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**The Implementation of Cambodia's  
Laws on Land Tenure:  
Squatters on Private Land**

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## **Abstract**

There is an urgent need for Cambodia to ensure that land management be persistently and fairly implemented towards all the social strata of the population. How the land management and implementation of laws and regulations influence the public daily life is the main focus of this paper. Social disarray cannot be well prevented unless the country is based on the rule of law. Similarly, land crisis can be predicted if the government does not have a strong political will to manage the nation's land. The possibility to get the benefit from the land requires that we find ways to ensure the fair land distribution to every citizen and encourage land use. Each relevant government agency plays a vital role in achieving the goal.

Methodologically, this paper has resulted from interviewing more than 100 squatters and some NGOs' staff whose work relates to the improvement of the living standards of the squatters during the 2006 summer. This research relies on legal documents from government agencies and other related documents from NGOs. The actual understanding from this fieldwork makes it possible to realize what the facts are and how to analyze those facts and use them to achieve a better outcome.

Overall, the findings propose two main legal suggestions. First, the stability of land titles which prevent the owners from any fear of losing ownership and also encourages the titleholders to invest in land should be seriously taken into account. Second, adverse possession may allow the adverse possessors to claim for titles of ownership if there are imprecise aspects in the status of particular properties. The law of adverse possession plays an important role in some developed countries such as England and the United States; and developing countries such as Brazil and Peru.

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## **Abbreviations**

Dept.	Department
MLMUPC	Ministry of Land Management, Urban Planning and Construction
NGOs	Non-Governmental Organizations
P/MOLMUPCC	Provincial/Municipal Office of Land Management, Urban Planning, Construction and Cadastre

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# Introduction

" . . . If you paid no attention to the issue of land, a peasant revolution could be predictable . . . ."

Hun Sen, 2002<sup>1</sup>

Since the collapse of the Pol Pot regime in 1979, the land management of Cambodia has encountered many experiences. The government first attempted to establish collective ownership without private property right aimed to promote solidarity among people who had been debilitated from the dark regime. The state established the Department of Management of Agricultural Economic Policy under the Ministry of Agriculture which played a role in preparing and organizing solidarity groups for farming.<sup>2</sup> In each village, the villagers were divided into solidarity groups for farming where the group members worked together in the farms. After harvesting, they shared the crops with their members. In the early 1980s, collective ownership was strengthened; however in the late 1980s, the practice became ineffective.<sup>3</sup> This being the case, and reforms were apparently needed.

In 1989, the land policy changed remarkably. Homeownership was provided to families whose occupation of houses was recognized by the local authority. Yet, with respect to cultivated land, only the right of possession was recognized. The reforms also attempted to create the Department of Cadastre to proceed with land grants.

The land grant process cannot be understood without an explanation of the structure of the organization of local administration. Cambodian territory is divided into twenty provinces and four municipalities, further sub-divided into districts. Each district is also separated into communes hereinafter called local authorities. The admission of occupation from the local authority is evidence for occupiers, and

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<sup>1</sup> A speech by Samdech Hun Sen, Prime Minister of Cambodia, on Intensive Cultivation, Land Management, Logging Ban—Areas of Attention in Agriculture, Fisheries and Forestry on April 11, 2002, <http://web.archive.org/web/20020527153638/http://www.cnv.org.kh/> (last visited October 2006).

<sup>2</sup> Voan Lim, Land Regime in Cambodia 7-8 (July 2006).

<sup>3</sup> *Id.* at 7-9. In 1989, a right of possession over cultivated land which was no more than 5 hectares had to be issued by a District Governor, while a right of ownership over residential land which was no more than 2,000 m<sup>2</sup> had to be issued by Provincial Governor, and right of land concession which was more than 5 hectares had to be issued by the Ministry of Agriculture.



the provincial/municipal authority which is helped by the local authority has a key role in preparing for land registration.<sup>4</sup>

The 2001 Land Law of Cambodia which is the latest land law states how to acquire the ownership of immovable property. Although the people just came to locate on land without recognition from the local authority, later on they could be accepted as members of villages since they acquired documents<sup>5</sup> necessary to support a claim of landownership. If they have stayed on a parcel of land for no less than five years prior to 2001 and fulfilled the requirements of law,<sup>6</sup> they could claim for a title of ownership. In the squatter areas where the government planned to develop, the authority first needed to investigate how far legal rights of such squatters should be recognized. If the squatters had all necessary legal documents, their right was protected by law, and they could claim compensation in accordance with the law.

Many people occupy land but do not have titles of ownership.<sup>7</sup> Some do not have any legal documents because they came to locate on a vacant piece of land whose owner did not possess continuously. Others fled from their land to avoid insecurity during the civil war, and when they returned, their land was possessed by other people. Consequently, people without titles of ownership cause a lot of social problems, especially disputes between the ones who have titles of ownership and the ones who do not.

In order to help solve the social problems, identifying squatters and land use is more crucial. The people, in squatter areas, who do not satisfy the requirements of law, are treated as illegal squatters. The authorities can evict them from their areas. Since the squatters are illegal, they have no right to oppose the development of squatter areas. More importantly, other people who are willing to illegally evict occupants threaten the position of squatters. However, if an owner does not make use of their land, the eviction of the squatters becomes useless because the land may be kept for speculative purposes. More social problems are certain to abound since the 2001 Land Law does not prevent land speculation. Therefore, removing illegal

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<sup>4</sup> Sub-decree on the Procedure to Establish Cadastral Index Map and Land Register, No. 46 ANK/BK/May 31, 2002. The main purpose of this sub-decree is to establish the procedures for systematic registration. See also Sub-decree on the Sporadic Land Registration, No.48ANK/BK/May 31, 2002.

<sup>5</sup> A Memorandum by Public Interest Legal Advocacy Project of Community Legal Education Center, 2 (August 9, 2006). Residents of Group 78 have shown through documentation that they have fulfilled these requirements—house statistic receipts, house and land sale contracts, title transference contracts, family record books, identity cards, and house-repairing requests.

<sup>6</sup> Land Law of Cambodia, NS/RKM/0801/14/August 30, 2001, art. 38. The first paragraph states the possibility to get ownership if the possession is unambiguous, non-violent, notorious to the public, continuous, and in good faith.

<sup>7</sup> National Cadastral Commission, Supplementary on Land Disputes 5 (February 6, 2006).

squatters from the squatter areas can contribute to release of a big burden of the government if the true landowners make use of their land.

Implementing the land law as well as other relevant laws and regulations will also prevent the squatters from illegal occupation of a piece of land. Article 29 of the 2001 Land Law forbids any beginning of occupation for possession. This land law provides the competent authority with the full rights to stop all illegal occupation by any necessary means. The authority also has the power to verify that occupants fulfill the requirements of law.<sup>8</sup> Moreover, the law required a sub-decree<sup>9</sup> to determine the procedures for establishing a cadastral index map and land register through systematic adjudication, and another sub-decree<sup>10</sup> to determine the procedures related to the sporadic registration of all immovable properties. By following these two sub-decrees, all land titles are to be issued by the competent authorities giving full confidence to the owners without fear of losing their land. There is consequently less of a chance for people who are looking to squat since it becomes easier to see who has illegally resettled.

The 2001 Land Law provides an opportunity for poor people to improve their lives.<sup>11</sup> There is room for the landless or poor people who require land for residential use and/or for family farming. The commune authority can recognize, through the chief of the village, who really require land. The local authority must submit a local social land concession plan to the provincial authority for approval. The goal of the social land concession is to encourage making use of land productively. Therefore, squatters who fail to legally resettle could acquire a definite title of ownership through social concession land.

This thesis depicts how squatters in Cambodia, according to the laws, could improve their standards of living. Chapter 1 introduces the causes leading to squatting and the impact on the society. Chapter 2 shows the structures of property rights mainly referring to the ownership system in Cambodia. The policy considerations for the development of squatter areas are described in Chapter 3. The last chapter proposes some possible solutions which could be taken as measures by the government with a view to implementing sustainable development.

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<sup>8</sup> *Supra* note 6, arts. 30 & 34. Article 30 can be interpreted that even people who occupied land for more than five years without peaceful occupation could be considered as illegal occupants and the title of ownership is not subject to be given. Moreover, Article 34 directs the punishment of people who occupied the property belonging to private persons without a title when the law came into force.

<sup>9</sup> Sub-decree on the Procedure to Establish Cadastral Index Map and Land Register, No. 46 ANK/BK/May 31, 2002.

<sup>10</sup> Sub-decree on the Sporadic Land Registration, No.48ANK/BK/May 31, 2002.

<sup>11</sup> Sub-decree on the Social Land Concession, No.19ANK/BK/March 19, 2003.

# Chapter 1: Squatters in Cambodia and Elsewhere

A huge number of people have been flowing into Phnom Penh, the capital of Cambodia since the first coalition government was formed in 1993. Not surprisingly, a majority of countries have also experienced massive domestic migration from rural to urban areas after wars although the number varies from one country to another.<sup>12</sup> For instance, in Peru in the 1940s and 1950s, rural inhabitants were enticed into the capital of Lima where there was the possibility of better economic and employment opportunities.<sup>13</sup> In Phnom Penh, similarly, the way of life was much more convenient than that in the countryside and thus lured provincial inhabitants into the city. The influx of these people led to increasing social problems because they did not possess title to land.

In order to grasp how social problems arise from the vast influx of provincial people to the city or urban areas, this chapter explores the historical causes leading to squatters and shows the impacts on the society.

## 1.1 Causes

Before going into the detail of causes of squatting, one should first understand the meaning of squatter. There is inconsistent terminology used to describe those who have an improper location in Cambodian society. Settlers who are living in vacant plots of land where most of them do not have legitimate documents are called squatters.<sup>14</sup> Black's Law Dictionary<sup>15</sup> defines squatter as having two meanings: first "a person who settles on property without any legal claim or title" and second "a person who settles on public land under a government regulation allowing the person to acquire title upon fulfilling specific conditions." The second definition of Black's Law Dictionary resembles the concept of social concession-holder in Cambodian laws. Stephen Jourdan defines a squatter as a person who claims to

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<sup>12</sup> Winter King, *Illegal Settlements and the Impact of Titling Programs*, 44 HARV. INT'L L.J. 433, 435 (2003).

<sup>13</sup> *Id.* at 436.

<sup>14</sup> Community Legal Education Center, *Eviction and Resettlement of Sambok Chab Village, Phnom Penh, Cambodia* 1 (June 6-8, 2006). See also Cambodian Human Rights and Development Association, *Human Rights Situation Report 2005, ADHOC Fifth Annual Human Rights Report* 47 (Report No. 5, March 2006).

<sup>15</sup> BRYAN A. GARNER, BLACK'S LAW DICTIONARY 1439 (8<sup>th</sup> ed. 2004).

have acquired title by adverse possession.<sup>16</sup> Although the term squatter has no legal significance, in England, if a squatter possessed land more than twelve years, the true owner becomes dispossessed.<sup>17</sup> Neither a definition nor concept of squatters exists in Cambodian laws, that is why the legal protection of those people is interpretably vulnerable.

This section shows the causes of squatters in Cambodia which arise from the shortages of food, the problems of land management and also political dilemmas.

### 1.1.1 Food Shortages

An understanding of the situation of squatters is necessary to appreciate why squatters have a strong incentive to settle on someone else's land. When left without alternatives, people will do whatever they can without being ashamed or thinking of any legal effect. The possibility to survive is always the first objective. Usually in urban areas, people can easily make a living by selling goods or food nearby or from their houses. Moreover, the companies which are mostly located in the city may provide a chance for people who are looking for work. Furthermore it is also possible for people who have their own motorbikes to become motor-taxi drivers in the urban areas.

Facing food shortages causes people to migrate from one place to another.<sup>18</sup> As the size of families rapidly increased<sup>19</sup> and the scope of farming areas expanded to their limits, food insufficiency came into existence. Mainly in the countryside the way of life became harder, thus some farmers were hopeless to continue their work as farmers. Since the market economy was introduced and national conciliation emerged in 1991, the development of the manufacturing industry started and gathered momentum in the labor-intensive capacity and light manufacturing industries, particularly garment factories.<sup>20</sup> The garment

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<sup>16</sup> STEPHEN JOURDAN, *ADVERSE POSSESSION* 3 (2003).

<sup>17</sup> A. J. HAWKINS, *LAW RELATING TO OWNERS AND OCCUPIERS OF LAND* 86-87 (Butterworth & Co. Ltd. 1971) (1971).

<sup>18</sup> Among 108 people were interviewed in August and September of 2006 in Phnom Penh Squatters Areas such as former Sambok Chab Village, Group 78 and Deikraham Village, 94% of the total interviewees came from provinces. See also Ben Crow, *Understanding Famine and Hunger in POVERTY AND DEVELOPMENT INTO THE 21<sup>ST</sup> CENTURY* 55 (Tim Allen and Alan Thomas ed., 2000).

<sup>19</sup> SO SOVANNARITH ET AL., *SOCIAL ASSESSMENT OF LAND IN CAMBODIA: A FIELD STUDY* 11 (Cambodia Development Resource Institute, Working Paper No. 20, November 2001).

<sup>20</sup> TOSHIYASU KATO, CHAN SOPHAL & LONG VOU PISETH, *REGIONAL ECONOMIC INTEGRATION FOR SUSTAINABLE DEVELOPMENT IN CAMBODIA* 23 (Cambodia Development Resource Institute, Working Paper No. 5, September 1998). The garment industry alone could create 165,000 jobs between August 1994 and March 1998.

factories have been mostly located in Phnom Penh. Not only the garment industry but also the construction industry has expanded sharply, reflecting a construction boom after the Paris Peace Agreements in 1991.<sup>21</sup> This phenomenon attracted an increasing rural population who were facing food shortages and looking for work.<sup>22</sup>

People will look for shelters after they have a chance to obtain food. For instance, Sambok Chab Village which is located near Samdech Hun Sen Park in Phnom Penh can be a focus for landless people to look for their resettlement because it is the place where people can make a living easily. Before the park was constructed, the number of people who located in Sambok Chab Village was relatively less than that after the park was in use<sup>23</sup> because the settlers could easily sell goods in the park.

Parents will concentrate on their children's schooling after they can have food and shelter. In the urban areas where the density of population is high, schools are more available. For instance, Chatomuk Primary School, Norodom Primary School and Preah Sisovath High School are nearby schools to Sambok Chab Village. Although the settlers' daily life is still miserable, they wish to send their children to school because they want a better future for their children. Therefore, a place where schools are available encourages settlers to locate there.

### **1.1.2 Problems of Land Management**

Land use and management has experienced many difficulties in Cambodian history. In ancient times, the land in the whole territory of Cambodia was owned by the king. The people however had the right of possession over land which was protected by law. The right of possession could be transferred by succession or will and could be the subject matter of a sale, loan or rental contract. The right of possession could also be forfeited when the land was abandoned for a period of three years. In this case a new occupant could claim possession while the former possessor could not.<sup>24</sup>

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<sup>21</sup> *Id.*, at 27-28.

<sup>22</sup> SUSAN FAINSTEIN & SCOTT CAMPBELL, URBAN THEORY 1 (1996).

<sup>23</sup> Kep Chutema, Phnom Penh Municipal Governor, Report on the Management and Development of Community 4-5, No. 609RBK/Kr (August 8, 2006). In 1992, There were 386 families who were living in Sambok Chab Village but on May 29, 2006 the number increased to 1352 families. Surprisingly, the number drastically increased to 3,163 families on June 6, 2006. Samdech Hun Sen Park was constructed in the mid 1990s.

<sup>24</sup> MATTHEW RENDALL, JOSEE TREMBLAY & PATRICIA BAARS, LAND LAW OF CAMBODIA: A STUDY AND RESEARCH MANUAL 20 (East-West Management Institute, Inc. ed., November 2003). This publication was made

Under the colonial period (1863-1953), the French colonists attempted to introduce the system of private property and ownership of land, but this policy was not entirely successful. The system was successfully introduced in some areas of rice growing plains but it was not in very large areas outside the plains.<sup>25</sup> The civil code of Cambodia which related to the property rights was promulgated in 1920 has been in use until 1975. The success of the implementation of laws was very limited. In the Pol Pot regime (1975-79) no individual property was allowed and all land had to be collectivized. Collective ownership under the People's Republic of Cambodia continued until 1989 and then the private ownership was surrendered to residential land while right of possession was given to cultivated land.<sup>26</sup> It was widely believed that there was a fair degree of equity of land distribution to the people in the villages during the land reform processes in 1989.<sup>27</sup> However, just about a decade later after 1989, the evidence showed, at the local level, there was extensively unsatisfactory land distribution which led to landlessness and land inequality; for example, the people who returned from the border camps (Cambodia-Thailand) after 1989 did not receive any land.<sup>28</sup>

The direct impact of land distribution between 1989 and 1998 on poverty reduction made the subsistence of some Cambodian people more miserable. Although the data on land inequality is inadequate for research, the increase of land inequality according to the existing sources is clear, and shows that the rural poor are suffering most from this trend. Such rural people are often forced to undertake hazardous forms of employment, such as migrant work which is an impetus to make them move from one place to another, especially to urban areas.

Self-help housing in the urban areas where the work opportunity is easily found is the first resort for people who are migrating. Occupations of premises as homes have quite naturally been associated with specially endowed occasions. When there are available vacant plots of land and no apparent forbidden resettlements, the landless people take the opportunity to locate on the land. Such resettlements also lure other landless people to locate more on those vacant plots of land. Sometimes landless people buy houses or land from the former settlers or friends by transferring sale contracts which have to be in accordance

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possible with support provided by the Asian Development Bank under the Implementation of Law Legislation Project, ADB TA 3577-CAM.

<sup>25</sup> *Supra* note 19, at 20.

<sup>26</sup> Sub-decree on Granting House Ownership to the Cambodian Citizens, No.25ANK/April 22, 1989.

<sup>27</sup> *Supra* note 19.

<sup>28</sup> Nicholas Hartman, *Cambodian Land Law: Its Impact on Current Trends in Landlessness and Land Inequality* 118 (2007).

with the law recognized by a competent authority such as the chief of the district but in reality, those contracts are mostly recognized by the lower level of authority such as the chief of the village.<sup>29</sup> Such a flow of illegitimate documents has continued from time to time and the price of a house or land also increases from one to another since the land market gradually rises. Therefore, when the resettlement on land is not well restricted, improper settlement comes into existence.

In accordance with the Cambodian Constitution, the 2001 Land Law, which seems to solve the above problem, surrenders private ownership of land to any Khmer citizens who fulfill the requirements of law.<sup>30</sup> The law assures the safety of title of ownership in which the titleholder could sell, and exchange immovable property. Yet, this law does not aim to prevent land speculation, which seems to encourage the rich and the powerful to buy land without any limitation. Usually the poor are subject to sell their land when they have financial difficulties. Moreover, the law requires all landowners to register their land, in a registration system which is complicated and costly. As such, the poor are likely to be more vulnerable to lose their land since they could hardly afford registration.

Also a widespread lack of public knowledge about the legal system remains an intricate matter for the government that should be taken seriously into account. Although the legal documents are publicly announced, it is likely that those who could have benefited most from the announcement would have been unaware how much legal advantage exists. Thus such people do not pay much attention to preparing legal documents. The people who have inadequate legal documents always suffer from the government policy especially in the case of land expropriation when the original possessors could not be appropriately compensated. Although, in some areas, there was difficulty in obtaining a title of ownership, in most areas there was ignorance among the possessors of the fact that they needed a land title to confirm ownership for legal protection.<sup>31</sup> More seriously, most rural people had no idea that the 1992 Land Law had been adopted<sup>32</sup> thereby failing to follow the requirements of law. Therefore, failures to educate the public by the government and implement the law strictly resulted in lasting consequences for many households especially problems made by an unfair judgment of the court.

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<sup>29</sup> *Supra* note 5 and see accompanying text.

<sup>30</sup> The Cambodian Constitution (1993), art. 44; *Supra* note 6, art. 8.

<sup>31</sup> *Supra* note 28, at 121.

<sup>32</sup> *Id.*

Similarly the squatters who have incomplete legitimate documents are more likely vulnerable. The understanding of how the law is implemented is the necessary requirement for their legal protection but very limited due to a lack of legal knowledge.<sup>33</sup> Although people abided for a long period of time, they faced financial limitations which prevent them from preparing legal documents. Thus without any doubt, the low level of income hinders the squatters from attending to the legal form of their property. This impact can be considered as a country's chronic unprotected right problem which becomes a large concern for the government.

### **1.1.3 Political Dilemmas**

Cambodian leaders faced difficulties in concentrating on the development of the country due to the fact that there were many changes of the political regimes. The civil war which persisted for a few decades brought hardship such as a lack of human resources for the incumbent government. During the Khmer Republic (1970-75) there was insecurity throughout most of the territory of Cambodia thereby increasing fear among the people. Sadly, the Pot Pot regime (1975-79) killed nearly all the cadastral officers and destroyed all administrative documents.<sup>34</sup> The remaining resources left by the Pol Pot regime were inadequate, and it was too hard for the later regime, the People's Republic of Cambodia, to improve such a miserable situation immediately. The land policy was then taken into account for the sake of the nation although many difficulties existed with the civil war more than a decade after 1979.

Also political dilemmas cause improper resettlements. In the early 1990s, Cambodia experienced a national political reconciliation which compelled the politicians to concentrate mostly on their political party. The Cambodian People's Party which had been ruling the country solely after the collapse of the Pol Pot regime has not experienced in multi-parties tried to be partial to all people especially the poor in order to gain votes. In Sambok Chab Village, for example, in 1992 a Council of Ministers decided to provide ten hectares of land in the suburb of Phnom Penh where there was no infrastructure to distribute to 386 families, as a result, such people sold the land just received and returned to resettle in the former place.<sup>35</sup>

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<sup>33</sup> According to the interview in August-September 2006, 61% of 108 interviewees did not complete primary school.

<sup>34</sup> Voan Lim, Land Regime in Cambodia 7 (July 2006).

<sup>35</sup> *Infra* note 163.



Political instability also causes an improper implementation of laws. Usually a ruling political party takes a vital role in developing a country if it has the political will to do so. The Cambodian People's Party which has ruled the country for about thirty years appears to have failed in the managing of land by the rule of law since land issues strongly relate to a political tendency. For instance, land issues which have been intervened by the Prime Minister resulted in negative effect<sup>36</sup> because the intervention may exacerbate the legal system. As such, land disputes are more likely to depend on political leaders for their resolutions. The competent authorities lessen their effort to strictly implement the laws and regulations. Therefore many people suffer from the improper implementation of laws and regulations.

## **1.2 Social Impact**

Having more squatters may seriously impact on the harmonization of the society. The more squatters a country has, the more of a load the society endures. The government finds it harder to concentrate on the country's development. Therefore, the government should pay much attention to the reduction of squatters in order to effectively develop the country.

This section discusses how the social impact caused by the squatters affects a country's development, which may exacerbate the public confidence in the government, social security and economic development.

### **1.2.1 People's Confidence in Government Policy**

Contriving to develop the areas where many poor are living often affects the daily life of the poor thereby curtailing the confidence of people in the government as a whole. As stated above, most squatters do not possess legitimate documents, and they are easily daunted by the authority. The squatter areas are often owned by the rich who can have a complete legitimate document such as a title of ownership which may legally evict the squatters from those areas.<sup>37</sup> As a result, the development of such areas always

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<sup>36</sup> *Supra* note 28, at 122.

<sup>37</sup> *Supra* note 23, at 3. See also the judgment No.34 (Kh) dated on September 26, 2002 of the Phnom Penh Municipal Court was adjudicated that Mr. Khov Sambath has land ownership over the area where there are 44 families are living. Also a judgment No.2064/TPr dated on March 3, 2004 was adjudicated that Mr. Lim Khy has a right of possession over land and also title to land where 237 families are living.

exacerbate the life of the squatters more seriously because they are subject to eviction to other areas without infrastructure and it is hard to access their living. Such squatters become despondent that the government fails to improve their standard of living but only further exacerbates the poor conditions.

The shock of eviction makes squatters feel more miserable and family members undergo disconnection. For example, the husband lives in the city for work while the wife lives in the newly distributed plot. Some children who were also sent to the Non-Governmental Organizations (NGOs) in order to maintain their study lost a chance to be under the care of their parents.<sup>38</sup> However some children who followed their parents to stay in the new area stopped their study because of impossibility to access schools. The family's financial resources must be shared according to the separation of the stay, thus they may face food shortages and other problems. Since no basic service network was installed from the outset, the squatters suffer a greater burden from poor health thereby making their livelihood more difficult.

The rich who own squatter areas are sometimes afflicted by the government order. As the land has not been regulated firmly by the rule of law as already mentioned, the political leaders always think of their own possible political gain.<sup>39</sup> The politically-based government orders make the landowners fear for the loss of their land. For example, on May 28, 2006, the Prime Minister announced that he would use the right to abolish some of the decisions of local cadastral authorities and provincial/municipal administrations who issued land ownership to powerful or rich persons. However, the Prime Minister did not mention about the punishment of the relevant authority who issued the title improperly. This tendency reflects a prevalent attitude in the Cambodian political culture that is characterized by absolute governance towards the ruling party which is likely to govern the country by neglecting the implementation of the rule of law.

The inaccuracy of land management undermines public confidence in the governmental institutions. The laws and regulations which have to be implemented by the government strongly depend on the effectiveness of the implementation of the government agencies. In Cambodia although the law exists, the competent authorities sometimes decide the cases in favor of the persons who may benefit them. Moreover, if the cases relate to the political issues or powerful persons, the local authorities fear making a decision, and therefore they submit the cases to the higher competent authorities or sometimes to the Prime Minister.

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<sup>38</sup> Loran Leguonvich, *A Camp of Evicted People from Bassac Area: A Glance of a Photograph*, Samné Thmei (Phnom Penh), July 3-9, 2006, at 6 (in Khmer Language).

<sup>39</sup> *Supra* note 23, at 4.

For instance, in a land dispute of 12 families in Angkor Thom District, Siem Reap Province, neither the commune authority nor the district authority resolved it although the authority apparently sees how the case should be done.<sup>40</sup> Thus the poor felt hopeless in the possibility of receiving justice.

### **1.2.2 Social Security**

The vacant plots of land which are left for speculative purposes provide a serious drawback to the decreased expressions of social discontent. In the urban areas, it is usually found that large parcels of land are enclosed with concrete posts for a long period of time. The owners just waited for a good chance to sell those vacant plots of land or construct some buildings on. In the meantime, the landless people who usually migrate from one place to another look for a place where a new condition of living can be found start to settle on the vacant plots of land. This may become a huge impetus for many migrants to settle on vacant land and the duration of their stay can be more than five years without any violence. When the squatter areas require development, the conflicts between the true owners and new squatters come into existence and sometimes demonstrations take place.

Although the 2001 Land Law recognizes a possession right until August 30, 2001, the possibility of legal protection to the poor squatters is still very limited. Usually, the legal documents are the best proof when a remedy to a land dispute is needed. Since the poor dwellers do not have much knowledge and financial resources<sup>41</sup> and especially do not understand how they can be protected by law through the legal documents, they failed to pay much attention to the registration of their properties. On the contrary, the rich people pay more attention to the necessary legal documents in order to protect their property right because they have enough resources. Consequently, the more vulnerable people are the poor. For instance, even though the squatters had settled in Sambok Chab Village for more than five years before the adoption of the 2001 Land Law, they all faced eviction without fair and just compensation due to the fact that they failed to have a title of ownership.

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<sup>40</sup> *Land Dispute of 12 families with Mr. Roeun Chuy in Angkor Thom District, Siem Reap Province* (Radio Free Asia Broadcasted in Khmer Language, March 13, 2007).

<sup>41</sup> Muth Sruoch, *Land Revolution Made by the Poor against the Powerful Persons Can Be First Exploded in Kilometlek 4 Village, Poipet, Moneaksekar Khmer* (Phnom Penh), April 6, 2006.

When unfair and unjust compensation exists in such land questions, an unsatisfactory effect will provoke a conflict. Since Sub-decree on State Land Management just existed in 2005, the land management system in Cambodia had difficulty in preventing illegal land grabbing. On the other hand, many poor came to locate on vacant plots of land without forbiddance from the authority. But when those vacant plots of land are needed for development or for other purpose, the government or authority just uses the order, notification, or violence to evict the people who are living on those vacant plots of land.<sup>42</sup> As a result, a confrontation, claim and demonstration were certain to abound which led to threat, arrest, and even killing towards the poor.

In addition to a defect in law, the security of ownership which is ensured by law exacerbates the livelihood of the poor squatters to some extent. The absence of a land tax fails to encourage landowners to invest in or make use of their land, and so gives heart to squatters intending to settle upon empty land. A country, in such a case of loss of taxation, loses not only national income, but also confidence in managing land itself. This trend causes the local authority to have less responsibility on their land management in their territory. On the other hand, the chaotic resettlement movement available from vacant plots of land is difficult to stop.

### **1.2.3 Economic Development**

With regard to free market principles, the 2001 Land Law fails to provide the legal tools necessary to limit land speculation, while a decrease of land atomization is seemingly predictable. Remarkably, the impact of free market encourages the poor to sell the land to the speculators who have a good understanding of the fact that the area is for the development target of the government policy. As a consequence, there are more and more landless people who place pressure on government. However, any intervention by the government that is too drastic would likely do more harm than good for the rural poor.<sup>43</sup> Since the rich could buy hectares of land unlimitedly and title to land is easily obtained, much land which is for speculative purposes has been bought up. Therefore, without a restriction to the land acquisition, land speculation can never be avoided.

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<sup>42</sup> Cambodian Human Rights and Development Association, *Human Rights Situation Report 2006, ADHOC Sixth Annual Human Rights Report* 42 (Report No. 6, January 2007).

<sup>43</sup> *Supra* note 28, at 122.

The growth of land speculation has a huge impact on economic development. The more the number of titleholders decreases, the more the number of the landless people increases. According to a survey, conducted in 143 villages across 15 provinces, among 31,793 families, the landless people comprised of 13%, the people who had never owned land were 7%, the landowners who had sold their land consisted of 6%, and the people whose land had been grabbed were 1%.<sup>44</sup> As mentioned above, there is no restriction on the selling of land sold, the new landowners usually bought land and waited for high market price without improving any land use conditions. Land buyers often kept land for vacant which causes a serious impact on land productivity. Therefore this agricultural country could hardly improve their economic growth through agricultural sector.

In an agrarian society, access to land is the most significant requirement necessitated to ensure the sustainable livelihoods of farmers. In this sense, land inequality which arises from a defect in law is a serious impediment for economic development. Cambodia which remains an agricultural country with 84% of the total population being rural dwellers has faced a huge land issues in recent decades.<sup>45</sup> This flow of problems increases year by year inexorably and more intricately in which some violence happens to serious death and injuries.<sup>46</sup> The increase of landlessness and land inequality shows that the rural poor often suffer from their woes of loss of land and thereby may cause a land revolution if no reasonable resolution is carried out soon.

Speculative land also provides extreme imbalances of resource allocation in which one group or class dominates all others. Influential people or civil servants can use their knowledge of law to acquire landownership at the expense of those who are poor or less knowledgeable of the law. Those influential or civil servants always first attempt to gain the title of ownership or possession of vacant land and wait until the land market price increases. A recurrent land dispute over titling proliferated as more land was brought under development purpose which has surely led to a serious destruction of the livelihood of the poor. Thus the poor always face the loss of their properties making their life more miserable. Similarly, in Paraguay a

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<sup>44</sup> Parallel Report Under International Covenant on Economic Social and Cultural Rights, Prepared by NGO Economic, Social and Cultural Rights Monitoring Committee sponsored by DanChurchAid 23 (August 2002).

<sup>45</sup> *Id.* at 22.

<sup>46</sup> According to the interim report made by the cadastral commission, in 2003 the number of land disputes is 1476 while in 2004 (as of November 30), the number increases to 2029. See also Cambodian Human Rights and Development Association, *Human Rights Situation Report 2005, ADHOC Fifth Annual Human Rights Report* 40-41 (Report No. 5, March 2006).

country in South America, the recent empirical studies showed that the gaining of land depended on the competitiveness of the landholders, that is the holders who were not competitive lost the land.<sup>47</sup>

In addition to unequal land allocation, speculative land can be rudimentary causes of poverty and income inequality. Unequal access to land acquisition provokes a large distance between the poor and the rich. Those who could access more land gain much benefit from land speculation or commercial transaction. On the contrary, those who could access less land or do not access land will seriously suffer from a lack of housing and food security.<sup>48</sup> Currently, the top 10% of households hold about 40% of the land while the lowest 50% own less than 9% which causes an impact on income differences.<sup>49</sup> While there are wide discrepancies in the income, the people with little income become poorer.

The social problems which arise from food shortages will also exacerbate the country's development. When parents are faced with a lack of food, they will rarely send their children to school. A lack of educational opportunities which will increase illiteracy makes it impossible for a country to develop in every field. When the literacy rate is high, it is easier for a country to develop<sup>50</sup> since strong human resources are a main factor in improving a nation.

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<sup>47</sup> Steven E. Hendrix, *Myths of Property Rights*, 12 ARIZ. J. INT'L & COMP. LAW 183, 219 (1995).

<sup>48</sup> *Supra* note 44. See also *supra* note 28, at 115.

<sup>49</sup> *Supra* note 28.

<sup>50</sup> Asian Development Bank, *Moving the Poverty Reduction Agenda Forward in Asia and the Pacific: The Long-Term Strategic Framework of the Asian Development Bank—2001-2015*, 2 (March 2001), <http://www.asiandevbank.org/Documents/Policies/LTSE/ltsf.pdf> (last visited March 2007).

## Chapter 2: Property Rights in Cambodia

Land which is crucial property for the livelihood of most people requires a good management. Although Cambodia faced many changes through political regimes<sup>51</sup> in recent decades, property rights have also been reformed several times in order to reach the needs of the society. Soon after the fall of the Pol Pot regime there were no laws governing land. Instead, the government, however, attempted to issue sub-decrees to manage land. For example, clearing forest land for cultivating without the authorization was forbidden.<sup>52</sup> The agricultural land was provided to the villagers in the form of the solidarity groups for farming.<sup>53</sup> Still each family was able to privately use the limited land such as residential land and land for family economy.<sup>54</sup> The government also encouraged people who requested rehabilitated land or to clear additional land in order to increase agricultural productivity and as a result they were allowed to extend the payment of patriotic contributions.<sup>55</sup>

In 1989, the reform of land management was strongly remarkable in land distribution. From June to December 1989, according to the new decision on the land use and management policy, all land possessors had to submit a possession-application form to the district office through the chief of the village and commune.<sup>56</sup> The state did not reshuffle and reallocate the land which has been possessed since 1979. This policy clearly motivated people to fulfill the requirements of possession. Therefore, after the deadline of December 1989, the land where possessors did not submit a possession-application form was considered free and open.<sup>57</sup>

Thirteen years after the collapse of the Pol Pot regime, the first land law which was promulgated by the State of Cambodia remained a critical discussion. Cambodians were granted full rights to possess and use land in which the right of possession, use and lawful enjoyment of land was guaranteed by the state.

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<sup>51</sup> People's Republic of Cambodia from 1979 to 1989: there was no private ownership and ownership rights over land. State of Cambodia from 1989 to 1993: the state surrendered private rights in land to the citizens. Kingdom of Cambodia from 1993 until now: the implementation of the 1992 land law until the new land law was promulgated in 2001. The new land law provides the private landownership to Cambodian citizens.

<sup>52</sup> Sub-decree on the Management of the Use of Agricultural Land, No.06ANK/May 06, 1985, art. 1.

<sup>53</sup> *Id.* art. 3.

<sup>54</sup> *Id.* art 5.

<sup>55</sup> *Id.* art 11.

<sup>56</sup> Instruction on the Implementation of the Land Use and Management Policy, No.03SNN/June 03, 1989.

<sup>57</sup> *Id.*

Also, no violation of private property was allowed unless it is for the public interest with fair and just compensation.<sup>58</sup> Since the protection of the property rights was assured by the state, the property owners may intend to develop their land because they do not have any fear of the loss of land. The protection of the property rights was also an incentive for those who wanted to obtain the right of possession by fulfilling the legal requirements since they might need the right for the future use. More noticeably, ownership rights were provided only for residential land while possession rights were surrendered to agricultural land.

Since the 1992 Land Law is not suitable to the market economy, the 2001 Land Law was promulgated instead. This chapter argues that Cambodian property rights work in what way and discusses what kinds of institutions are responsible for the property right issues according to the newly-promulgated law.

## **2.1 Institutions and Procedural Mechanisms**

This section depicts the institutional responsibilities of the government agencies related to the registration of immovable properties since 1979. The section shows how the historical background in terms of land management in Cambodia improved gradually with regard to the nation's development. This section also describes the procedures of the land registration in accordance with the 2001 Land Law and tells how this new land law intends to protect Cambodian people's property rights.

### **2.1.1 Cadastral Institutions**

Cambodia experienced many changes in the institutions which were responsible for land management after the Pol Pot regime. Soon after 1979, the government created the Department of Management of Agricultural Economic Policy under the Ministry of Agriculture which had the duty to prepare and manage solidarity groups for farming. This department was renamed the Department of Cadastre in 1989,<sup>59</sup> which was the secretary unit responsible for land issues. In 1994, the Department of Cadastre was under the control of the Office of the Council of Ministers.<sup>60</sup>

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<sup>58</sup> Land Law of Cambodia, No.100K/October 13, 1992, arts. 2 & 3.

<sup>59</sup> Sub-decree No.31ANK/June 14, 1989.

<sup>60</sup> Sub-decree No.58ANK/October 3, 1994.



The needs of the society required the country to develop the system of land management. In 1999, the Ministry of Land Management, Urban Planning and Construction was created<sup>61</sup> to direct and manage the affairs of land management, urban planning, construction, cadastre and geography in the Kingdom of Cambodia unless otherwise specified<sup>62</sup> (See Figure 1 for the structure of the Ministry of Land Management, Urban Planning and Construction). Since then, the Department of Cadastre was again transferred to the General Department of Cadastre and Geography which was under the control of the Ministry of Land Management, Urban Planning and Construction as one of the general departments at the central level.

The newly-formed General Department of Cadastre and Geography has a very important role in land issues. The main duties of this General Department are to register land titles throughout the country and also to define parcel boundary as well as to carry out cadastral survey and maps.<sup>63</sup> Five departments which are under the General Department of Cadastre and Geography have the main function to fulfill the duties of the General Department.<sup>64</sup> Among the five departments, only the Department of Land Registration has the responsibility to register state properties and also to register land titles as well as to inscribe and update all physical and juridical changes of immovable properties.

Although the Department of Land Registration plays a vital role in legitimating land titles, the land registration cannot be done without local level participation. Each province/municipality has an Office of Land Management, Urban Planning, Construction and Cadastre and also each district has a Bureau of Land Management, Urban Planning, Construction and Land. Although land management does not have an office in each commune, the chief of the commune who represents the local authority has also the main function to be involved in the registration process from local territory before all relevant documents go to the District Cadastral Administration.<sup>65</sup>

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<sup>61</sup> Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction, NS/KRM/0699/09); see also Sub-decree on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction, No.62ANK/BK/July 20, 1999).

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

<sup>63</sup> *Id.* art. 21.

<sup>64</sup> *Id.* arts. 21-26.

<sup>65</sup> *Supra* note 10, art. 7.

**Figure 1:  
The Ministry of Land Management, Urban Planning and Construction—MLMUPC**



## 2.1.2 Registration Procedures

The Cambodian land registration and title system has improved remarkably in accordance with the market economy. The land reforms in 1989 surrendered limited rights to the possessors over the land. Only residential land could have the right of ownership. In contrast, cultivated land could have the right of possession. The government provided rights of possession to the people who had held cultivated land at least one year to the date of determination.<sup>66</sup> The chief of the Provincial People's Committee had the right to issue the title of ownership over the residential land while the title of possession over the cultivated land had to be issued by the chief of the District People's Committee.<sup>67</sup> Through the local authority, the head of the family had to apply for ownership right and possession right to the District People's Committee within a limited period.<sup>68</sup> In 1994, the provincial/municipal governor was the final authority to issue certificates, both for residential and agricultural land. During 1995-1998, the Department of Cadastre was under the control of the Office of the Council of Ministers, the final authority also shifted from the provincial/municipal governor to the chief of the Department of Cadastre.<sup>69</sup>

This subsection describes the registration procedures in accordance with the 2001 Land Law. Only the cadastral administration has the right to register land throughout the country. The cadastral administration is divided into three levels: the central level which refers to the General Department of Cadastre and Geography; the Provincial Cadastral Administration which refers to the Provincial Office of Land Management, Urban Planning, Construction and Cadastre; and the District Cadastral Administration which refers to the District Bureau of Land Management, Urban Planning, Construction and Land. There are two registration systems, one is a systematic land registration (see Figure 2) and the other is a sporadic registration system (see Figure 3). The systematic land registration determines the procedures of establishing a cadastral index map and land register through systematic adjudication areas. The sporadic registration system determines the procedures of registration of immovable properties in the area that was not declared as an adjudication area.

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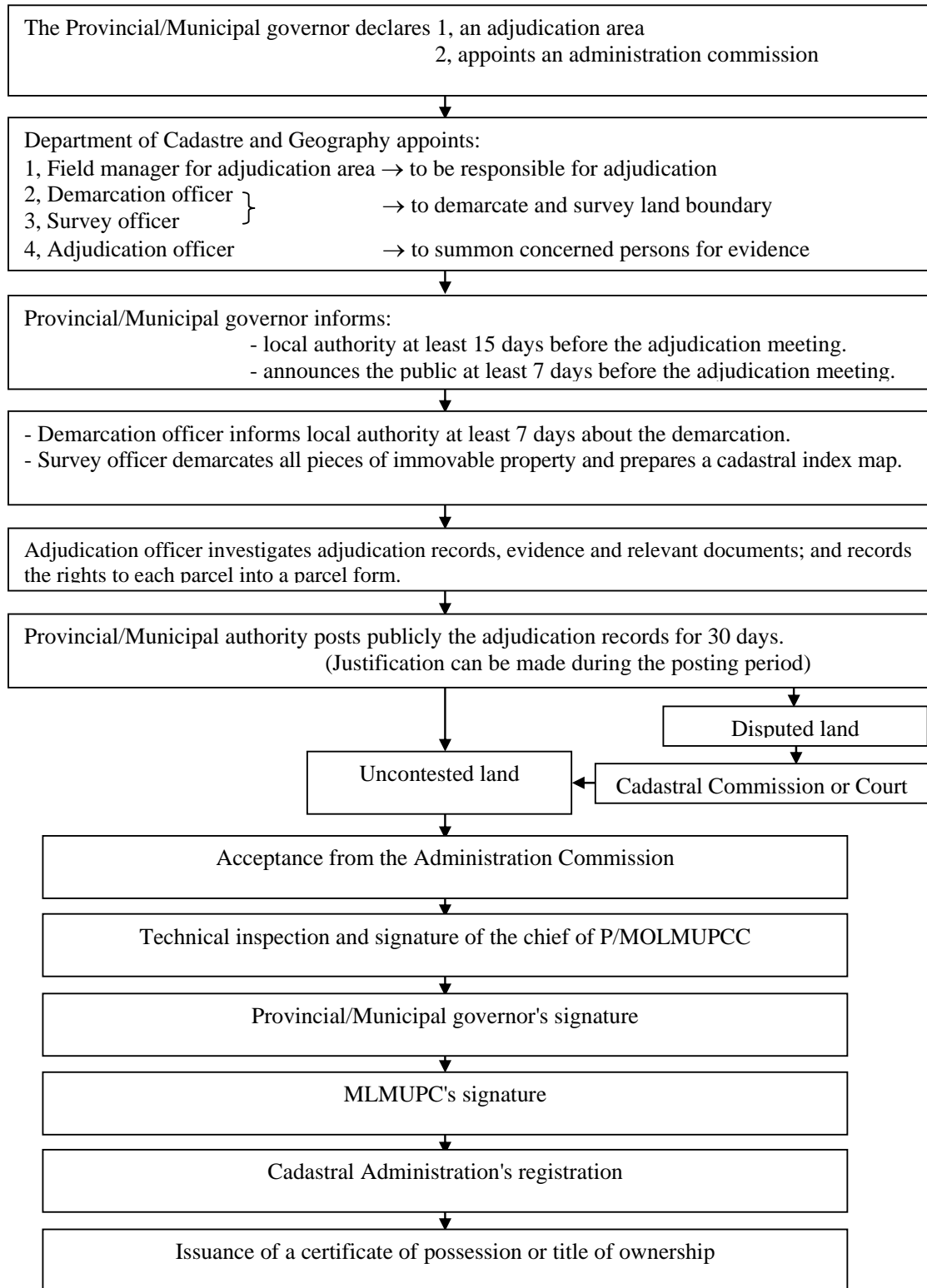
<sup>66</sup> Instruction on the Implementation of Land Use and Management Policy, No.03SNN/June 03, 1989.

<sup>67</sup> Ownership right over residential land is not more than 2,000 square meters, the excess was considered as possession. Right of possession over cultivated land was not more than 5 hectares. More than 5-hectare land could be provided as concession land.

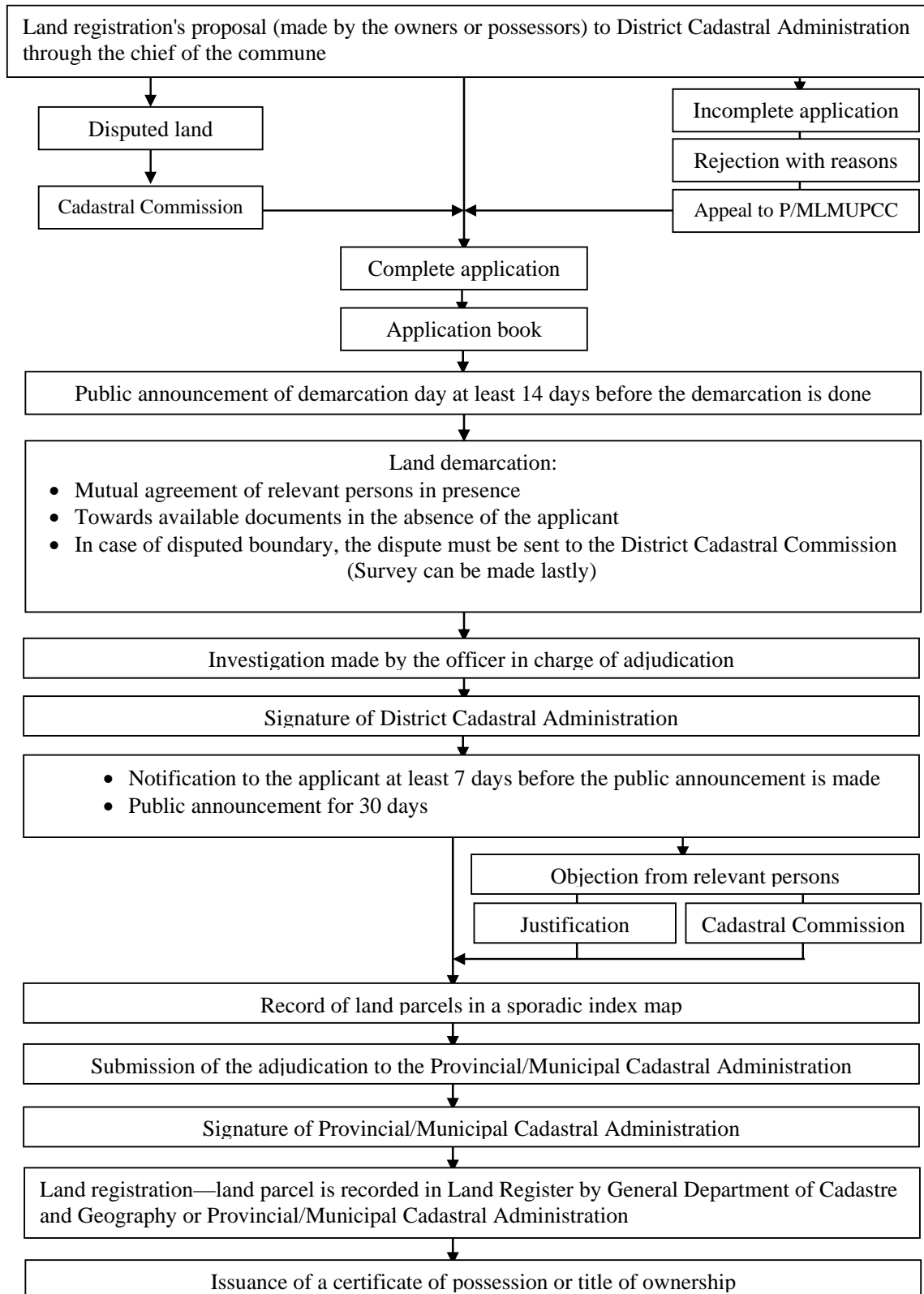
<sup>68</sup> There were two periods of receiving an application form for ownership right and possession right. The deadline of the period was December 31, 1989 (Instruction on the Implementation of Land Use and Management Policy, No.03SNN/June 03, 1989) and that of the second was June 30, 1990 (Instruction on the Policy of Land Administration and Use, No.13IKSK/SRNN/April 10, 1990).

<sup>69</sup> CHAN SOPHAL, TEP SAVARY & SARTHI ACHARYA, LAND TENURE IN CAMBODIA: A DATA UPDATE 27 (Cambodia Development Resource Institute, Working Paper No. 19, October 2001).

**Figure 2: Systematic Land Registration**



**Figure 3: Sporadic Land Registration**



## 2.2 Legal Interests

This section describes how ownership can be structured into several forms. The section defines each form of ownership in accordance with the 2001 Land Law and also shows how ownership can be protected by law.

### 2.2.1 Ownership Structure

The full private ownership which is offered by the 2001 Land Law seems to fit the 1993 Cambodian Constitution reflecting the market economy.<sup>70</sup> Article 85 of the 2001 Land Law deals with a new definition of ownership; that is, "the owner of immovable property has the exclusive and extensive right to use, enjoy, and dispose of his property, except in a manner that is prohibited by law." Therefore, only the things set forth by law may restrict the right of ownership.

Understanding the extent of a person's landownership is an important matter for the owner. Article 90 of the 2001 Land Law refers to sub-surface ownership rights in which there are some restricted rights to claim the ownership of statutes, bas-reliefs and antiquities found therein. Article 91 mentions the ownership rights in airspace above the land except the stringing of electric and telecommunication wires as well as the flying of the aircraft over the land. Therefore, the landowners actually can own the airspace above their land and the resources that are below the surface of the land with some restrictions determined in the law.

In addition to the scope of ownership regarding what is above and below land, there are some more issues concerning ownership. Attachment to the land is one scope of ownership while the accretion is the other. Anything that is attached to land in a permanent nature belongs to the owner of the land.<sup>71</sup> A house is a typical example of an attachment to the land where the lessee will merely be the occupier of the house until the expiration of the lease and the landowner must pay the cost of the house to the lessee.<sup>72</sup> Such an attachment to the land is usually applied to the long term leases.<sup>73</sup> In Japan, on the contrary, buildings are not considered attachments to land, but are separate objects of ownership, with a persistent lease

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<sup>70</sup> *Supra* note 30, art. 56; *supra* note 6, art. 1.

<sup>71</sup> *Supra* note 6, art. 96.

<sup>72</sup> *Id.* art. 97; *supra* note 24, at 65.

<sup>73</sup> The long lease of the Cambodian Land Law can be 15 years or more, art. 106.

relationship between building owner and landowner as required.<sup>74</sup> In Cambodia, as in other countries, accretion on the one hand can be the result of human acts which includes construction and plantation work, and on the other hand can be the result of nature which includes the gradual expansion of a riverside piece of land by alluvial deposits.<sup>75</sup>

Ownership can be divided into different forms. For example, the 2001 Land Law divides ownership into three forms including undivided ownership, co-ownership and joint-ownership. Article 168 defines that "undivided ownership is the ownership of one specific property by several persons." Also each owner of undivided ownership has a share of the property which cannot be divided. As such, each of the owners is entitled to use every part of the property, not a specific part of it, and has rights and obligations in proportion to the size of the share.

Article 175 defines co-ownership as "the ownership of immovable property belonging to several persons divided by lots, of which each person has one part that is a private part and another part that is a share of common property."<sup>76</sup> This article is clear that each co-owner has full rights to the individual part of the property which is similar to the rights a person owns free standing property. However, there are some limits on the use of property by co-owners such as rights to grant easements over their private part of the property.<sup>77</sup>

Regarding joint-ownership, Article 186 defines joint-ownership as "a form of common ownership that applies to ramparts and walls dividing two adjoining ownerships."<sup>78</sup> Also the responsibility for maintenance is proportional to the degree of ownership. Joint owners have equal rights to owned property so long as their use does not cause damage to other owners. The law provides broad possibilities to any of the joint owners who prefer to upgrade the joint-ownership or to abandon it unless prohibited by law.<sup>79</sup>

An understanding of the vital differentiated remarks to the obligations of the owners of each type of ownership is necessary. Without the consent of all owners of the undivided ownership, the right to sell,

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<sup>74</sup> Frank G. Bennett, *Building Ownership in Modern Japanese Law: Origins of the Immobile Home*, Law in Japan, 26 JAPANESE AMERICAN SOCIETY FOR LEGAL STUDIES 75, 83 (2000).

<sup>75</sup> *Supra* note 6, art. 100.

<sup>76</sup> *Id.* Paragraph 2 of Article 10 gives the definition of undivided ownership: "ownership by several identifiable individuals collectively exercising their rights over the entire property is undivided ownership"

<sup>77</sup> *Id.* art. 177.

<sup>78</sup> *Id.* Paragraph 3 of Article 10 also states the definition of co-ownership: "ownership by several persons exercising exclusive rights over certain parts of the property, and [where] the other parts, named common parts, are subject to legal rules or contractual agreement, is co-ownership."

<sup>79</sup> *Id.* ch. 11, arts. 186-196.

encumber or change the property is impossible.<sup>80</sup> However, a majority of owners can decide to repair or cultivate a piece of property.<sup>81</sup> For co-ownership, each co-owner is not allowed to grant easements over his/her own private part of the property and also to cause a nuisance to the other co-owners or to encroach on the common areas.<sup>82</sup> As for joint-ownership, each owner cannot give up his/her joint-ownership right over the wall of the building because the abandon will have a serious impact on his/her property.<sup>83</sup>

### 2.2.2 Legal Protection

Cambodia follows the land title registration system in which a certificate of title provides conclusive evidence of the land rights pertaining to a particular land parcel. A title of ownership which identifies the title owners lists all encumbrances to ownership such as mortgage, antichresis, gage, and long-term lease.<sup>84</sup> Since the cadastral records are the official legal evidence, the registration of title is always needed. The essence of the title of ownership is therefore important for the transfer which cannot be objected by a third person. However, all transfers must be made in a written authentic form drawn up by a competent authority and registered with the Cadastral Administration.<sup>85</sup>

The 2001 Land Law also carefully prevents ownership acquisition from illegal occupation in which the punishment is done towards the illegal occupants. The new occupants who occupy public land or private land without titles of ownership must face not only the eviction but also punishment both civil and criminal charges.<sup>86</sup> As public state properties are not the subject of acquisition of ownership, any individuals who occupy those properties are subject to have a serious damage because they have to face not only the immediate eviction and punishment, but also the loss of what they have spent to invest in land.<sup>87</sup>

The competent authorities are also required to be responsible for issuing titles of ownership. The title of ownership is an important tool to legally prevent the titleholders from other violations. However if the title is made in wrong manner, the owners who hold that title may affect the interest of the innocent

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<sup>80</sup> *Id.* art. 171.

<sup>81</sup> *Id.* art. 170.

<sup>82</sup> *Id.*, art. 177.

<sup>83</sup> *Id.* art. 187.

<sup>84</sup> *Id.* art. 238.

<sup>85</sup> *Id.* art. 65.

<sup>86</sup> *Id.* arts. 34 & 35.

<sup>87</sup> *Id.* art. 43.



people. As such, the punishment towards the authorities who committed their duty improperly to issue titles is very necessary. The law therefore clarifies that the authorities who illegally issue titles of ownership and even those who are negligent to the violation of such a thing are also subject to punishment including civil and criminal charges as well as administrative sanctions.<sup>88</sup>

## **2.3 Methods of Acquisition**

The exigencies facing the market economy and democratic society in the early 1990s made Cambodia prepare the new constitution providing private ownership right to the whole Cambodian citizens. This became a strong impetus to create a new land law which led to an adoption in 2001 in order to be in accordance with the constitution. Since then, there is a clear provision directing how to legally acquire ownership of immovable properties and how it can legally protect the owners in their everyday life necessities.

### **2.3.1 Acquisitive Possession**

Before the adoption of the 2001 Land Law, an ownership right was surrendered to only residential land with the restriction to 2,000 square meters of the amount owned. A right of possession was given to agricultural land with the amount of no more 5 hectares.<sup>89</sup> Each head of the family had to submit an application form for ownership or possession request to the chief of the commune. When a complete application was reached at the district authority, a receipt was given to the applicant. However, final legitimate documents such as titles of ownership or certificates of possession were issued at the central level. Therefore, the land which was legitimately recognized was the registered land. If the possessors wanted to possess land more than 5 hectares, they had to hold the land in the form of concession within a specific time due to a period of each plant. The concession could be renewed after the expiry of the first plant period to the second period and subsequently.<sup>90</sup>

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<sup>88</sup> *Id.* arts. 44, 46, 259 & 261.

<sup>89</sup> *Supra* note 66.

<sup>90</sup> *Id.*

There are many problems remain cumbersome for Cambodian citizens regarding legal possessions. Historically, Cambodia has just been peaceful throughout the country since 1998.<sup>91</sup> The civil war which had mistreated the whole society made people worry much more about their personal security rather than other necessary things. Also, the communication in the whole country makes it impossible for the local authorities to conduct their duty very well. Although all possessors had to submit possession-application forms to the district office in order to obtain titles of possession, in reality not all could do that due to the insecurity reason.

More noticeably, the implementation of the state regulations through local authorities continued unabated. Some areas continued to recognize the possession before 1979 which prevented some people from having their own possession.<sup>92</sup> Therefore, those people could never submit the possession-application forms to the district office since they did not obtain possession of land. This became a great flow of locating on someone's land for a long period of time in which according to the new land law such possession could be requested for a title of ownership.

### **2.3.2 Means of Ownership Acquisition**

As mentioned above, the property right still requires critical analysis. Despite the removal of temporary possession in the new land law, the 2001 Land Law retains some connections related to the 1992 Land Law and other former regulations. Although ownership acquisition which requires to be possessed at least five years of possessions prior to the effective date of the law, all legal possessions which were less than five years are allowed to continue until five years in order to establish the foundation for a definite title of ownership.<sup>93</sup> This flexibility of law seems to cover a wide range of legal possessors even, for instance, those who just bought land a few days before the date of determination and fulfilled the old law and regulations.

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<sup>91</sup> Pol Pot, the former leader of Khmer Rouge died in 1998. The Khmer Rouge guerrilla finally defected to the Royal Government of Cambodia in the late 1998. Before that, the fighting was partly available in Cambodia.

<sup>92</sup> In Preal Commune, Kanhchreach District, Prey Veng Province, the land was not redistributed after 1979. Although solidarity groups had been in process in the early 1980s, the previous owners still functioned mainly on distributing the produce. Therefore, after the disappearance of the solidarity groups, the former owner took their own possession thereby made more landless people. (Free Radio Asia, broadcasted in Khmer language, evening session of February 11, 2007).

<sup>93</sup> *Supra* note 6, art. 31.

Land acquisition could be obtained by social land concessions which contribute to solving landless people. The landless people could obtain residential land or/and agricultural land for their subsistence through the social land concessions. The requirements to obtain titles of ownership are a good means for the landless people to make use of land. For the residential land, within the period of three months after receiving the land, the concession-holders must permanently reside at least 6 months a year. As for the agricultural land, the recipients must cultivate in land within the period of twelve months after receiving the land. All the concession-holders must fulfill the social land concessions for five years in order to request for a definite title of ownership.<sup>94</sup>

Land ownership can also be acquired by a sale contract. Article 65 of the 2001 Land Law states the validity of the sale contract in which the sale contract must be registered by the competent authority certified subsequently by the lower level of authority. Article 69 requires that the price of selling be included in the sale contract. The selling price is important in order to determine how much transfer tax is to be paid on the transaction. Therefore, the contract which does not contain a selling price must be null and void. Article 69 also requires that the tax transfer be paid before registration will be allowed. The sale contract without registration is not sufficient to pass ownership.<sup>95</sup>

Another form of acquisition of ownership is by way of exchange. According to Article 70 of the 2001 Land Law, the conditions of a contract for exchange of immovable property are the same manner as a sale of immovable property. This remains a critical discussion reflecting Article 69 which requires the record of property price in the contract. The law does not state who has the right to evaluate the price of the property for the exchange. If the parties of the contract are to write down the price, they will write down the price below market price thereby biasing the proper market price which leads to the reduction of the state income tax.

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

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<sup>94</sup> *Supra* note 11, art. 18.

<sup>95</sup> There are some exceptions of sale contracts although they are in the authentic form. Article 66 of the 2001 Land Law states the invalid sale transactions can be done towards: a person who is not the owner of the property offered for sale; a joint-owner of an undivided property without the consent of the other joint owners; a person whose immovable property is the subject of seizure; a guardian; a curator; a judge; a government officer; and a person whose property is under foreclosure. Article 67 also states the invalidity of sale contracts between spouses.

law is silent on the process of registering a transfer of an immovable property by way of succession which is different from a transfer by sale or a transfer by exchange. However, it is presumable that if the transfer is by way of intestate succession, the court will be involved in distributing the deceased's assets into any other parts on the estate. The court order which acknowledges the party entitled to the new part of the immovable property could be filed with the cadastral administration to effect the change in the land register noting new successors. In case of testate succession, the procedure necessary to officially register the transfer is not addressed which makes unclear that whether the court order requires to confirm the validity of the will as a registered asset or not. Yet, Article 79 of the land law acknowledges that devolution of immovable property by succession will be covered by the civil code.

It is also possible to acquire ownership over immovable property by gift. Article 79 of the 2001 Land Law states the effectiveness of the gift whenever it is in the form of a contract. Article 81 requires that a contract be in an authentic form and registered with the cadastral administration. Naturally, the donees do not bear any consideration when they receive a gift. However, an accepted gift is irrevocable. The law again does not state whether taxes need to be paid before the transfer will be registered with the cadastral administration. Thus such a flaw in law causes a great loss of state tax income.

## Chapter 3: Policy Considerations

Land is a fundamental resource that is most effectively used and exchanged when rights to land are recognized by the state as a rule of law. In a society where many land problems are found, it is hard to see that society is well developed. Psychologically, people intend to develop their land if they are sure that their rights to land are legally protected<sup>96</sup> unless otherwise stated in law. When a market economy makes inroads into a customary society where a gradually changing attitude towards group or individual ownership of land exists, conflicts and litigations over land rights are certain to abound. The market economy inroad consequently results in private sector disputes, as well as conflicts between private and public interests.<sup>97</sup> In Cambodia, the frequent intervention by the government in land disputes always results in vulnerable solutions because the interventions are in favor of political gain which aggravates the implementation of laws. As such, government intervention may exacerbate the discretionary powers of the judicial institutions<sup>98</sup> as well as the competent government agencies. Therefore, in order to make sure that all rights to land must be assured by law, all government intervention should be done in connection with government policy considerations and the government policy considerations must be implemented in accordance with a rule of law.

When all governmental mechanisms are conducted with regard to rules and regulations, the relevant government agents function depending on their role without fear of pressure from the higher rank officials. A development policy made by the government must benefit the public or a majority of the people with careful considerations. This chapter argues that stable title to land can work for the development of a country. The chapter also discusses how policy considerations can work towards the promotion of development and social welfare.

### 3.1 Stability of Title

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<sup>96</sup> Bernadette Atuahene, *Legal Title to Land as an Intervention against Urban Poverty in Developing Nations*, 36 GEO. WASH. INT'L L. REV. 1109, 1115 n.24 (2004).

<sup>97</sup> Tim Handstad, *Designing Land Registration System for Developing Countries*, 13 AM. U. INT'L L. REV. 647, 663 (1998).

<sup>98</sup> *Supra* note 12, 455 n.116.

A land market affects the value of title to land to some extent. In the areas where there is no land market, the landowners usually do not pay much attention to gaining title to land.<sup>99</sup> For example, in the late 1980s, under conditions of subsistence cultivation, where land values were relatively low, people did not value land titles and only recognized their land through the tradition and culture.<sup>100</sup> Thus their land ownership was confirmed depending on the mutual agreements among the neighbors and the certification made by the local authority such as the chief of the village or sometimes the chief of the commune rather than a formal certification recognized by the state.<sup>101</sup> On the contrary, the areas where the land market was available, the landowners paid much attention to the land titles because those land titles could prevent them from land grabbing and also could be an incentive in terms of land transactions such as land sale and land exchange as well as in property inheritance.<sup>102</sup>

Although the law recognizes only a registered land title, a limited understanding towards title to land among the public remains intricate issues for the government to develop the country. Before the 2001 Land Law, applicants had to keep a receipt of a land title when they already applied for the title. But most people considered that receipt as a land title while some others did not know any necessary documents related to land they should have.<sup>103</sup> Therefore, the 2001 Land Law provides a definite title of ownership of immovable properties and states clearly that the cadastral institution has the responsibility to register the title. Only the title registered in the cadastral institution could prevent titleholders from any invasion. This section argues that to secure a title to land is an impetus to develop land and also facilitates land transactions.

### **3.1.1 Land Development**

Since land is an important resource for every country and community, a careful land administration is very important to develop such a resource. In order to plan a sound land development, the developer must be aware of the basic facts concerning the land.<sup>104</sup> If the land is unsecured by the government, the landowners do not intend to develop their land much more because they are scared of losing what they have

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<sup>99</sup> *Supra* note 19, at 18.

<sup>100</sup> *Id.* at 16.

<sup>101</sup> *Id.* at 18.

<sup>102</sup> *Id.* at 26.

<sup>103</sup> *Id.* at 26.

<sup>104</sup> *Supra* note 97, at 661.

spent on investing in land. In contrast, land with secure title encourages landowners to invest in land, such as by constructing buildings or creating a plantation.

A secure land title encourages the landowners to invest in their property due to the fact that the property will not be usurped. For instance, many individuals and private entities in Phnom Penh as well as in other provincial towns produced a construction boom in their own land<sup>105</sup> since they could gain secure land tenure. Although there were no surveys on the data concerning the number of buildings recently developed, it could apparently be seen that a huge number of buildings have been constructed since the coalition government in 1993. This shows that a secure land title is a good incentive for landowners to commercially invest in their land and also a good way to contribute to the country development. Therefore, the land can be filled with buildings which can be used as commercial centers, markets, and apartments.

A secure land title also provides incentives to the landowners to engage in their environmentally and agriculturally sound practices. People without a secure land title may invest in land less than those who have a secure title.<sup>106</sup> In Costa Rica, a country in Central America, a research showed that the increase of the income per farm significantly depended on the security of the land tenure.<sup>107</sup> Similarly, in South America, some reports have concluded that the lack of secure title to land remained a main restriction on the development of agriculture.<sup>108</sup> In Cambodia, a large number of plantations along the way to Sihanouk Ville are available since the landowners could gain title to land. Therefore, a secure land title encourages the landowners to make their land productive thereby contributing to the increase of the nation's produce.

The development of land through the secure land title reduces land disputes.<sup>109</sup> When the land is always in use, that is there are plants and sometimes gates, the neighbors are aware of their own land boundary even though this is de facto recognition. On the contrary, if land is not secure, the landholders are not likely to plant trees or to pay attention to building gates. As such, it is easy for people wanting land to intend to invade the insecure land thereby making land disputes more frequent.

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<sup>105</sup> *Supra* note 20, at 27-28.

<sup>106</sup> *Supra* note 47, at 195.

<sup>107</sup> *Id.* at 194.

<sup>108</sup> *Id.* at 194.

<sup>109</sup> Alexandre (Sandy) Kedar, *The Legal Transformation of Ethnic Geography: Israel Law and the Palestinian Landholder 1948-1967*, 33 N.Y.U. J. INT'L L. & POL. 923, 974 (2001); CHAN SOPHAL & SARTHI ACHARYA, LAND TRANSACTIONS IN CAMBODIA: AN ANALYSIS OF TRANSFERS AND TRANSACTION RECORDS 5 (Cambodia Development Resource Institute, Working Paper No. 22, July 2002).

### 3.1.2 Land Transactions

Land which may fall into a transaction goal for human beings to develop their living standards requires a legal support from the government in order to fulfill the human desire. Although land is permanent, landowners changed property ownership. The landowners' title to land, in this context, must be secured by the government, especially when the land is transacted. A secure land title is therefore a positive tool for economic development because landowners can proceed with legal land transactions such as collateral, and sale.

A secure land title could easily facilitate farmers to obtain loans for agricultural purposes. When farmers want to invest in farming equipment, they are able to receive loans to finance the purchase because they can make personal guarantees by use of a land title as collateral. Article 197 of the 2001 Land Law assures that immovable property can be used as collateral to secure the payment of a debt by way of mortgage, antichresis, or gage. This advantage of law encourages people to actively take part in land transactions. The mortgagees feel secure with the loans they provided to the mortgagors because they could claim for sale on the immovable property in court on the due date of debt.<sup>110</sup> As such, the mortgagors also try their best to make use of loans in order to pay back the debts avoiding losing their property. Through antichresis, the debtors obtain loans to fulfill their financial requirements by assuring that the creditors could claim for sale of the property to be reimbursed by privilege and in preference to other creditors.<sup>111</sup> Also, a secure land title could allow the titleholders to use it as the gage to assure their debt.<sup>112</sup> However, all the forms of collateral contracts are valid only in case the forms are made in a written authentic form and recorded in a cadastral register.<sup>113</sup>

Land transactions can also proceed with sale contracts or contracts for exchange if a land title is well secured. In idealized free market, private landownership surrenders full right to the landowners who can not be deprived of their ownership unless otherwise stated in law. Thus landowners are allowed to sell

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<sup>110</sup> *Supra* note 6, art. 198.

<sup>111</sup> *Id.* art. 206.

<sup>112</sup> *Id.* art. 219.

<sup>113</sup> *Id.* arts. 199, 207 & 220.



or exchange their property to the buyers when needed. Although there are some restrictions<sup>114</sup> to the contract by way of sale or exchange, the concerned parties can benefit each other by fair and proper agreements. The transactions benefit not only the parties, but also the state which gains revenue through the tax payments on the property transacted.<sup>115</sup> Noticeably, the transactions can never be valid unless all the contracts of transfer of ownership are recorded with the cadastral administration.<sup>116</sup>

Lease on immovable property which has a secure title plays a major role in the increase of agricultural productivity through land transactions. Article 106 of the 2001 Land Law states that in a contract of lease on immovable property the owners could get the regular payment of rental from the leasees. Since the leases can be long term such as 15 years or more, the leasees who have resources to invest in land may easily lease the land for producing the crops. The landowners incapable of farming due to a lack of working force or agricultural resources can still get benefit from their land through lease agreement. This is therefore a good means to improve not only the living standards of landowners who are not able to invest in land by themselves but also land productivity. In Vietnam, for example, the government recognized a defect in the 1988 Land Law which did not allow the Vietnamese people to lease land thereby discouraging the increased agricultural productivity or foreign investment. This became an impetus for Vietnam to adopt a new land law in 1993 which recognizes land leasing by giving increased rights and security to the Vietnamese land-users.<sup>117</sup>

### **3.2 Promotion of Development**

A vigilant land administration is a good strategy for the development of land. A government thus must concentrate on a land development plan aimed at improving the way of life of the citizens. All plans

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<sup>114</sup> *Id.* arts. 66 & 67. The following persons are forbidden to sell their property: a person who is not the owner of the property offered for sale; a joint-owner of an undivided property without the consent of the other joint owners; and a person whose immovable property is the subject of seizure. The following person are not allowed to purchase: a guardian cannot purchase the property of his ward; a curator cannot purchase the property he/she administers; judges or government officers cannot purchase the property over which they have jurisdiction or that they were charged to sell; a person whose property is under foreclosure cannot purchase this property. Also spouse cannot transact the property between each other.

<sup>115</sup> *Id.* art. 69. Paragraph 2 of Article 69 states that "A contract of sale of immovable property shall be registered only when all parties have proven by evidence that all taxes on the subject property have been paid."

<sup>116</sup> *Id.* art. 69.

<sup>117</sup> Hong Anh Tran, *Case Note and Comment: An Assessment to the Vietnamese Land Law and Regulation*, 13 WIS. INT'L L.J. 585, 585 (1995)

must have advantages and disadvantages. However, most vantage points for a development plan are more preferable to disadvantages. In order to reach this goal, the government therefore should make policy considerations based on the most vantage points. For example, in order to develop one area in the future, planners should carefully study the details of the affect which may be caused by the development plan.

This section proposes some considerations for the promotion of development in squatter areas and vacant land. Squatter areas exist throughout the world especially in the developing countries which require a very careful management from the local authority. Also vacant land which causes a huge loss of land productivity should be necessarily taken into account for their effective use. Thus this section also proposes some measures to enforce landowners to make use of land.

### **3.2.1 Squatter Areas**

A true list of squatters is an important instrument in realizing who is really staying in the squatter areas and therefore ensures that every squatter will obtain benefit from a development plan if the government plans to develop those squatter areas. In this regard, the local authority plays a vital role in controlling the accurate number of people in the area. Since a squatter area is an easy place for the flow of people, without a careful check of the list of squatters may cause an impact on the future development plan. For example, in Deikraham Community A in Village 14, Tonle Bassac Commune, Chamkarmorn District of Phnom Penh, when the government planned to develop the village, the number of the families in a required list of the squatters was exaggerated.<sup>118</sup> Therefore, in order to obtain an accurate list of squatters, the government should have a statistical number of the squatters in all squatter areas certified by the competent authority every year although they are not in the forthcoming development plans.

Obtaining an accurate number in a list of the squatters becomes more effective in managing a squatter area if the squatters are divided into small groups. A large number of squatters in each community may cause counting inaccuracy because, in that community, the community members do not know each

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<sup>118</sup> In a list prepared by the chief of Deikraham Community A subsequently certified by the District Governor of Chamkarmorn, there are 289 families in which 48 families were exaggerated (on file with author).

other and therefore it is hard to control the accurate number.<sup>119</sup> A small group of about 30 families in the community provides an opportunity to a group leader to control the group members very well.<sup>120</sup> Also a group allows group members to know each other clearly. This is a good way to easily check the list of the squatters in each community with small groups. If there is any person comes to live in the group; each group member, especially the group leader knows and therefore could claim against the new comer. The list of the squatters should be frequently announced to those who are living in the squatter areas and guaranteed by the authority as a legitimate list of squatters. However, those who have names in the list should permanently stay in the squatter areas with some conditions otherwise their name should be removed from the list. The leaders of small groups should be given responsibility to confirm who do not stay in the areas.

The forbiddance of the sale of a house may also be a positive means to prevent chaotic settlement in the squatter areas. The local community usually knows very well that the squatters do not have enough legal evidence to claim for the ownership, but those squatters have stayed for a long period of time. Therefore, they have no right to sell their house or land. In order to achieve this goal, a list of squatters plays a crucial role in preventing a sale because a buyer will not be permitted to record the name in the list. Since all sale contracts are not recognized, those who still buy the immovable property in the squatter areas by any means must not be recognized in a list of squatters. Thus the buyers will never have their name in the legal list which is recognized by the competent authority thereby deterring them from buying immovable properties in the squatter areas.

### **3.2.2 Vacant Land**

Imposing land taxes is a good strategy to reduce vacant land. As mentioned in chapter 2, Cambodia follows a land registration system which will provide the information necessary for a successful tax system. A land taxation system could provide several benefits such as increasing national revenues, producing a fairer system because all land is specifically identified, and strengthening the local authorities

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<sup>119</sup> Report on the Management and Development of Community prepared by the Phnom Penh Municipality, No. 609/RBK/Kr (August 8, 2006). The report recognized the mistake of controlling the statistic of the people in the community thereby having a negative affect on the individual rights and the implementation of laws.

<sup>120</sup> A personal interview made in August and September of 2006 showed that in a large number of the community around 200 families, each community member is hard to know each other.

by giving responsibility to collect land taxes.<sup>121</sup> Moreover, landowners intend to improve their land if the landowners are obliged to pay the taxes because they require income from the land. In contrast, if they do not have any duty with their land, they are more likely to keep their land for speculative purposes without any improvement. For example, in the suburb of Phnom Penh, large plots of vacant land which are enclosed by fences or walled gates are awaiting for a good chance to be sold; therefore, the Cambodian government should consider imposing land taxes in order to improve productivity of large parcels of vacant land.

Also, by forcing landowners to effectively make land productive is another good strategy in reducing vacant land. Although land is taxed, the enforcement of land use<sup>122</sup> brings many other advantages to the country such as increasing productivity and providing information necessary to identify tax payers and punish unused landowners. If land taxes are strictly imposed, tax collectors require that landowners record types of land use. If landowners do not invest in land, they shall be punished to pay extra tax, otherwise the land must be considered free and open. Thus, the best way to increase the agricultural productivity is to require landowners to record types of crops they produce in their cultivated land in a tax list.

### **3.3 Social Welfare**

The squatters usually do not have specific skills and knowledge<sup>123</sup> for their livelihood and therefore need support from the government in order to improve their way of life. Those squatters are the most vulnerable people when facing an eviction. In order to reduce such vulnerability, the government should consider possible ways which enable the squatters to sustain their living standards. Although costly in the short run, government support will lead to a good result in the future which will reduce not only the big load of the government on the social welfare, but also poverty in the entire country. Also when citizens are able to sustain their living standards, their children will be sent to school. For the future generation, consequently, full literacy is expected to exist. Therefore, the investment on capacity building of the human

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<sup>121</sup> *Supra* note 97, at 664.

<sup>122</sup> Land use can be assumed as an economic activity and it is determined by economic forces. See also MATHER, A.S. LAND USE 26 (1986).

<sup>123</sup> A personal interview made in August and September of 2006 showed that among 108 squatters, 61% of them did not finish primary school.

resources will benefit the country not only at the present time, but also in the future with sustainable development.

This section therefore proposes two main policies such as vocational training and a loan policy to the government in order to improve the living standards of the squatters. The former provides training to improve the specific skills which fits the squatters' capability as the only way to make the squatters sustain their way of life. The latter allows for loans in order to initiate the squatters' businesses.

### **3.3.1 Vocational Training**

In order to effectively support the sustainable livelihood of the squatters, research on how they survive is a very important tool to set up the policy. Research should mainly focus on how they could gain income for their daily life and what they prefer to do when possible. Since squatters are also strong in terms of the labor force, the strengthening of skills for the labor force by increasing technical and vocational training is the way to achieve specific goals. Thus, the government should plan to train them based on the skills that are preferable such as for barbers, tailors, painters, and carpenters.

Cutting hair is one of the skills which can easily provide income for those who have good skills in this occupation. By conducting research in squatter areas, the government knows the number of squatters who is interested in the field of barbering. Thus the government could cooperate with the donors or NGOs to prepare a free training course for those squatters. This training is not necessarily conducted over a long time, because the trainees could easily gain the knowledge within a short period of training time.<sup>124</sup> Therefore, the support for training does not consume much money, but in turn, provides a very fruitful result which contributes to the nation's development.

Tailoring is another profession which the government should take seriously into account for the improvement of squatters' skills. The squatters who are interested in the tailoring field should be trained in groups. During training, the trainees could produce clothes which are available for market consumption; therefore this training course can obtain some finance from selling clothes to support the training. If those squatters are trained to improve the new models of the suits, they are able to introduce up-to-date models to

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<sup>124</sup> Usually it takes about 1 or 2 months to know how to barber.

the market which may attract customers. Moreover, to run this kind of business when finished the training, the trainees do not require a big shop, but are able to run it in their house.

The training on painting towards the persons who are interested in this field is a good means to improve the living standards of the squatters. Some squatters are good at painting although they had been little trained on it.<sup>125</sup> As such, a further special training for those squatters may help them improve their innate talent available for a better painting. The training course can produce paintings which can be sold to obtain some self finance to support the course. Thus, the government may not spend much money to conduct the training course. Moreover, after training the trainees are able to run their business in a small scale which will not require much capital.

Carpentering is another skill which may improve the way of life of squatters. The squatters who are interested in carpentering should be encouraged to join the training course of carpentering because they will be able to start their business after the training course.

### **3.3.2 Loan Policy**

In order to reach the above goals, government loans should be carefully taken into account. As mentioned above, all squatters have to be strictly controlled so that the local authorities can make an identification. Usually, squatters lack financial resources<sup>126</sup> to run their business and since they are poor, they will never receive loans from the private institutions. Therefore, when the squatters are clearly identified, it is more convenient for the government to fulfill loan policies. In this case, government loans play a vital role in allowing squatters to run their business which in turn, the government could gain interest from the loans. This also contributes to making the country development sustainable.

Government loans which help a small scale start-up business for the squatters are necessary to create a sustainable income for their daily life. Long-term loans with low interest rates can be a strong incentive for the poor to invest in the field they are interested in. For instance, as discussed in subsection 3.3.1, some squatters who become barbers, tailors, painters, or carpenters may face financial shortages to

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<sup>125</sup> A personal interview made in August and September of 2006 showed some squatters were interested in painting and they even wanted to open a painting shop if they have enough resources to do so.

<sup>126</sup> Many squatters want to make a better business, but they cannot do that since they are facing the financial resources.

begin a start-up business. So if the squatters can obtain the loans, they are able to start their business. Also any squatters who want to be retailers or wholesalers can afford the financial resources to do so and will gain better money to support their living standards. Although the government might face financial shortages in supporting the project in the short run, the results will be greatly beneficial to the whole society for a sustainable future.

Providing government loans benefits not only the loan borrowers but also the government. Through the loan policy, the government can get the interest from the loans which will increase the national income as well. The local administration will also strengthen through the delegation of power from the central government in order to implement government policy.<sup>127</sup> When the local authorities become strong, it is efficient to manage local loans. The interest gained from the loans could be used to develop some other areas in the local levels or national levels. This policy may reflect the development of the country contributed by local people thereby making them more active to build the country.

More importantly, through the loan policy, sustainable development comes into existence. When the citizens can afford to improve their living standards, they send their children to school thereby increasing literacy. Thus the country increases the number of human resources which can effectively contribute to the development. Also the government does not carry a big load for social welfare, instead the government focuses more on the development of other necessary areas such as infrastructure, schools, hospitals, and technology. Therefore providing loans will increase the economic growth which can contribute to the existence of the development.

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<sup>127</sup> *Supra* note 97, at 664.

## Chapter 4: Areas for Improvement

A plan of the government to improve in any area must be in accordance with the rule of law. In Cambodia, as seen in this century, the number of land disputes has increased rampantly year by year.<sup>128</sup> The weakness in the land dispute resolutions comes from the weak power of the relevant competent authorities which are not independent. The decisions made by the competent authorities are dependent upon the higher rank officers or leaders thereby exacerbating the implementation of laws and regulations. This tendency makes the government agencies which are responsible for implementing laws and regulations fearful of following the laws strictly, and sometimes the cases of land disputes must be sent to higher authorities although they could be solved at the lower levels.<sup>129</sup> Therefore, the effectiveness of the implementation of laws requires that the government agencies be strong.

This chapter argues that only law enforcement by the government agencies and judicial institutions allows for the society fair for development. The chapter then proposes to apply a strict law to adverse possession for those who have possessed the immovable property in accordance with the law. Finally, this chapter also suggests the possible relocation policies which do not seriously affect the daily life of the squatters, but improve their living standards.

### 4.1 Enforcement

The gist of the perpetuity of the implementation of laws mainly depends on the quality of the relevant institutions. The government which has the main responsibility to implement the laws adopted by the national assembly has to ensure that the government agencies must follow the laws strictly. In order to reach this goal, each agency should be free from any other pressure. For example, the local authorities who

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<sup>128</sup> Cambodian Human Rights and Development Association, *Human Rights Situation Report 2005, ADHOC Fifth Annual Human Rights Report* 40 (Report No. 5, March 2006); Free Radio Asia broadcasted in Khmer language, evening session of January 24, 2007.

<sup>129</sup> *Supra* note 40.



have the right to clarify who possessed a parcel of land lawfully<sup>130</sup> must assure that all legal evidence must be fulfilled. Therefore, the government should provide more right with high responsibility to accomplish the local duty because the high responsibility is the only way to ensure that each government agency can successfully achieve plans in accordance with the law. Also, the judicial institutions which interpret the law must be ensured that their professional ethics are highly respected.

This section argues that the government agencies play a vital role in order to enforce the laws effectively. Thus the government should consider the resources available at each agency and control strictly how this works. It also suggests strengthening the judicial institutions which have the main role to adjudicate all the cases in their jurisdiction without any prejudice. The judicial independence is an important point for discussion.

#### **4.1.1 Government Agencies**

In a country where the government agencies are strong, the government development plans can be easily achieved because all the agencies have to follow the same laws thereby making them have standards of rule or general rules. Yet, in a country where the level of the rule of law is relatively low, it is hard to make the agencies work well in accordance with the laws. The rule of law in this sense requires that the government's preferences be attained by general rule rather than by personal discretion. However, if the government does not strengthen the government agencies, the poor implementation of laws comes into existence thereby making it impossible to achieve the government goals. Therefore, in order to succeed in implementing the laws, the government must delegate some power to the government agencies from the central level to local level, and strictly punish the government agencies for misconduct. The government agencies must take high responsibility for the implementation of laws.

The delegation of services to the government agencies can achieve a number of tasks that the government plans. The government has a mandate within a limited period of time, so it is required that all agencies work out simultaneously. Delegation is beneficial because it is used to overcome the task very successfully within the limitation period. The government can use delegation to increase a range of services that will be provided to government agencies. For example, governments of large countries delegate to the

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<sup>130</sup> Sub-decree on the Sporadic Land Registration, No.48ANK/BK/May 31, 2002, art. 7.

ministries of defense the task of national security and delegate to the ministries of finance the task of managing their country's economy. In reality, the modern nation could not exist without delegation.<sup>131</sup> In order to overcome delegation policy, the government of Cambodia should consider how to effectively delegate the right to every government agency for the development plan in accordance with the rule of law. For example, the local authorities should be given the right to control the people in the territorial authority and certify who has the right to possess immovable properties.

Self-responsibility of each government agency is crucial to help enforce the laws which are required to be fair for the public. Each agency has to be responsible for their duty in terms of the implementation of laws. For example, the chiefs of the communes who have the duty to bring the possession-application forms to the Cadastral District<sup>132</sup> have to ensure all the forms are correct. The certainty of possession-application forms also reflects that the applicants are legally protected. All the documents made by the local authorities should be treated as a highly legitimate basis which is to be certified by the provincial authorities for the complete legal requirements. This releases a burden of the higher authorities and they therefore have more time to focus on other development plans.

More importantly, in order to successfully enforce the laws, each government agency has to be strictly punished for their misconduct. The 2001 Land Law has some provisions to punish the authorities who infringe upon public or private properties. For example, Article 261 punishes the officials or authorities who directly or indirectly abuse the power or attempt to seize immovable properties from a peaceful occupant.<sup>133</sup> This provision appears to provide the subordinate authorities with their own decision to make sure that what they are planning to do, even under the orders of higher rank officials is legal or not. Thus the subordinate authorities should have the right to reject the illegal order from the higher authorities. Yet, in this case, the law fails to protect the subordinates who deny following the wrong orders from the higher authorities in case they are asked to do so, because the higher authorities usually have pressure on

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<sup>131</sup> Arthur Lupia, *Delegation of Power: Agency Theory* 1 (2001), <http://www-personal.umich.edu/~lupia/delegation.pdf> (last visited April 2007).

<sup>132</sup> *Supra* note 10, art. 7.

<sup>133</sup> The punished official or authority shall be subject to a fine from ten million Riels to twenty-five million Riels with additional administrative sanctions. As for the imprisonment, it can be done from six months to 2 years. Articles 261-266 of the 2001 Land Law refer to the punishment towards the administrative authorities.

the lower authorities.<sup>134</sup> However, if punishment is exercised towards all the relevant authorities for their misconduct,<sup>135</sup> other authorities are scared of such commitment.

#### 4.1.2 Judicial Institutions

Law enforcement can be successfully implemented when the judicial system in the country is strong. The suffering of people by injustice often arises from the poor judiciary. In developing countries, it is possible to strengthen this institution by ensuring a strict separation of power, providing appropriate salary for the judges, ensuring that the judges have the personal security, and strictly punishing those who commit indiscretions.

The independence of the judiciary is guaranteed by the constitution<sup>136</sup> and this branch plays a vital role in enforcing the laws. The Cambodian constitution assures that only the judiciary has the right to enjoy judicial power.<sup>137</sup> The king guarantees the independence of the judiciary where the Supreme Council of Magistracy assists the king in this matter.<sup>138</sup> More importantly, the judges cannot be dismissed.<sup>139</sup> This provision encourages the judges to stay independent from other branches because they do not have the pressure from the other branches of government. In Japan, the constitution provides for the democratic fundamentals of the separation of state powers as well as the means of checks and balances among the legislative, executive, and judicial branches so that none of them may go beyond the others in the exercise of their powers.<sup>140</sup> Paragraph 3 of Article 1 of the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period in 1992 states clearly the principle of the independence of the judiciary as follows:

The principle of the independence of the judiciary which entitles and requires judges to ensure the judicial proceedings are conducted fairly and that the rights of the parties are respected. They must have decent and sufficient material conditions for the exercise of their

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<sup>134</sup> Mr. Touch Meng Srieng, a Chief of Boeung Sralang Commune said that when doing something in accordance with the laws which affects the higher rank officials, those officials always respond, "Are you foolish? Don't you want to stay here? Do you want to leave here?" (Radio Free Asia Broadcasted in Khmer Language, March 18, 2007).

<sup>135</sup> It is more complicated to understand the reality of land issues in Cambodia these days. The disarray of the land management makes Cambodian people disoriented. The unfair decisions in notifications made by higher rank officials to give land to anyone, usually rich or powerful, undercut the public trust. See Moneaksekar Khmer (Phnom Penh), May 10, 2007, at 1 & 4.

<sup>136</sup> *Supra* note 30, art. 109.

<sup>137</sup> *Id.* art. 111.

<sup>138</sup> *Id.* art. 113.

<sup>139</sup> *Id.* art. 114.

<sup>140</sup> The General Secretariat of the Supreme Court of Japan, *Justice in Japan*, 1 (2005).

functions. Judges must receive suitable training and be remunerated adequately to ensure their impartiality and independence.

This article states that the judges must adjudicate based on sufficient evidence from both parties without prejudice to any party.

Providing appropriate salaries for judges encourages them to focus more on their professional ethics and stay away from corruption. Since adjudication is conducted in the name of Khmer citizens in accordance with the legal procedures and laws,<sup>141</sup> the salary of the judges should be special than that of other officers in other government agencies or other institutions. When judges' salary is enough, the judges do not worry about their living standards any more, but in turn they have to fulfill their work correctly. For example, in the United States, the salary of the chief justice<sup>142</sup> is more than the requirements of the living standards, so the judicial system in this country works very well. It is necessary to adequately finance the judicial institutions for their day-to-day functioning and the implementation of reform programs.

In developing countries where the rule of law is not well performed, providing personal security for the judges is necessary to prevent fear of judgments. In 2003, the courts were fearful after a shot at Sok Sethamony, the Phnom Penh Municipal judge on his way to work in the central part of the city.<sup>143</sup> This has appalled the judges for their judgment and has also undermined the public trust in terms of the fair judgment. For land disputes between the poor and powerful individuals, judges usually adjudicate in favor of the powerful individuals' interests.<sup>144</sup> Therefore, if judges are guaranteed safety in making fair judgments, they will decide the cases in accordance with the laws.

Strict regulations and punishment towards judges who misconduct their duty is also very crucial to enforce laws effectively. The judges, who, as mentioned above, should be provided with appropriate salaries, must follow strict regulations for their daily life. Any contact of the judges with related-litigation persons should be restricted. Thus when judges fail to follow such regulations, they must be punished. The strict regulations therefore prevent judges from corruption so that they feel free to adjudicate by following all legal procedures and laws.

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<sup>141</sup> *Supra* note 30, art. 110.

<sup>142</sup> Judges' salary in the Supreme Court in Ohio; <http://www.sconet.state.oh.us/introduction/salary/default.asp>.

<sup>143</sup> Kevin Doyle & Phann Ana, *Professional Killing on the Rise in Cambodia*, The Cambodia Daily, April 27, 2003, <http://cambodia.ahrchk.net/mainfile.php/news200304/601/> (last visited April 2007).

<sup>144</sup> Land disputes between the powerful and the poor (Free Radio Asia broadcasted in Khmer language, May 8, 2007).

## 4.2 Adverse Possession

The method of land management in Cambodia differs in comparison to other countries due to the vulnerable changes of the regimes in Cambodia. The civil war hindered the Cambodian government from managing land well thus many intricate land issues appeared to the present time. Since all possessions before 1979 were not recognized by the 2001 Land Law,<sup>145</sup> the success of land distribution depends upon how the land distribution is administrated. More importantly, the law has not been disseminated throughout the country which makes some people remain unknown what the 2001 Land Law is. The failure to stipulate adverse possession in the law or to adopt the law of adverse possession also makes the government more difficult to solve the squatter's settlement.

Stephen Jourdan defines adverse possession as "the process by which a person can acquire title to someone else's land by continuously possessing it for a set limitation period, in circumstances where the owner either has, or is deemed to have, the right to recover the land."<sup>146</sup> While the first meaning of adverse possession defined in Black's Law Dictionary refers to "the use or enjoyment of real property with a claim of right when that use or enjoyment is continuous, exclusive, hostile, open, and notorious."<sup>147</sup> This section proposes the possible elements of adverse possession which should be well implemented. The section details why each element is necessary for adverse possession. By comparing the conditions in England and the United States, it also suggests how to find an appropriate period of time to acquire land through adverse possession.

### 4.2.1 Elements of Adverse Possession

Adverse possession represents a strong means to show the imprecise aspect of property ownership. The essential characteristic of acquisition by adverse possession is the idea that if the owners of the property fail within a certain period of time to secure the eviction of a squatter or trespasser from their land, the titles are extinguished and they are thereafter statutorily impeded from recovering possession of the land.<sup>148</sup> The 2001 Cambodian Land Law which stopped any beginning of possession when the law came into force shows that no any possessions including adverse possession are allowed. However, Article 38 seems to provide five elements of adverse possession and these are discussed below.

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<sup>145</sup> *Supra* note 6, art. 29. The other regulations before 2001 also denied the possession before 1979.

<sup>146</sup> *Supra* note 16, at 3.

<sup>147</sup> *Supra* note 15, at 59.

<sup>148</sup> KEVIN GRAY, ELEMENTS OF LAND LAW 740 (1987).

First, the possession must be unambiguous.

The possessor shall occupy the land unambiguously means that whether the possession is exercised by himself or somebody else on his behalf, the possessor has to possess in his capacity as an exclusive possessor acting on purpose for himself but not on the basis of some other rights. If the real possessor remains hidden behind an ostensible possessor, he cannot claim a title of possession allowing acquisition of ownership. His possession is null and void.<sup>149</sup>

This also means that the acquirer must have sole physical occupancy of the property. The extent of physical occupancy must generally correspond with the customary and appropriate uses made on land of that nature and size. For instance; for residential property, the possessor is required to take up residence in the appropriate structure on the premises; while for the cultivated land, the possessor is required to cultivate in land; for ranch or grazing property, the possessor is required to use the land for the grazing of livestock. The possession of such land must be a commonly recognized method of establishing a customary and appropriate use of the property.

Second, the possession must be non-violent.

The possessor shall occupy the land non-violently means that any possession originated through violence is not considered to conform to the law. However, if violence is used against the third parties who try to get the immovable property without right to do it, such violence does not interfere with the possession initially peacefully acquired.<sup>150</sup>

The claimant must be in possession within the limitation period without being evicted either physically or through court action.

Third, the possession must be notorious to the public.

"The possessor shall occupy the land notoriously to the public means that the possessor has to possess without hiding himself to those who could want to contest his rights on the immovable property and are not able to see him or to determine who he was."<sup>151</sup>

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<sup>149</sup> *Supra* note 6, art. 38, para.2.

<sup>150</sup> *Id.* art. 38, para.3.

<sup>151</sup> *Id.* art. 38, para.4.

The possessor must use the property in a manner that is open to the public and sufficient to put those who would pass the property on notice that there is occupation therefore it must not be clandestine and it must be quite obvious to those who customarily see or pass through the property. The possession is supposed to apprise the community or neighborhood of the land which is occupied by an occupant.

Fourth, the possession must be continuous.

The possessor shall occupy the land continuously means that the possessor has to act in a normal expected regular way during the required time to claim acquisition of ownership.

The fact that occupation is interrupted for a short period of time or that the land is left uncultivated to recover fertility does not constitute an obstacle to acquisition of ownership.<sup>152</sup>

The possessor must be in possession for the requisite statutory period. The continuity of possession may be established even if the property is used only for certain periods during the year, so long as those periods are consistent and regular.

Fifth, the possession must be in good faith.

"The possessor shall occupy the land in good faith means that the possessor is not aware of any possible rights of third parties over the property that the possessor has been possessing."<sup>153</sup>

This element of adverse possession requires that the possessor establish that the property possession was against the rights of the property's true owner and such action is inconsistent with the title of the true owner but it does not require the possessor to establish evil intention or hatred towards the true owner. The state of mind of the possessor is necessary to determine whether the possessor is acting in good faith or not. In England, the state of mind of a possessor may be drawn from the concept of either claim of right where the possessor claim to be the owner of the property whether or not such a claim has any justification or color of title where the possessor has an instrument that is believed to convey title, when in reality such an instrument is ineffective or inoperative.<sup>154</sup>

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<sup>152</sup> *Id.* art. 38, para.5.

<sup>153</sup> *Id.* art. 38, para.6.

<sup>154</sup> MARIANNE M. JENNINGS, REAL ESTATE LAW 151-52 (1985).

## 4.2.2 Limitation Period

The 2001 Land Law should introduce the limitation period for an action for the recovery of land from the date on which the right of action accrues. In England, although the land has been well managed, the normal limitation period for claiming a right to land was 12 years from the date on the accrual of the right of action stated in the Limitation Act 1980, s 15(1) as:

"No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims, to that person."<sup>155</sup>

Through the limitation of time, the possession can deprive not only the owner of his right to evict the trespasser, but by its operation, also may permit the court to grant title. In the United States, the statutory time requirements for adverse possession vary from state to state, which may be as little as one, or as many as sixty years depending on the specific purpose and on state law.<sup>156</sup> Cambodia therefore should reconsider this matter in law.

## 4.3 Relocation Policies

In order to develop the squatter areas, the relocation policies require careful consideration from policy makers. Although relocation of squatters may be a financial drain on national resources especially on local resources, the government should carefully allocate funds in the national budget in order to provide specific budgetary outlays for this purpose because the results will have a great advantage for the country's development as a whole. Eviction of squatters without relocation is an inhumane response that merely exacerbates the existing predicament because the squatters are likely to have nowhere to go.<sup>157</sup> It will also ineluctably cause increased homelessness, vagrancy, crime and penury, and cause families to seek similarly illegal living situations elsewhere. Therefore, relocation of squatters must be carefully planned by the government and its processes have to be well implemented.

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<sup>155</sup> *Supra* note 16, at 259. Until 1879, the limitation period was 20 years. But by the Real Property Limitation Act 1874, the period was reduced to 12 years with effect from January 1, 1879, in relation to actions commenced on or after that date.

<sup>156</sup> Todd Barnet, *The Uniform Registered State Land and Adverse Possession Reform Act, A Proposal for Reform of the United States Real Property Law*, 12 BUFF. ENV'T'L. L.J. 1, 1 (2004).

<sup>157</sup> *Supra* note 97, at 1167.



This section argues that in order to achieve a government plan for developing the squatter areas, on-site upgrading policies must be necessarily included. The section proposes several techniques in order to achieve the goal. Lastly, this section proposes how to effectively use the state land for social land concessions in order to improve the way of life of the squatters.

#### **4.3.1 On-Site Upgrading**

Developing squatter areas does not necessarily mean all the squatters must be evicted. As mentioned in chapter 3, the government has to focus on social welfare in order to improve the living standards of squatters so that they are able to obtain their own sustainable income. By providing a full ownership right to squatters who fulfill legal requirements, this strategy may ease the way for government to develop squatter areas through on-site upgrading. The same approach could be taken with squatters acquiring through limitation, and squatter communities that effectively develop their land.

Providing a full ownership right to the squatters who follow the requirements of laws is necessary for the government to set up the development plan in the areas. According to the 2001 Land Law, some squatters are entitled to obtain the title of ownership<sup>158</sup> but in reality the squatters did not have titles because of a lack of financial resource. Thus, the government should have a policy to surrender the titles of ownership to those squatters. When the squatters have the title of ownership which can be protected by law, they may intend to improve their land. As discussed in chapter 3, the squatters are encouraged to have vocational training and to obtain loans from the government as a result they fulfill the development plan because they have their own financial source.

Also, providing a full ownership right to squatters by amortizing is a vital means to succeed in the government development plan. Some squatters who do not have legal proof to land legitimacy but they stay there for a long period of time in good faith, they shall be entitled to obtain full titles of ownership with some necessary conditions. For example, the squatters must amortize within time limitations in order to obtain full ownership. When those squatters complete the conditions, the government should provide the titles for them. Moreover, the government can allow a company to construct buildings in the squatter areas where the squatters could have contracts with the company to pay for the newly-built building within

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<sup>158</sup> *Supra* note 6, arts. 30, 31, 37 & 38.

appropriate limited time. When the contract is fulfilled, a definite title of ownership should be given to each squatter family.

The government could also provide a full ownership right for communities where squatters live in order to develop the areas. When the authority makes sure that squatter communities are strong and they could protect their interests very well, the government should provide a title of ownership for those communities. Community leaders must be responsible for the interests of the whole community. This strategy is also a necessary way to prevent from illegal location because the community could apparently see who resettled without permission. Therefore, if the government plans to develop those squatter areas, it is more convenient to discuss with the community leaders to find way how to achieve the plans. Yet, this strategy requires a strict management from the authority<sup>159</sup> otherwise it will never succeed. Thus, a strict management of squatter areas requires that there be a law to govern such areas.

#### **4.3.2 Social Land Concession Policies**

A careful plan towards social land concessions is crucial to obtain a good result of the government development plan. The 2001 Land Law provides chances for the poor to obtain land ownership through the social land concessions. There are many possibilities in assisting the poor at any level of authorities because there are local social land concessions and national social land concessions.<sup>160</sup> The local authorities play a vital role in succeeding this goal.<sup>161</sup> Yet, it requires highly transparent allocation made by the local authorities in order to effectively rescue the poor. For example, in order to develop the squatter areas by use of the social land concessions through the relocation policy, the government must prepare at least a basic infrastructure for the relocation to urban areas and agricultural land in addition to the relocation to remote areas, and also provides some loans for the squatters who lack financial resource to make a living.

The policy of relocation to urban areas can be successful if a basic infrastructure is constructed. In Phnom Penh, for example, there is some vacant state private land which mostly allows squatters to

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<sup>159</sup> Beng Hong Socheat Khemro, *Legal Framework: Present Land Tenure in Cambodia 10* (2006). It is a teaching manuscript for master students at the Royal University of Law and Economics in Phnom Penh, Cambodia (on file with author).

<sup>160</sup> *Supra* note 11, art. 4.

<sup>161</sup> The local authority (commune council) is authorized to select the target land concession recipients in his/her territorial commune. See also *id.* art. 28.

relocate.<sup>162</sup> Practical experience has shown that relocation of squatters to new areas without providing the basic infrastructure such as roads, water supplies, sewerage system and schools resulted in failure.<sup>163</sup> As discussed in chapter 3, the squatters are encouraged to have vocational training so that they are able to improve their way of life wherever they live. Thus the improvement of the new areas will be available due to the better living standards of the new settlers.

The encouragement of squatters to live in rural areas where the social land concessions are available is more crucial to achieve the government development plan. The government must provide incentives for those who are volunteers to live in the remote areas. For example, the squatters could obtain residential land and agricultural land for their subsistence. The government could cooperate with NGOs to train those squatters to know how to effectively cultivate farmland if they do not have farming skills. More importantly, the government should provide basic loans for the squatters in order to start their business. So, if the infrastructure is built and the possible way to improve the living standards is available, the squatters must stay in the new areas permanently. Relocation to remote areas is a way to diffuse population growth into rural areas.

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<sup>162</sup> *Supra* note 159, at 8. In Phnom Penh there are 10% of vacant land in which 3% are vacant state private land.

<sup>163</sup> In 1992, squatters who were living in Sambok Chab Village were moved to live in the suburb of Phnom Penh without basic infrastructure. As a result, they left it and came back to stay in the same place. See also *supra* note 23, at 4.

## Conclusion

Cambodia seems to have endeavored to achieve a new land reform policy in order to enter the market economy. Since the principle of private property was introduced in 1989, efforts of the government to manage land have changed the responsible institutions several times.<sup>164</sup> The abrogation of the 1992 Land Law showed that the society needed<sup>165</sup> devising intermediate legal positions that outperform systems of pure private property; thus the new land law was finally ratified in 2001 although there was still some imperfection in law.

The foregoing account of land registration in Cambodia indicates that the procedures which are considered to be merely technical may, in fact, be highly complex and convoluted. The stability of a land title could encourage the titleholders to develop, change, and alienate the land as they please without restrictions. Yet, the poor understanding of the public towards legal necessities also makes it impossible for the public to avoid their vulnerability to the interpretation of the laws and regulations. The lack of resources in the government agencies results in hardship and slowness of the implementation of laws. Land registration may easily fall into corruption committed by the relevant institutions.<sup>166</sup>

According to the demographical status of Cambodia and the total land area, the Cambodian people should not be faced with the landlessness. However, in reality, although in the remote provinces where the density of the population is very low, there are inexorable rises of land disputes between the poor and the rich or between the poor and the powerful due to the increase in price of land and this causes an increase in fomented violence. In order to solve this social problem, the government urgently requires that the existing laws and regulations be strictly implemented and all the government agencies and judicial institutions function in accordance with the rule of law. Yet, the government has only succeeded in creating the Cadastral Commission<sup>167</sup> and the National Authority for Land Dispute Resolutions<sup>168</sup> which are unable to perform the task well by virtue of the persistent dominant hegemony. Consequently, the rich and powerful

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<sup>164</sup> See subsection 2.1.1 of chapter 2 for more details.

<sup>165</sup> Pact Cambodia, *Advocacy in Cambodia: Increasing Democratic Space* 55 (May 2002).

<sup>166</sup> Issuance of land titles involved corruption (Free Radio Asia broadcasted in Khmer language, Morning session of May 23, 2006).

<sup>167</sup> Sub-decree on the Organization and Functioning of the Cadastral Commission was created on May 31, 2002.

<sup>168</sup> The National Authority of Land Dispute Resolutions was created on February 26, 2006 by the Royal Decree No.NS/RTT/0206/096.

often overcome the cases of the land disputes. Real political will thus plays a vital role in carrying out changes in the area of land.

The widespread rise of squatters in urban areas is a sign of serious social problems that will not abate unless strict measures are taken. The eviction of the squatters has shown that the government must completely ensure there is only little affect on the squatters' daily life. In order to achieve a development policy of squatter areas, there are some crucial considerations which the government should attempt to accomplish. First, the government should legitimize the actual squatters in the areas in order to avoid the future inflow. Second, it is necessary to make sure that the squatters have adequate skills and knowledge to sustain their living standards thereby providing appropriate vocational training and loans for them. Third, policy makers should study the possibilities of the improvement of squatters whether by on-site upgrading or relocation policy. The first consideration should be mainly connected with the possible legitimate title of ownership of the squatters, the second consideration can work well with the cooperation of NGOs and donors, while the third consideration should relate to the social land concessions where state private property is available.

Unused land is a hindrance of land productivity. The tax on the unused land should be strictly implemented otherwise the government should take effective urgent action to revert the unused land to the state private land for the implementation of an effective social land concession.<sup>169</sup> The unused land affects not only economic growth through agricultural sectors but also encourages speculative purposes where the rich and powerful have much opportunity to buy land without making land productive.

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<sup>169</sup> NGO Statement to the 2004 Consultative Group Meeting on Cambodia 74 (December 6-7, 2004).

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