

## **Land Administration in Post Conflict Cambodia**

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### **SUMMARY**

This paper starts by identifying the importance of developing appropriate land administration responses if countries emerging from violent conflict situations are to make progress in increasing food security, reducing poverty and improving rural conditions. The paper then explores the case of Cambodia, a country and society that is recovering from a conflict of the most serious kind. The case is a cautious success story which shows that a lot can be done if there is a unified aim and will. The lesson applies both to the donors and to the country in conflict. The post conflict situation can also provide a momentum for change. This paper draws the following conclusions: systematic first registration can be feasible; a post-conflict situation is likely to boost both the community participation and donor interests; and a unified donor community can be an important catalyst for policy promotion, but that the process is slow and that sustainable results can only be gained over a long term.

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### **1. INTRODUCTION**

Secure access to land is a crucial factor in the eradication of food insecurity and poverty, and the need to improve access to land remains a pressing issue in many parts of the world. Providing secure access to land is frequently not easy, and it is particularly complex in situations following violent conflicts. Getting the answer right can go directly to the matter of achieving sustainable peace. Yet too often there are post-conflict situations where land issues have been understated, despite their critical importance in developing solutions to emergency humanitarian needs and to longer-term social and economic stability.

The effects of violent conflicts are usually widespread in a country but they can be particularly severe in rural areas. As most of the population in poor countries is rural, violent conflict in rural areas can result in vast numbers of displaced people. Rural areas often lack access roads and other infrastructure and services, and their absence hampers the establishment of good governance during the transition to peace. Following conflicts, access to land in rural areas is required by those displaced, and often by former militia members. Of particular importance in the post-conflict environment is the recognition of vulnerable groups which almost invariably include women and children, and may also include ethnic or political minorities.

Almost by definition, recovery from a violent conflict is hugely difficult. The mass dispersal of people from their lands, widespread death and injury within the population, destruction of critical infrastructure, collapse of the legal system, loss of records and expertise, continued fear and threat of violence; these factors in combination would overwhelm almost any country. As almost all countries emerging from conflict were already poor before their spiral downwards into violence, the need for external assistance is crucial.

The Food and Agriculture Organization of the United Nations (FAO) has provided technical assistance to improving access to land in a number of countries emerging from violent conflict within the context of food security, poverty alleviation and rural development. While every conflict situation is likely to be different, they nevertheless share a number of common characteristics. FAO is currently reviewing its experiences and those of its partners in order to identify key issues of land access and land administration that arise in the various stages of post-conflict situations, and potential responses to them. This work is being supported by case studies that analyse land tenure and its administration in post-conflict countries in Africa, Asia, Europe and Latin America. The lessons learned will be presented in guidelines that are intended to provide practical advice to land administrators who work with FAO in the re-creation of systems of land tenure and land administration in post-conflict countries. It is hoped that these guidelines will also be of use to other organizations.

Cambodia is a country which can provide a number of useful lessons to land administrators working in post conflict situations. While FAO has not provided direct technical assistance to the resolution of land issues in Cambodia, the experiences gained in the country are relevant to its work in other jurisdictions. It is intended that lessons learned in Cambodia will be incorporated in the guidelines to be prepared. The body of this paper provides an analysis of the situation in Cambodia, and then focuses on lessons that have been learned.

## **2. LAND ISSUES IN CAMBODIA FOLLOWING THE CONFLICT**

### **2.1 Conflict**

Cambodia's recent history is well known. In 1975, after the revolution by the Khmer Rouge, the post-colonial society was completely reformed. The new leaders declared the year as Zero, introducing an agrarian, totalitarian communism of a scale not seen before or after by the rest of the world. The individual ownership of land was banned, cities emptied and people were forced to live in communes that engaged massive irrigation projects. The infrastructure was literally destroyed, for example, the land registration records were all lost. In 1979, Vietnamese forces helped to overthrow the Khmer Rouge from the main parts of Cambodia, and introducing a more traditional type of communism. The Khmer Rouge still occupied large parts of the country and many areas were dangerous due to amounts of randomly spread land mines.

In 1993, the general elections facilitated by the United Nations started a long and painful democratisation and normalisation process. The first multiparty government was riddled by conflicts and was unable to unify the country. After the second elections in 1998, the new coalition government managed to commit to reforms towards normalisation and stabilisation. In 1998, the Khmer Rouge weakened into a guerrilla group in the jungle and finally gave up all resistance, and the legitimate government gained control of all the territory for the first time over thirty years. Currently Cambodia is a peaceful country governed by a democratically elected government in a multi-party system. The country joined ASEAN a few years ago and has just completed negotiations for joining the WTO and it increasingly attracts all types of tourism. Still, the reconstruction of the society is very much an on-going process. Cambodia's progress has been evident, yet setbacks have been experienced from time to time. Public institutions continue to struggle with low resources, lack of tradition and limitations of knowledge and skills. The enforcement of laws remains low, corruption is widespread and poverty prevails. The path towards normalisation is long. The country has yet to manage to form a new government based on the results of the general elections held in July 2003. Having said all this it is clear that there is no return to the past in Cambodia and the future prospects are promising.

### **2.2 Land Matters**

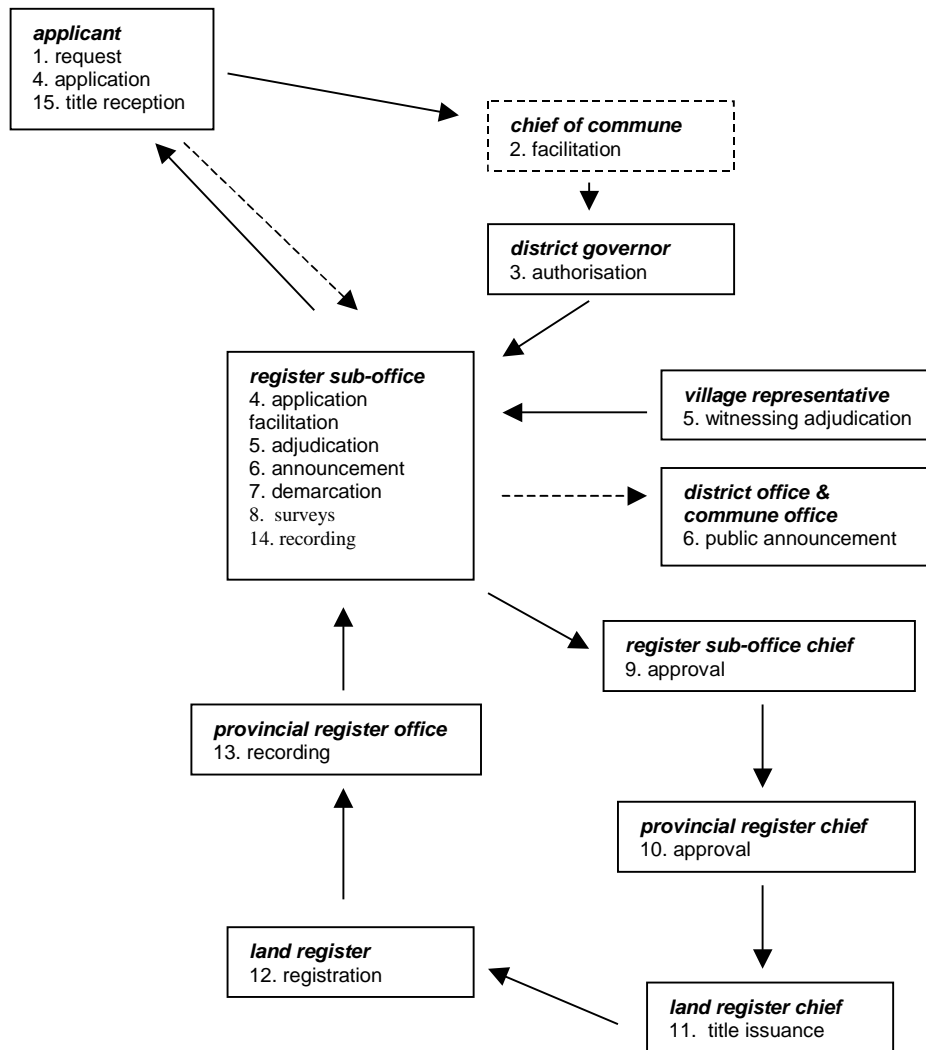
Cambodia is still dominantly an agricultural society and issues of land have crucial impacts on most people's life. The issues of access to land and secure tenure may not any longer be matters of peace and war, which still was the case a few years ago, but they continue to be key issues for stability. In urban areas and in Phnom Penh in particular, growing and concentrating population cause increasing stress for the land administration and management.

The organisation broadly in charge of land issues is the Ministry for Land Management, Urban Planning and Construction and under it, the General Department of Cadastre and Geography (later the land register) is responsible for land registration and mapping in the country.

In ancient times, prior to the French protectorate, all land belonged to the Sovereign with usufruct rights issued to individual farmers. During the French protectorate era, land tenure shifted towards private ownership. The Khmer Rouge abolished the private ownership of all properties, systematically destroyed all cadastral records and reorganised all farming, including parcel structures, to fit with massive irrigation systems. During the Vietnamese influence from 1979 to 1989, there was no private ownership of land, with all land being owned by the State. The land was cultivated in solidarity groups, but slowly people started to occupy their "own" parcels. In 1989, the government introduced private ownership for residential and business parcels and possession rights to the cultivation land. However, there was no return to the situation that existed before the Khmer Rouge. The parcel structure had been destroyed, people had moved around Cambodia, many had fled and nearly two million people (one fourth of the population) had died of hardship. The re-introduction of private property took the form of a broad-based land redistribution and privatisation programme, along with the opening up of the market economy. Presently, cultivation lands are all privately held, with the exception of the areas occupied by Hill-tribes where customary rights prevail. The proof of occupancy is usually based on a rather short period of occupancy and rarely on informal documentation. The land register covers about 15 % of all parcels.

#### 2.2.1 Aftermath of the Land Distribution: Land Registration

As a result of the land distribution program 4.5 million first registration claims were received by the land register. The claims overwhelmed the institution that had no resources, tradition or skills for the mammoth task. The situation in the land registry until recently has been the following. The land register (in the General Department of Cadastre and Geography) has an office in every province and district. The logic is to have three identical land books existing in three locations so that the records are never again lost (for example, by fire, systematic destruction, etc.) The composition of the registration office varies from non-existent in remote rural areas to busy urban offices. The main task consists of first registration by claim (the 4.5 million claims), sporadic registration and land management (with the local government). Activities for first registration started in 1992 and occurred sporadically without much planning or consideration of feasibility. The procedure was bureaucratic involving the local government and community, three levels of the register and containing handful of approving and checking manoeuvres. As a matter of fact, it was never designed to be primarily an exercise of land registration but rather one of land distribution. The following figure illustrates the old system.



The sporadic registration approach failed. In practice it took place, and still occurs, based only on an unofficial contract where the applicant finances all activities. The result was that only residential and business land titles were issued, which today account to less than 15 % of all parcels in the country. The approach left small farmers, who typically occupy a small residential parcel and a couple of rice parcels, without land titles. There were many reasons for this. The human resource situation varied from desperate to barely adequate in the register offices. The lack of institutional tradition proved to be a mammoth obstacle. Although the rules and regulations were formally obeyed in the registry, the lack of the culture of quality was evident. The office premises were often in a bad condition, technical equipment broken and archives non-existent. The survey plans attached to the title applications were poor in both technical and legal terms. Composite cadastral maps did not exist. It was arguable whether the shortcomings in the technical quality caused land surveys potentially to create more problems than solve. The land register, a public institution, worked like a private enterprise, but without competition. Apart from first registration, the land register officials facilitated land transfers, which, however, were often not registered, and contained a manipulated price in order to lessen transfer taxes. In conclusion, the land registration system

was not working effectively, was bureaucratic and not transparent, and involved too many officials and corruption. Because of the price, the quality problems and the fear of taxation, registration had become unattractive in general.

### 2.2.2 Land Issues

The land tenure system introduced for privatisation proved insecure and exclusive. The influence of land administration was limited to the registered parcels. All other land was still vested in the local governments which used the power with varying competence. There were many land disputes which were to be settled by a committee involving local government and register officials or by the court. The committees usually did not function and the court cases concerning ownership of unregistered land were often dismissed (on the basis that the unregistered land was public land falling under the government's mandate) and sent to the local government for resolution.

Many disputes grew from the conflict. Most of the pre 1979 holders had to abandon their land, and on their return, disputes arose with new occupants but legislation did not (and does not) recognise the pre-1979 rights. The army was still present in many areas. Over the past decade, returning landholders have often found the land to be occupied by military (claiming rights for it) or by people who have bought the land from the military. Another source of conflict is the 1992 government campaign of first registration. Every claimant (the 4.5 million applicants) received a receipt as proof of a fulfilled claim. People often treated the receipt as a land title. The receipts were frequently transferred and even used as collateral, which resulted in numerous disputes. The poor technical quality of land administration has had an impact too. Overlapping land titles existed in areas where the demand and the value of land was highest and where therefore registration had been most attractive. There were also cases where an overseer had succeeded to gain title to the land of another. The trick was to deal with another officer than the one that had issued the previous title to the same parcel. As the parcels were not surveyed it was possible for the land officer to hand out a new title without realising that a land title had already been issued for that parcel. There were also subdivisions of public lands to parcels in numbers that did not fit to the space in question. The state land issues were largely left unresolved. It was common for people to occupy public reserve lands. The extents of the reserves were not demarcated or known. In addition, several government organisations declared new land rights and restrictions concerning for example natural reserves, watersheds and concessions without consulting the land register, local authorities or the land occupants. In result of all, ten years ago in Cambodia every landholder, with or without a land title, who did not occupy his/her parcel was in danger of losing it. The government officials on the one hand used power over land excessively and uncontrolled, and on the other hand had no means of knowing the extent and location of public property that they were to manage and protect.

## **3. ADDRESSING LAND ADMINISTRATION**

The Government of Cambodia soon noticed that land issues had to be increasingly addressed in the name of stabilisation and normalisation. In 1995, the governments of Finland, Germany and France joined hands with the Government of Cambodia in order to improve the land administration situation. The cooperation has continued until today with Finland and

Germany. More recently, other donors including the World Bank, the Asia Development Bank and Canada have provided assistance in various land matters.

### **3.1 Towards a Feasible First Registration**

The beginning of the technical cooperation in Cambodia took place in a challenging administrative environment. The government, which was still very much engaged in solving the rampant conflict, often lacked presence when land matters were to be discussed. Even more the government lacked a policy that would have joined all efforts and institutions. While the top-down routes were limited, “bottom-up” developments progressed on two parallel fronts: technical and legal. The Land Law reform was launched; the process took about six years and became largely a land policy forming exercise. On the technical side focus was placed on improving the feasibility of land registration. The justification for covering land registration was strong. It would bring the poor under the rule and protection of law, into the reach of the society and give them means to fight the poverty. It would stop the power of the strong over the weak and provide adequate basis for investments, natural resource monitoring, public land protection and so on. Therefore, the development of a new first registration system was started.

#### Approach

When thinking of the first registration method, the absence of documented data on legal rights and physical extends of the property, the widespread corruption and the general poor enforcement of laws had to be considered. Only an approach that could ensure maximum transparency and publicity could meet the requirements of equality. Field visits were obligatory. When principles of registering all lands, visiting every parcel in the field and using verbal testimonies as evidence were applied, all parties would have to have an access to the fieldwork and an appeal process had to be organised for interest parties. A base map would have to be made and naturally systematic approach would save money. When thinking of feasibility there were no other methods left to consider than the one that would conclude the whole process at one time for an area.

#### Method

For a few years the Government of Cambodia embarked on pilot projects for a systematic land registration. In Cambodia, systematic parcel-by-parcel land registration followed processes established elsewhere, but in particular it looked for feasible and democratic ways of registration from legal, economic and human rights points of views. The following ideas guided the planning: all parcels were to be registered, field inspected and oral testimonies were to be used as evidence for adjudication. The system had to be cheap and effective and to cause minimum inconveniences to the people who were busy enough struggling for their survival. Experiences elsewhere suggested that the biggest bottleneck for the land registration work was the difficulties of mobilisation of the landholders. Therefore, the system had to go to the people instead of waiting for them to show up in an office. The holders were only to be bothered once for the adjudication, the demarcation and the surveys. All this resulted into the application of the *area by area*, the *parcel by parcel* and the *one parcel - one visit* principles.

The idea was to develop a system to be handled by a single officer utilising landholders as surveying assistants. The protection of people's rights was to be dealt in the public awareness campaign that had to be accessible to every landholder. Equally, the adjudication and the demarcation had to be accessible to every landholder, and in the end all landholders had to have a right to study all recorded information and appeal against it in an organised manner. It was recognised that an appropriate technical result in Cambodia would be flexible in terms of surveying accuracy and boundary marking. Boundary marks are not used in rural Cambodia. A very modest surveying method would likely overcome the accuracy of defining the boundary corner locations as they were generally not considered as points but a kind of "corner area".

The developed, tested and now adopted system consists of six parts: the public awareness campaign (later the public information), the adjudication, the demarcation, the surveying, the documentation and the public display (later the appeal). In Cambodia, the long lasting instability presented great difficulties for the public information. The campaign starts after the declaration of a new adjudication area by spreading formal information through official letters, radio spots and newspapers but, more importantly, personal meetings are held with the local government and the village chiefs. Village meetings have been organised successfully reaching most of the village households, more women than men often showing up. The trustworthy contact with the village chief has proved essential for the exercise.

One of the new ideas was that the adjudication was to be executed simultaneously with the demarcation, which proved to be feasible and to save costs. After the demarcation, the adjudication immediately follows by checking the rare documentary evidence and collecting the oral testimonies from the owners, villagers, elders etc. In case of disputes, an initial attempt is made to negotiate the settlement, and if a decision cannot be reached, an appeal process is followed. The boundary lines in Cambodia (that can be classified as "fixed") are narrow and defined although not necessarily straight. Therefore the corners need to be demarcated relatively accurately, but flexibility is allowed in the determination of the boundary line. The marks are not inserted, but may be placed in the landholders' expense. This idea has been under a debate in Cambodia. It is maintained by some that at a time when global coordinates can be fixed for all new spatial data, it is a too late one for establishing a boundary mark based system versus a coordinate fix based system! To prevent a potential bottleneck from occurring, the surveying methods had to be effective and cheap. The GPS technology for ground control and photointerpretation for boundary surveying were inevitable solutions in Cambodia with large open areas. Conventional methods have been only used for the parcel corners invisible in the orthophotography. The documentation is based on a simple GIS and database software. All data, digitised boundary layers and numerical land register data, are integrated through the Unique Parcel Reference Number, which follows the administrative organisation. The records are accessed through a simple GIS interface (although presently the second generation system is being introduced) and outputs can be produced semi-automatically.

The public appeal proved to be a very sensitive part of the registration. There are marginalised groups (such as the illiterate or disabled, both common in Cambodia) that may not be able to explore the records or to claim against a shortcoming. In the appeal, the records, both graphical and textual are taken to the village for display for thirty days and the



land holders can claim for any technical or juridical problems that they think remain in the records. As a solution for the problems of the more vulnerable, an assistant is present explaining the records and to help draft claims. After thirty days, the claims are handed over to an ad hoc administrative commission with representation from the local government, the local community, the government and the land register. The commissions have a duty to settle disputes with the disagreeing parties. The unsettled cases are handed to the court while others proceed to first registration and title issuance.

Finally, crucial to the feasibility, the systematic registration had to bypass the present bureaucratic title issuance chain. The data of hundreds of parcels concerning an adjudication area had to be handled and approved simultaneously; otherwise the incoming individual title claims would create a backlog. Therefore, new legal provisions were drafted legalising the systematic procedure and creating an avenue for the first registration area-wise. In particular, the establishment of the administrative commission to approve the record and settle the disputes enabled all parcels of the area to be handled as one group. The statute also established mandates for registration team personnel whose tasks were designed to be carried out by personnel with little or no previous experience after they had received training.

### Outcome

The procedure described in this paper was tested for two years and the legal provisions for their use were adopted in early 2000. Some forty thousand parcels were recorded during the piloting stage and the results were encouraging. The procedure worked well and problems were rare. The main hindrance experienced in the process was caused by the ambiguous legislation. For example, the limitations of public and private land were not clearly defined in the legislation making it difficult to define these lands on the ground. Still, the procedure proved to be effective. One rural parcel required only 0.4 person working days for first registration from the beginning to the issuing of title. The total estimated cost of the first registration per parcel was about fifteen US dollars (in 1999). The figure includes aerial photography, orthophoto production, systematic registration, development costs, training costs, headquarters costs and title issuance. The main negative consequence was that it proved a lot harder to reform the land register than to reform the method of first registration. The pilot first registrations resulted in a backlog in registration and title issuance, and only through a rather painstaking process was the backlog cleared. The land register is currently undergoing reform.

### **3.2 Recent Developments**

The success in the systematic registration and its popularity among the public, together with the growing interest in the topic by the international community and NGOs helped the Government to address the land issue in a more comprehensive manner. The new Land Law which was enacted in August 2001 made important tenure security improvements and gave finality to land tenure arrangements. In close cooperation with the international community the Government initiated the process to develop a comprehensive land policy framework, created a Land Policy Council, and issued a Statement of Royal Government on Land Policy, which provides an ambitious set of targets for the country.

The systematic registration system has been improved further by expanding the public awareness campaign, increasing the direct participation of local communities in the facilitation of the registration process and by fine tuning the method for the urban areas. In addition, a whole new country-wide system for land dispute settlements has been created. Since June 2002, the Ministry of Land Management, Urban Planning and Construction has implemented the World Bank supported Land Management and Administration Project, which has a broad list of aims and targets. Its core function is to register one million new titles during its first five years.

#### **4. CAMBODIAN LESSONS FOR POST CONFLICT SITUATIONS**

Cambodia currently provides a perfect study tour target for professionals embarked in solving problems of a post conflict land administration. Cambodians can be credited for recognising a number of critical problems, and making a good progress in addressing them. The following main lessons learned from Cambodia were identified for this paper:

- *The systematic first registration with modern legal, technical and social standards can be feasible.* The Cambodian case shows that things can be done cheaply while still maintaining appropriate quality. The key is to engage the community and to develop a locally suitable application for mass surveys and data collection.
- *A post-conflict situation is likely to boost the momentum for community participation.* The Cambodian communities have been very eager to carry out the land registration. The process has rightfully been taken as a step towards stability and normalisation, towards the “good old days”.
- *The donor community can play an important role in supporting the creation of common policy for land issues.* In Cambodia, it proved possible and successful to unify the donor and NGO community for supporting the Government’s policy making.
- *A post conflict country making progress in land sector is likely to experience a donor honeymoon.* The current situation in Cambodia is that a vast number of donors would like to be involved in the land sector development. The interest has long ago overcome the Government’s resources to handle the support.
- *It is possible to make a successful land administration project in a post conflict country, but little is still known about how to establish a sustainable land administration system in such a country.* The process has only just started in Cambodia and the real results will be seen in years, if not in decades, to come. Most donors still fail to see the difference between a system and a project. A responsible donor support moves from the honeymoon to a long, happy marriage.

#### **BIOGRAPHICAL NOTES**

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