The Dynamics of Land Tenure and Land Management in Cambodia:
Observations on Privatization, Interest Groups and Development Cooperation

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Contents

1 Preliminary Remarks 3
2 Current Dynamics of Land Tenure in Urban and Rural Areas 3
3 The Position of Stakeholders involved in the Privatization Process of the Country 5
4 Problems in Constructing a Registry System in an Uncertain Legal and Political Environment. 7
5 Recommendations for Development Cooperation 9
1. Preliminary Remarks

1. This summarizing report about the dynamics of land tenure in Cambodia and the GTZ "Land Management Project" is based on discussions and impressions during a short-term visit in Phnom Penh (15.-19.10.1995) as well as during two short field trips made in the Commune of Vial Poona (Udong Province) and in Khanda Province (cf. travel itinerary in appendix). It followed on from a study lasting several weeks within the framework of the sector project "Relevance of Land Tenure Development for Developing Countries" about land tenure and divestiture in the Lao PDR. Accordingly, a comparison with the situation in Laos followed in certain questions.

2. In view of the short time and the professional background of the consultant the report must be limited to the political embeddedness of the „Land Management Project“ and the potential for collaboration of the project with other institutions. It thus mainly makes a statement about result 4 of the project planning matrix ("Recommendations for the modification of the Land Law and for implementation regulations have been worked out") and result 5 ("Cooperation with other institutions has been improved").

2. Current Dynamics of Land Tenure in Urban and Rural Areas

3. The extent of the current dynamics in the process of the appropriation of property and land by various interest groups, and through the setting down of rights of ownership or possession in towns and in rural areas can be set out using the following indicators:

4. In the capital, Phnom Penh, an active land market has arisen with price differentiation dependent on the position of the property, with speculative price rises because of expected profits from land to be used for development (e.g. airport extension), and a very high number of land transactions since the beginning of the UNO Mission, the number of which is not exactly known.

5. Powerful interest groups put strong pressure on the municipal Registry Office in order to push the registration of titles and completed land transfers quickly forward. In doing so, they take advantage of the legal uncertainties and existing inconsistencies in the current valid legislation.

6. Conflicts over land of varying kinds are breaking out, not only in towns, but also especially in rural areas. They are evidently based in many ways in land restitution to families in the '80s by Commune and District Administrations without having made any differentiation according to yield potentials, the position of the fields, or family structure. Boarder conflicts exist between villages or communes, and restitution demands made by people forced to relocate and who have now returned to their villages are either blocking solutions, or making them more difficult.

7. These conflicts either become politically instrumentalized or further inflamed by local politicians and officials close to the government as well as by Khmer Rouge groups. The latter use open land questions, problems of agricultural land distribution, and the legal insecurity of the population as a lever for creating political instability in the villages. Government officials make use of the concept of an enemy of the Khmer Rouge by re-allocating land, and suppressing those who lose claims and start to protest.

8. The national administration, but especially also the administration at subordinate levels (province, district, commune) are only able to react inadequately and hesitantly to the dynamics of this situation: framework legislation (such as the Code Civil or an analogous bill) which sidestep the much criticized Land Law (1992), and which protect land transfers legally, consistently regulate the line of succession or the responsibility of regional legislative bodies; the legislator remains at fault. The "wild", unplanned appropriation of land is not responsible to any legally anchored land-use, regional or urban planning. The provinces have little hold on the identification of land for settlement, business zoning or farming. They also have little hold on the supervision of the observance of the required land use pattern.

9. The mechanisms of coordination between ministers responsible have thus far been too weak to be able to connect land registration adequately with land use and sector planning. The communication between the various regional levels and the regional legislative bodies is inadequate.

10. Accordingly, accelerated land registration and the reconstruction, or rather reform, of a nationwide registry in municipal and rural areas receive highest priority in official announcements. This could be seen for example in the introductory statements made by the Minister of Justice, or by the advisory staff of the two
Prime Ministers in the Council of Ministers, or as well in the weight given to the land question in the daily press (see Annex).

11. The decision of the **Council of Ministers** as the central governmental set-up, to remove the "**Land Titling Department**" from the Ministry of Agriculture - likewise the municipal Registry Office of the City of Phnom Penh - and to assign it directly to the Council as an executive unit, indicates its desire to solve the current land tenure problems. But this step underlines conversely the extreme **political explosiveness** of the continuation of land registration in Cambodia, "...and the challenge for the project to make a contribution to increasing legal security about the possession of land, and to create better planning and administration for that land" (core objective of the project).

3. The Position of Stakeholders involved in the Privatization Process of the Country

12. The **official objective** for the (re-)construction of land registration can be outlined in the following way: legal security for citizens by re-defining property rights in land so as to strengthen the build-up of the "civil society"; stemming the flow of thus far uncontrollable land speculation by using political instruments; to increase the willingness of domestic and foreign entrepreneurs to invest by being able to offer secure negotiable legal titles to land.

13. In Cambodia, there is quite open discussion that at the same time, those powerful **pressure groups** which push forward these demands for processes of lobbying and legislation, also pursue their own **vested interests**. Legally questionable land appropriation carried out by returning Cambodian entrepreneurs (with foreign passports) or foreign investors, people high up in the military, politicians and top officials in the time between 1989 and 1994 are now being **belatedly sanctioned** through land registration. This goes not only for the spectacular cases in the towns, but also more especially in rural areas.

14. Top Cambodian officials talk at the same time frankly about "**land laundry**". The GTZ project, and likewise that of the municipal Registry Office, is per force involved in these controversial processes, since they can only be made possible and urged on through the development project. On the other hand, these vested interests of the political and economic elite now offer a guarantee that the development project enters into **strategic coalitions** with top officials to achieve its objective ("The Registry Office is improved in quantity and quality") in order to reduce possible bureaucratic hurdles at the subordinate level, or to lift blockades, and to drive the enforcement of better legal framework conditions forward.

15. As a **leading principle** of all land tenure decisions in Cambodia, the basic rule, that restitution claims dating from before 1979 are not generally recognized by the State, still exists. Keeping to this strict regulation is made all the easier by the fact that all Registry Office documents dating up to 1975 were destroyed during the Pol Pot regime of terror. Consequently there is **no more "written memory"** in the country upon which plaintiffs can draw in court.

16. As it is, the **jurisdiction** cannot properly enter into its role as arbitrator because there are not enough positions for judges, above all in rural areas. Most of the judges have been trained in a system where the separation of powers and independence from the State and the Party are unknown. The latest legislation has not been sufficiently disseminated in the provinces, or is scarcely available in written form, and as well, deep insecurities and a lack of experience characterize the picture of the legal system. A special plan of the "International Human Rights Law Group", the "Cambodian Court Training Program" has begun with both basic and further training schemes. The experience of this group in land conflicts, out-of-court solutions and the enforcement of interests are already being informally used and evaluated by the GTZ project, and an intensive collaboration between the two in the future is imaginable (see Para.5).

17. **Land speculation** and **land conflicts** are not only a problem in the capital. In other cities, and in the village context, high officials, military people and private investors acquire land which could be used for agriculture without checking the existing property rights. (There is, for example, the case of the efforts of foreign investors to turn the harbor town of Sihanoukville into a type of special economic zone so that it is not subject to Cambodian land and tax legislation.) How much land has undergone a change of usage, and what effect this has on agricultural production is very probably unknown. In out-of-the-way provinces, military people grab valuable agricultural land in great style, without the circumstances and legitimacy of the appropriation of the land being made public.

18. Although the feverish redistribution of land most strikingly involves properties and buildings in and around
Phnom Penh, and on plantation land, various positions of interest going right up to massive conflicts, are also characteristic of every day life, both within and between villages. Thanks to the multiple forced resettlement of local populations, the spontaneous return of broken-up families to their home villages, and the return of refugees from Thailand, permanent demands for the transfer back of former dwellings and fields are directed towards the local authorities. These authorities are overloaded many times and expect solutions and backing from the Land Titles Department.

19. The reallocation of land to family units began in the period of time after 1979. With the dissolution of production cooperatives and the increased return to family farms since about 1985, the redistribution of land to families has been done very schematically and without considering soil quality, yield potential, the actual division and supply of labor, and equipping households with agricultural machinery so that complaints are raised, and conflicts break out in the course of the registration process. Because of this, registration comes to a standstill, and conflicts can carry on for years.

20. In view of the legal insecurity which still exists, the lack of dissemination of laws from the State and a weak jurisdiction, a plan to construct a nationwide land registry will be confronted again and again with unresolved land questions and smoldering land conflicts at the local level. At the same time, officials - for want of alternative institutions - have to take over the difficult role of the "honest broker" in order to make extra-legal solutions possible, and to provide clarification for bogged-down disputes. In order to lighten the workload, a set of activities should be fostered early (see Para.5).


21. Measured against Laos, the existing legal framework for property rights in the Kingdom of Cambodia are still comparatively incomplete, and partially contradictory:

22. In the Land Law of 1992 which forms the basis of land registration, elements of family law, inheritance and contract law are indeed integrated, but only to the degree that they are supposed to regulate the transfer of land. An equivalent to a general Civil Code, i.e. a civil statute book in which the conditions for the transfer of property and the drawing up of contracts should be generally set down, does not yet exist, but is supposedly being worked on. Information about the state of the process of legislation was, however, very difficult to get a hold of during the study trip! The same goes for a set of rules about the certification of contracts and last wills, etc.

23. Since the weaknesses in the Land Law are known to the Administration and the interest groups (e.g. incompleteness, unclear terms, at present also limited by the slavish takeover and forcible application of the French model to Cambodian conditions), the Law can hardly more than bring a basis for decision into play in cases of conflict. Two legal amendments are expected:

- a reformed Land Law which also ought to solve the conflicts between the various legal bases for land registration in the city of Phnom Penh, and for the rest of the country (see below)
- a civil code for the foundations of contract law.

24. The Council of Ministers is aware of this uncertainty or rather blockade, and emphasizes the necessity of working out contract, family and inheritance laws as quickly as possible. However, the Land Titling Project must work in a framework which continues to be unclarified and a bit contestable during the next months (presumably years). Two factors have an additionally aggravating effect:

25. It is not conclusively recognizable if the legislator and the political parties and lobbyists who influence the parliament really have an interest in rapid and clear legal framework conditions, or if it is not simpler to enforce a redistribution of urban and rural property and land immediately through the exertion of political, military and economic power, rather than through the rule of law. Those responsible in the project will possibly have to call persistently for the enforcement of the reform, in spite of all the lip service of the Council of Ministers.

26. The current Land Law has been definitively formulated by the director of the Land Title Department in such a way that it will not be easy for him to make himself a lawyer in a reformed legal framework.

27. In the neighboring Laos, a hefty debate is currently being carried on about the inclusion of Customary
Rights and the group-specific distribution effects of the re-structuring of property and land, and in particular about the inclusion of gender aspects into the resources legislation. The legislator can no longer withdraw itself from the confrontation created by this debate by using international donors (World Bank) and a coordinated action by NGO’s. In Cambodia, these questions, which are also important for land registration, are ignored at the official level, or rather they are not considered relevant. The Minister of Justice, for example, in principle denies the existence and justification of Customary Rights, substantiating this with the social upheaval of recent decades, the forced resettlements, the mass murders, and thus the loss of an "institutional memory" through which oral regulations are maintained and developed.

28. Not only information from Administration officials and project cooperators, but also very superficial impressions during our field trips showed us directly that land registration, demarcation of fields, and conflicts in villages are decided at the working level of the Land Titling Project according to autochthonous norms handed down form generation to generation and rules of land access, land distribution and conflict arbitration. In a country in which it has been attempted to enforce five, sometimes extremely varied political systems and ideas of the law in only 30 years, customary rights further play a central role as a basis for regulations of social relationships, particularly in rural areas.

29. Accordingly, it is necessary for the GTZ project to have an extensive overview here so as to a) use the traditional set of rules below the judicial level for the continuation of the registration process, and b) develop an understanding for, and perhaps steer away from, the causes of possible blockades and delays.

30. Since the younger generation has grown up without personal legal security, and the older generation has at least lost once its seemingly guaranteed and protected possessions of house and land (and has only had them partially returned), trust is only slight in to the State legislation in general, and in the reliability of land titles specifically. Therefore, the GTZ project ought never to lose sight of the fact that, with all the technical and administrative requirements for reform, the legitimizing of land registration is not yet anchored in the population, and always has to be fought for and proven again and again. Along with this, the role of the "Land Titles Department" in conflicts will be very closely observed.

31. While the "Land Titling Department" works according to the Land Law (1992), the registration of developed properties in Phnom Penh takes place in the Registry Office in the city on the basis of an old decree from 1989 which partly contradicts the Land Law (see Annex). The two set-ups have long been openly in conflict. The leading cadres accuse each other of illegitimate dealings, and thus obviously block unified action. What the contradictions and inconsistencies are is not immediately recognizable to the outside observer.

32. The identification and brief and precise analysis of both the relevant wordings of the law, the history of their origins, and their actual application by a neutral Cambodian consultant who is not thus far involved in the dispute would be helpful for a new start for and a future constructive collaboration between the two set-ups. Of course, there is the danger that both systems have already drifted far apart since the municipal Registry Office is supported by an EU-Project which is dominated by French ideas of land registration and cadastral system, and thus problems of compatibility could arise.

33. Legally secured regulations for implementation for the procedure of land registration which have been made public in regional legislative bodies do not yet exist. This leaves a lot of space for negligence and arbitrariness. The "Land Titling Project" works according to self-formulated regulations which would, however, withstand legal challenge from unsatisfied participants who are versed in the law. The wording of legally flawless regulations for implementation is urgently needed, but first of all through a second step: they can first be formulated with long-term perspectives and be legitimized by the Council of Ministers when clear framework legislation exist on which they can be constructed.

34. The current procedure of awarding and registering titles which requires up to 16 administrative steps is currently being critically analyzed by the project (see the flow charts drawn up by the project in the Annex), so as to formulate suggestions for a simplified form of procedure. This is a first step designed to lighten the work in Registry Offices at the District and Province levels even under very uncertain legal framework conditions. But it also helps in particular to make the process more transparent for the participants on the spot, i.e. for the Administration officials in the Communes, the village chiefs and in particular for the applicants, and to build up the trust in the registration of land. For a long time, many false expectations have grown up about registration thanks to a lack of knowledge about the procedure. This means that the receipt issued by the Registry Office and handed to the applicant confirming the process of registration has already been initiated, acts as a land title.
5. Recommendations for Development Cooperation

35. Top political officials of the Council of Ministers convey the strong will to break down parallel, contradictory structures in the resource and land tenure related legislation, to concentrate the direct control over the process of land registration at the highest level, and to aim for better coordination than in the past with other Ministries. The political expectations made upon the GTZ Project are accordingly high. In the future it will scarcely be able to break away from this political context; rather more it will make use of the chance of making contributions to the reforms of the legislation and to be able to offer service functions for other set ups above and beyond the core task of registration. (cf. Result 5).

36. It is not the primary task of the project to be in overall charge of the process of resource, contract and administrative legislation in Cambodia; on the other hand, the success of the project can be endangered without this framework. It is not for nothing that the World Bank makes massive influence over the acceleration of the process of legislation in the neighboring Laos PDR, a prerequisite for putting into effect the registration of land successfully and long-term. But the joining of the Land Titles Department to the Council of Ministers also creates new potentials in Cambodia, parallel to the technical setting up of the registration system, for influencing and altering the political framework conditions (cf. also Result 4):

37. The greatest possible transparency over the work in progress of the project and an offensive information policy is desirable since the Land Titling Department in the past had the reputation of isolating itself, having a technocratic manner and even a "bunker mentality". The impulse of the young project will be motivatingly but also critically watched.

38. It is necessary to demonstrate the technical, administrative, legal, planning and inter-ministerial possibilities of land registration and a cadastre system to the political decision makers: there is a need to compare the French system, the Torrens and German "Grundbuch" models, and to estimate the future potential as basic information data, its relevance for land use and sector planning, etc. (cf. activity 2.2). This could be carried out in the form of expert panels or of workshops, possibly in cooperation with the German Foundation for International Development (DSE). The GTZ would have the chance of building up its own profile in the field of political counseling, besides the massive influence through French and Anglo-American legal and economic advisors in the Council of Ministers.

39. The problems of implementation on the practical side of allocating titles must be pointed out to the Council and made emphatically clear, be they based in contradictory or lacking legislation. Concrete suggestions for the standardization or simplification of existing legislation should also be presented. Likewise, problems and blockages in the cooperation with other administrative units, with international donors or private investors ought to be demonstrated along with suggestions for solutions.

40. It must be tested in general how far the project wants to be involved in training programmes for judges, restricted to the District and Province levels, in order to a) secure the dissemination of relevant land legislation, and b) to make a mid-term contribution to increasing legal security (passing on responsibility in conflicts from the Administration to a (possibly) independent judiciary). Decisions about commitment in this area is decidedly dependent on the speed of the reform of land legislation.

41. In addition, the project should test how far it can make, in parallel or alternatively, a contribution at the local level to maintaining autochthonous, customary rights for drawing up contracts for land transfer, the witnessing of land rights, and the allocation of land. This is, however, only possible if the Central State at least tolerates these rights. The same is true for the effects of the allocation of titles on the women's rights to land.

42. There are large gaps in the knowledge about land questions at the local level in this early stage. Typical causes, the course and the consequences of land conflicts in towns and the three provinces in which the project will be primarily operating should be made transparently clear for the participants in the "Land Titling Project". They are additionally helpful to back-up the project politically.

43. Analysis of the reasons for and the course of typical land conflicts in towns. Between 1989 and 1994, massive misuse took place in the allocation of titles: land titles were handed out without being registered in the cadastre; the one and the same piece of land was allocated many times over. This can scarcely have been possible without corruption in State offices.

44. In the villages there is evidence of land conflicts being based in economic differentiation after 1989 when well-to-do families took advantage of the poverty and indebtedness of poor households in order to buy land. Development projects take advantage of the legal vacuum and make use of plots without extensively
checking the claims of people with potential rights to the land. The dismantling of the production cooperatives ("solidarity groups") in the villages and the reallocation of land to families has brought considerable tension and accusations with it. The allocation of land to returning refugee families brings attendant distribution problems; the landlessness of young families is increasing. There is a great shortage of land with new areas of conflict between longer settled families and new settlers from refugee villages.

45. Typical **court cases** referring to land questions in the capital ought to be analyzed. Here, informal contact ought to be made to lawyers (e.g. Dirksen, Flipse, Le & Partner and others. It has been shown in Laos that lawyers have a personal interest in such coalitions meaning that this can be a cost-effective form of cooperation.)

46. The identified tasks ought not to be carried out by collaborators of the "Land Titling Department", but rather by **external Cambodian consultants** with field experience: the analysis of written material (court files, administrative procedures) should be carried out by legally and administratively trained persons; sociologists or anthropologists should deal the situation of the villages; all of them should demonstrate exemplary cases making use of case studies (expert interview, group discussions, intensive interviews).

47. Further, the already existing **lists of all laws** and ordinances, etc. which could be useful for the project ought to be updated. A private lawyer could do this as a local consultant.

48. Questions of the possibility of increasing **fees** for the partial self-financing of cadastral work (Activity 1.10.) ought to be tested in close cooperation with the municipal cadastre office which were obviously already able to gather the relevant information.

49. A stronger **dovetailing of land legislation and land use or regional planning** is required at both the national and Province levels. There is a considerable **deficit of information** amongst those who are political responsible as to how far a modern cadastre can also take over important functions as a data bank for land use planning. The political leadership of the Ministry for the Environment complained greatly about the **current lack of coordination** in resource legislation and also especially in the work of the "Land Titling Department" in the past for the setting up of a consistent legal framework in which legislation for agricultural and pasture land, forests and water resources are coordinated under environmental points of view. The potential of the cadastre system for also delivering elementary information for planning and land use has been emphasized here again and again.

50. In as far as it is desired and supported by the Council of Ministers, **coordination and information transfer** should be sounded out as a **first step** through the Land Titling Department with the resulting set ups (cf. Activities 2.3. and 5.25.4.):

51. With the **Ministry of the Environment**:

- Land tenure legislation as part of the environmental legislation and a model for legislation for forest and water resources which do not yet exist,

- The creation of a system of **incentives** (land taxes) for the **sustainable use of land** in the new land legislation, and for land administrative (levying through already existing cadastre offices or the setting up of a new tax administration),

- Clarification of property rights regimes as well as of access and utilization, for example, of biodiversity zones, protected areas (State property, allocation as common property to local user groups, responsibilities of the administration, who takes care of the files?),

52. With the **Ministry of Rural Development**:

- Department for Administration, Finance and Planning: questions of registration in development programmes and projects in various provinces,

- Application of the cadastre in land use planning,

- Department of Community Development: testing how far its instruments, methods and staff can be useful in the dissemination of information about land registration to village populations.
53. With the National Mekong Committee:
   - common utilization of map material (already introduced)
   - common utilization and extension of data information systems.

54. With the Ministry of Agriculture as well as the Ministry of Fishery, Wildlife etc.
   - Registration and responsibility for forests, land along river paths, in flood areas, etc.

55. Cooperation with a selected Province Administration as a pilot zone, e.g. Khanda Province:
   - Land use planning and urban planning,
   - dealing with flooded areas.

56. This cooperation could be both informally organized as well as accompanied by round table discussions with a follow-up for checking the success and modification of the cooperation. This could be worked out by the GTZ alone or in cooperation with DSE. Only through this cooperation the requirements of the most important users - who not only include private investors but also government agencies- to the cadastre will be clarified (Activity 1.2.), and can be integrated into future work.