Concerns involving land and natural resources are highly emotive to Cambodians. For most Cambodians, economic and social life is tied to land and natural resources. The large majority of the population lives in rural areas, engaged in traditional land-based social systems and dependent on agriculture, fishing, and forests for existence.

The use and customary claims by rural people on land and natural resources – on forests and fisheries, in particular – have not been recognised or incorporated in the laws, policies, and institutions of the state, and in resulting official procedures and actions of the government.

Improved understanding of land and resource tenure provides crucial insight into the different concepts, perspectives, mechanisms, and values related to land and natural resources. While land tenure per se is not a solution – it is simply a description of ideas and conditions – a better understanding of land tenure is essential for improving the allocation and management of land and resources.

**Importance of land and resource tenure in Cambodia**

Land has significance to Cambodians for its association with socio-religious, economic, and political values. All of these are important – it is challenging, perhaps impossible, to distinguish a hierarchy of importance among these values. Moreover, values and objectives associated with land are often contradictory and conflictive, especially between different ethnic-cultural groups and across different levels of socio-political organisation. The objective of basic social institutions associated with land – land tenure, land policy, and land law – is to achieve a reasonable and socially beneficial balance among these various values and differing interests.

Cambodia has historically been a predominately rural and agrarian nation – its culture, political organisation, and economy have been and remain inextricably linked to land and natural resources. Cambodia remains today a rural nation, with an estimated 85% of the population in rural areas, almost all of whom are engaged in agriculture, fishing, and forest harvesting for their livelihoods. Access to land and natural resources – and the capture of benefits from land and resources – shapes Cambodia: how people live, how wealth and power are distributed and used, economic productivity (or under-productivity), and environmental quality and sustainability.

Competition for land and natural resources, and conflicts over inequitable distribution of benefits, has been a major force in Cambodia's history as it has in many countries, including at times violent upheaval and revolution. Inequity between the rich and poor -- particularly profiled as inequity between urban people and rural peasants -- was a major source of Khmer Rouge support against the pre-1975 government, and a basis for subsequent efforts by the Khmer Rouge regime to 'reeducate' the urban populace into "new people" through collective farms and other works. By determining access to and the distribution of benefits from land and natural resources, land and natural resource tenure will continue to play a fundamental role in shaping the lives of Cambodians and the nation's social, political, and economic destiny.

**Understanding tenure**

Land tenure refers to the legal or customary rules and procedures governing the rights, obligations, and liberties of individuals and groups in the use of and control over land resources.
(Acquaye 1984). Land tenure is best conceived as the 'bundle of rights' associated with land and values related to land.

Rights in land resources are enforceable claims related to

- the ability to hold, occupy, or use land,
- the expropriation of benefits derived from land use, and
- the right to exclude others from sharing in the land or its benefits.

Land rights are claims that require social sanction (e.g., a recognition as legitimate) and social guarantee of enforcement. Without sanction and enforcement, claims cannot be realised against competing claimants. Land tenure is, thus, a set of social relationships which define how decisions regarding land use -- and the benefits from land use -- are distributed and realised in society.

As with all social institutions, land tenure reflects the complex of philosophical ideas and historical events which govern the ownership and use of land resources in a society. Land tenure describes both the situation of land resources control and usage at a given point in time, and provides guidelines for the transferal of control and usage across time. With the passage of time, social conditions and values change which in turn necessitate changes in land tenure -- as such, land tenure is not static but is in a constant process of evolution.

Variations in rights and tenure

While no single 'typology' of tenure is universally accepted, a number of different types or characters of tenure are generally understood. These include

- Allodial rights and usufruct rights
- Legal tenure and customary tenure
- Open access and limited access
- Public property and private property

Each of these is a spectrum with extremes and variations in between; together they can be conceived as a multi-dimensional matrix.

Allodial rights and usufruct rights

Land rights can be broadly divided into allodial and usufruct rights. Allodial rights are those which are free of any superior claim. Such rights are sometimes referred to as "ultimate" rights to land. Usufruct rights involve the use of a property to which the user does not hold allodial rights. The degree to which a single property can provide multiple and separate uses and benefits, it can have multiple distinguishable usufruct rights. For example, usufruct rights to land may involve the right to establish a home, crops, and to collect the benefits from an existing resource, such as the fruits from trees. A holder of these usufruct rights may claim allodial rights to the house, crops, and fruit, but can not claim allodial rights to the basic land and natural resource -- e.g., the land and the tree.

Legal tenure and customary tenure

A important distinction exists between legal tenure and customary tenure. Legal tenure is
recognised as legitimate under the policies and laws of the state; in developing countries, it usually has been shaped substantially by laws and policies introduced by colonial authorities. Customary tenure is recognised as legitimate by the traditions and customs of a society; it often stretches farther back in time and has deeper and different cultural roots than legal tenure. Within a nation, a range of customary tenures often exists – sometimes involving sharp distinctions, sometimes involving gradual variations, in tenure between different groups distinguished by ethnicity and geography.

Reflecting different antecedents, different objectives, often different concepts, legal tenure and customary tenure are embodied and carried out in different social institutions. As a result, legal and customary tenure usually do not correspond, which poses difficulties for resolving conflicting claims, as legal and customary tenures resolve conflicts through different processes and often with different outcomes.

Legal tenure reflects the history, objectives, and dominant interests of the nation-state. In most developing countries, legal tenure is a mix of pre-colonial arrangements (typically feudal, built on inherited authority), colonial policies and laws (oriented toward strengthening colonial authority and exploitation, not national development), and post-colonial national agendas (often ideological, sometimes economic, always political). Often legal tenure is not fully rationalised or uniform -- inconsistencies arise from its polyglot development, conflicting objectives, and administrative realities -- but usually the state makes some efforts to clarify policies, resolve inconsistencies, and formulate a uniform tenure framework.

Customary tenure is the set of rules, understandings, and processes which determine land use -- and the benefits from land use -- based on cultural traditions in society. Customary tenure reflects traditional beliefs and political organisation, over which the modern nation and its legal system is an overlay. Whereas legal tenure is defined by objectives and political interests at the national level -- formulated by and suited to people who hold power at the national level -- customary tenure is oriented and adapted to local communities and groups sharing cultural roots. For most such groups and communities, land and natural resources to which the group/community have claim is the principal source of security for both individuals and communities; it is the only permanent material asset that the individual and the community holds. The social values and relationships related to land and natural resources -- e.g., the customary land tenure system -- play a critical role in these societies and economies.

Under customary land tenure, the absolute right (allodial right) to land is held by the group (usually a clan or tribe), and use (usufructory) rights are conferred by the group, usually to a sub-clan, family, or individual. In many customary tenure systems, rights of individuals are considered in a context of co-temporal rights to the same land by other people (often family or clan members) in accord with customary practices and accepted social structures. As most traditional societies exist without written legal codes and accurate mapping or measuring devices, customs governing land matters and specific use rights are traditionally dependent on the judgments of group leaders, on oral history, and the memories of elders.

Because each cultural group develops its own particular customs with respect to land tenure, a diversity of customary tenure systems exist in Cambodia, associated with different ethnic groups – Khmer, Cham, and 'minority' groups. Customs for controlling, distributing, and re-distributing land and land-based resources also vary at a given time between different culture groups and over time within groups.
Open access and limited access

A third important differentiation is between open access and limited access to land and resources. Open access exists where anyone may use land and resources; open access areas are sometimes referred to as a 'commons' because everyone shares right of use. Limited access exists where rules of tenure – legal or customary – effectively enable designated people to use land and resources while excluding others. Open access provides greater social equity because it avoids creating classes with access and without access; however, open access often results in excessive use when too many people have access, which leads to resource degradation, decreased productivity, and therefore declining shares for everyone. Limited access is often necessary for maintaining land and resource productivity; however, policies and strategies for determining who benefits from limited access – and who does not benefit – need to reflect social and cultural objectives as well as economic ones.

Public property and private property

A fourth important differentiation is between 'public' and 'private' property. While some parallel to public and private property exists in customary tenure, the concept of 'public' and 'private' property as generally used derives from European tenure forms and is an institutional construct of the nation-state. The 'public' and 'private' property differentiation has legal and institutional function, in terms of defining rights. However, 'public' and 'private' property is sometimes wrongly assumed to imply that benefits also accrue respectively to 'public' and 'private' beneficiaries. Association of public property with public (only) benefit, and private property with private (only) benefit, leads to serious misunderstandings, inaccurate analyses, and flawed policies.

Public property is generally associated with the state – the dominant political structure in a nation – and is the immediate responsibility of government. Private property is generally associated with individuals, or with groups that act as a 'collective individual' (such as a family, private company, or a community acting collectively), and transfer immediate responsibility to the individual or group. It is important to recognise that all property rights – public and private – derive from the state – because property rights rely on social sanction (recognition as legitimate) and social guarantee of enforcement, without which claims cannot be realised. Private property rights are thus always subsetted from and subordinate to a larger set of public rights; arguments that public rights are sometimes subordinate to private rights fail to recognise that the argument is actually a conflict involving fundamental public policy objectives (such as whether rights granted for economic or political reasons are superior or subordinate to rights granted for reasons such as "human rights").

The distinction between public and private property rights is often of limited functional utility, and application of the terms without additional qualification can generate more ambiguity and confusion than clarity. The state frequently confers responsibility for land and natural resources to its agencies, such as in Cambodia responsibility for forests to the Department of Forestry and Wildlife, for protected areas to the Ministry of Environment, and for fisheries (including fish habitat encompassing flooded and mangrove forests) to the Department of Fisheries. In theory, public agencies carry such responsibility with an objective to maximise 'public' benefits. In practice, such agencies are sometimes guided by objectives and methods of dubious 'public' benefit, including the privatisation of benefits from 'public' land and resources in ways that benefit the agency (or selected individuals) moreso than the nation overall.
Private property rights are rarely a completely 'full set' of rights, but rather are a limited set of rights, subordinate to a range of public rights. The state can require that private property conform to broader public objectives, such as environmental, public safety, and economic objectives. Thus, it is possible that private property, when conditioned by a broader set of public objectives, achieves greater 'public good' than public property which is used in ways that do not contribute to the public good.

**Contemporary land and resource tenure in Cambodia**

The dominant feature of contemporary land and resource tenure in Cambodia is a continuation of feudal political traditions, in which resource claims and allocations are made by a powerful elite for their own benefit, without public accountability, and with little consideration for broadening the distribution of benefits. Institutions do not exist for ensuring comprehensive consideration of technical or socio-economic concerns in resource allocations; for ensuring public transparency or discussion of resource allocation decisions; or for ensuring a broader distribution of benefits beyond a small elite. The development of legal tenure reflects the interests of this elite, with much emphasis on recognition and legitimisation of large land/resource claims and allocations; with far less emphasis on establishing and promoting tenure systems that provide benefits and security for the large majority of Cambodians; and with bias in favour of Khmer and against non-Khmer Cambodians.

Present-day land and resource tenure in Cambodia expresses the co-existence and often conflicting overlap of legal tenure – embodied in laws and policies, and carried forward by government – and customary tenure, often practiced by the people even if not recognised under the law. Both legal and customary tenure need greater clarification – informed by research related to customary tenure – and rationalisation before a practical and socially beneficial tenure system is in place.

Both legal and customary tenure are heavily conditioned by two significant influences in Cambodia. The first is the profound social and institutional disruption of the past several decades, which deeply ruptured the institutions on which both legal and customary tenure rely, posing some uncertainty about the constitution of these today. Laws concerning *land, forests, and fisheries* are currently under formulation, in an effort to establish clarity regarding legal tenure; it remains to be seen whether clarification of customary tenure – possibly a larger task – will receive adequate attention and be incorporated into legal tenure.

The second is that both legal and customary tenure are bent by the political realities of Cambodia, in which both the framework of the state and the framework of custom and culture are overpowered by forces that do not follow either law or custom. The 'cowboy capitalism' of contemporary Cambodia – in which regional powermen (and powerwomen) exert significant influence – it is unlikely that either legal tenure or customary tenure have much meaning if they do not serve the interests of these powerful people.
**Historic influences on land tenure in Cambodia**

<table>
<thead>
<tr>
<th>Era</th>
<th>Tenure</th>
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<tbody>
<tr>
<td>Pre-empire</td>
<td>??</td>
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<tr>
<td>Khmer empire</td>
<td>feudal political structure: allodial land right held by the king, usufruct rights granted to subjects</td>
</tr>
<tr>
<td></td>
<td>customary rights co-existed with feudal tenure, with increasing freedom from king's tenure with political and geographic distance</td>
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<tr>
<td>French colonial</td>
<td>introduction of European tenure concepts and institutions, including government 'forest reserves'</td>
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<tr>
<td>Sihanouk / Lon Nol</td>
<td>weak national institutions; semi-feudal tenure; extensive corruption; civil war</td>
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<tr>
<td>Khmer Rouge</td>
<td>nationalisation of all property rights (abolition of private property); disruption of both nation-state and customary tenure systems (incl. massive population disturbance)</td>
</tr>
<tr>
<td>State of Cambodia</td>
<td>re-introduction of nation-state institutions, including limited private property, cadastral office, land registration</td>
</tr>
<tr>
<td>Royal Government of Cambodia</td>
<td>expansion of &quot;cowboy capitalism&quot; and associated large-scale land/forest/fishery allocations; weak support for provision of tenure security for most Cambodians, but increasing socio-political stability favourable to re-establishment of customary tenure; efforts to revise Land Law, Forest Law, Fisheries Law, etc</td>
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**Forest tenure in Cambodia**

Forest tenure in Cambodia reflects the features, issues, and ambiguities that characterise land tenure in general. However, the potential for obtaining wealth rapidly from selling standing timber – forest 'capital' accumulated over a long period – distinguishes Cambodia's forest resources from land in general. As Cambodia stabilised and developed links to world timber markets in the past half decade, this potential became real as standing timber was sold to international buyers. With it, *de facto* forest tenure shifted radically, as a small elite exercised its power to privatise what was previously 'national' wealth, over-riding both customary tenure of rural people and any legal tenure that might interfere in the capture of forest wealth by the elite. As a result of intense international pressure, the government has constrained mass logging, but tensions about forests – and about forest tenure – remain high and far from resolved.

Under current and proposed forest law, all "forest" in Cambodia is the property of the State. Jurisdiction and authority for forests is generally assigned to the MAFF Department of Forestry and Wildlife; however, designated protected areas are assigned to the Ministry of Environment, and wetland and mangrove forests are assigned to the MAFF Department of Fisheries.

Current forest law is recognised as inadequate and unclear, and a new forest law is being formulated. The new law will be more comprehensive and rational than current law; it is not intended to fundamentally alter the character of forest tenure, but the draft law specifically enables community forestry and provides a coherent legal framework for forest concessions,
both of which have significant implications for forest tenure. The new forest law will also leave a variety of important issues to be resolved, such as clarification of the criteria and process for distinguishing ‘forest’ from non-forest areas. Is ‘forest’ all area currently occupied by trees – thereby not encompassing recently deforested areas? Or is ‘forest’ the area that was under forest cover at some time in the past – if so, when, and by what evidence? Once ‘forest’ is legally recognised, is there any means for later re-classification?

Under current forest law, usufruct rights to forest resources can be conveyed by the State to designated beneficiaries by means of forest concessions (limited usufruct rights) and community forest designations (limited usufruct rights); the proposed draft forest law will continue and strengthen both provisions. Current forest law and forest management practice by the State does not recognise customary tenure per se in relation to forests. However, the proposed draft forest law provides for recognition of customary rights to forest areas (possibly full usufruct right), and draft policies for forest concession management and protected area management recognise customary rights to forest areas. Current forest law does not recognise private ownership of ‘forest’. The proposed draft law is less clear regarding private ownership (full usufruct right) of ‘forest’, although there is provision for continuation of private ownership of forest resulting from tree planting.

Land and resource allocations made in recent years have transferred extensive areas of forest to non-forest status, such as land grants to the military and to agricultural concessions. The rights to these forests have thereby been transferred from under the jurisdiction of forest law. Provisions in the draft land law, including a provision for “free concessions”, could provide a means to continue such allocations, particularly in the absence of any transparent mechanism and process for making allocations.

Policy considerations for forest tenure

The development of forest tenure should be guided by three objectives:

- recognition of and respect for customary forest use and forest dependency by local people, as part of evolving socio-economic and cultural systems;
- mobilisation of forest resources to support economic development, aimed at ensuring sustainable productivity of fully-valued forests and equitable distribution of benefits; forest tenure is critical for economic management because it links investment (costs incurred) in forest productivity to benefits from forests;
- management of forests as an integral part of environmental systems, in which forests have unique and irreplaceable roles that cross and do not abruptly alter with jurisdictional boundaries.
### Tenure typology

<table>
<thead>
<tr>
<th>Legal tenure</th>
<th>Traditional / customary tenure</th>
<th>‘Powerman’ tenure</th>
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<tbody>
<tr>
<td></td>
<td>active use</td>
<td>claim w/o use</td>
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</table>

#### Legally designated 'forest'
- **DFW**
  - forest concession
  - non-concession
- **DoFish**
  - flooded forest
  - mangrove
- **MoE**
  - national park
  - wildlife sanctuary
  - multiple use area
- **other**
  - APSARA
  - ???

#### Other allocations involv. forest
- **village land**
  - pagoda
  - school
  - commons
- **private land with trees**
  - homesteads
  - permanent farmland
  - swidden fields/chamkar
  - woodlots
- **military allocation**
- **agricultural concession**
- **roads**
- **water structures**
- **Provincial claim**

#### Uncertain legal status
1. Ironically reminiscent of the pre-Khmer Rouge era, the recent logging of Cambodia’s forests – involving senior authorities granting resource extraction rights to logging interests, with no benefits to the rural people affected by logging – has enriched a small and mainly urban elite, with little benefit to the large majority Cambodians.

2. In customary tenure, the ‘state’ is at the community or group level, whereas in the nation, the state exists at the national level.

3. A description from Papua New Guinea is illustrative of customary land tenure:
   The general rule is that the allodial title rests with a group which commonly is...a clan. These vary to a marked degree in size and...evolution. Subclans commonly...gain independence as population rises, but (subclan) mergers occur where populations decline. The ownership of all rights is not always vested in the one group, and allocation of rights within a clan does not always follow the same pattern ... The occupier of land under custom normally has rights which automatically ensure to him as a member of a land owning group -- either by descent...and other criteria, or sometimes by adoption by a group or family. In patrilineal Chimbu areas, the land passes ideally from fathers to sons modified by other factors... In the matrilineal Tolai area...the land is used for a period (such as a gardening cycle)...and then pooled for redistribution...among a sub-clan or extended family... With changing technology, questions as to whether subsidiary rights are conditional or subservient or dominant, when new uses are applied to land, come up more frequently. Confusion also arises with migrant groups living on customary land. (Kilori 1984)

4. Sometimes called the “tragedy of the commons”, a term popularised in the 1960s by a widely known thesis by Garret Hardin.

5. A corporation, in legal terms.

6. An Oxfam-supported Land Policy Project is promoting public transparency and greater social equity in land policy and law.

7. Established by Royal Decree in 1993; also recognised in the Environment Law.