

Briefing Note

Commission on Human Rights Reception of Complaints, Investigation and National Assembly-Senate Relations of the National Assembly of Cambodia

Land Dispute Resolution Mechanisms in Cambodia



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Table of Contents

1. INTRODUCTION	1
2. LEGAL FRAMEWORKS GOVERNING ELCS AND THEIR APPLICATION	1
3. TREND REGARDING LAND DISPUTES BY YEAR	2
4. COMMON CAUSES OF LAND DISPUTES	3
5. LAND DISPUTE RESOLUTION MECHANISMS	3
6. CHALLENGES OF IMPLEMENTING THE LAND DISPUTE RESOLUTION MECHANISMS.....	4
7. CONCLUSION.....	5
Bibliography	5

Land Dispute Resolution Mechanisms in Cambodia

1. INTRODUCTION

Cambodia is a predominantly agrarian country with arable land covering almost 21 percent (or 3.7 million ha)¹ of the 18.1 million hectares in Cambodia. In per capita terms, this is 0.25 hectares of arable land per person. In 2010 77.2 percent of the population lived in rural areas and;² the vast majority of citizens depend on land and natural resources, such as forests and fisheries, to sustain their livelihoods. In rural Cambodia, land is also deeply connected to the cultural and spiritual life of indigenous and non-indigenous communities.³

Since the last decade, as the price of land has risen, disputes over landownership have occurred among the people in villages. There is a trend of land disputes escalating into violence involving citizens, government authorities and private companies who are granted land concessions for agricultural business. Although the government has tried to reconstruct and improve land management since 1989, there have been problems with both the legal system and the implementation of laws.⁴

This paper will briefly examine the common causes of land disputes and the existing legal framework and policy concerning land dispute resolution in Cambodia. It will also highlight some main challenges in implementation of the legal framework and policy and possible solutions to overcome these challenges.

2. LEGAL FRAMEWORKS GOVERNING ECONOMIC LAND CONCESSIONS AND THEIR APPLICATION

During the Kampuchea Democratic regime from 1975-1979, private ownership of property and all official land records were abolished and destroyed. During that time, and after the fall of the regime, for the next ten years, land belonged to the State and there were no private owners of land. In 1992, the right of all Cambodians to privately own and transfer land was recognized through the adoption of a Land Law enacted on 10 August 1992⁵ and the enactment of the Constitution of the Kingdom of Cambodia on 21

¹ See: <http://geography.about.com/library/cia/blccambodia.htm> (Accessed 22 May 2014)

² <http://www.tradingeconomics.com/cambodia/rural-population-percent-of-total-population-wb-data.html> (accessed 10 November 2014)

³ SRSG (2007)

⁴ Sekiguchi, M., and N. Hatsukano. 2013. Land conflicts and land registration in Cambodia. In Land and Post-conflict peace building, ed. J. Unruh and R.C. Williams. London: Earthscan. Available at: <http://environmentalpeacebuilding.org/assets/Documents/LibraryItem-000-Doc-165.pdf> (Accessed 16 February 2016)

⁵ 1992 Land Law, Art. 2

September 1993, which stated in Article 44⁶. Land property right existing before 1979 was not recognized.⁷

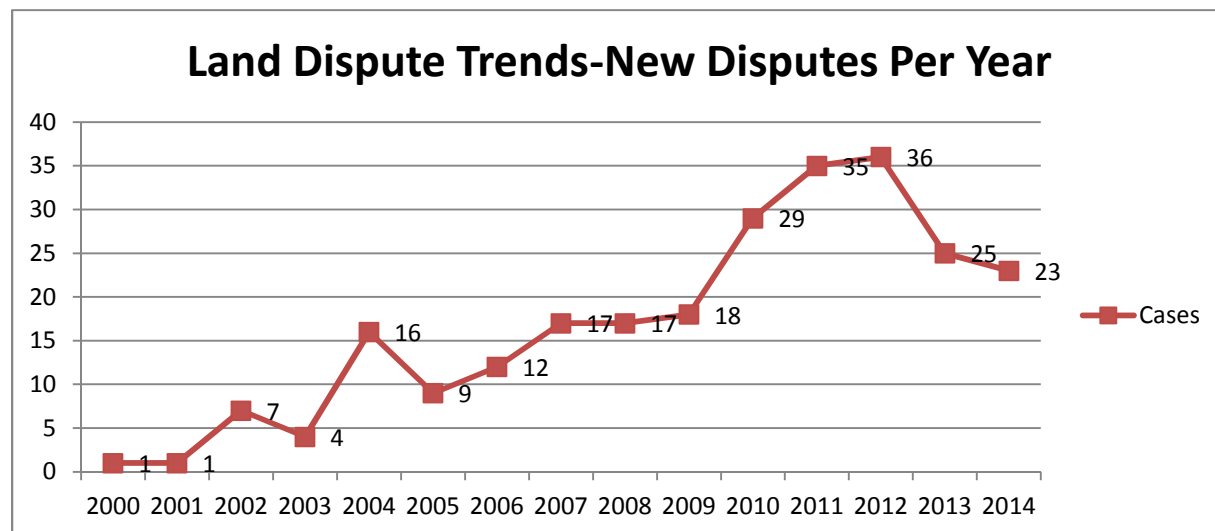
In order to improve land management in Cambodia, the government has introduced a land reform program. The program focuses on the strengthening of management systems, distribution and usage of land and, ensuring the security of land ownership.

The Land law 1992, which was amended on 30 August 2001,⁸ and Sub-decree no.146 on ELCs issued on 27 December 2005, are the key legal instruments governing economic land concessions in Cambodia. The Land Law 2001 authorizes the granting of land concessions for either social or economic purposes.⁹

3. TREND REGARDING LAND DISPUTES BY YEAR

Despite numerous legal safeguards, the past decade has seen the number of land related conflicts increase. Between 2000-2001, there was only one new case per year. However since then, the number of conflicts continued to rise peaking in 2012 with 36 cases, and then decreased until 2014, with 23 cases (please see Figure 1)). To date, no research has been done on the reasons for the changes in the trend regarding the number of land disputes. By 2014 the total number of land disputes was 352 with 68 cases being resolved, 14 cases abandoned and 270 cases or 77% unresolved.¹⁰

Figure 1



Source: The NGO Forum on Cambodia, statistical analysis of land disputes in Cambodia 2014

⁶ 1993 Constitution of the Kingdom of Cambodia, Art. 44: *all persons, individually or collectively, shall have the right to ownership and Khmer legal entities and citizens of Khmer nationality shall have the right to own land. Legal private ownership shall be protected by law. The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation in advance.*

⁷ 2001 Land Law, Arti. 7

⁸ It is now called Land Law 2001.

⁹ 2001 Land Law, Art. 49

¹⁰ http://www.ngoforum.org.kh/administrator/components/com_ngoforum/files/00ad824b8515dd9cf8e898bb13f980e5-Layout-Land-dispute-report-2014-Eng.pdf.p.8, accessed date: 9 Feb, 2016

It should be noted that some data from the NGO Forum on Cambodia was used in this paper due to the difficulty in accessing data from other sources. Therefore, the number of new land disputes per year may differ from other sources due to different methods and criteria used for data collection.

4. COMMON CAUSES OF LAND DISPUTES

According to various reports, the major causes of land disputes in Cambodia include: an unclear legal framework; weak institutions; peoples' lack of land ownership certification documents; authorities are not being clear regarding the boundaries between land concessions; and the lack of clarity concerning public, private state land and community land.¹¹ Another study by the NGO Forum on Cambodia also found that infrastructure development projects and economic land concessions without proper study and public consultation required by law have often led to land disputes.¹²

5. LAND DISPUTE RESOLUTION MECHANISMS

There are five formal land dispute resolution mechanisms in Cambodia relating to land rights: 1) the Commune Councils; 2) the Administrative Commissions (AC); 3) the Cadastral Commission; 4) the National Authority for Land Conflict Resolution (NALDR); and 5) the judiciary.

- 5.1 The Commune Councils only reconcile differences of opinion among citizens of communes, but do not make decisions.¹³
- 5.2 Administrative Commissions are established in all areas that are undergoing systematic land registration, and are the first instance of dispute resolution in cases where disputes arise during the land registration process. The AC has no power to issue a decision and may only seek to assist the conflicting parties to resolve their dispute.¹⁴ If the AC is unable to resolve a dispute it is forwarded to the Cadastral Commission. The Land Law of 2001 requires that disputes over unregistered land be submitted for investigation and resolution by the Cadastral Commission. However, if the disputants are still not satisfied, they may make a complaint to the court.¹⁵
- 5.3 The Cadastral Commission is responsible for resolving disputes over unregistered lands occurring outside of areas being adjudicated for systematic land registration, as well as disputes that emerge during adjudication that cannot be resolved by Administrative Commissions.¹⁶ The Cadastral Commissions consist of the National Cadastral Commission, Provincial/Municipal Cadastral Commissions in all 24 provinces and municipalities and District/Khan Cadastral Commissions in

¹¹ Sithan Phann, Royal University of Agriculture "Land Conflict Resolution through Cadastral Commission" http://www.forum-urban-futures.net/files/Sithan_Land%20Conflict%20and%20Conflict%20Resolution.pdf (Accessed 16 February 2016)

¹² NGO Forum on Cambodia, Research Advocacy Communication Center (RACC) "Statistical Analysis of Land Disputes in Cambodia 2014" http://www.ngoforum.org.kh/administrator/components/com_ngoforum/files/00ad824b8515dd9cf8e898bb13f980e5-Layout-Land-dispute-report-2014-Kh.pdf (Accessed 16 February 2016)

¹³ 2002 Sub-Decree No.22 ANK/BK on the Decentralization of Power, Roles and Duties to the Commune/Sangkat Councils, 25 March 2002, article 61.

¹⁴ The make-up and role of the Administrative Committees are set out in Sub-Decree No.46 ANK/BK on Procedures to Establish Cadastral Index Map and Land Register, 31 May 2002.

¹⁵ 2001 Land Law, Art. 47.

¹⁶ 2001 Land Law, Art. 47.

all 194 districts/khans.¹⁷ Only the District/Khan Cadastral Commission has the authority to facilitate reconciliation, and in cases where no agreement is reached, it will be referred to the provincial level. If a case can still not be resolved at the provincial level it will be forwarded to the National Cadastral Commission, which has the power to issue a decision.¹⁸

The Cadastral Commission has no jurisdiction over land disputes concerning registered land, which must be heard by the courts. Any disputes concerning a contractual or inheritance dispute must also be referred to the courts, regardless of whether the land is registered or not.¹⁹

5.4 In February 2006, the National Authority on Land Dispute Resolution was established by a Royal Decree.²⁰ It is mandated to hear cases which are —beyond the competence of the National Cadastral Commission— and receive complaints throughout the country involving land disputes.

5.5 In cases of dissatisfaction with the result, the disputants may complain to the court within 30 days.²¹

6. CHALLENGES OF IMPLEMENTING LAND DISPUTE RESOLUTION MECHANISMS

Implementation the mechanisms described above is still a key challenge due to several factors. First is the lack of clarity over the jurisdiction of each mechanism which results from having a number of dispute resolution bodies which leads to confusion for complainants.²² Other factors include poor access to dispute resolution mechanisms by impacted individuals and communities, time-consuming administrative and procedural burdens, and financial costs associated with submitting a complaint. While there are no official fees such as those associated with court filings, the costs associated with transportation, lost wages and legal assistance often prohibit individuals from seeking remedies before dispute resolution bodies. In addition, complainants have reported that decisions issued by existing dispute resolution bodies are inconsistent and subject to external pressures.²³

Furthermore, according to the World Bank Centre for Advance Study and GTZ, although the Cadastral Commissions have a better record of addressing conflicts over small parcels of land, they usually struggle to resolve complex cases that involved multiple parties and parties with external connections.²⁴ In addition, the same report indicates that while cases may fall under the jurisdiction of the Cadastral

¹⁷ NSDP 2009-2013, p.9 and also

http://www.kh.undp.org/content/cambodia/en/home/operations/projects/democratic_governance/association-of-councils-enhanced-services/

¹⁸ 2002 Sub-Decree No.47 on the Organization and Functioning of the Cadastral Commission, Art. 19.

¹⁹ Ministry of Interior and MLMUPC, Inter-ministerial Circular on Interim Protective Measures Protecting Lands of Indigenous Peoples that Has Been Requested for Collective Ownership Titling, While Awaiting Titling Process According to Procedure to be Completed, 31 May 2011

²⁰ Royal Decree NS/RKT/0206/097, 26 February 2006, determined that the composition of NALDR consisted of a representative of the Prime Minister as chair, the Minister of MLMUPC as first vice chair, with members from all of the other major ministries, and representatives from the police and military forces, amongst others. Subsequently, in March 2006, a sub-decree was issued by the Royal Decree.

²¹ 2002 Sub-Decree No.47 on the Organization and Functioning of the Cadastral Commission, Art. 2 and 3.

²² Mark Grimsditch and Nicolas Henderson, 'Untitled: Tenure Security and Inequality in the Cambodian Land Sector,' Bridges Across Borders Cambodia, Centre for Housing Rights and Evictions (COHRE), Jesuit Refugee Service (2009), <http://bit.ly/1jFVjaJ>

²³ (SR), U. N. (2012). *A Human Rights Analysis of Economic and Other Land Concessions in Cambodia, Advanced Version*. Available at: <http://bit.ly/17FL8bq>. Phnom Penh: A/HRC/21/63/Add.1/Rev.1.

²⁴ World Bank, Centre for Advanced Study and GTZ, 'Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution,' p. xii (October 2006), <http://bit.ly/1n30yAW>.

Commissions, weaker parties may not file cases due to lack of faith in the process and outcome. Moreover, in another study by the World Bank, people involved in land disputes avoided filing complaints because “formal institutions of justice such as the Cadastral Commissions or the courts were perceived as costly, time consuming and biased toward the rich.”²⁵

7. CONCLUSION

To sum up, even though Cambodia established a relatively well-developed legal framework for land management, land related-dispute issues are still a concern. This can be seen in the trend regarding the number of land disputes that has continued to rise over the past decade with land dispute mechanisms only able to address some of the issues.

The challenges may be overcome through: the strengthening of the capacity and independence of the judiciary and the dispute resolution mechanisms; raising public awareness of the accessibility of land dispute resolution mechanisms and; clarifying the duties and responsibilities of all levels of the Cadastral Commission throughout the country.

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²⁵ World Bank and Centre for Advanced Study, “Justice for the Poor? An Exploratory Study of Collective Grievances over Land Local Governance in Cambodia,” p. 37, (October 2006), <http://bit.ly/1jXlbZH>.

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