

An Analytical Study on Identifying Current Disputes and Major Challenges in Accessing to Land Tenure Security in Cambodia

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Abstract:

Cambodia is an agrarian country where land is the most important contributor to economic growth and subsistence of majority of population. However, land of the whole country has not yet been completely registered and secured from ownership claim from one person to another. Methodologically, this paper aims to find out what the current issues and challenges to land tenure security which cause serious land disputes recently in Cambodia. All data and information are collected to analyse the challenge of land tenure. The paper revealed several challenges such as impact of economic land concession, historical changes of political and economic systems, uncertainty of boundaries and possession, lack of transparency in land management, lack of financial and technical support and population growth as well. The government shall put land issue as a priority on the table to discuss and seek for effective mechanisms to resolve. To finish land registration and demarcation is priority while land legislations shall also strongly be enforced.

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Key words: Cambodia, land tenure, access, land dispute, challenge.

Introduction

Cambodia is an agrarian country where land is the most important contributor to economic growth. Statistically, the majority of Cambodian households live dependently on land and natural resources as a main source for food and income security. Controversially, these majority of households are suffering from insecure access to land due to they have no enough documents detailing their rights over land. This is one of the reasons of critical land disputes today which has led half million of people to poverty and landlessness (Phalthy H., 2010 p118; Licadho, 2014; Laurent K., 2012, p7). The challenges of accessing to land tenure security in Cambodia will be discussed in the following pages.

Methods

The purpose of this study is to find out the current issues and challenges in accessing to land tenure in Cambodia and what mechanisms should be applied. Methodologically, this study basically reviews the existing data from different sources such government agencies, NGOs, and development partners who are working in the field. Additionally, only up-to-date data and information are selected for analytical input of this study.

Literature Review and Discussion

Through analytical discussion and literature review, there are many issues and challenges to land tenure security; however, only some of critical challenges have been deeply discussed as the following:

Historical Changes of Political and Economic Systems

The all lands of the country were governed and managed by the monarchical power before the arrival of French colonialists. After French started colonizing Cambodia in 1884, they reformed the administration of the country and promulgated Civil Code 1920 to some provisions of which recognized private property rights (World Bank, 2001). Since then to 1960s, there was adequate system of land management and cadastral maps and titles but in Pol Pot regime (1975-1979) land records and legal documents prior to this regime were totally destroyed. From that reason, the forms of private property rights had been cancelled and converted into collective property under the control of the ANKAR (Phalmy H., 2007, and Sovannarith & Sopheap, 2001). After the collapse of Pol Pot regime, people still did not have access to private land tenure, but only had access to collective lands for agricultural and residential purposes, where the ownership of land remained in the hand of the State (World Bank, 2012). In 1989, the government reintroduced private property rights over residential land within an area of 2,000 square meters and the possession rights to cultivated land of less than 5 ha (Sopha C., 2001). To the first of private property reintroduction the government only allowed rights of ownership over residential land and rights of possession over agricultural land. Though government allowed people to own these kinds of land, but the majority of landholders had not been completely issued certificate or official document to ensure their rights from future risk of land claim that it is a reason left for insecure land tenure right today. Furthermore, the 2001 Land Law was adopted and rejected all land ownership prior to 1979 when many people returned to hold their former agricultural and residential lands after overthrow of Pol Pot regime; therefore, these people also held insecure land without official documents. This is to explain that the historical and political changes in Cambodia have strongly affected on private property rights.

Uncertainty of Land Boundaries and Possessions

The land statistics are not yet highly accurate but available information indicates that among the total landmass of 181,035 sq.km, 2.71 million ha are cultivated land, 1 million ha are covered by towns, infrastructure and waterways, 3,134,471 ha are protected areas, 1,490,500 ha are protected forests, 10,730,781 ha (59.9%) are forestry areas, 3,374,328 ha are forest concessions, about 0.10 million ha are land mine-contaminated areas, and about 1.73 million ha seem to be scrub land (Sovann, S. 2010; Kimseng, S. 2013). Most lands in the country have not yet been registered and titled at the parcel level (Sovann, S. 2010) which cause the majority of Cambodian landholders being suffered from very insecure land tenure (Torhonen, 2001). Only about 10% of the rural populations have title to their land and about 60% of household had not documents detailing their occupancy rights (UNCDF, 2010, CDRI, 2007). Moreover, a number of landless people are estimated to rise up from 13% in the late 1990s to 25% in 2007 (Adhoc, 2013), and 20% to 40% of the rural households were landless in 2009 (USAID, 2011), and it is increased by 2% every year (Andreas and Siphath, 2012). UNDP found that the national average of landlessness was 21 % and land poverty, i.e. owning less than one hectare, was estimated at 45% of the total population (UNDP, 2011; USAID, 2011; Sik Boreak 2000).

Sovann, S.(2010), cited by Radio France International, indicated that there are about six million parcels of land of the country according to land assessment in 2001, but Phalthy, H. (2010,p26) argued that the land parcels should approximately be ten million parcels. However, due to uncertainty of land possession and land boundaries for both state land and private land, only 1,913,279 certificates of ownership were issued as of April 2010. Consequently, the uncertainty of land possessions and boundaries are not only hard to be secure for land tenure, but also cause a lot of conflicts over land throughout the country (World Bank, 2002).Because of uncertainty of land

boundary, only 12% out of 4.5 million application forms for land receipts and titles in 2001 has been processed and acceded. (Sophal, C. 2001). A recent report of Ministry of Land Management Urban Planning, and Construction indicated that by February 7, 2014, the government has just registered 3.3 million parcels of land which means that so far the government has only registered about 30 percent or 3.3 million out of 10 million parcels of land in the whole country. Remarkably, the progress of land registration is seen moving a bit faster under the Government Order No.01, 07 May 2012, on the measure to strengthen and increase efficiency of the management of Economic Land Concession that was voluntarily joined by students from various universities with technical and cadastral officers. There were more than 3000 students joined this program while they were supported and funded by personal pocket money of Prime Minister. Under the Order from late 2012 to mid 2013, there are 710 thousand applications for land titles, among which 680 thousand land titles were adjudicated and announced and 400 thousand land certificates have been issued to the owners. Though result of this programme was remarkable and welcomed by people, there were rumors of political motivation and failure left behind under the implementation of this Order because it took places in new unidentified areas rather than in dispute areas which mean it did not help resolve the problem of land disputes meanwhile there was a warning promise to stop measuring and issuing ownership under this program if the ruling party lost the 2013 election. This indicated that the purpose of Order No.01 was not to mainly resolve land disputes but to gain political votes of 2013 national election.

Lack of Transparency and Laws Enforcement

The slow process of land registration and poor governance is also from a reason of lack of transparency in land sector. The lack of transparency in land sector does not only make the land

dispute even worse, but it also leads to administrative and political corruption (FAO, 2012b). Administrative corruption in land sector appears in public administration and government services which can take the form of small bribes that need to be paid to register property, change or forge title, acquire land information, process of cadastral survey, and generate favorable land use plans (TI, 2011). The official fee for land titling in Cambodia is less than 10 dollar per title (Sovann S. 2010), but the reality, the people are unable to pay very high unofficial fees (Mark, 2009). Additionally, the vulnerable communities involved in land disputes with powerful, wealthy and well-connected individuals often find their complaints to Cadastral Commission and the court unresolved, rejected or simply ignored (BABC, 2013). For instance, there were 5,129 cases of land disputes were registered, but only 1,782 cases successfully resolved, 1,338 cases rejected, 1,753 cases were underway to be resolved and 256 cases were withdrawn (Sovann, S. 2010). Some cases have been being taken a few years, yet there was no resolution found such as Boeung Kak Lake that was happened since 2007 but until now, the dispute has not yet been resolved completely though there was a sub-decree signed by Prime Minister to reserve 12.40 ha from Boeung Kak Lake for affected families. Likewise, political corruption is a high-level abuse of government power or political position which aims to seize control over country's resources. Some irresistible actions by elected leaders, public officials and private sector may go unpunished or impunitive as key national institutions are co-opted to protect the interests of a few. The form of political corruption in land occurs when influential groups seize the land of the poor and marginalized through forced eviction (TI, 2011 p4-6). The lack of transparency in land sector has led people to suffering from land tenure insecurity and even some would lose their land. Pertaining to land distribution, the landless and land-poor people would get land distribution through Social Land

Concessions (SLCs); but the lack of transparency of SLCs allocation have become increasingly inequitable and long-waiting (USAID, 2011). In 2011, the government approved of 44,897 ha of land to be granted to former militants and families of former soldiers living with disabilities in 11 provinces throughout the country, but so far, the national committee for SLCs has allocated land to only 2,108 families of former militants (Adhoc, 2012). Another research indicated that by December 2011, there was less than 7,000 hectares in total was allotted to land-poor and landless farmers (Andreas & Siphath, 2012). Concerning to SLCs, Adhoc pointed out that in 2012 government granted 38 SLCs covering 100,790 ha, among which 13 SLCs gave rise to disputes, corruption, mismanagement, and serious abuses (Adhoc, 2013).

Impacts of Economic Land Concession

According to the 2001 land law, the Government can allocate State private land as Economic Land Concessions (ELCs) to business tycoons, political elites and foreign investors for agro-industrial plantations (Andreas and Siphath, 2012). The maximum size of State private land to be granted is up to 10,000 hectares as ELCs, but some of ELCs exceed by far as law permits (United Nations, 2007). Government data indicated that there were only 1,335,724 ha granted under ELCs scheme (Kimseng, S. 2013); but several NGOs argued that as of late December 2012, government has granted at least 2,657,470 ha to private companies under ELCs scheme (Andreas & Siphath, 2012, Adhoc, 2013 p9). This figure represents more than a half of country arable land (73% of arable land) had been leased to investors as of late 2012 (Andreas & Siphath, 2012; Global Witness, 2013 p9). Evidentially, some ELCs violate various areas of Cambodian laws and they are considered as main causes of serious land disputes such as land grabs and land evictions recently. Moreover, ELCs are only benefiting a minority, but they are affecting the majority of people's

livelihoods, especially the rural citizens, and environmental and natural resources (CCHR, 2013; UN, 2012, Andrea & Siphath, 2009). Besides the violation of various laws, the lack of fair assessments of land concessions area often includes people and communities' lands in the concessional zone and these people are subject to forced eviction. The affected families were generally forced to leave their homes and lands without a fair and just compensation in advance as stated in the laws. The resolutions that are generally applied for affected families with ELCs are seen in the forms of forced eviction in which people were forced to accept cash compensation and/or displacement to a new plot of land where it is proved that the plot is far away from their previous land and home, and is rocky and hill where are unable to farm. The eviction and reallocation, whether forcible or not, can often impoverish affected people and limit their access to income generation but increase in debt; lack of access to clean water, electricity, healthcare services and education, physical and mental health problems; challenges to realizing civil and political rights (UN, 2012).

Lack of Financial Assistance and Staff

A lack of financial assistance, professional staff and equipment for land management and administration process has been among the factors inhibiting land title issues (World Bank, 2002 & Sophal, C. 2001). Though there were about 3, 700 staffs in total were trained on various fields, about 1,000 staff for land registration and 2,697 staff for land dispute resolution, yet this would not be enough to handle land issues of the country (Sovann S., 2010). According to Budget Law 2014, the Ministry of Land Management, Urban Planning and Construction (MLUPC) will get 96,196.6 million riel Cambodian currency (about 24,049,150 million USD) in 2014 for entire ministry expenditures which are less if comparing with other ministries. This means that the government has not paid much attention to land management and urban planning. Besides, the

government budget, there are development partners and NGOs are also working and supporting in this field but financial and technical supports are still far away from the needs while land disputes have been being occurred throughout the country.

Population Growth and Demand for Economic Development

The participation of civil society and local residents are also important for land tenure security (Rainsey, 2012). The economic development policy also forces to high demand of land while the population is growing up. The rapid growth of recent population would lead to shortage of residential and agricultural lands; meanwhile, demand of land for development of agricultural or agro industrial production is also high. The population growth and advanced technology really play important role in land use changes; not only in the urban area, but also in rural indigenous communities (Jefferson FOX, 2009, p321-325). Since the real estate has been developing, the land price has risen up rapidly, especially the urban area, land conflicts have come up on the stage as well. It was noticed that the price 8 times higher from 2004 to 2007. On one hand, the increase in price of land encouraged people, particularly the smallholders, to sell their land carelessly that led them to landlessness and land-poorness (Dirk Lohr, 201, p28-32). On other hand, having seen land value has grown up, some people illegally settle down or occupy new plots of land where are not registered. Those people are generally rejected by authorities to issue them the official documents. At the same time poor awareness of legal base of landholders leads them to misunderstand of possession receipts as their ownership certificates. This misunderstand has led them to ignore or pay less attention for land registration or titling. This is also why they are still suffering from land tenure insecurity (World Bank, 2011 p.42; Phalthy H. 2010, p26). Additionally, the civil societies were not encouraged by government to work on land sector while some civil societies that are working on land

generally meet some difficulties in cooperation with government agencies or some of their reports may be rejected by the government without reasonable explanations.

Conclusion

There are several major challenges over land tenure security in Cambodia. These issues of land tenure become social phenomena that are in an emergent call for fair resolutions. The insecurity of property rights to land has led victims (of land holders) to missing large parts of realizing the economic and non-economic benefits such as investment incentives, land transferability, and improvement of credit market access, more sustainability of resources management, and independence from discretionary interferences by bureaucrats. The loss of large part of benefits to land is a catalyst that could lead directly to slip into chronic poverty. The government shall put this problem as a priority on the table to discuss and seek for emergent resolutions. The failure of implementing land legislations is a main root cause of land disputes as seen many cases of various violations of law in land sector. The government shall check out all licenses of land concession to companies whether or not those companies follow the laws and agreement. If they do not, the license shall be withdrawn back and part of concessional land shall be allocated to affected households to end up disputes.

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