas.

Vocational trainings are necessarily conducted for social land concession holders before the implementation of social land concession programs in order to achieve the social land concession purposes. People have different skills and desires in which the improvement of those skills should be included in the government policy for social land concessions. For those who want to work as farmers should be provided with agricultural trainings. For those who want to work in other fields such as barbering, hair dressing,

⁶³ Supra note 60 at 1111.

carpentering, painting and tailoring should be trained in those fields.⁶⁴ Although training programs may be costly and the government may be unable to provide by the government budget, a call for NGO cooperation and international assistance will be a possible option. The outcome of the training programs will be worth because trainees are able to survive by themselves thereby contributing to the improvement of social development.

Creation of jobs in relocation areas contributes to the success of social land concessions. As discussed earlier, the main challenges of social land concession holders are the impossibility of having jobs to do. Encouragement of investors to invest nearby relocation areas is very crucial to create jobs for social land concession holders. For relocation areas where social land concession holders are farmers, small processed enterprises are necessary to make agricultural products into processed food. The government should also encourage investors to build garment factories near relocation areas in order to absorb workforces from social land concession holders. If social land concession holders have jobs to do in new relocation areas, it is not therefore necessary where those areas are because they can fulfill their livelihoods.

Another need for successful social land concessions is to provide long-term loans with low interest rates.⁶⁵ Usually, poor and landless people hardly access loans from private institutions. With this regard, the assistance from the government in order to allow an opportunity for those people to receive loans for starting up businesses is very necessary to make their sustainable income. As mentioned earlier, vocational trainings only do not necessarily mean that trainees can successfully receive fruit from the trainings unless knowledge obtained from the trainings is able to be utilized. Budget for trainings is needed in order to make sure that trainees will have jobs resulting from the trainings. However, loan policy management is necessary to be carefully taken into account. The background of social land concession holders who require loans should be aware clearly so that they will not escape from paying the loans back. The government plays also a vital role in finding suitable market for the products produced by social land concession holders.

Sustainable social development cannot exist with the absence of education of the children of social

⁶⁴ For more information, see Phalthy Hap, "The Implementation of Cambodia's Laws on Land Tenure: Squatters on Private Land" (Master's thesis, Nagoya University Graduate School of Law, 2007), 38-39.

⁶⁵ For more information, see Phalthy Hap, "The Implementation of Cambodia's Laws on Land Tenure: Squatters on Private Land" (Master's thesis, Nagoya University Graduate School of Law, 2007), 39-40.

land concession holders.⁶⁶ As mentioned in “Challenges of Social Land Concessions” above, dropout rates become a big hindrance for future social development. In this respect, government regulations on a minimal requirement of children’s schooling⁶⁷ are crucial. Because illiteracy is very difficult for development purposes, for example, illiteracy of agricultural populations is an obstacle to improving agricultural sectors.⁶⁸ An incentive of encouraging children to school should therefore be included in the government loan policy. Through receiving loans, it is expected that people can improve their living standards, and then they send their children to school thereby increasing literacy. Local authorities play a crucial role in controlling dropout rates through school teachers. This policy should be therefore taken urgently into account because the continuance of dropout rates will have social problems soon in the future.

3.3.1.3 Economic Land Concessions

Economic land concessions have been seen as a vehicle for economic development in Cambodia through the effective use of state private land. By limiting the maximum size of economic concession land controlled by any one individual to no more than 10,000 hectares, the 2001 Land Law may be seen to promote equitable distribution of wealth. Before going into detailed discussions of economic land concessions, one should understand the meaning of economic land concessions clearly. The term ‘economic land concession’ refers to a mechanism to legally provide state private land through a specific contract to an investor for agricultural and agro-industrial exploitation.⁶⁹ By investing economic concession land which consists of 6 percent of the total land area as of 2006,⁷⁰ it is expected that the investment will lead to country economic growth which benefits not only the rich but also the rural poor citizens. However, experience has not been enough witnessed. Therefore, only the actual implementation in accordance with the rule of law will lead to equitable share among Cambodian citizens.

This sub-section therefore discusses the impact arising from the actual practice of economic land concessions and proposes some considerations for improvement. Firstly, the sub-section elaborates the

⁶⁶ Personal interview in November-December 2008 and March 2009 shows that 72 percent out of 149 interviewed relocated people have not completed primary school and only 2 percent completed university.

⁶⁷ At least, children are required to attend school until grade 9.

⁶⁸ Joel M. Ngugi, “Re-examining the Role of Private Property in Market Democracies: Problematic Ideological Issues Raised by Land Registration,” *Michigan Journal of International Law* 25 (2004): 497. (467-527)

⁶⁹ Sub-decree on Economic Land Concessions, No.146ANK/BK, December 27, 2005, art. 2.

⁷⁰ Supra note 43 at 15.

overview of economic land concessions from the conceptual origin of land concessions since 1989. Secondly, this sub-section describes the actual mechanisms of economic land concessions. Thirdly, the sub-section raises the impact of economic land concessions which is resulted from ambiguous master plans. Lastly, this sub-section proposes the needs for reform in order to ensure that economic land concessions will benefit Cambodian citizens in general.

Overview of Economic Land Concessions

Remarkably, in the early stage of land privatization in 1989, Cambodia used the word 'land concession' which referred to the right to large land for planting important crops in order to serve country economy.⁷¹ Unlike the current economic land concessions, the size of the land concessions at that time was limited to only the minimum size which was no more than 5 hectares. The term of the use of concession land was determined clearly depending on the period of harvesting. The concession land was provided to each family depending on the ability of the family and the availability of the local land. However, it was uncertain that how the state could benefit from the use of concession land. At that time, the Ministry of Agriculture was authorized to issue certificates of concession land. However, records of certificates of concession land have remained unknown. Legally speaking, as of August 30, 2001 each Cambodian family could hold land up to 5.2 hectares.⁷² It necessarily means that other size of landholdings belonged to concession land which was owned by the state. The unavailability of certificates of concession land might become a main reason why some people could own large amount of land⁷³ when the 2001 Land Law came into effect.

It is noted that the emergence of large concession land for agricultural purposes was available since 1995 although there was no law governing concessions. It is understandable that the concessions may continue from the concession concept in 1989 which did not restrict the maximum size.⁷⁴ More remarkably,

⁷¹ Instruction on the Implementation of Land Use and Management Policy, No.03SNN, June 03, 1989.

⁷² The maximum of land subject to ownership was 2,000 square meters and the maximum of land subject to possession was 5 hectares.

⁷³ Sedara Kim, Sophal Chan and Sarthi Acharya, *Land, Rural Livelihoods and Food Security in Cambodia: A Perspective from Field Reconnaissance*, Working Paper No. 24 (Phnom Penh: Cambodia Development Resource Institute, October 2002), 6.

⁷⁴ Phea Pimex Company received 315,028 hectares of concession land under 2 provinces, Kampong Chhnang and Pursat on January 8, 2000.

in 1994, under security reasons the government authorized military to control forest and some other land. Consequently, the military started to control unclear large amount of land. Although after full security in the whole country in late 1998, the military provided some land to companies for concessions. The Ministry of Agriculture, Forestry and Fisheries which is a responsible institution for land concessions failed to control land concession contracts made by the military.⁷⁵ Most of concession land⁷⁶ generally affected local people and indigenous people resulting from the fact that the companies failed to implement the concession contracts. As such, the government has not been benefited much from land concessions but in return suffered from national and international critics in terms of human rights violation.

Experiencing the ineffectiveness of large land concessions provided to one individual, the 2001 Land Law restricts the maximum size of concession land to no more than 10,000 hectares. Necessary requirements stipulated in the law that land concessions start exploitation after 12 months from the approved date otherwise the contracts will be void. More remarkably, the land concessions which were approved before the 2001 Land Law came into effect would be void if the concessions failed to start exploitation after 12 months from August 30, 2001 without reasonable grounds.⁷⁷ The 2001 Land Law also requires that only state private land be subject to the concessions⁷⁸ but fails to mention registration before concession contracts are made. Consequently, several land concessions were approved without prior registration. This flaw in law leads to disputes between companies and local and indigenous people when the companies start their exploitation. Responding to this defect, the Sub-decree on State Land Management which was adopted in October 2005 requires that state private land, subject to land concessions, be already registered.⁷⁹ It is also remarkable that the 2001 Land Law needs a sub-decree to determine the procedures for granting concession land for agro-industrial purposes, but the preparation of the sub-decree required more than 4 years to complete.

The term 'economic land concession' was widely known in the Sub-decree on Economic Land Concessions adopted on December 27, 2005. Since then, it is expected that economic land concessions

⁷⁵ Sophal Chan, Saravy Tep and Sarthi Acharya, *Land Tenure in Cambodia: A Data Update*, Working Paper No. 19, (Phnom Penh: Cambodia Development Resource Institute, October 2002), 23.

⁷⁶ Until January 31, 2001, there were 55 concession companies in which 16 companies were cancelled. The total areas of the remaining 39 companies were 705,394 hectares. See *Ibid*, 19-23.

⁷⁷ The 2001 Land Law, art. 62.

⁷⁸ The 2001 Land Law, art. 17.

⁷⁹ Sub-decree on the State Land Management, No.118ANK/BK, October 07, 2005, art. 2.

approved by the contracting authority will not affect local and indigenous people. The sub-decree requires 5 criteria⁸⁰ for granting economic land concessions in which the competent authority have to ensure that no forced eviction is made without the agreement of legal landholders. The initiation of economic land concession projects consists of two possible ways that is a solicited proposal, where a contracting authority proposes a project for solicitation of proposals from investors and an unsolicited proposal, where an investor proposes a project proposal to the state for approval. The Sub-decree on Economic Land Concessions also provides the procedural instruction of reducing economic concession land which was provided before the 2001 Land Law came into effect.

The purposes of economic land concessions have been known when the Sub-decree on Economic Land Concessions was adopted. Since 80 percent of Cambodian people depend on agriculture and 23 percent of the total land⁸¹ can be served as agricultural purposes, the government intends to develop intensification agriculture and agro-industries by encouraging appropriate and large capital investment. Another purpose of economic land concessions is to increase state or provincial or commune revenues through the collection of land use fees, taxation and related service charges. It is noted that one of the most important purposes is to increase employment in rural areas within a framework of intensification and diversification of livelihood opportunities and within a framework of natural resource management based on appropriate ecological system. It is therefore expected that rural citizens will receive benefit from economic land concessions and the government is able to improve social development because of the national income from economic land concessions.

Economic Land Concession Mechanisms

Economic land concessions can benefit the state and rural citizens if the mechanisms are done with legal rules. It is also necessary that all relevant institutions be responsible for their duties so that no

⁸⁰ Sub-decree on Economic Land Concessions, No.146ANK/BK, December 27, 2005, art. 4. The 5 criteria of land for granting economic land concessions are: 1. land which was registered and classified as state private land, 2. land which consists of land use plan adopted by Provincial State Land Management Committee, 3. land which was valued for the environmental and social impact to economic land concession plan, 4. land which has the solution for relocation in accordance with the law. The contracting authority has to ensure that no forced eviction is made without the agreement from legal landholders and has to ensure the right of way to private land, 5. land which was consulted with public or had a request for economic land concessions with territorial authorities and local people.

⁸¹ Supra note 43 at 14.

violation of power is made. For example, the Ministry of Agriculture, Forestry and Fisheries which is the contracting authority has to be accountable to the government. Also, technical secretariat is required to ensure that all technical matters with regard to economic land concessions do not affect social and environmental harmonization. Provincial and district authorities play an important role in confirming that the economic land concessions will also benefit their people and in controlling the implementation of the companies. Moreover, commune authorities, who are already decentralized, are necessary to make sure that their commune people are not affected by economic land concessions.

Although economic land concessions have shaped the focus on large capital investment, similarly to land concessions conceptualized in 1989, the Ministry of Agriculture, Forestry and Fisheries is responsible for approval of all economic land concessions in the whole country. It should be noted that the Sub-decree on Economic Land Concessions adopted on December 27, 2005 allowed provincial governors to provide economic land concessions with the capital investment less than 10,000,000 Riel⁸² and concession land size less than 1,000 hectares. The Ministry of Agriculture, Forestry and Fisheries is entitled to provide economic land concessions with capital investment of no less than 10,000,000 Riel or economic land size of no less than 1,000 hectares. Just approximately 3 years after this practice, the government divested the provincial governors of the authorization to provide economic land concessions.⁸³ The reasons of divesting of the right of provincial governors have not been known. However, it may be hard to manage economic land concessions if contracting authorities are available for various institutions.⁸⁴ The reform of contracting authority is expected to work in a better way because only the Ministry of Agriculture, Forestry and Fisheries is responsible for signing contracts of economic land concessions.

Technical secretariat plays a pivotal role in economic land concessions. This secretariat consisting of 8 members from various ministries has duties to develop economic land concession projects and documents for economic land concessions through solicited proposals. The recommendations on all economic land concession proposals and on the review of existing economic land concessions are made by the technical secretariat in order to make smooth economic land concessions. The secretariat has to monitor

⁸² 10,000,000 Riel is equivalent to US\$ 2,500 in June 2010.

⁸³ Sub-decree on the Amendment of the Sub-decree on Economic Land Concessions, No.131ANK/BK, September 15, 2008.

⁸⁴ It is noted that reports of economic land concessions prepared by the Ministry of Agriculture, Forestry and Fisheries do not include any information of economic land concessions with less than 1,000 hectares.

the performance of economic land concession contracts. However, the Sub-decree on Economic Land Concessions does not say effectiveness of recommendations made by the secretariat. For example, if the secretariat finds that concession contracts do not follow the conditions stated in the contracts, the economic land concession companies may still continue the contracts unless the recommendation to cancel the contract is followed by the contracting authority. Moreover, the secretariat does not maintain all concession contracts thereby making it difficult to monitor the concession performance.⁸⁵ Clear duties of technical secretariat are needed.

More remarkably, provincial state land management committees, which are led by provincial governors, are not entitled to have a main responsibility on economic land concessions. With regard to land concessions, it is known that these committees have duties to decide and monitor commune land use plans through commenting on land concession projects and cooperate in monitoring the performance. Another duty of these committees is to cooperate in organizing public consultations on land concession projects. Provincial authorities should be authorized to propose for cancellation of economic land concession contracts if it is clear that the contracts are not well performed. As such, so far, a lot of social land concessions⁸⁶ have affected local and indigenous people and provincial authorities are not able to resolve the problems. The responsibilities and duties of provincial authorities to ensure effectiveness of economic land concessions are indeed necessarily stipulated in law.

Similarly to provincial authorities, district authorities are not vitally provided with responsibilities to contribute to effective economic land concessions. As stipulated in the Sub-decree on State Land Management, concerning economic land concessions, district state land working groups led by district governors have duties to organize consultations and commenting on land concession projects as well as cooperate in monitoring the performance of land concession projects. It is unclear how these authorities cooperate in monitoring. Thus, the monitoring of the performance of economic land concessions should be given to district authorities because these authorities stay closer to the concession land and local people. The government should therefore provide district authorities with more responsibilities for economic land

⁸⁵ Special Representative of the Secretary-General for Human Rights in Cambodia, *Economic Land Concessions in Cambodia: A Human Rights Perspective* (Phnom Penh: United Nations, Cambodia Office of the High Commissioner for Human Rights, 2007), 7.

⁸⁶ *Ibid.*, 12; RFA, June 22, 2007; November 11, 12 & 23, 2007; March 9, 2009; May 18, 2009.

concession approval in their district territory.

The voice of commune councils with regard to economic land concessions has not much heard. The Sub-decree on Economic Land Concessions includes commune councils in economic land concession mechanisms but does not provide enough power to the approval of economic land concessions. Commune councils have duties to check and comment on detailed documents of solicited or unsolicited economic land concession proposals within 28 days of working days.⁸⁷ The comments of commune councils will be considered by the contracting authority. These comments can be possibly refused by the contracting authority. Moreover, the commune councils are not involved in initiation of economic land concessions thereby leading to a lack of information concerning the impact of economic land concessions. Therefore, it is necessary to consider amending the Sub-decree on Economic Land Concessions in order to include more involvement of commune councils in economic land concessions.

Impact of Economic Land Concessions

A dream of contribution to economic growth through economic land concessions is far to come. Since the early inception of large scale economic land concessions in 1995, Cambodia has not remarkably enjoyed full benefit from the economic land concessions.⁸⁸ In return, considerable economic land concessions granted continue to limit rural Cambodians' access to land and natural resources and to destroy the environment more seriously. Urgent government measures are necessary to be taken into account, because economic land concessions have continued to impact negatively on local community and indigenous people whose livelihoods depend upon land and forest resources. Environmental impact should be studied well and accounted by relevant authorities. Negative image from national and international communities toward economic land concessions also provokes a bad impact on government administration.

The impact of economic land concessions has continued to exacerbate the daily life of community living in surrounding concession areas. Land provided for economic land concessions have not carefully conducted research on every impact arose therefrom. Although the government tried to issue regulations

⁸⁷ Sub-decree on Economic Land Concessions, No.146ANK/BK, December 27, 2005, art. 34.

⁸⁸ Supra note 42 at 75.

stating that concession land is not to affect private ownership in the areas of investment projects,⁸⁹ evidence has shown that tears and fears of local communities affected from the concessions have always existed. There are no data of affected people concerning economic land concessions available at both government and NGOs' sides. However, a very apparent example of well-known largest economic concession land granted to Phea Pimex Company has affected a number of people living in Kampong Chhnang and Pursat Provinces. Protests from villagers have happened since the performance of the contract in 2000.⁹⁰ On account of the protests, the company did not continue the work from 2005.⁹¹ Also, small economic land concession scale affected the livelihoods of people living at the concession areas.⁹² For instance, an economic land concession provided to C.I.V Development Agro Industry in Kratie Province affected villagers in two communes. Consequently, 334 families⁹³ filed a complaint to Kratie Provincial Governor requesting to cancel the company contract.

Economic land concessions have also had a serious impact on indigenous people⁹⁴ although their rights to collective ownership of land are protected by the 2001 Land Law. The non-existence of public consultation before the approval of economic land concessions has resulted in various problems.⁹⁵ The livelihoods of indigenous people depend profoundly on shifting agriculture and non-timber products, therefore land and forest are the central resources of their livelihoods. A lack of responsibilities of relevant authorities is the main cause of conflicts between indigenous people and concession companies. Usually, before signing a contract, a mission group is established in order to evaluate and collect data of land which belongs to local and indigenous people. However, the affect on those people still exists making more

⁸⁹ Instructive Circular on Providing Economic Land Concessions for Investment Plan with regard to the Implementation of Order No.02BB dated June 13, 2005 on Strengthening the Management of State Property, No.05SRNN, July 01, 2005.

⁹⁰ Supra note 85 at 62-67.

⁹¹ Ministry of Agriculture, Forestry and Fisheries, *Situation of Investment Companies with Economic Concession Land more than 1,000 hectares* (Phnom Penh, December 1, 2008).

⁹² *Information: Company Bought Land and Then Obtained a Possessory certificate While People Did not Know* (RFA radio broadcast May 18, 2009) (morning session, in Khmer Language); see also *Information: Land Disputes between Villagers and Khaou Chuly Development Company* (RFA radio broadcast June 19, 2009) (morning session, in Khmer language).

⁹³ On August 28, 2008, 204 families of Srechar Commune in Snuol District of Kratie Province filed a complaint to Kratie Provincial Governor requesting to cancel the company contract. On September 9, 2008, 130 families of Pithnu Commune in the same district filed another complaint requesting to cancel the company contract. Their reasons of the complaint are they lose agricultural land, community forest land, grazing land, rotational cultivated land of indigenous people.

⁹⁴ LICADHO, *Land Grabbing and Poverty in Cambodia: The Myth of Development*, A LICADHO Report (Phnom Penh: LICADHO, May 2009), 19.

⁹⁵ Supra note 43 at 14.

intricate complaints. For example, Khaou Chuly Development Company made a contract with the government on October 8, 2008 after various legal mechanisms had been made. Yet, conflicts resulted from the performance of this contract still happened.⁹⁶

Remarkably, economic land concessions have caused a strong environmental impact. Various studies have witnessed that forest land is also affected by the concessions. Procedurally, it is required that the environmental impact with regard to economic concession land be evaluated.⁹⁷ In so doing, it is expected that economic land concessions bring a sound investment and a sustainable development. Yet, experience has so far shown that economic land concessions have been frustrating. The concessions always cause deforestation, polluted rivers and underground water,⁹⁸ toxic environmental waste.⁹⁹ The use of pesticides and fertilizers in an inappropriate way is also a serious concern of environmental affect. Planting eucalyptus trees on a large scale economic concession land has caused severe ecological damages such as “the drying up of streams, lowering of underground water tables, soil acidification, reduction in local biological diversity and degradation of soil fertility.”¹⁰⁰ Although the law says that economic concession land belongs to state private land which does not cover forest land and protected areas, economic concession land sometimes overlaps the prohibited land.¹⁰¹ It is, therefore, necessary that the government consider avoiding violation of law when providing economic land concessions.

Economic land concessions have also affected the government administration’s image. As already mentioned, although legal procedures are stipulated, the actual practice has skipped some parts of the procedures. For example, the Sub-decree on Economic Land Concessions requires that detailed documents of unsolicited economic land concession proposals be included preliminary studies of environmental and social impacts, in actual practice however this requirement is not fulfilled.¹⁰² Remarkably, the 2001 Land

⁹⁶ *Information: Land Disputes between Villagers and Khaou Chuly Development Company* (RFA radio broadcast June 19, 2009) (morning session, in Khmer language).

⁹⁷ Sub-decree on Economic Land Concessions, No.146ANK/BK, December 27, 2005, art. 4.

⁹⁸ *Supra* note 43 at 14.

⁹⁹ Special Representative of the Secretary-General for Human Rights in Cambodia, *Economic Land Concessions in Cambodia: A Human Rights Perspective* (Phnom Penh: United Nations, Cambodia Office of the High Commissioner for Human Rights, 2004), 32.

¹⁰⁰ TERRA, “Eucalyptus Plantations Threaten Ecology of Cambodia’s Great Lake,” *Watershed*, vol. 8, July-October 2002, 6. See also *Ibid*, 32.

¹⁰¹ *Supra* note 42 at 75.

¹⁰² *Supra* note 85 at 8. During the Government-Donor Coordination Committee Meeting on February 12, 2007, H.E. Sarun Chan, Minister of Agriculture, Forestry and Fisheries said that concession companies do not want to

Law requires that concessions be exploited within 12 months after the date of concession approval otherwise the concessions will be void. However, many valid land concessions have remained inactive after 12 months.¹⁰³ More noticeably, although the 2001 Land Law states that economic concession land shall not exceed 10,000 hectares, still after August 30, 2001 one concession company was provided 100,852 hectares of economic concession land.¹⁰⁴ Uncommitted contracts lead to incomplete work of the companies because affected people's protests always happen. This situation consequently deters potential foreign investors from investing in Cambodia since they do not trust the government administration.

A typical example has shown the imperfect performance of economic land concession contracts. Khaou Chuly Development Company, which is a corporation, applied for 10,000 hectares of economic concession land in Pichreada District of Mondul Kiri Province on February 14, 2006 to the Ministry of Agriculture, Forestry and Fisheries. The company probably did not research on the place of the proposal because the Ministry of Environment reduced the size of area causing environmental impacts to 2,705 hectares. After the request of the Ministry of Environment, the Ministry of Agriculture, Forestry and Fisheries as the contracting authority worked much on the company's proposal. Mondul Kiri's Provincial Governor issued a mission order to assign a working group in order to study, investigate, assess, and get statistic of land area of cultivated field, rotational cultivated field, and graveyard which may be affected. This working group found that 319 hectares was affected among proposed 2,705 hectares. Finally, the Ministry of Agriculture, Forestry and Fisheries signed a contract with Khaou Chuly Development Company providing only 2,386 hectares of economic concession land on October 8, 2008. The contract stated that the company has to pay deposit US\$ 10 per hectare equaling US\$ 23,860 not later than 2 months after the contract approval. Yet, until December 31, 2008 the company did not pay deposit yet. Moreover, in June 2009 the company had a conflict with indigenous communities living in the commune where economic concession land was granted.¹⁰⁵ This consequence necessarily reflects that all work done by the relevant authorities has not been clear and the government should therefore strengthen the administration well.

undertake environmental and social impact assessments prior to applying for economic land concessions because of the reason of time-consuming and expensive assessments.

¹⁰³ Supra note 85 at 9.

¹⁰⁴ Supra note 91 (reporting that GREEN SEA INDUSTRY Co., Ltd. received 100,852 hectares from the Ministry of Agriculture, Forestry and Fisheries dated October 23, 2001).

¹⁰⁵ Ibid; RFA, June 19, 2009.

Needs for Successful Economic Land Concessions

The attempt to increase national and local revenues through economic land concessions have not met yet. As of February 28, 2009, excluding the economic concession land approved by provincial governors,¹⁰⁶ the government has granted 845,920 hectares accounting for 4.7 percent of the total land as economic concession land to 65 valid concession companies.¹⁰⁷ Land concession fees and workforces resulted from economic land concessions have not been known. Moreover, unused economic concession land which is required to pay for unused land taxes has not been enforced. Misconduct of concessionaires has remarkably continued and exacerbated livelihoods of affected people. The laws and legal regulations have not been fully respected. The flaw in law should be necessarily amended. Since most of state land has not been registered, it urgently needs an appropriate instruction to use it effectively. Unsolicited economic land concession proposals which are stipulated in the Sub-decree on Economic Land Concessions have resulted badly and are therefore required elimination. Also, the government should provide more power and responsibilities for local authorities to initiate and monitor economic land concessions.

Some provisions in the 2001 Land Law and relevant regulations should be urgently amended in order to have effective economic land concessions. Paragraph 2 of Article 56 of the 2001 Land Law is seen to provide concessionaires too much right to defend concession land against any encroachment or infringement by all means. So far, concessionaires have enjoyed this provision by use of security guards to kill animals and injure people inhumanely. Sometimes, this conduct has violated fundamental rights of Cambodian citizens because as stated earlier most of economic concession land has not been demarcated and registered. Therefore, it is necessary to eliminate this provision. In addition, Article 59 of the same law tries to limit the maximum economic concession land size to not exceed 10,000 hectares in order to avoid the improper use of land. The actual ground of this limit has not been known although it may be reasonable that it is for the fair share of wealth to rich people. In fact, only unsolicited economic land concession proposals have been approved so far allowing the companies to look for potential business gains through logging. The law requires reducing the size of concession land which exceeds 10,000 hectares provided

¹⁰⁶ Data on economic concession land less than 1,000 hectares approved by provincial governors have not been available yet.

¹⁰⁷ Ministry of Agriculture, Forestry and Fisheries (2009).

before August 30, 2001. The reduction process has not been effective and moreover one economic land concession company was still granted ten times more than the limit after 2001.¹⁰⁸ Therefore, it is not necessary to limit the size but to monitor the effective use of the land granted.

It is necessary to have an appropriate legal instruction for economic land concessions relating to state private land which has not been registered. The Sub-decree on State Land Management requires that economic concession land be registered before approval.¹⁰⁹ This requirement has hardly been followed due to the fact that the systematic land registration is going on slowly.¹¹⁰ Following legal procedures, economic land concessions may never be provided. With this regard, the Sub-decree on Economic Land Concessions should provide a detailed instruction in order to allow relevant authorities to make use of unregistered state private land in accordance with the rule of law. Experience has witnessed enough that contracting authorities still continue approving economic concession land although the land has not been registered yet. On the process of initiating contracts, the Ministry of Agriculture, Forestry and Fisheries requests registration from the Ministry of Land Management, Urban Planning and Construction and then the ministry signs contracts although the land has not completely registered. Consequently, conflicts always arise thereafter.

Elimination of unsolicited economic land concession proposals is needed in order to improve the effectiveness of economic land concessions. So far the government has provided economic concession land through only unsolicited proposals. The result of this practice has caused very problematic in Cambodian society because of land grabbing and violation of the right of affected people. This consequence leads to loss of confidence on the government administration. The government's attempt is to make the effective use of state private land in an appropriate way for a fruitful result. The government recognizes that solicited economic land concession proposals have more priority than unsolicited proposals. This recognition may be true that the government realizes that the existing unsolicited economic land proposals have been

¹⁰⁸ Green Sea Industry Company was provided 100,852 hectares in Stung Treng Province by the Ministry of Agriculture, Forestry and Fisheries on October 23, 2001, about two months after the 2001 Land Law came into effect. Although this land size was later subject to the reduction, it shows bad image of implementation because the law was already violated.

¹⁰⁹ Sub-decree on the State Land Management, No.118ANK/BK, October 07, 2005, art. 3.

¹¹⁰ As of September 2008, the number of land certificates which was already signed through systematic land registration was 952,010 certificates. The systematic land registration project started since 2002. The amount of state land registered through this project has not been known.

ineffective. However, the government fails to stop approving unsolicited proposals by raising three main purposes, “the introduction of new technology; exceptional linkages between social land concessions and economic land concessions; and exceptional access to processing or export markets”¹¹¹ which are not much logical.

Delegation of power through decentralization to the local authorities has not fully contributed to economic land concessions. As mentioned in “Economic Land Concession Mechanisms” above, the role of local authorities extending from provincial to commune levels has little responsibility with regard to granting economic concession land. It seems that the voice of these local authorities is not much heard. For example, when Mundul Kiri provincial authority asked WUZHISHAN L.S. GROUP for a list of Chinese technicians, the company did not provide that list. The special representative of the Secretary-General for human rights in Cambodia witnessed this fact that “[r]equests by the [P]rovincial Department of [Labor] to inspect the sites have not been met, with company representatives in the province saying that inspection would require the Prime Minister’s direct authorization.”¹¹² Albeit such response from the company, the provincial governor has nothing to do, meaning that authorities have not been authorized to initiate the cancelation of companies in case the companies do not follow the rules set by law. In addition, the power of district and commune authorities is even worse. Therefore, if the government does not share power to local authorities to control concession companies, it is likely that the companies pay less respect to the local authorities.

3.3.2 Centralization and Local Incentives

Cambodia has not remarkably benefited from the decentralization which was introduced at the commune level since 2002 and district and provincial levels since 2009. Local authorities have received budget from national government for implementing development plans at the local levels. It should be noted that the amount of budget is limited and therefore the development plans have a small scale. Commune authorities have little role in land administration since these authorities do not have branches of the Ministry of Land Management, Urban Planning and Construction. However, branches of the ministry

¹¹¹ Sub-decree on Economic Land Concessions, No.146ANK/BK, December 27, 2005, art. 18.

¹¹² Supra note 99 at 70.

located at the district level have not been empowered to administer land in the district territory. Currently, provincial authorities who receive signature delegation from the Ministry of Land Management, Urban Planning and Construction are able to finalize land registration by issuing sporadic registration certificates through sporadic land registration. Only two provinces, Pailin and Mondul Kiri, have not been able to issue sporadic registration certificates as of 2009. So the national authority, the General Department of Cadastre and Geography still takes this role. Therefore, such process makes land registration slow and less effective.

Current land registration system does not provide incentives for local authorities to perform jobs seriously. The financial outcome from land registration and other related work goes to national budget. Local authorities just receive salary from the government and national budget for implementing local development plans. Although local authorities try to work hard, they are not able to fully serve their local communities since they do not gain additional income. As such, the system of preventing income from work done at local levels is a hindrance for local effective output.

The question of delegation is connected to the problem of training and capacity, particularly at the district level. Trust in any revised system is important to enjoy successful progress in registration, and it is therefore important that changes in the responsibilities of officials at the various levels should be made with careful thought about staff capacity. It can be said, however, that the future lies in the direction of further delegation of issuing authority, to the district level. The centralization of issuing power has overwhelmed the capacity of national authority, in the sense that there are simply too many applications for existing staff to process. This is an objective factor that cannot be avoided without delegation. In fact, the delegation of signing authority to provincial level (for all but two provinces) can be understood as a response to this problem of excessive application volume. However, delegation to the provincial level as well should be seen as insufficient in the long term, for two reasons. As some scholars have pointed out,¹¹³ monitoring of officials is likely to be more effective if the monitoring and issuing functions are separated. The other important point in the Cambodian context is that officials at the district level are less distant from the local people affected by their actions. In future reform, therefore, efforts to delegate authority further, to district level, are desirable.

¹¹³ Supra note 2.

Chapter 4: Reform Proposals

It is true governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent- i.e., the consent of the majority, giving it either by themselves or their representatives chosen by them; for if any one shall claim a power to lay and levy taxes on the people by his own authority, and without such consent of the people, he thereby invades the fundamental law of property, and subverts the end of government. For what property have I in that which another may by right take when he pleases to himself.¹

4.1 Possible Legal Provision Amendments

Attempting to protect ownership rights and other relevant rights by adopting the second land law, the 2001 Land Law, has not remarkably benefitted Cambodian citizens as a whole. In 2004, it is witnessed that 34 percent of Cambodian people live under the poverty line² and approximately 20 percent of the total population is landless.³ It does not necessarily mean that Cambodia lacks land to distribute to the landless, but lacks an actual, fair and effective distribution mechanism. Moreover, land disputes have rampantly occurred due to the fact that existing laws and legal regulations have been hardly fulfilled. Therefore, this section proposes crucial points which should be urgently taken into account in the future amendments. Land rights should be easily recognized by law and thereby be well protected. The concept of possession which is not defined clearly in law causes confusion among law implementers as well as civil societies. Ambiguity of the transfer of land rights has been an obstacle for the implementation. More importantly, all provisions should be always constitutional.

4.1.1 Protection of Land Rights

The Cambodian Constitution intends to provide ownership to Cambodian citizens and requires that legal private ownership be protected by law as stipulated in Article 44 that:

All persons, individually or collectively, shall have the rights to own property. Only natural

¹ John Locke, *The Second Treatise of the Civil Government: An Essay Concerning the True Original, Extent, and End of Civil Government*, <http://www.liberty1.org/2dtreat.htm>, last visited July 21, 2008.

² World Bank, *Cambodia Halving Poverty by 2015?: Poverty Assessment 2006, Report No. 35213-KH* (World Bank, February 7, 2006), i.

³ UNDP Cambodia, *Land and Human Development in Cambodia*, Discussion Paper No. 5 (Phnom Penh: UNDP Cambodia, 2007), 47.

persons or legal entities of Khmer nationality shall have the rights to own land.

Legal private ownership shall be protected by law.

Depriving ownership from any persons shall be exercised only in the public interest as provided for by law and shall require fair and just compensation in advance.

In compliance with the constitution, the 2001 Land Law determines the regime of ownership of all immovable property in the whole Kingdom of Cambodia and attempts to protect ownership rights and other relevant rights.⁴ Protection of land rights are confirmed by Article 5 of the 2001 Land Law which states that, “[n]o person may be deprived of his ownership, unless the deprivation is for the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and after the payment of fair and just compensation in advance.” Moreover, Article 3 of the 2001 Land Law requires that all persons respect legal private ownership of immovable property. Noticeably, the law protects only full ownership which is evidenced by a systematic registration certificate.

Technically, a systematic registration certificate can never be individually obtained. A cadastral index map and land register are the main tools to clarify full ownership. The 2001 Land Law merely recognizes the systematic registration certificate which is registered in the land register as stated in Article 40 that:

While waiting for the reconstitution of the cadastral index map and land register, the competent authorities shall continue to issue certificates of immovable property for the possession recognized before this law comes into effect.

This certificate is only the evidence of possession but not a systematic registration certificate and is not a document which cannot be contested.

This certificate shall only constitute definite ownership which cannot be contested as long as no claims arise when creating the land register.

In case of having a claim, the determination of the legal possessor of the immovable property shall be based on further investigation of all relevant evidence. A certificate of immovable property is one type of evidence but not in itself determinative.

It is clearly understood that the law does not fully protect possession of immovable property which is proved by a certificate of immovable property although the law still allows issuing it. The fact has shown, as mentioned in Chapter 1, that a huge number of landholders have not received systematic registration certificates and thereby are not fully protected by law.

⁴ The 2001 Land Law, art. 1.

Full legal protection of strict concept of ownership hardly benefits Cambodian citizens but seriously exacerbates their way of life. As understood the technical matter of producing systematic registration certificates, any landholders can never individually apply for those certificates, meaning that their land rights cannot be fully protected by law although those landholders respect all legal requirements. Only cadastral administration has the right to issue systematic registration certificates and sporadic registration certificates through systematic land registration and sporadic land registration respectively. The 2001 Land Law requires the Sub-decree on the Procedure of Establishing Cadastral Index Map to register land systematically and the Sub-decree on Sporadic Land Registration to register the land which is individually applied for. Albeit this fact, only systematic land registration can provide full right of ownership through an owner certificate for immovable property known as a systematic registration certificate while sporadic land registration can provide only a certificate of immovable property known as a sporadic registration certificate.

Systematic land registration depends on the government's projects in cooperation with foreign donors. If the project does not work, meaning no systematic registration certificates are provided, land rights of Cambodian citizens can never be protected by law and consequently the constitution will also be violated. Therefore, it is necessary that the law protect possession rights representing by certificates of immovable property. In so doing, the law should require that all landholders apply for certificates of immovable property within a limited period of time. As such, the difference between a certificate of immovable property and an owner certificate for immovable property should be only the accuracy of a land parcel in which the owner certificate for immovable property provides accurate coordinates while the certificate of immovable property does not. The law should stipulate that if some size of land remains during the process of systematic land registration between the two land parcels representing certificates of immovable property, equal share of size should be provided to each abutter unless otherwise agreed. Thus, every landholder will enjoy full legal protection from the law if each landholder fulfills legal requirements.

4.1.2 Concept of Possession

The term 'possession' has remained problematic in Cambodian legal interpretation. The 2001 Land

Law recognizes only legal possession⁵ which has not been clearly defined in any provision. As mentioned in Sub-section 3.2.2 “Uncertainties of Laws and Legal Regulations” of Chapter 3, uncertainties of the criteria of legal possession provoke much misunderstanding among law implementers and civil societies thereby leading to bad impacts on land system. Therefore, understanding clearly the ambiguous determination of legal possession and the use of its terms are vital to propose future amendments. As Article 6 of the 2001 Land Law states that only legal possession will be subject to the acquisition of ownership and Article 29⁶ realizes possession which had been recognized land since 1989 but fails to state the evidence of that land, therefore the proposed amendment of the first paragraph of Article 29 is:

In the scope of reconstituting ownership of immovable property in Cambodia after the period of crisis from 1975 to 1979, and with no subordination to the general rules of prescription related to ownership of immovable property, on an exceptional basis, possession of immovable property which had been recognized [by land application receipts or sporadic registration certificates] since 1989 may constitute a right in rem over immovable property and may lead to the acquisition of ownership by the holder of the property, in accordance with the conditions set by this law.

As such, it is clear that only landholders who applied for land application since the inception of land privatization in 1989 and have land application receipts or sporadic registration certificates have the right to claim for ownership. Also, it is necessary to identify clearly the term ‘legal possession’ or alike which is mostly referred to in the 2001 Land law but is not provided any criteria or requirements. As already discussed in Sub-section 3.2.2 “Uncertainties of Laws and Legal Regulations” of Chapter 3, some words of Article 38 of the 2001 Land Law should be changed so that the requirements of legal possession are clear. Then Article 38 of the existing 2001 Land Law should therefore be amended as:

[Legal possession of immovable property in order to be transformed into ownership shall consist of five requirements that is] the possession shall be unambiguous, non-violent, notorious to the public, continuous, and in good faith.

The possessor shall occupy the land unambiguously means that, whether it is exercised by himself or by somebody else on his behalf, the possessor has to possess in his capacity as exclusive possessor acting on purpose for himself but not on the basis of some other rights. If the real possessor remains hidden behind an ostensible possessor, he cannot claim a

⁵ The 2001 Land Law, arts. 6, 29, 30, 31, 37, 39 & 42.

⁶ Article 29 of the 2001 Land Law originally states that “[i]n the scope of reconstituting ownership of immovable property in Cambodia after the period of crisis from 1975 to 1979, and with no subordination to the general rules of prescription related to ownership of immovable property, on an exceptional basis, possession of immovable property which had been recognized since 1989 may constitute a right in rem over immovable property and may lead to the acquisition of ownership by the holder of the property, in accordance with the conditions set by this law.”

sporadic registration certificate allowing acquisition of ownership. His possession is null and void.

The possessor shall occupy the land non-violently means that any possession originated through violence is not considered conforming to the law. However, if violence is used against third parties that try to get the immovable property without right to do it, such violence does not interfere on the possession initially peacefully acquired.

The possessor shall occupy the land notoriously to the public means that the possessor has to possess without hiding himself to those who could want to contest his rights on the immovable property and are not able to see him or to determinate who he was.

The possessor shall occupy the land continuously means that the possessor has to act in a normal expected regular way during the required time to claim acquisition of ownership. The fact that occupation is interrupted for short periods of time or that the land is left uncultivated to recover fertility does not constitute an obstacle to acquisition of ownership.

The possessor shall occupy the land in good faith means that the possessor is not aware of any possible rights of third parties over the property that the possessor has been possessing.

The first paragraph of Article 30 of the 2001 Land Law should be added the term ‘legal possession’ so that no confusion will be predictable. The proposed future amendment of Article 30 should therefore be “any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested [legal] possession of immovable property, has the right to request a definitive systematic registration certificate.” Also, Article 31⁷ should be amended as below.

Any person who had been enjoying [peaceful and uncontested legal possession for more than 5 years after this law came into force has the right to request a definitive systematic registration certificate].

The improper recognition by competent authority of any possession that is not in accordance with the legal requirements is considered null and void. The authority that has given the abusive recognition shall be personally liable to the law.

Remarkably, the concept of possession is also stipulated in the 2007 Civil Code although the term used in Khmer is slightly different.⁸ However, one conflict provision of the 2001 Land Law with the 2007

⁷ Article 31 of the 2001 Land Law states as below:

“Any person who had been enjoying possession before this law came into force may be authorized by the competent authority, if such person fulfils all requirements to become an owner of the property, to extend his possession until he attains the legally prescribed period of five years, after which he will obtain a definitive systematic registration certificate. The authorization to extend for the sufficient period of time cannot be denied by the competent authority if the possession is peaceful and uncontested.

A competent authority that improperly refuses an authorization to extend the time is personally liable to the law.

The improper recognition by competent authority of a possession that is not in accordance with the legal requirements is considered null and void. The authority that has given the abusive recognition shall be personally liable to the law.”

⁸ In the 2001 Land Law, the word possession is written in Khmer as *phokaek* while in the 2007 Civil Code as *karkankab*.

Civil Code requires the amendment of the 2001 Land Law. Second paragraph of Article 29 of the 2001 Land Law states that “[a]ny beginning of possession shall be ceased when this law comes into effect.” On the contrary, Article 162 of the 2007 Civil Code referring to the prescriptive acquisition of ownership of immovable property still allows possession as shown below.

(1)-A person who peacefully and openly possesses an immovable property for a period of 20 years with an intention to own shall acquire the ownership thereof.

(2)-A person who peacefully and openly possesses an immovable property for a period of 10 years with an intention to own shall acquire the ownership thereof if he or she was in good faith and was not negligent when commencing the possession.

(3)-Neither Paragraph (1) or (2) shall apply to any immovable property belonging to the state, regardless of its kind.

Clearly, the 2007 Civil Code ceases only possession of state property but the 2001 Land Law ceases all possession. Therefore, in order to be in accordance with the 2007 Civil Code, the second paragraph of Article 19 of the 2001 Land Law should be amended as “possession of state property shall be ceased when this law comes into effect.”

4.1.3 Transfer of Land Rights

Unclear concept of possession has also been problematic for the transfer of land rights. The law recognizes the transfer of ownership of immovable property in which the immovable property has not been systematically registered as stipulated in Article 39 of the 2001 Land Law that “[w]hile waiting for the possession to be transformed into full ownership, possession in compliance with this law constitutes a right in rem over immovable property. Such property may be subject to exchange, transfers of rights and transactions.” Yet, no laws and legal regulations provide the procedures of transferring property which has not been registered. Moreover, the use of the word ‘transfer of ownership’⁹ remains ambiguous for everyone because usually transfer of ownership means the ownership of one individual is transferred to another. But in fact, the law strictly says that only land parcels which have been systematically registered can receive full ownership. Thus, even a sporadic registration certificate cannot represent full ownership. As such, it should necessarily be used the word ‘transfer of immovable property rights’ rather than ‘transfer of ownership.’

⁹ Article 63 of the 2001 Land Law uses this term.

It should be noted that the fundamental importance of the formality of the transfer of immovable property rights is to pay transfer taxes¹⁰ to the state. The law requires that all types of transfer of immovable property be registered. This requirement of the transfer of ownership seems to encourage informal land transactions due to the fact that as of November 2008, approximately 1.5 million land certificates including those obtained from both systematic and sporadic land registration were issued among the estimated 10 million land parcels.¹¹ Consequently, the remaining 85 percent of land parcels are presumably transacted in informal ways if landholders want to have land transactions. This defect in law results in a great loss of state income. Therefore, it is necessary to provide an easy procedure of all types of transfer of immovable property so that landholders cannot escape from legal requirements. More importantly, making the transfer of unregistered immovable property legal will be good evidence for the systematic land registration.

The impact of defect in law actually provokes uncertain implementation. For example, the second paragraph of Article 244 of the 2001 Land Law states that “[o]wnership of immovable property can be established by documents of sale, gift, exchange, or succession made by any person authorized by Article 65 of this law. Those documents shall be filed with the Cadastral Administration.” This article relates to Article 65 which states as the following.

The transfer of ownership can be enforceable as against third parties only if the contract of sale of immovable property is made in writing in the authentic form drawn up by the competent authority and registered with the Cadastral Registry Unit.

The contract of sale itself is not a sufficient legal requirement for the transfer of the ownership of the subject matter.

In this regard, in order to validate all types of the transfer of ownership, a contract needs to be in writing in the authentic form recognized by a competent authority that is cadastral administration, and be registered. There are two main points concerning a transfer contract, one is a contract itself and the other is the registration of the contract. It should therefore be understood that it is necessary to subsequently register the immovable property if a transfer contract occurs.¹² In this context, it seems that all land in Cambodia was already first registered, but in fact it was not. More remarkably, Article 63 of the 2001 Land Law recognizes only the term ‘transfer of ownership’ which seems to be contrary to Article 39 which uses the

¹⁰ Currently, the transfer tax of immovable property is 4 percent of the total sale price.

¹¹ Interview with Vanna Siek, Chief, Department of Land Registration of the Ministry of Land Management, Urban Planning and Construction in Phnom Penh (December 3, 2008).

¹² The 2001 Land Law, arts. 65, 244 & 245.

term ‘transfer of rights.’ As such in order to provide validity to all contracts of the transfer of immovable property rights, Article 63 of the 2001 Land Law should be amended as “[t]he transfer of [immovable property rights] between private persons by purchase, exchange, gift or succession shall be implemented in accordance with the provisions of the law.” Then all provisions which are used the term ‘transfer of ownership’ should be changed to ‘transfer of immovable property rights.’ For example, Article 80 of the 2001 Land Law¹³ should be amended as “[a] gift is a contract by which a person called a giver or donor, transfers his or her property [rights] to another person called a receiver or donee, who accepts it.”

Another measure to make an effective valid transfer of land rights is to ease administrative work. For instance, in order to provide a complete valid contract, the competent authority should start from the beginning until the end, meaning that through an administrative network, the relevant persons have to pay transfer taxes and subsequent registration fees at the same time. As will be proposed in section 4.2 “Possible Reform Proposals,” district authorities are appropriate government agents to be responsible for all transfers of land rights and subsequent land registration.

4.1.4 Constitutionality Matters

Efforts to administer all land issues in Cambodia through the 2001 Land Law have remained remarkably unsuccessful. Although the law attempts to provide full ownership through systematic land registration, the registration pace of actual practice has been slow. Simultaneously, land disputes have pervaded rampantly. The 2001 Land Law also introduces an administrative mechanism to resolve disputes involving possession of immovable property as mentioned in Article 47 below.

Disputes between possessors of immovable property shall be investigated and resolved under determined procedures. The results of the investigation shall be submitted to the Cadastral Commission established at the Ministry of Land Management, Urban Planning and Construction. This commission shall make decisions on those disputes. In case of dissatisfaction with the result, the disputants may complain to the court. The organization and functioning of this commission shall be determined by a sub-decree.

Noticeably, this article does not specifically indicate whether possessors have sporadic registration certificates or not. Strict interpretation of this article may refer that all disputes involving possession of immovable property belong to the competence of cadastral commission. However, the Inter-ministerial

¹³ Article 80 of the 2001 Land Law says “[a] gift is a contract by which a person called a giver or donor, transfers his property ownership to another person called a receiver or donee, who accepts it.

Proclamation on the Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes dated on November 26, 2003 states that disputes involving registered land that is land with certificates belong to the competence of the court while disputes involving unregistered land that is land without any certificates belong to the competence of cadastral commission.¹⁴ But all disputes involving contracts of transfer of unregistered immovable property belong to the court competence. It seems that this ministerial proclamation and Article 47 of the 2001 Land Law are conflicting. To avoid such a conflict of law, only the first sentence of Article 47 of the 2001 Land Law should necessarily be amended that “[d]isputes between possessors of unregistered immovable properties shall be investigated and resolved under determined procedures.”

Interestingly, giving options as alternative dispute resolutions to government agents to resolve unregistered land disputes remains debatable. The concern of unconstitutionality has come into existence. As stated above, Article 47 of the 2001 Land Law does not clarify whether the court will adjudicate cases passed from cadastral commission both a question of law and a question of fact. According to the concept of separation of power, it is understood that the court will adjudicate the cases both a question of law and a question of fact. Although the Cambodian Constitution states that all lawsuits including administrative ones have to be adjudicated by court,¹⁵ it is not a big matter that the 2001 Land Law creates cadastral commission in order to decide land disputes concerning unregistered land because the disputants can file a claim in court if they are not happy with the cadastral administration’s decision. However, Sub-decree on the Organization and Functioning of the Cadastral Commission dated on May 31, 2002 provides that the court is required to verify only a question of law over the cases decided by the National Cadastral Commission.¹⁶

In addition, the law does not say what court level is appropriate for the cases already decided by the National Cadastral Commission. Since verifying a question of law is the competence of the Supreme Court, it can be interpreted that the National Cadastral Commission has the discretionary as the Appeal Court. Therefore, it is quite conflicting to the Constitution in which Article 128 New states that:

¹⁴ Inter-ministerial Proclamation on the Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes, No.02PKN/03, November 26, 2003, art. 1.

¹⁵ Constitution of the Kingdom of Cambodia, amend. February 15, 2008, art. 128 New.

¹⁶ Sub-decree on the Organization and Functioning of the Cadastral Commission, No.47ANK/BK, May 31, 2002, art. 23.

The judicial power is an independent power.

The judicial power shall guarantee and uphold impartiality and protect the rights and freedoms of citizens.

The judicial power shall cover all lawsuits including administrative ones.

This power shall be vested in one Supreme Court and in such inferior courts of all sectors and levels.

In order to be in accordance with the Constitution, unsatisfactory cases after decided by the National Cadastral Commission should be adjudicated by the Appeal Court because this court has the right to see both a question of law and a question of fact. As stated in the second paragraph of Article 129 New of the Constitution, “[o]nly judges shall have the right to adjudicate. A judge shall fulfill this duty with strict respect for law, wholeheartedly, and conscientiously,” it is understood that only judges have the power to ensure the just adjudication of all cases. Moreover, Article 103 New of the Constitution stipulating that “[j]udicial power shall not be granted to the legislative or executive body,” makes a clear concept of the separation of power. Therefore, to be constitutional, the 2001 Land Law should stipulate clearly in Article 47 as proposed below.

Disputes between possessors of unregistered immovable properties shall be investigated and resolved under determined procedures. The results of the investigation shall be submitted to the Cadastral Commission established at the Ministry of Land Management, Urban Planning and Construction. This commission shall make decisions on those disputes. In case of dissatisfaction with the result, the disputants may complain to the court. [The first court competence in this case shall be an appeal court.] The organization and functioning of this commission shall be determined by a sub-decree.

In compliance with this amendment, all relevant legal regulations are necessary to be amended. For example, the first paragraph of Article 23 of the Sub-decree on the Organization and Functioning of the Cadastral Commission¹⁷ should be amended that “disputant has the right to file a complaint in an appeal court and the Supreme Court respectively if the he or she is not happy with the decision of the National Cadastral Commission within the period of 30 days from the date of receiving the decision.” In so doing, the court can still have full judicial power and therefore there is no question concerning unconstitutionality of the 2001 Land Law and other relevant legal regulations.

¹⁷ Paragraph 1 of Article 23 of the Sub-decree on the Organization and Functioning of the Cadastral Commission, No.47ANK/BK dated May 31, 2002 states that “[d]isputant has the right to request the verification of a question of law over the decision made by the National Cadastral Commission by filing a complaint in court within 30 days from the date of receiving the decision.”

4.2 Possible Reform Proposals

4.2.1 Monitoring and Separation of Functions

Local authorities in Cambodia should be entitled to finalize land registration and other relevant work in order to have a successful land administration. Currently, district authorities are appropriate agents to issue sporadic registration certificates. Experience has shown that, since land privatization in 1989, officials at the district level have gained legal knowledge to the extent that can be now utilized. With this regard, district authorities should be fully responsible for all work done at the district level and responsible to provincial and national authorities. Provincial authorities should just provide technical support for district authorities if necessary and monitor district work. By so doing, procedures will be less time-consuming and the district authorities will see clearly that they have to bear all responsibilities concerning what they have done and therefore they will do their work carefully.

4.2.1.1 Provincial Authorities

As mentioned earlier, provincial authorities do not have ultimate decisions for land administration, especially in the case of issuing land certificates. However, provincial authorities play an important role in examining and approving all land application documents. It is noted that the 2001 Land Law aims to provide a full ownership right which is represented by an ownership certificate. In this respect, only systematic land registration has appropriate mechanisms to fulfill this attempt. The provincial governors are entitled to announce adjudication areas for systematic land registration projects but the announcement happens only in case the projects supported by the government and foreign assistance have enough funds to conduct the systematic land registration. Experience has shown that since the inception of systematic land registration projects in 2002 until September 2008, only 902,968 land certificates were distributed to the landowners. Ironically, it may take a century to finish a total number of expected 10 million land parcels throughout the country if the registration pace is not speeded up.

Remarkably, the sporadic land registration requires the provincial governor to approve all relevant land documents submitted by district cadastral administration before land certificates can be issued.

Provincial cadastral administration plays a vital role in examining and giving recommendations to the provincial governor. The central authority, the General Department of Cadastre and Geography offers a final approval also involves in approval of land documentation if provincial cadastral administration does not receive delegation power from the Ministry of Land Management, Urban Planning and Construction. For provinces which receive delegation power from the central level, provincial cadastral administration can sign sporadic registration certificates but systematic registration certificates are signed by the central cadastral administration, that is the General Department of Cadastre and Geography. However, the fact shows that no systematic registration certificates have been issued through sporadic land registration so far.¹⁸ It is noted that as of November 2008, only 589,827 sporadic registration certificates were issued. This number shows that still a huge number of landholders do not have land certificates. Without having any kinds of land certificates, the right of landholders will can vulnerably violated.

Although the sporadic land registration mainly provides only sporadic registration certificates, it is the only way to give legal evidence in respect to land tenure. The current procedures of sporadic land registration are time-consuming and costly thereby making landholders deter from applying for land certificates. The reformed procedures are necessarily taken into account in order to encourage all landholders to register their land through sporadic land registration. With this regard, provincial authorities are necessary to be technical support providers to all district authorities who are in need of. Provincial governors should not be required to approve all sporadic land registration documents, but receive the claims and resolve them as the duties mentioned in cadastral commission.¹⁹ Provincial cadastral administration should be required to receive the data of sporadic land registration from district authorities. By so doing, the procedures are short and thereby motivating landholders to apply for land certificates.

Provincial authorities should be required to manage all income in the provincial territory. As all land information is available at the provincial level, so the provincial authorities verify all land taxes and other relevant duties received from district authorities. Provincial authorities should have the right to audit all necessary documents submitted by the district authorities. After confirming correctness of all land taxes including unused land taxes, the provincial authorities should be required to send received amount of

¹⁸ Supra note 10.

¹⁹ Sub-decree on the Organization and Functioning of the Cadastral Commission, No.47ANK/BK, May 31, 2002, arts. 12-16; Sub-decree on Sporadic Registration, No.48ANK/BK, May 31, 2002, art. 8.

income to the national level. These authorities should be highly responsible to the national authorities. Therefore, it is expected that all hierarchical authorities have to be responsible for their role and duties very strictly.

4.2.1.2 District Authorities

District authorities play a pivotal role in sporadic land registration. Currently, the district authorities including district governors and district administration do not have ultimate decision for land registration although these authorities have main duties to demarcate, survey and adjudicate all land parcels. The final approval of all sporadic land registration documents which depends on the Provincial Governor or the General Department of Cadastre and Geography makes procedures time-consuming and costly. As mentioned above, the provincial authorities should provide only technical support when district authorities need. Also, land applications which are involved in land disputes, the mechanism of land dispute resolutions through cadastral commission should be used. As such, provincial authorities and national authority can be actively involved with the dispute resolutions. Therefore, the sporadic land registration should be conducted only at the district level because district authorities stay closer to landholders and thereby can fulfill the needs of the landholders.

A new government policy should urgently require that all landholders apply for land certificates within a limited period of time. Since the systematic land registration projects have a long way to go, speeding up the registration of all land parcels through sporadic land registration is an appropriate way to strengthen land administration as well as to prevent land disputes. As mentioned earlier, the government intends to register all land parcels through systematic land registration in order to provide a full right of ownership which cannot be contested. However, the time to finish this goal is not known. Moreover, land disputes have still happened rampantly making more people be affected from land grabbing. As such, an urgent measure is necessary to be taken into account. With this regard, the district authorities should be empowered to provide all certificates of possession to landholders. The Sub-decree on Sporadic Land Registration is therefore necessarily amended in order to fulfill these needs. Technical trainings for district authorities are also needed so that all legal procedures are correctly implemented.

In order to achieve the sporadic land registration goal, the district authorities have to be highly

responsible for land administration to the provincial and national authorities. If all land is registered through sporadic land registration, it helps fasten the speed of systematic land registration projects because the number of land disputes is low. Also the transfer of land rights and all taxes and relevant duties are necessary to be vigilantly done at the district level. The main task of the District Office of Land Management, Urban Planning, Construction and Land is responsible for reporting all relevant documents to the provincial authorities. The district authorities who are close to the people in the district within appropriate territorial area are expected to serve the people fast. People who are not happy with the work done by district authorities can request the provincial authorities to solve those unsatisfactory problems. This mechanism makes district authorities more responsible for their duties.

District authorities play a core role in administering all land issues in their territory. Experience has evidenced that most of the landholders did not want to complete land documents to the provincial level since it is time-consuming and costly although all certification made by the district authorities is not valid. Therefore, in order to make all land documents valid, it is necessary that the delegated power be provided for district authorities. As such, strengthening land related legal knowledge of the district authorities is urgently needed. The Ministry of Land Management, Urban Planning and Construction plays a vital role in providing technical legal knowledge for district authorities. It may be more effective that the trainings are firstly conducted for provincial authorities and then these authorities have to forward the trainings to the district authorities. When district authorities have adequate legal knowledge, they are able to implement the law correctly making smooth land administration for the whole society.

District authorities should be required to collect all land taxes. Every landholder in each district has to pay land taxes at the district level. After the deadline of paying taxes, the district authorities can verify those who do not pay the taxes and send the names to the commune authorities in order to levy taxes. The enforcement of unused land taxes should be strengthened well at the district level. As commune authorities are the very close authorities to the local people in the commune territory, these authorities can fulfill the work provided by district authorities. With this regard, district authorities receive information concerning unused land from the commune authorities every year so that the data of unused land information is yearly updated. After receiving all land taxes and other relevant duties, the district authorities have to bring all collected budget to the provincial authorities.

4.2.1.3 Commune Authorities

Village chiefs play a pivotal role in recognizing all necessities of their villagers' needs. As villages are the smallest units in each commune administration, village chiefs usually know all villagers in their villages. Therefore, the village chiefs may understand the real needs of their people. Although the village chiefs are not elected by their villagers but appointed by the commune councils, the appointment may respond to the desire of their local people because all villagers vote for the commune councils in their commune territory. Benefiting from this system, the village chiefs are necessary to be entitled to basically sign all necessary land documents of their villagers before those documents go to the commune authorities. The only signature of a village chief on land documents does not provide validity of the documents, however land documents without the signature of a village chief should be considered invalid. By so doing, it ensures that every procedural requirement is fulfilled.

Commune authorities should be provided a high responsibility to connect the needs of commune people to the district authorities. With this regard, it is necessary that the commune authorities receive sale contracts, transfer of land rights and encumbrances from the commune people and bring all of documents to the district authorities for completing legal necessities. Evidence so far has been convinced that land documents such as sale contracts are always used with only the signature of commune chiefs. Because commune chiefs are required to only sign the contracts, certifying that the signatures of the involved persons are correct. Consequently, people involving transactions may stop the procedure at the commune level because they may think that if the documents are signed by district authorities, they will spend much money. So people can use those contracts as informal transactions which are not protected by law.²⁰ As such, if the commune authorities are required to receive the sale contracts and then brings those documents to the district authorities for final decisions there will be no informal transactions. By so doing, the documents returned to the owners are legally completed.

Interestingly, commune authorities play a pivotal role in enforcing people who fail to pay tax at the

²⁰ Kenneth W. Dam, *Land, Law and Economic Development*, John M. Olin Law and Economics Working Paper No. 272 (Chicago: The Law School of the University of Chicago, January 2006), 2, under note 8; See also Klaus Deininger, "Land policies for growth and poverty reduction: Key issues and challenges ahead," 6, <http://www.oecd.org/dataoecd/24/55/36562720.pdf>, last visited December 2, 2009.

district level. As the deadline of paying land taxes passes, the commune authorities after receiving the notification list of those who have not paid land taxes from the district authorities are able to realize who have not paid land taxes and thereby can collect all the remaining unpaid land taxes. With this regard, village chiefs can cooperate well with the commune authorities in order to inform the villagers who have not paid land taxes to pay the taxes in a limited period of time. Moreover, as discussed in the previous chapter, the commune authorities in cooperation with village chiefs can clarify all unused land information in all villages of each commune. Commune authorities should enforce unused landholders to pay unused land taxes after receiving the list of those who do not pay unused land taxes. This mechanism can ensure good land administration thereby making all landholders happy with the local governance by virtue of fair and just society.

4.2.2 Grant Monitoring Authority to Provincial and National Administration

Land tax collection can be accomplished if well-designed punishment mechanisms toward both competent authorities and taxpayers have been enforced. Dissemination of land tax obligation for taxpayers to understand clearly what they have to fulfill with their property is necessary. Commune authorities play a pivotal role in fulfilling this goal. Administrative sanctions toward all competent authorities at every level of authorities should be strictly imposed, for administrative misconducts are the main cause of corruption and consequently irresponsibility of competent authorities will be predictable. Also criminal penalties have to be ensured that any competent authorities who commit wrongdoings will be brought into imprisonment. More importantly, strict fine measures of taxpayers who evade from paying land taxes should be transparently and fairly enforced by competent authorities.

It is necessary to explain land taxpayers the obligation and usefulness of tax payment in order to accomplish a full tax collection policy. In this respect, local authorities play a vital role in achieving this goal. Information boards in each village and commune should be established in order to put information concerning the goal of taxation so that taxpayers understand that goal clearly. Since land tax revenues are used to serve local social services, it is expected that making taxpayers be aware of what they should do with their landownership or land rights will fulfill the tax collection policy. Notifying the punishment mechanisms to local people is very crucial because local people are likely to respect law if they see that

when they commit wrongdoings, they will be punished. However, a transparent punishment is more important to make all taxpayers see that there is no exception to any circumstances so that they actively participate in tax payment.

Administrative sanctions should be necessarily imposed on competent authorities with regard to their misconducts. As mentioned earlier, the provincial authorities do not receive land taxes directly from the taxpayers but confirm the accuracy of tax payment from the district authorities. Therefore, in case that tax revenues do not have balance with the expected taxes collected, the provincial authorities should issue a letter to district authorities for explaining the imbalance. If district authorities cannot clarify the mistakes, the investigation of this issue is needed. Demotion of authorities who are found subsequent misconducts should be strictly enforced in order to warn all officers that their misconducts can always be watched and therefore they will be punished. Similar thing has to be done by the national authorities toward provincial authorities. This mechanism can ensure the sole responsibility of each level of authorities.

Criminal penalties toward competent authorities who commit criminal acts have to be effectively enforced by the court in order to overcome land tax collection policy. For example, if tax collectors steal taxes for their personal use, those tax collectors have to be sent to prison. Every tax conversion made by landholders in conjunction with tax collectors must be firmly controlled. More importantly, actual criminal penalties make tax collectors deter from committing wrongdoings. As such, land taxpayers see that their tax payment goes to the correct place thereby encouraging them to pay land taxes because they see that tax collectors cannot be corrupt. With this regard, it is vital to strengthen court system in order to ensure that every system works well.

A well-designed mechanism to fine those who do not pay land taxes is more crucial to encourage all land taxpayers to pay taxes. An experience of unused land tax enforcement has evidenced the weakness of system toward those who fail to pay unused land taxes. Consequently, huge vacant land remains available without paying unused land taxes leading to serious land speculations. It should be therefore necessary that law determine the period of time to confiscate land for those who fail to pay land taxes to the state. With this regard, the 1992 Land Law seemed to provide a better measure, for this law stipulated a tax

provision²¹ while the 2001 Land Law does not. The policy of confiscating unused land failing to pay taxes possibly encourages all landholders to pay land taxes because landholders are afraid of losing their land. Moreover, land transactions have to be made in formal transactions meaning fulfilling all legal requirements otherwise land taxes are still imposed on original landholders.

4.2.3 Land Taxes: Give Local Communities a Stake in Land Tax Revenues

4.2.3.1 Objects of Taxation

It is necessary to clearly classify immovable property subject to taxation. As mentioned earlier, due to the ruling party's political tendency, Cambodia has not levied taxes on land value but on unused land since 1996.²² However, no reports on the availability of unused land area in the whole country have been known. It is therefore believed that the actual performance of the collection of taxes on unused land is far from successful. Albeit this failure, it is vital that the government find a more efficient and effective mechanism in order to extend taxation over other objects. Therefore, this sub-section suggests the possible objects subject to taxation such as residential land, agricultural land and buildings in addition to the unused land so as to strengthen land administration.

Levying taxes on residential land is a way not only to increase additional budget but also to strengthen ownership status of the land. Although the poverty rate in Cambodia remains remarkably high,²³ obligation of the residential landholders to pay land taxes does not seriously affect landholders' livelihoods if the government has a well designed tax regulation. With this regard, the size of residential land should be taken into consideration. In Japan, for example, law sets special rules which indicate small scale residential land up to 200 spare meters, tax base is then calculated as one sixth of the price.²⁴ It is applicable in Cambodia and may be fair for citizens to pay taxes on residential land depending upon land size, condition and location. For instance, the determination of minimum residential land size is necessary for the owners to pay a very small amount of taxes while the owners of the large size pay much. Yearly tax charged one

²¹ The 1992 Land Law, art. 18.

²² Proclamation on the Collection of Tax on Unused Land, No.224/PK/SHV/ BD, July 05, 1996; Instructive Circular on the Tax Implementation on Unused Land, No.017SRN/SHV/BD, December 01, 1999; Notification on the Management of the Collection of Tax on Unused Land, No.010SHV/PK/BD, June 06, 2007.

²³ See Chapter 1 on page 12.

²⁴ Outline of tax system for Land and Water Bureau, http://tochi.mlit.go.jp/english/tax/02_01_01.html, last visited May 8, 2009.

dollar or less per a piece of residential land of minimum size will contribute to prevention of land disputes. More remarkably the tax payment will build good culture for all residential landowners.

The collection of agricultural land taxes does not mainly affect the livelihoods of poor citizens. As already mentioned in Chapter 2, the landless rate rises to 20 percent among rural households, so this number of those people is not affected by the land taxation. In return, those poor citizens are provided with basic infrastructures in order to improve their way of life. More interestingly, the vigilant design of tax system on agricultural land will be needed in order to lead to successful outcome. Agricultural land can be taxed basing on land value. It is true that the land tax reform in Meiji era changed the policy from taxing land basing on output of agricultural produce to land value. However, Australia, New Zealand, Denmark, South Africa and East Africa, Hawaii, and western Canada have experienced in imposing land taxes basing upon estimated yield from the land per a determined unit.²⁵ It is noted that the land taxation which was introduced in New Zealand in 1878 was attempted to break up large individual agricultural landholdings.²⁶ Similarly, in Cambodia, high concentration of landholdings by one-fifth of the population who controlled up to 70 percent of the available land remains worrisome for Cambodia society.²⁷ Therefore, it is expected that agricultural land taxation will benefit the whole society, especially the local communities by sharing wealth from the rich.

Levying taxes on buildings is a possible way to increase national budget for planning development projects. This kind of taxation may be suitable to be applied to buildings in urban areas where economic activities mainly take place. A vigilant well designed tax system is also vital in order to ensure that such taxation is fair and transparent for all building holders. In this respect, taxes on monthly or yearly income arising from those buildings may be appropriate. This system also needs highly responsible committees in order to make sure that tax evasion resulting from corruption does not happen. Moreover, as not all people are honest to declare the payment of taxes,²⁸ the rate of taxes on buildings should be necessarily taken into account so that the taxpayers are happy with payment thereby motivating them to pay taxes.

Unused land taxes are important to encourage landholders to invest in land. As mentioned Chapter

²⁵ Peter F. Dale and John D. McLaughlin, *Land Administration* (Oxford: Oxford University Press, 1999), 64.

²⁶ *Ibid*, 64.

²⁷ Ministry of Planning, *Cambodian Human Development Report 2007: Expanding Choices for Rural People* (Phnom Penh: Ministry of Planning, 2007), 11.

²⁸ *Supra* note 25 at 63.

1, one of the main purposes of land taxation is to encourage land improvement. If land is not used, the government takes action against unused landholders by levying a high tax rate. Also unused land taxation can prevent land speculation. Usually the rich or buyers purchase land for profits, for when land prices have increased, they will sell it. Such practice has continued from one to another thereby making no contribution to economic growth. It is necessary that a strict measure to collect land taxes be taken into account. Local authorities as previously mentioned have a vital role in controlling unused land so that they can enforce all unused landholders to pay unused land taxes. It is possible to tax unused land of large size with a specific objective such as a very high rate; making holders of larger unused land size pay more unused land taxes. This policy therefore motivates landholders to use the land more effectively or to sell the land to those who will be likely to invest in land.²⁹

4.2.3.2 Tax Collection System

Success in collecting land taxes needs a highly responsible and transparent institution as well as easy mechanism which should not be time-consuming and expensive. With this regard, it is necessary that local authorities in cooperation with tax agencies be empowered in order to enforce all land-related tax laws. As such, the inclusion of tax officers at every level of local authorities is vital to achieve the goal. Local people are then able to pay land taxes at the nearer institution making them more convenient to pay the taxes. Cooperation of the cadastral officers is needed so that tax officers can easily confirm all tax available revenues. Similarly to the cadastral administration, land tax offices should be available at the district level. Also, it is important to strengthen commune authorities so as to be capable to cooperate with district authorities for land tax collection.

Local authorities are necessary to have tax officers in order to perform the tax regulation very well. Currently, there are Provincial Tax Sub-Offices at the provincial level and District Tax Agencies at the district level. Therefore, it may be more vital to provide responsibility for tax officers who work at the district level in order to receive land taxes in the district territory. The district tax officers should be accountable to Provincial Tax Sub-Offices for all land tax collection. The provincial tax officers should be responsible for receiving land taxes and examining the accuracy of the tax collection by District Tax

²⁹ Supra note 25 at 62.

Agencies. Further trainings for tax officers in order to accomplish the role are needed. Land taxpayers should pay land taxes at the district level so that it is more convenient for them. It should be noted that communication via road infrastructures is not easily accessible throughout the country yet. As such, the government should urgently consider building main roads from communes to districts.

The cooperation between cadastral officers and tax officers is needed in order to achieve a land tax collection policy. As mentioned in Sub-section 4.2.1.2 “District Authorities,” district cadastral officers play an important role in controlling all land documents which provide good information for tax collection purposes. Therefore, cadastral officers should provide available land data subject to taxation to district tax officers in order to ensure the fair and transparent tax collection. Also tax officers should submit the name of landholders, who fail to pay taxes, to cadastral officers so that the cadastral officers are able to notify commune authorities about those unpaid tax landholders. This practice may provide a system of checks and balances between tax officers and cadastral officers thereby ensuring a fair and transparent system. Importantly, all information concerning land and land taxes should be always updated. Strict punishment mechanisms for those who fail to follow the rules are necessarily taken into account.

Commune authorities play a vital role in facilitating tax agencies to accomplish the task. As commune authorities stay closest to local people, these authorities are familiar with the local situation. As mentioned earlier, commune authorities in cooperation with village chiefs can collect the data of unused land every year in order to inform district authorities for unused land tax collection. Also, when receiving information from the district authorities concerning villagers who do not pay land taxes, village chiefs should notify those villagers to pay taxes. Trainings of commune authorities and village chiefs with regard to land taxation are crucial so that those authorities can perform the duties very well.

4.2.4 Risks of Reform Proposals

Although district authorities are expected to work well with land registration and other related work, some bad impacts may be predictable. District authorities may fulfill work in favor of the rich and powerful people since there is room for extra benefit. For example, the same work requested by the rich or powerful people may be done faster than that requested by the poor or ordinary people. Moreover, district authorities may demand bribe from involved people. District authorities are possibly hard to refuse the

requests made by powerful people although those requests are not lawful. In this respect, district authorities may bribe provincial authorities for wrongdoings.

4.3 Issues of Legal Trainings

The implementation of land related laws and legal regulations can be more effective if all law implementers understand the law well. Experience has so far witnessed that competent authorities are not completely aware of legal norms thereby making them more difficult to respect the law. Limited human resources of local authorities are also a main hindrance to the implementation of law. As mentioned in Sub-section 3.2.1 “Limited Legal Awareness” of Chapter 3, only 2,574 local authorities were trained with a limited period of time and 477 higher education students were trained in order to become high and low ranking officials.³⁰ Therefore, trainings on newly adopted land related laws and legal regulations should be provided for all competent authorities. Also, it is necessary to train judges when new laws and important regulations are adopted. Attorneys at law should be further trained as well in order to provide efficient consultation to their clients.

Trainings on newly adopted laws and legal regulations for competent authorities play a very vital role in achieving the implementation of law. With this regard, the Ministry of Land Management, Urban Planning and Construction should organize training courses for competent authorities.³¹ The cooperation between this Ministry and other NGOs involving in land issues is more effective to hold crucial workshops. It should be noted that the National Authority for Land Dispute Resolutions remarkably contributes to legal dissemination relating to land issues because this National Authority has trained 3,951 competent authorities in 2009.³² Moreover, the Ministry of Interior in cooperation with the East West Management

³⁰ For more information, see chapter 3 on page 113.

³¹ Sub-decree on the Establishment of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK, July 20, 1999, art. 3 (stating that the Ministry of Land Management, Urban Planning and Construction has duties to “disseminate, educate, train laws, legal regulations and profession techniques that relate to the field of land management, urban planning, construction and geography”).

³² The National Authority for Land Dispute Resolutions trained competent authorities through legal training workshops as follows:

- January 12-13, 2009: for Kratie, Ratanakiri and Stung Treng Provinces consisting of 264 participants,
- February 17-23, 2009: for Takeo, Kep, Kampot and Preah Sihanouk Provinces consisting of 428 participants,
- February 25, 2009: for Phnom Penh Capital consisting of 459 participants,
- March 23-25, 2009: for Kampong Speu and Koh Kong Provinces consisting of 270 participants,
- May 29-June 1, 2009: for Mondulkiri and Preyveung Provinces consisting of 351 participants,

Institute trained 563 competent authorities in 10 provinces as of July 2009.³³ The number of competent authorities has been trained is still limited, therefore the government should encourage the Ministry of Land Management, Urban Planning and Construction to conduct trainings for all competent authorities throughout the countries especially when newly adopted laws exist.

Another important issue which the government should take into account is to train judges when newly adopted land related laws and important regulations are available. Since most of the judges in Cambodia are familiar with old laws and legal regulations and have limited understanding of newly adopted laws thereby making them sometimes adjudicate cases bias to old legal norms. Therefore, trainings for judges are necessary. The Ministry of Land Management, Urban Planning and Construction should cooperate with the Ministry of Justice and other NGOs in order to hold training workshops for judges. The Royal School of Judges should also be updated with newly adopted laws in order to provide an opportunity for judge students to receive most updated legal knowledge. When judges have correct understanding what the law says, the judges may decide the cases in accordance with the rule of law.

Attorneys at law should also be trained with newly adopted land related laws and legal regulations in order to broaden their understanding, making them easier to explain and defend clients. In this respect, attorneys can play an important role in giving advice to their clients whether the clients have to file a complaint. If attorneys have full knowledge of the consequences of the cases, those attorneys are able to explain their clients what the clients should do in a lawsuit. As such, if the cases are likely to be failed, the clients may give up their complaints reducing fewer land disputes in court. Therefore, the Ministry of Land Management, Urban Planning and Construction should cooperate with NGOs working for land issues in

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- June 14-20, 2009: for Kampong Chhnang, Pursat, Battambang and Pailin Provinces consisting of 741 participants,
 - July 19-24, 2009: for Kampong Cham, Kampong Thom and Preah Vihear consisting of 504 participants,
 - August 17-21, 2009: for Banteay Meanchey, Udon Meanchey and Siem Reap Provinces consisting of 522 participants, and
 - September 2-3, 2009: for Kandal and Svay Rieng Provinces consisting of 412 participants.

The participants include provincial governors, provincial vice governors, chiefs of provincial courts, prosecutors and vice prosecutors of provincial courts, commissioners, commanders of provincial sub-military operational regions, commanders of provincial royal armed forces, chiefs of cantonments of forest and fishery administration, chiefs and vice chiefs of provincial departments, chiefs and vice chiefs of offices under provincial halls, commune authorities, village authorities, directors and vice directors of senior and junior high schools, and relevant officers.

³³ East West Management Institute (EWMI), 2009.

order to organize legal training workshops on newly adopted land related laws and legal regulations for all attorneys.

4.4 For Further Study

For future Cambodian land administration, vested power may be appropriate for commune authorities. Currently, although commune councils are elected every five years since 2002, these councils are still incapable of registering land and other related work. A limited education of commune authorities is a hindrance for implementation of law. Moreover, branches of the Ministry of Land Management, Urban Planning and Construction have not been available at the commune level. Only one commune clerk, assigned by the Ministry of Interior, is a government official working at the commune level these days. Therefore, within limited human resources, commune authorities are not able to fulfill land administration.

If Cambodia is able to benefit from the full decentralization, land taxes and relevant taxes may be shared differently from the local authorities and national authority. With this regard, Japanese experience may be appropriately applied. At the present time, it should be noted that infrastructure is still poor. Also, the banking system is not developed and trustworthy yet, making the way of payment hard for people to pay for the central government directly.

Conclusion

This research identified the factors behind the failure of land registration in Cambodia since the inception of land privatization in 1989. Law on paper and its actual application have been far different from one another and consequently fundamental land registration work has not been finalized. The Instruction on the Implementation of Land Use and Management Policy dated on June 3, 1989 was the first ever government instruction to privatize land in Cambodian land history after the collapse of the Pol Pot regime in 1979. It is noted that the instruction required the state to grant ownership rights over residential land of no more than 2,000 square meters, and possession rights over agricultural land of no more than 5 hectares. Yet, only sporadic registration certificates were issued to represent these two land rights. This instruction required all landholders to apply for land possession and landownership within a period of 6 months and another extended period of 6 months,¹ totally from June 1989 to June 1990. In the aftermath of the implementation until June 1990, approximately 3.7 million land applications accounting for 70 percent of the total land parcels were applied.

More remarkably, the 1992 Land Law which aimed at completing land registration witnessed the failure of its implementation. Punishment provisions such as the confiscation of property which was not registered after 5 years from the date when the 1992 Land Law came into effect² were never enforced. Consequently, sporadic registration certificates consisted of only 12 percent of land applications as of 2000. As such, a large number of land parcels remained unregistered causing uncertain land tenure more problematic. Noticeably, this law did not stipulate the size of holdings of different types of land as determined in the instruction of June 3, 1989 thereby remaining ambiguous whether the size was still restricted or not. Moreover the 1992 Land Law was incompliant with the 1993 Cambodian Constitution showing a need of new land law. Therefore, an attempt to promulgate another land law became the main focus of the government efforts for a better land administration.

Meanwhile, the government tried to reform government institutions in order to find a better way to improve land system. With this regard, from 1995 to 1999, the Department of Cadastre under the

¹ Letter of the Office of the Council of Ministers on the Request to Delay the Acceptance of Land Applications, No.94SCN/KS, January 17, 1990.

² The 1992 Land Law, art. 224.

supervision of the Ministry of Agriculture, Forestry and Fisheries was shifted to be under the supervision of the Office of the Council of Ministers. This reform did not result in a positive way and therefore in 1999 the government established the Ministry of Land Management, Urban Planning and Construction in order to manage all land throughout the country. Since then the Department of Cadastre was promoted to the General Department of Cadastre and Geography which has played a role as the national cadastral administration. The Ministry of Land Management, Urban Planning and Construction tried its efforts to draft the new land law. Fortunately on August 30, 2001 the new land law was promulgated.

Noticeably, the 2001 Land Law which aims at providing full rights of ownership to Cambodian citizens still has met various hurdles. The attempt to build a perfect land system through cadastral index maps and land registers has been far from completed because it needs systematic land registration projects to be made throughout the country. However, from 2002 to April 2010 systematic land registration projects so far have achieved only 1.3 million systematic registration certificates out of an estimated set of 10 million land parcels. This number witnesses the slow pace of systematic land registration. Moreover, systematic land registration projects have so far taken place at the areas where disputes do not mainly occur. If the registration pace continues to be slow, it may take a century to finish the systematic land registration projects and consequently land problems will abound.

The failure to require all landholders to apply for land certificates with a determined period of time has caused a major drawback of sporadic land registration. From 2000 to 2008, the number of sporadic registration certificates increased from 518,258³ to 589,827⁴ respectively showing that the implementation of sporadic land registration after the 2001 Land Law has not worked well. Consequently, a large number of landholdings remained unregistered and therefore landholders may think it is not necessary to have land certificates because most of landholders are able to enjoy their property without land certificates. The failure to stipulate punishment measures toward those who fail to register their land through sporadic land registration become a strong disincentive to registering landholdings. Security interests in land have remained feeble and landholders are not able to enjoy their properties with such tools because security

³ Sophal Chan et al., *Land Tenure in Cambodia: A Date Update*, Working Paper No. 19 (Phnom Penh: Cambodia Development Resource Institute, October 2001), 30.

⁴ Department of Land Registration, *Summary of the Result of Sporadic Land Registration from 1989 to November 25, 2008*, by Vanna Siek, Chief (Phnom Penh: General Department of Cadastre and Geography, Department of Land Registration, November 25, 2008).

interests require the properties to be registered. Furthermore, unregistered properties have resulted in a great deal of informal land transactions which cause a loss of state revenues.

Past experience has witnessed that the centralized power to finalize land registration in respect to sporadic land registration has not guaranteed that land problems would reduce. For example, in September 1994 the government required the Department of Cadastre to issue sporadic registration certificates which had been previously issued by district or provincial authorities. Since then, disputes arising from uncertain land tenure still continued to increase remarkably.⁵ The government then required land applications for possession and ownership to be passed through the Office of the Council of Ministers for additionally examining the correctness of land application documents before the Department of Cadastre issued land certificates. This practice had resulted in more intricate and time-consuming procedures thereby deterring landholders from registering their land. Moreover, this practice has exacerbated the power of local authorities with respect to land administration and consequently does not benefit from the decentralization policy in which local authorities who stay close to local people should be entitled to serve them.

Land management in Cambodia has so far witnessed imperfect implementation of law. Local authorities have done little responsibility with regard to land use, sustainable environment and extralegal landholdings. In response to solving such shortcomings, speeding up land registration will contribute to land management. As of April 2010, approximately 1.9 million land certificates including systematic registration certificates and sporadic registration certificates were issued among an estimated set of 10 million land parcels meaning a large number of land parcels remains uncertain. The government consequently faces difficulties in controlling land use because of inadequate land information. Also informal land transactions can be nationwide available making the government lose national revenues from stamp duties. Moreover, a large number of unregistered properties reflect the deterrence of large investments.

Unsecure land tenure is a core problem leading to land grabbing. A lack of land tenure security provides an opportunity for the scramble for land thereby rampant land grabbing is inevitable. Disputes

⁵ See Letter of the First Prime Minister to the Second Prime Minister Requested that the Applications of Land Possession Should Be Passed to the Office of Council of Ministers, No.918KhT/2-95, June 16, 1995; Letter of the Second Prime Minister to the First Prime Minister on Agreeing with Letter No.918KhT dated June 16, 1995, No.97Kh/2-95, June 22, 1995.

between boundaries often happen especially in the case of economic land concessions when a contracting authority did not demarcate the boundary before granting the land to concession holders. Usually, rich and powerful people are able to take advantages of having land certificates but poor landholders are not. With irresponsibility of competent authorities, the issuance of land certificates is sometimes in favor of the rich and powerful people granting the size of land over other neighboring people. Moreover, available vacant land has attracted other people to occupy and harvest that land thereby causing land disputes.

The purpose of current Cambodian land registration has been substantially different from that of the registration during the inception of land privatization. It is seen that one of the land registration purposes in 1989 was to impose on land taxes, and in this regard, it resembled the policy of Japan in the Meiji era. In the aftermath of this policy setting, 70 percent of land parcels were applied for land certificates within only one year. However, according to political reasons during the early 1990s, land taxes were never enforced. Since then the issuance of land certificates was remarkably slow. Unlike in Japan, land tax reform during the Meiji era succeeded in registering land because land taxes were collected effectively.⁶ Moreover, the 2001 Land Law does not require landholders to register their land through sporadic land registration leaving room for landholders not to pay attention to land registration. Therefore, the 2001 Land Law which fails to stipulate land taxation discourages competent authorities from performing land registration seriously.

Local authorities have limited legal awareness concerning land laws and legal regulations making them difficult to implement the law correctly. In Japan, when the Meiji land tax reform started, local authorities were trained immediately so that those authorities were able to implement the government policy efficiently. Conducting further legal trainings on newly adopted laws and regulations for local authorities plays an important role in achieving the implementation. In order to effectively train local authorities, subsequent trainings should be applied. For example, national authorities train provincial authorities and then provincial authorities transfer that knowledge to district authorities. When local authorities are aware of laws and regulations, those authorities will be able to implement the law and government policy efficiently.

⁶ R. P. Dore, *Land Reform in Japan* (London: Oxford University Press, 1959), 14-15.

Bibliography

Legal Sources

Laws and Royal Decrees

Civil Code of Cambodia, 1920.

Civil Code of Cambodia, No.NS/RKM/1207/030, December 8, 2007.

Land Law of Cambodia, No.100K, October 13, 1992.

Land Law of Cambodia, NS/RKM/0801/14, August 30, 2001.

Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans, No.NS/RKM/0508/017, May 26, 2008.

Law on Commune Administration, No.NS/RKM/0301/05, March 19, 2001.

Law on Finance for 1995, No.11/NS/94, December 31, 1994.

Law on Natural Protected Areas, NS/RKM/0208/007, February 15, 2007.

Law on the Commune Election, No.NS/RKM/0301/04, March 19, 2001.

Law on the Environmental Protection and Natural Resource Management, NS/RKM/1296/36, December 24, 1996.

Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction, NS/KRM/0699/09, June 23, 1999.

Law on the Establishment of the Stamp duties, No.21K. February 15, 1991.

Law on the Provincial and Districts Administration, No.NS/RKM/0108/017, May 22, 2008.

Royal Decree No.101NS, July 16, 1948.

Royal Decree No.NS/RKT/0206/097, February 26, 2006.

Royal Decree on the Creation of Natural Protected Areas, dated November 01, 1993.

Japan Laws

Civil Code of Japan, 1896.

Real Property Registration Act (Act. No. 123 of 2004 as revised by Act No. 132 of 2007)

Government Legal Regulations

Sub-decree on Granting House Ownership to the Cambodian Citizens, No.25ANK, April 22, 1989.

Sub-decree on Revising Article 4 of Sub-decree No.68ANK/BK dated October 18, 2004 on the amendment of Article 4 of Sub-decree No.88ANK/BK dated December 1, 2000 on the Establishment of Council of Land Policy, No.35ANK/BK, February 06, 2009.

Sub-decree on the Amendment of the Sub-decree on Economic Land Concession, No.131ANK/BK, September 15, 2008.

Sub-decree on the Amendment of the Sub-decree on Economic Land Concessions, No.131ANK/BK, September 15, 2008.

Sub-decree on the Collection of the Stamp duties, No.20ANK, September 21, 1991.

Sub-decree on the Economic Land Concessions, No.146ANK/BK, December 27, 2005.

Sub-decree on the Establishment of the Council of Land Policy, No.88ANK/BK, December 01, 2000.

Sub-decree on the Management of the Use of Agricultural Land, No.06ANK, May 06, 1985.

Sub-decree on the Organization and Functioning of the Cadastral Commission, No.47ANK/BK, May 31, 2002.

Sub-decree on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK, July 20, 1999.

Sub-decree on the Procedure of Establishing Cadastral Index Map and Land Register, No. 46ANK/BK, May 31, 2002.

Sub-decree on the Procedure to Establish Cadastral Index Map and Land Register, No.11ANK/BK, March 22, 2000.

Sub-decree on the Rule and Procedure of Transferring State Public Property and Public Entity Property, No.129ANK/BK, November 27, 2006.

Sub-decree on the Social Land Concessions, No.19ANK/BK, March 19, 2003.

Sub-decree on the Sporadic Land Registration, No.48ANK/BK, May 31, 2002.

Sub-decree on the State Land Management, No.118ANK/BK, October 07, 2005.

Sub-decree on the Transfer of the Department of Cadastre of the Ministry of Agriculture, Forestry and Fisheries to be under the Supervision of the Office of the Council of Ministers, No.58ANK, October 3, 1994.

Sub-decree on the Transfer of the Department of Cadastre of the Ministry of Agriculture, Forestry and Fisheries to be under the supervision of the Office of the Council of Ministers, No.58ANK, October 03, 1994.

Sub-decree on Transferring Boengkak to state private property, No.108ANK/BK, August 7, 2008.

Circular on the Illegal Occupation of State Land, No.02SR, February 26, 2007.

Circular on the Instruction for Enforcement of Taxation on Unused Land, No.017SRN/KSH/T, December 01, 1999.

Decision of the 9th Party Central Conference Concerning the Management and Use of Agricultural Land, No. 255SRMChh, August 3, 1984.

Decision on the Establishment of Land Dispute Resolution Commissions in Provinces/Municipalities throughout the Country, No.47SSR, June 10, 1999.

Instruction on the Amendment of Instruction No.03SNN dated June 3, 1989 of the Council of Ministers, No.03SNN, December 8, 1990.

Instruction on the Implementation of Land Use and Management Policy, No.03SNN, June 03, 1989.

Notification on the Cessation of Acquisitive Possession on Immovable Property, No.43SCN/KBC, September 06, 2001.

Proclamation on the Management and Elimination of Anarchy in Forest Sector, No.01PK, January 25, 1999.

Ministerial and Relevant Legal Regulations

Decision on Providing Cadastral Services, No.51SSR, December 21, 2006.

Form for Filling Certificates of Immovable Property “New Certificates” dated September 07, 1994.

Instruction on Movement of Conventional Act in Regard to Immovable Transfer, No170SD/SNN, July 07, 1992.

Instruction on the Issuance of Certificates of Land Possession and Establishment of Related Documents, No.116SD/SNN, April 11, 1991.

Instructive Circular on Implementation of Procedure of Sporadic Land Registration, No.01DNS/SD, March 19, 2004.

Instructive Circular on Providing Economic Land Concessions for Investment Plan with regard to the Implementation of Order No.02BB dated June 13, 2005 on Strengthening the Management of State Property, No.05SRNN, July 01, 2005.

Instructive Circular on the Policy of Land Administration and Use, No.131KSK/SRNN, April 10, 1990.

Instructive Circular on the Principles and Procedures of Complementary Land Registration, No.06SNN, May 05, 2006.

Instructive Circular on the Registration of Buildings and Parcels of Co-ownership Land, No.01DNS/AKKD/SRNN, September 21, 2005.

Inter-ministerial Proclamation on the Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes, No.02PKN /03, November 26, 2003.

Joint Circular on Mechanism to Provide Agricultural Dissemination Services for Social Land Concession Peasants, No.507PK/KSK, December 26, 2006.

Notification on the Acceptance of Land Applications and Subsequent Measures, No.3451KSK/SCN, July 21, 1990.

Notification on the Management of the Collection of Tax on Unused Land, No.010SHV/PK/BD, June 06, 2007.

Proclamation of on the Function, Duty and Structure of Provincial/Municipal Office of Land Management, Urban Planning, Construction and Cadastre; and on the Function, Duty of Subordinate Offices, No.76PK, September 02, 1999.

Proclamation on the Appointment and Activity of the Department of Cadastre, No.111PK/KSK, October 31, 1989.

Proclamation on the Collection of Tax on Unused Land, No.224PK/SHv/BD, July 05, 1996.

Proclamation on the Use of Land-Related Documents, No.2746PK/KSK, August 02, 1989.

Official Letters

Letter No.2856KSK/M/RB dated October 30, 1989 of the Ministry of Agriculture.

Letter of First Prime Minister to Second Prime Minister Requested that the Applications of Land Possession Should be Passed to the Council of Ministers, No.918KhT/94, June 16, 1995.

Letter of Office of Party Center on Abolishing National Contribution by Creating Land Taxation Instead,

No.057D/KhBB, February 23, 1991.
Letter of Second Prime Minister to First Prime Minister on Agreeing with Letter No.918KhT dated June 16, 1995, No.97Kh/2-95, June 22, 1995.
Letter of the Council of Ministers on the Land Conflict Issues between Authorities and People, No.1052SCN/ SR, July 05, 1995.
Letter of the Ministry of Land Management, Urban Planning and Construction to the Royal University of Law and Economics, No. 498 DNS/SDP dated June 16, 2010.
Letter of the Office of the Council of Ministers on the Request to Delay the Acceptance of Land Applications, No. 94SCN/KS, January 17, 1990.

Official Speeches

Opening Address by H.E. Mr. Sethy Im, Minister of Education, Youth and Sport, Cambodia at the Regional Workshop on “Promoting Right-Based Approach in Pre-Service Teacher Education in the Asia-Pacific Countries,” (Phnom Penh, May 25-27, 2009).
Chhunlim Im, “Santeakrakatha thleng knong pithy bet veak sekhasala ampi kaphlaspdou batpisort ney kardohsray viveat deithly,” (Speech at the Closing Workshop on the Exchange of Experience in Land Dispute Resolutions) (Kampong Cham: Cambodia, 27 April 2006) (photocopy of transcript).

Judgment

Notification issued by the Council of Ministers, No.588SCN dated May 03, 2007 abrogated the judgment by the Supreme Court, No. 231 dated August 08, 2006.

Books

Becker, Cary S. *Economic Theory*. New Brunswick; London: Aldine Transaction, 2007.
Citynet. *Municipal Land Management in Asia: A Comparative Study*. Citynet, United Nations, 1995.
Dale, Peter F. and John D. McLaughlin. *Land Administration*. Oxford: Oxford University Press, 1999.
De Soto, Hernando and Francis Cheneval. *Realizing Property Rights*. Zurich : Ruffer&Rub, 2006.
De Soto, Hernando. *The Mystery of Capital*. New York: Basic Books, 2000.
De Soto, Hernando. *The Other Path: The Economic Answer to Terrorism*. New York: Basic Books, 1989.
Dinerman, Beatrice in consultation with Winston W. Crouch and John. C. Bollens. “Organization and Structure of Local Government in the United State.” In *Local Government in the United States of America*, ed. International Union of Local Authorities. The Hague: Martinus Nijhoff, 1961.
Dore, R. P. *Land Reform in Japan*. London: Oxford University Press, 1959.
FAO. *Decentralization and Rural Property Taxation*, FAO Land Tenure Studies. Rome: Food and Agriculture Organization of the United Nations, 2004.
Flath, David. *The Japanese Economy*, 2nd ed. Oxford: Oxford University Press, 2005.

- Garner, Bryan A. *Black's Law Dictionary*, 8th ed. St. Paul, Minn: West Group, 2004.
- Gottesman, Evan. *Cambodia after the Khmer Rouge: Inside the Politics of Nation Building*. New Haven: Yale University Press, 2003.
- Jones, Kevin D. "Land Privatization and Conflict in Central Asia: Is Kyrgyzstan a Model?" In *In the Tracks of Tamerlane: Central Asia's Path to the 21st Century*, ed. Daniel L. Burghart and Theresa Sabonis-Helf, 259-273. Washington: Center for Technology and National Security Policy, July 2004.
- LICADHO. *Land Grabbing and Poverty in Cambodia: The Myth of Development*. Phnom Penh: LICADHO, May 2009.
- Locke, John. *The Second Treatise of Government and A Letter Concerning Toleration*, ed. J. W. Gough, Chapter 1, Section 3. Oxford: Basil Blackwell, 1956.
- Mather, A.S. *Land Use*. Hong Kong: Longman Group, 1986; reprint, 1989.
- Merryman, John Henry. *The Civil Law Tradition*, 2d ed. California: Stanford University Press, 1985.
- Ministry of Agriculture, Forestry and Fisheries. *Agricultural Sector Strategic Development Plan 2006-2010*. Phnom Penh: Ministry of Agriculture, Forestry and Fisheries, n.d.
- National Institute of Statistics. *Statistical Yearbook of Cambodia, 2008*. Phnom Penh: National Institute of Statistics, Ministry of Planning, December 2008.
- Pact Cambodia. *Advocacy in Cambodia: Increasing Democratic Space*. Phnom Penh: Pact Cambodia, May 2002.
- Pel, Sokha, Pierre-Yves Le Meur, Sam Vitou, Laing Lan, Pel Setha, Hay Leakhen & Im Sothy. *Land Transactions in Rural Cambodia: A Synthesis of Findings from Research on Appropriation and Derived Rights to Land*. Coll. Études et Travaux, série en ligne n°18, Éditions du Gret, www.gret.org, May 2008.
- Rendall, Matthew, Josee Tremblay and Pat Baars. *Land Law of Cambodia: A Study and Research Manual*. Phnom Penh: East-West Management Institute, Inc., November 2003.
- Royal Government of Cambodia. *Cambodian Millennium Development Goals 2003*.
- Royal Government of Cambodia. *National Strategic Development Plan 2006-2010*, December 22, 2005.
- Ryan, Alan. *Property and Political Theory*. Oxford: Basil Blackwell, 1984.
- Sakou, Samoth. *Kampuchea: Kavivath ney challana noyobay* [Cambodia: The Evolution of Political Movement]. Paris, 2000.
- Siegan, Bernard H. *Property and Freedom: The Constitution, the Courts, and Land-Use Regulation*. New Brunswick; London: Transaction Publishers, 1997.
- UNDP and Ministry of Planning. *Cambodia Human Development Report 2007, Expanding Choices for Rural Poor People*. Phnom Penh: UNDP, 2007.
- Verschuuren, Jonathan. *Principles of Environmental Law: The Ideal of Sustainable Development and the Role of Principles of International, European, and National Environmental Law*. Baden-Baden: Nomos Verlagsgesellschaft, 2003.

Working Papers and Discussion Papers

- Chan, Sophal and Sarthi Acharya. *Land Transactions in Cambodia: An Analysis of Transfers and Transaction Records*, Working Paper No. 22. Phnom Penh: Cambodia Development Resource Institute, July 2002.
- Chan, Sophal and Sovannarith So, *Cambodian Labour Migration to Thailand: A Preliminary Assessment*, Working Paper No. 11. Phnom Penh: Cambodia Development Resource Institute, June 1999.
- Chan, Sophal, Tep Saravy and Sarthi Acharya. *Land Tenure in Cambodia: A Date Update*, Working Paper No. 19. Phnom Penh: Cambodia Development Resource Institute, October 2001.
- Dam, Kenneth W. *Land, Law and Economic Development*, John M. Olin Law and Economics Working Paper No. 272. Chicago: The Law School of the University of Chicago, January 2006.
- Kato, Toshiyasu, Sophal Chan and Vou Piseth Long. *Regional Economic Integration for Sustainable Development in Cambodia*, Working Paper No. 5. Phnom Penh: Cambodia Development Resource Institute, September 1998.
- Kim, Sedara, Sophal Chan and Sarthi Acharya. *Land, Rural Livelihoods and Food Security in Cambodia: A Perspective from Field Reconnaissance*, Working Paper No. 24. Phnom Penh: Cambodia Development Resource Institute, October 2002.
- McKenney, Bruce and Tola Prom. *Natural Resources and Rural Livelihoods in Cambodia: A Baseline Assessment*, Working Paper No. 23. Phnom Penh: Cambodia Development Resource Institute, December 2002.
- Mearns, Robin. *Access to Land in Rural India: Policy Issues and Options*, World Bank Policy Research Working Paper No. 2123. World Bank, May 1999.
- Ramamurthy, Bhargavi, Boreak Sik , Ronnås Per and Hach Sok. *Cambodia 1999-2000: Land, Labour and Rural Livelihood in Focus*, Working Paper No. 21. Phnom Penh: Cambodia Development Resource Institute, December 2001.
- Sik, Boreak. *Land Ownership, Sales and Concentration in Cambodia: A Preliminary Review of Secondary Data and Primary Data from Four Recent Surveys*, Working Paper No. 16. Phnom Penh: Cambodia Development Resource Institute, September 2000.
- So, Sovannarith, Real Sopheap, Uch Utey, Sy Rathmony, Brett Ballard and Sarthi Acharya. *Social Assessment of Land in Cambodia*, Working Paper No. 20. Phnom Penh: Cambodia Development Resource Institute, November 2001.
- UNDP Cambodia. *Land and Human Development in Cambodia*, Discussion Paper No. 5. Phnom Penh: UNDP Cambodia, 2007.

Articles in Journals and in Others

- “Ancient History of Asia: Before and after the Westerners Came.”
- Atuahene, Bernadette. “Legal certificate to Land As an Intervention Against Urban Poverty in Developing Nations.” *George Washington International Law Review* 36 (2004).

- Bamire, A.S. and Y.L. Fabiyi. "Economic Implications of Property Rights on Smallholder use of Fertilizer in Southwest Nigeria." In *Land Reform: Land Settlement and Cooperatives*, ed. P. Groppo. Rome: Rural Development Division, FAO, 2001/2, 87-92.
- Bennett, Frank G., Jr. "Getting Property Right: 'Informal' Mortgages in the Japanese Courts." *Pacific Rim Law and Policy Journal*. Vol. 18, 2009, 463-509.
- Bird, Richard M. and Enid Slack. "Land and Property Taxation: A Review." (March 2002).
- Byanugisha, Frank F. K. "The Effects of Land Registration on Financial Development and Economic Growth: A Theoretical and Conceptual Framework." World Bank Policy Research Working Paper No. 2240. The World Bank, November 1999.
- Michael M. Calavan, Sergio Diaz Briquets and Jerald O' Brien, "Cambodian Corruption Assessment," prepared for USAID Cambodia in May-June 2004 submitted August 19, 2004).
- Candelaria, Maria Aurora Fe. "The Angkor Sites of Cambodia: The Conflicting Values of Sustainable Tourism and State Sovereignty." *Brooklyn Journal of International Law* 31 (2005).
- Cooper, George W. "The Cambodia Portion of an Eight-country Study by the North-south Institute for the World Bank." In *Land Policy and Conflict* (World Bank, March 20, 2002).
- Global Youth Connect. "Cambodian Program Report, Human Rights Delegations for Young Leaders, July 16-August 15, 2006." (New York: Global Youth Connect, n.d.).
- Hanstad, Tim. "Designing Land Registration Systems for Developing Countries." *The American University International Law Review* 13 (1998): 647-703.
- Hartman, Nicholas. "Cambodian Land Law: Its Impact on Current Trends in Landlessness and Land Inequality." (2007).
- International Development Assistance (IDA), "Land Policy: Securing Rights to Reduce Poverty and Promote Growth," (World Bank, July 2009).
- Konyimbih, T. M. "Major issues of Smallholder land Policy: Past Trends and Current Practices in Kenya." in *Land Reform: Land Settlement and Cooperatives*, ed. P. Groppo (Rome: Rural Development Division, FAO, 2001/2), 49-56.
- Locke, John. *The Second Treatise of Government and a Letter Concerning Toleration*. Edited by J. W. Gough. Oxford: Basil Blackwell, 1956.
- Locke, John. *The Second Treatise of the Civil Government: An Essay Concerning the True Original, Extent, and End of Civil Government*.
- Meidinger, Errol. "Property Law for Development Policy and Institutional Theory: Problems of Structure, Choice, and Change." *Legal Studies Research Paper Series, Paper No. 2006-001* (2006).
- Ngugi, Joel M. "Re-examining the Role of Private Property in Market Democracies: Problematic Ideological Issues Raised by Land Registration." *Michigan Journal of International Law* 25 (2004).
- Palomar, Joyce. "Land Tenure Security as a Market Stimulator in China." *Duke Journal of Comparative and International Law* 12 (2002).

- Ricklefs, M. C. "Land and the Law in the Epigraphy of Tenth-Century Cambodia." *the Journal of Asian Studies* 26, No. 3 (May 1967): 411-420.
- Sek, Setha. "Land Registration to Improve Security, Transparency, Governance and Sustainable Resource Management" (paper presented at regional workshop on land issues in Asia, Phnom Penh, Cambodia, 4-6 June 2002).
- Sullivan, Paul M. "Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i." *University of Hawai'i Law Review* 20 (Fall 1998): (99-163).
- Tran, Anh Hong. "Case Note and Comment: An Assessment of the Vietnamese Land Law and Regulation." *Wisconsin International Law Journal* 13 (Spring 1995): 585-602.

Reports and Newsletters

- Department of Land Registration, *Summary of the Result of Sporadic Land Registration from 1989 to November 25, 2008*, by Vanna Siek, Chief (Phnom Penh: General Department of Cadastre and Geography, Department of Land Registration, November 25, 2008).
- LICADHO, *Land Grabbing and Poverty in Cambodia: The Myth of Development*, A LICADHO Report (Phnom Penh: LICADHO, May 2009).
- National Institute of Statistics, *Cambodia Inter-censal Population Survey 2004: Housing and Household Amenities*, Report 4 (Phnom Penh: National Institute of Statistics, Ministry of Planning, July 2005).
- Report of the Outcome of Land Registration System from the Start until September 2008*, by Land Management and Administration Project, No.0894 LMAP (Phnom Penh: Land Management and Administration Project, Ministry of Land Management, Urban Planning and Construction).
- Special Representative of the Secretary-General for Human Rights in Cambodia, *Land Concessions for Economic Purposes in Cambodia: A Human Rights Perspective* (Phnom Penh: Cambodia Office of the High Commissioner for Human Rights, November 2004).
- Special Representative of the Secretary-General for Human Rights in Cambodia, *Economic Land Concessions in Cambodia: A Human Rights Perspective* (Phnom Penh: United Nations, Cambodia Office of the High Commissioner for Human Rights, 2007).
- Special Representative of the Secretary-General for Human Rights in Cambodia, *Economic Land Concessions in Cambodia: A Human Rights Perspective* (Phnom Penh: United Nations, Cambodia Office of the High Commissioner for Human Rights, 2004).
- The Cambodian Human Rights and Development Association, *Human Rights Situation 2008* (Phnom Penh: The Cambodian Human Rights and Development Association (ADHOC), January 2009).
- The Cambodian Human Rights and Development Association, *Human Rights Situation 2005* (Phnom Penh: The Cambodian Human Rights and Development Association (ADHOC), March 2006)
- Terra. "Eucalyptus Plantations Threaten Ecology of Cambodia's Great Lake." *Watershed*, Vol. 8, July-October 2002.
- World Bank, *Cambodia Halving Poverty by 2015?: Poverty Assessment 2006*, Report No. 35213-KH

(World Bank, February 7, 2006).

Newspapers, Magazines and Radios

Australia radio broadcast December 9, 2009 (in Khmer language).

Online Asia Times, 13 September 2002.

RFA radio broadcast February 11, 2007, April 5, 2007, June 22, 2007, November 11, 12 & 23, 2007, August 9, 2008, September 6, 2008, March 9, 2009, May 18, 2009, June 15, 19 & 28, 2009 (in Khmer language).

RFI radio broadcast June 26, 2009 (in Khmer language).

Sammé Thmei (Phnom Penh), 3-9 July 2006 (Newspaper in Khmer language).

Unpublished Documents

East West Management Institute (EWMI), 2009.

Housing Rights Task Force. "Information about Communities in Phnom Penh Facing Eviction and Were Evicted in 2007, July 2008." TMs (photocopy).

Im, Chhunlim. "Chumnuoy smaradei ampi panhha deithly" (Supplementary on Land Disputes). Phnom Penh: National Cadastral Commission, February 9, 2006.

"Land Registration" for URDSE-Conférence on June 11, 2007.

Lim, Vaon. "Roborb deithly nov Kampuchea" [Land Regime in Cambodia] (July 2006) TMs (photocopy).

Ministry of Agriculture, Forestry and Fisheries. *Situation of Investment Companies with Economic Concession Land more than 1,000 hectares* (Phnom Penh, December 1, 2008).

Ministry of Land Management, Urban Planning and Construction. *Frequently Used Questions* (Phnom Penh, February 20, 2003).

Say, Bory. "Cambodian Legal and Judicial Systems before 1975" (Lecture taught at the Nagoya University Graduate School of Law on 7 February 2007).

Websites

<http://documents.amarc.org/files/2005-09-08/Cambodia.pdf>.

<http://info.worldbank.org/etools/docs/library/35466/LAND%20POLICY%20AND%20CONFLICT.pdf>

http://siteresources.worldbank.org/IDA/Resources/IDA-Land_Policy.pdf.

<http://ssrn.com/abstract=636204>.

<http://ssrn.com/abstract=636208>.

<http://ssrn.com/abstract=876467>.

http://tochi.mlit.go.jp/english/tax/02_01_01.html.

http://www.atimes.com/atimes/Southeast_Asia/DI14Ae02.html.

<http://www.era-rsa.org/index.php?l=en&s=3>.

<http://www.era-rsa.org/index.php?l=en&s=8>.

<http://www.liberty1.org/2dtreat.htm>

<http://www.ndu.edu/ctnsp/tamerlane.htm>.

<http://www.oecd.org/dataoecd/24/55/36562720.pdf>.

<http://www.pressreference.com/Be-Co/Cambodia.html>.

http://www.usaid.gov/kh/democracy_and_governance/documents/Cambodian_Corruption_Assessment.pdf.

<http://www1.worldbank.org/publicsector/decentralization/June2003Seminar/LandPropertyTaxation.pdf>.

www.olemiss.edu/courses/pol337/asiahist.pptc.

Index 1: Questionnaire

I am now a doctoral law student at the Nagoya University Graduate School of Law in Japan. My research topic is the implementation of Cambodia's laws on land tenure.

The following questions aim to get the data about the real life of squatters in order to find the appropriate solutions to contribute to solving the challenging problems.

1. Sex
a. Male b. Female
2. What is your general education? a. Below primary b. Above primary c. University
3. Where did you live before staying in the squatter area?
a. Phnom Penh b. Province
4. How long have you started living here?
a. More than 5 years b. Less than 5 years
5. Have you received land certificate yet? a. Yes b. No
6. What was your job before coming here?
a. Seller b. Worker c. Govt official d. Moto taxi driver
e. NGO's staff f. House wife g. Other.....
7. What is your job now?
a. Seller b. Worker c. Govt official d. Moto taxi driver
e. NGO's staff f. House wife g. Other.....
8. What do you want to do if you are able to?
a. Seller b. Worker c. Govt official d. Moto taxi driver
e. NGO's staff f. House wife g. Other.....
9. Do you satisfy this place?
a. Yes
b. No , reason:.....
.....
10. Do you think it is fair to relocate you here?
a. Yes
b. No , reason:.....
.....
11. What would you suggest if there is any other relocation?
.....
.....
.....

Thank you very much for your kind cooperation!!!

Index 2: Result of Questionnaire

I am now a doctoral law student at the Nagoya University Graduate School of Law in Japan. My research topic is the implementation of Cambodia's laws on land tenure.

The following questions aim to get the data about the real life of squatters in order to find the appropriate solutions to contribute to solving the challenging problems.

I interviewed the former squatters who dwelled in Sambok Chap village, Chbar Ampov, Deikraham, Bouding and Boreikeila. They were resettled in Boreikeila (onsite upgrading), Trapaing Anhchanh, Trapaing Andong, and Damnak Trayeung in November-December 2008 and March 2009. The number of interviewees is 149.

12. Sex

- a. Male = 22.15% b. Female = 77.85%

13. What is your general education?

- a. Below primary = 72.48% b. Above primary = 25.51% c. University = 2.01%

14. Where did you live before staying in the squatter area?

- a. Phnom Penh = 28.86% b. Province = 67.79% c. Vietnam = 3.36%

15. How long have you started living here?

- a. More than 5 years = 0 b. Less than 5 years = 100%

16. Have you received land certificate yet? a. Yes = 0

- b. No = 100%

17. What was your job before coming here?

- a. Seller = 48.99% b. Worker = 16.11% c. Govt official = 7.38 d. Moto taxi driver = 2.69%

- e. NGO's staff = 3.36 f. House wife = 7.38% g. Other: 14.09% (Fishing = 0.67%
Fingernail maker = 0.67%

Sewer = 0.67%

Hairdresser = 2.01%

Laundress = 0.67%

Medicine seller = 0.67%

Cut clothes rim 0.67%

Motorbike repairer 0.67%

No work 0.67%

Private company staff 0.67%)

18. What is your job now?

- a. Seller = 41.61% b. Worker = 6.71% c. Govt official = 4.70% d. Moto taxi driver = 2.69%

- e. NGO's staff = 8.05% f. House wife = 28.19% g. Other: 8.05% (Fishing = 1.03%
Fingernail maker = 1.03%

Sewer = 1.03%

Hairdresser = 3.09%

Laundress = 1.03%
Medicine seller = 1.03%)

19. What do you want to do if you are able to?

- a. Seller = 87.25% b. Worker = 1.34% c. Govt official = 3.36% d. Moto taxi driver = 0.67%
e. NGO's staff = 0 f. House wife = 0 g. Other: 7.38% Hairdresser = 2.69%
Motorbike repairer = 0.67%
Sewer = 0.67%
Medicine Seller = 0.67%
Create a small enterprise = 0.67%
Private company staff = 0.67%
Not clear = 1.34%

20. Do you satisfy this place?

- a. Yes = 63.76%
b. No = 36.24%, Reasons:
- Too small plot of land and can't be planted.
 - Small plot of land without good environment and no hygiene.
 - Unfair distribution plots of land.
 - Difficult to find jobs.
 - Far from the market.
 - It is easy to find jobs at the previous place.
 - Too difficulties because of no water supply, electricity, and drainage. When it is raining, it floods.
 - Inadequate income.
 - No jobs.
 - Difficult situation with water supply and electricity and the place is too small.
 - No place to plant.
 - The house is leaking and the ceiling is not good in quality.
 - Too high and the house is also leaking.
 - It is difficult for 80 year old mother to climb up and down.
 - The price of the new house is less than that of the previous.
 - No quality buildings.
 - Difficult situation with water supply and electricity and the place is too small.
 - New houses are not good in quality without kitchen and bad toilet designed.
 - Inadequate water, no job and capital
 - No room separated in a house

21. Do you think it is fair to relocate you here?

- a. Yes = 64.43%
b. No = 35.57%, Reasons:

- The old place is easy to find jobs.
- Far and difficult to look for jobs.
- Facing difficulties and the new place is too small.
- Not enough plots of land to relocate.
- The new place is not developed.
- The old place is more expensive than the new place.
- Forceful eviction.
- No jobs.
- Difficult to sell something.
- Cannot sell something with high price.
- Inadequate place for selling.
- The new place is isolated from other places in the field and no jobs are provided.
- Difficult to look for jobs.
- The government does not support in the early phase of eviction.
- Too much forceful.
- Old house is more convenient.
- The new place is not well organized
- The Phnom Penh Municipality lied people to have enough water and electricity supply when they move to live in the new place but in fact there is not. The Municipality also lied that they offered food stuff such as rice and fish sauce.

22. What would you suggest if there is any other relocation?

- On-site upgrading and provide jobs for all people.
- Provide loans for a business start up and do not want eviction.
- On-site upgrading but if relocate to the farther areas, water supply, electricity and roads should be provided.
- New place should be easier to look for jobs.
- Provide fair plots of land.
- Do not want people to be moved out to other places.
- The change should be more developed.
- Provide all settles for people.
- Provide big enough settles.
- The new place should be better and with a lot of people.
- Provide jobs for people in the new areas.
- The new place should be appropriate.
- Prepare a good new place with water supply, electricity, roads, schools, hospitals, and good security.
- Good quality buildings and proper drainage system.

- Good quality buildings and appropriate financial support.
- The new buildings should be in good quality.
- Build shopping center in the new place.
- The new buildings should be equipped with lifts.
- Want the government to improve the freedom of the poor. If new resettlement is available, it should be appropriate. The eviction should be in prior agreement.
- Don't be violent; it should be transparent with fair compensation.
- The government should create jobs for people.
- Appropriate solution should be taken into consideration.
- Provide new houses and jobs for the people.
- The new place must be appropriate and don't evict them very far.
- Manage the garbage well.

Thank you very much for your kind cooperation!!!

Index 3: Questions for the Interview of the Government Official

I am now a doctoral student of law studying at the Nagoya University Graduate School of Law in Japan. My research topic is the implementation of Cambodia's laws on land tenure.

The following questions aim at seeking the answers in order to contribute to the analysis of my doctoral dissertation.

23. Number of land certificates applied for registration
24. Registration fees
25. Number of land certificates issued:
 - a. Systematic registration
 - b. Sporadic registration
26. Procedural registration mechanisms
27. Difficulties in issuing land certificates
28. Amount of state land
 - a. Private
 - b. Public
29. What provinces were entitled to issue land certificates?
30. Amount of available concession land:
 - a. Economic concession land
 - b. Social concession land
31. Number of people receiving social concession land
32. Practical work with regard to the issuance of certificate to social concession land holders
33. Number of people receiving job from economic concession land
34. Number of cadastral staff
35. Sub-decrees with regard to the 2001 Land Law
 - a. Statute on Communities (LL. art. 23)
 - b. Sub-decree related to Procedures for Reduction and Specific Exemption of the Economic Land Concessions (LL. art. 59)
 - c. Sub-decree related to Sub-decree related to Construction Formalities and All Conditions Imposed on Owners Relating to Land Management and Urban Planning (LL. art. 115)
 - d. Sub-decree related to Formalities of Leases of immovable property for residential, commercial, industrial and agricultural purposes (LL. art. 113)
 - e. Sub-decree related to the Formation of Hypothecs and the Form of Registration (LL. art. 201)
 - f. Sub-decree related to the Organization and Functioning of Cadastral Administration (LL. art. 228)
 - g. Sub-decree related to Cadastral Survey (LL. art. 234)
36. The policy of the government toward squatter settlements
37. Land taxation?

Thank you very much for your kind cooperation!!!

**Index 4: Result of the Interview with the Government Official, Mr. Vanna Siek
Chief of the Department of Land Registration**

Phnom Penh, Cambodia

(December 3, 2008 at 3:00 to 4:30 pm)

- From 1989 to 1995: “Title of land occupancy and use” is considered as “sporadic registration certificate”.
- Since 1995 until now: The term “title of land occupancy and use” was replaced by “title of immovable property”.
- Documents concerning certificates of land occupancy and use were lost.
- As of November 2008, only 589,827 possessory land certificates were issued.
- As of September 2008, only 902,968 systematic registration certificates were issued.
- Types of land registration:
 - Sporadic land registration from 1989 until now, only “sporadic registration certificates” were issued.
 - Systematic land registration is to issue “systematic registration certificates”.
 - Complementary land registration is made on areas where systematic land registration projects were made, but landowners were absent or failed to participate in the projects, then they are able to apply for registering their land later.
- World Bank funded US\$100 million for systematic land registration for 15 year project starting from 2002 to 2017. Estimated land parcels are about 6 million parcels, but in fact the number may be 10 million parcels. The projects were divided into 3 phases. Each phase consists of 5 years and costs approximately US\$34 million (1/3 of the total US\$100 million).
- Circulars concerning cadastral service fees:
 - Inter-ministerial Proclamation on the Determination of the Revenue from the Cadastral Service Fee, No.377SHV, May 28, 2002,
 - Inter-ministerial Proclamation on the Amendment of Inter-ministerial Proclamation No.377SHV dated May 28, 2002 on the Determination of the Revenue from the Cadastral Service Fee, No.396SHV/PK, October 28, 2004,
 - Decision on Providing Cadastral Services, No.51SSR, December 21, 2006.
- Difficulties in land registration
 - Budget is hard to be received. From 2002 to 2007, approximately 1 million land parcels were registered.
 - Allowance for the staff is limited, US\$180/month. If the staff worked slowly, this amount is deducted to US\$90/month.
 - Each adjudicated area (one commune) consists of 26 staff. One commune is one unit but before one village was one unit.

- Regulations concerning the projects were issued slowly (always with external support). There was no land evaluation.
- Lack of technical staff.
- Lack of professional staff.
- Boundaries of some communes are not clear.
- Only 11 provinces have been conducted systematic land registration. The project will include 4 more provinces (Kampong Chhnang, Pursat, Banteay Meanchey and Svay Rieng) by increasing about 100 staff. So the number of cadastral staff may increase from 700 to 800 including government officials and contractual staff.
- Process of drafting the 2001 Land Law
 - At the beginning stage, Cambodian side prepared the draft by just revising the 1992 Land Law. This work started from 1996 to 1998. Finally, the draft was rejected.
 - Then, since 1998 the draft was prepared in French and then translated into Khmer.
 - NGOs were involved in advising and recommending the draft.
- Estimated 80% of the total land belongs to the state (no distinction between the amount of state private land and state public land.)
- Concession land has not been registered; therefore there are no data about it.
- Related sub-decrees (*italic is the answer, and LL. refers to the 2001 Land Law*):
 - Statute on Communities (LL. art. 23): *Ministry of Interior is responsible to prepare it in order to make communities to be legal entities.*
 - Sub-decree related to Procedures for Reduction and Specific Exemption of the Economic Land Concessions (LL. art. 59):
 - Sub-decree related to Sub-decree related to Construction Formalities and All Conditions Imposed on Owners Relating to Land Management and Urban Planning (LL. art. 115): *General Department of Land Management and Urban Planning is responsible.*
 - Sub-decree related to Formalities of Leases of immovable property for residential, commercial, industrial and agricultural purposes (LL. art. 113): *Not yet done. But now they continue following the old lease contract.*
 - Sub-decree related to the Formation of Hypothecs and the Form of Registration (LL. art. 201): *Not yet done. Hypothec is not known in reality.*
 - Sub-decree related to the Organization and Functioning of Cadastral Administration (LL. art. 228): *He thinks it is not necessary.*
 - Sub-decree related to Cadastral Survey (LL. art. 234): *Now they follow the procedure of registration through the Systematic Land Registration and Sporadic Land Registration.*
- Land Taxation?

Tax on houses in the cities may be available. But tax on agricultural land may be hard to happen.