Land Rights Programme, Cambodia – Knowledge Profiles

Heidi Feldt, 2016
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<td>ADHOC</td>
<td>Cambodian Human Rights and Development Association</td>
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<td>BMZ</td>
<td>Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (Federal Ministry for Economic Cooperation and Development)</td>
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<td>CIDA</td>
<td>Canadian International Development Agency</td>
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<td>DED</td>
<td>Deutscher Entwicklungsdienst</td>
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<td>ELC</td>
<td>Economic Land Concession</td>
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<td>FAO</td>
<td>Food and Agriculture Organization of the United Nations</td>
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<td>FIAN</td>
<td>FoodFirst Information and Action Network</td>
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<td>GIZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>JSM</td>
<td>Joint Supervision Mission</td>
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<td>KfW</td>
<td>KfW Entwicklungsbank (KfW Development Bank)</td>
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<td>LAMDP</td>
<td>Land Administration, Management, and Distribution Programme</td>
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<td>LASSP</td>
<td>Land Administration Sub-Sector Programme</td>
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<td>LASED</td>
<td>Land Allocation for Social and Economic Development</td>
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<td>LDSSP</td>
<td>Land Distribution Sub-Sector Programme</td>
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<td>LICADHO</td>
<td>Cambodian League for the Promotion and Defense of Human Rights</td>
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<td>LMAP</td>
<td>Land Management and Administration Programme</td>
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<td>LMSSP</td>
<td>Land Management Sub-Sector Programme</td>
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<td>LRP</td>
<td>Land Rights Programme</td>
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<td>MAFF</td>
<td>Ministry of Agriculture, Forestry and Fisheries</td>
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<td>MLMUPC</td>
<td>Ministry of Land Management, Urban Planning, and Construction</td>
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<td>MoE</td>
<td>Ministry of the Environment</td>
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<td>Mol</td>
<td>Ministry of Interior</td>
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<td>MRD</td>
<td>Ministry of Rural Development</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>RGC</td>
<td>Royal Government of Cambodia</td>
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<td>SLC</td>
<td>Social Land Concession</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNESCAP</td>
<td>United Nations Economic and Social Commission for Asia and the Pacific</td>
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<td>VGGT</td>
<td>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests</td>
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On behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ), GIZ has been supporting projects to secure land tenure rights in Cambodia since 1995. The project started supporting the reconstruction of a cadastre (1995-2001) which was destroyed by the Pol Pot Regime in the 1970s. After 2001 it became part of a multi-donor programme called Land Management and Administration Programme (LMAP, till 2012). During its last phase the project focussed specifically on land rights and communal land titles of the most vulnerable groups in the country (Land Rights Programme, LRP, 2012 – 2016). The aim of the present knowledge profiles is to document the extensive experiences made during project implementation before it starts to be lost. These knowledge profiles seek to provide rapid and easy access to knowledge generated in the project. They are not meant to reveal existing local knowledge.

After introducing briefly the land rights situation in Cambodia the knowledge profiles are structured according to the main components of the project focussing on

- Strategy and methods applied
- Impact and achievements
- Success factors
- Problems and challenges
- Learning and innovation and
- Key documents.

The knowledge profiles build on the vast experiences of the current and former project staff in Cambodia. These include Florian Rock, POCH Sophorn, UCH Sophâs, SIV Kong, Maraile Görgen, PRAK Chantry and many others. Unfortunately, the perspective of the long-term project leader, Franz-Volker Müller, is missing, as he died in March 2015.

Andreas Lange, Jorge Espinoza and Matthias Hack of the Land Management Programme at GIZ revised the document.

Heidi Feldt, 2016
1. Land Rights in Cambodia

With 4 out of 5 households engaged in agricultural activities (Agricultural Census, 2014) access to land is a highly disputed issue in Cambodia. Traditionally the king was the owner of the land, while farmers were users obtaining user rights by carrying out agricultural activities. It was only through the French protectorate that it became possible for the land property rights of the people to change from a user, or possession right to an ownership right (Diepart, 2015:8). While the possession right was linked to conditions like continuous utilisation of land, for example for cultivation, and was recognised by social consensus on the local level, ownership rights were definitive. On the eve of full takeover of the country by the Khmer Rouge in 1975, only about 10% of all parcels privately occupied were privately owned, while the other 90% were possessed (Lim, 1998: 17). The French had introduced taxes for all privately occupied land, whether it was owned or possessed. At the beginning of the 20th century land concessions for plantation agriculture were introduced and in 1921 the first rubber plantation was established (Diepart, 2015:9). The concession rules established by the French persisted after independence and were the model for the economic land concession system that exists today.

Under the Khmer Rouge (1975-1979) the land sector was radically reorganised: the Khmer Rouge collectivised all means of production including land, all individual rights to land possession or ownership were eradicated and all land registration documents including the cadastre were destroyed. Cambodia also lost its whole vertical reference system. The Khmer Rouge destroyed deliberately all the fixed points and the vertical and horizontal reference infrastructure and documentation.

The regime forced urban dwellers into rural areas to work in rice production. The whole economy was concentrated on one single product. The consequences were dramatic: In only four years more than 1.5 million people died of hunger and repression. The cities were virtually deserted.

The Vietnamese intervention that started in late 1978 led to the Khmer Rouge being quickly driven into mountains and border areas, though they lingered there till 1998. In the first months after the Khmer Rouge were driven out of most settled areas of the country, people migrated through the country, trying to get back to their former homes or searching for land for cultivation. During the period of warfare (1978-1998) many people were forced to flee to refugee camps in Thailand.

The Vietnamese introduced new forms of agricultural production units based on Solidarity Groups comprised of 10-15 families. Land was given in usufruct, and abandoned land was cultivated by those who had the labour capacity to do so. As the system developed it created conflict over access to land between people. After the devastating experience of the Khmer Rouge regime people refused collectivisation. Nevertheless, according to Diepart, the system allowed for a quick recovery of agricultural production (Diepart, 2015: 11).

With the end of Vietnamese domination in 1989, Cambodia moved towards a market economy and from state ownership of land to a private property system. In 1989 the national government amended the constitution and adopted various legal provisions, all of which made a private property system legal again, including the right of ownership of residential land. (See 1989 constitution articles 15, 17, and 18 [b]. See also Council of Ministers ANK 25/ April 22, 1989, Sub-decree on Providing House Ownership to the Cambodia Population). In 1992 a comprehensive land law was adopted. For the most part it was drawn from articles in the last
civil code that Cambodia had before the Khmer Rouge takeover in 1975. While the land law still prohibited private ownership of agricultural land, it made a legal distinction between possession rights for agricultural and concession land. Residential land was given in ownership. In principle, ownership and possession rights were identical except that a possession right could be lost by stopping the occupation or use of the land for a certain period of time whereas with ownership continuous occupation was not necessary. Under the 1989 and 1992 provisions, if people wanted their land to be registered they had to claim for “sporadic land registration”. The responsible cadastral administration received 4.2 million applications but only issued 10%, mainly because the fees were too high for most people to afford. There were also some issues about the complexity of the procedure and the administration’s lack of resources. These titles were either ownership or possession titles depending on whether the land was residential or agricultural.

Primarily because of the power realities of the time and also because most people including all poor people had possession rights, which were considered of little value unless embodied in a possession title, despite provisions of the law to the contrary, there was a great deal of illegal land grabbing by the powerful. Many donors and NGOs thought that a new framework to ease land registration for the poor was urgently needed.

Land Law 2001

In 1998 the Ministry of Land Management, Urban Planning and Construction was established. The Ministry was responsible for drafting a new land law, which led to the promulgation of the land law of 2001. Under the new legal provisions the land remained the property of the state unless it has been legally privatised. The land law differentiates between five different categories of properties:

- Private land: land with full legal private ownership;
- State private land: simply all state land that is not public, this type of land can be legally privatised;
- State public land: state land with a public interest such as roads, military bases, public buildings and services, land with forest, water bodies, river beds – state public land can not be privatised;
- Monastery land: ownership of Buddhist monasteries in collective ownership;
- Indigenous community land in collective ownership: established residence areas of indigenous communities and lands involving traditional swidden agriculture. A sub-decree on registering indigenous land added burial and spiritual land.

The aim of the law is to improve tenure security and access to land through a market-based land reform including land-titling, cadastral administration and a liberalised land market. Economic land concessions (ELC) were to attract investments, while social land concessions (SLC) were established as a means of redistributive land reform giving state land to landless and land poor people. The registration of land was to be accelerated through Systematic Land Registration instead of Sporadic Land Registration.

All Cambodians were entitled to occupy, use and sell land, but no “regime of ownership of immovable property prior to 1979” is recognised (Land Law, 2001, Art. 7). In order to obtain a title, people had to be occupying land peacefully and without force for five years. Only
indigenous peoples land and monastery land, both involving collective ownership titles, are based on former, traditional land claims.

Social Land Concessions are reserved for land poor and landless households including demobilised soldiers or families of killed or disabled soldiers. After 5 years of constant use, land distributed through SLCs can be transferred into private property, limited to a maximum of 3,600 m$^2$ for residential and 2 ha for agricultural use per household.¹ Land allocation through SLCs has been marginal. By 2014 the total number of families benefitting from SLCs was 12,374 with 113,167 ha of land registered (Diepart, Sem, 2015:77).

State land for distribution comes from the public domain, mostly from the highlands (Müller, 2012:3). The distribution of these lands is extremely unbalanced. While the biggest part is given in economic land concessions, SLCs count only for 4% of the land distributed. Additionally, the procedures of SLCs are very time-consuming, suggesting a lack of willingness of the RGC to address the problems of landless poor families.

ELCs were limited to 10,000 ha granted for 99 years (a new amended sub-decree on ELC limits leasing time to 50 years). This 10,000 ha limit is routinely ignored. ELCs are meant to attract foreign direct investments in agricultural production, mainly in rubber, sugar and other crops. There are no restrictions on who can apply for an ELC. Only some conditions must be fulfilled: The land must be developed within 1 year and the respective sub-decree requires a land use plan, an Environmental and Social Impact Assessment and public consultation with local authorities and residents. Contracts are subject to payments by the concessionaires.

The main problems of ELCs are related to the allocation of land without consultation of local people and especially of indigenous peoples. This has created a lot of land disputes between ELCs and local people.

Responsible entities for administering ELCs are the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of the Environment (MoE) while the Ministry of Land Management, Urban Planning and Construction (MLMUPC) is responsible for titling ELCs. Although being the Ministry of Land, it does not dispose of land. This rests in the competence of the Council of Ministers, MAFF, MoE or the Prime Minister himself.

¹ In the sub-decree on SLC, article 16: the residential land is 1,200 – 3,600 m$^2$. Article 17: the maximum for agriculture land is 2 ha, if land is available it can be up to 5 ha maximum. Due to a lack of land availability for LASED, the distribution for LASED target group is less than the sub-decree allows.

Directive 01

In May 2012, as reaction to a dramatic rise in protests against the evictions through ELCS and the coming election, Prime Minister Hun Sen announced a moratorium on the granting of ELCS. Land already occupied by families should be acknowledged within ELCS – the leopard skin policy was born.

At the same time he pushed the whole titling process, presumably to gain support of the rural population during parliamentary elections in July 2013. He announced an accelerated land-titling programme to be implemented by students and volunteers throughout the country. Directive 01 provided titles not based on legal rights but based on donation by the state, and allowed title for up to five hectares per family of state land. Almost immediately over 5000 volunteers (mostly students) were mobilised, paid directly from off-budget resources of the Prime Minister. The declared goal was to register and issue titles for up to 700,000 parcels. Foreign assistance or even foreign witnessing of implementation was not permitted, except at the public display events.

Despite these efforts, current land tenure regimes remain fragmented. Land tenure allocation follows different patterns: while in the uplands the allocation of land is dominated by forest and economic land concessions undermining local tenure systems, systematic land registration has focussed on the rice production areas in the central plains.

References
Cooper, G.W. (2002) Land policy and conflict – the Cambodian portion of an eight-country study by the North-South Institute for the World Bank


Lim, Voan (1998) Land Regime in Cambodia, Annex II.


2. General Programme Approach and Evolution over Time

German development cooperation supported the land reform in Cambodia at a very early stage. Already in 1995 a Land Management Pilot Project was implemented, followed by the programme-based approach of the Land Administration, Management and Distribution Programme. It was designed to assist the RGC to improve land tenure security and to promote the development of an efficient land market (Biddulph, 2014). The centrepiece was the land-titling programme focussing on systematic land registration.

When the Land Management and Administration Programme (LMAP) of German development cooperation was planned, it was suggested that smallholder agriculture could be a driving force to bring rural people out of poverty. One of the considered key constraints was a lack of investment, which was linked to a lack of land tenure security. Hence, supporting land titling was seen as a means to improve access to credits and financial resources and thus contribute to poverty alleviation. The programme is based on the assumption that land security – specifically for the rural poor – is essential and that land titling is the most adequate means to achieve it. Although the people gained legal entitlements through yearlong use of agricultural or residential land, their claims are not sufficiently protected without formally recognised titles.

Development of the project

The vision of the RGC in the land sector is “to administer, manage, use and distribute land in an equitable, transparent, efficient, and sustainable manner in order to contribute to achieving national goals of poverty alleviation, ensuring food security, national resources and environmental protection, national defence and socio-economic development in the context of market economy.” (PRR, 2014:12) The RGC designed the framework programme for the sector called Land Administration, Management and Distribution Programme (LAMDP), which consists of three sub-sectors:

- Land Administration Sub-Sector Programme (LA-SSP)
- Land Management Sub-Sector Programme (LM-SSP)
- Land Distribution Sub-Sector Programme (LD-SSP)

German development cooperation was the first to start. Two years later Finnish cooperation, through the consulting firm FINMAP, began its Cambodian Land Cadastral Project. Both projects were part of the Land Management and Administration Programme (LMAP) linked to the Ministry of Land Management, Urban Planning and Construction (MLMUPC).

LAMDP started officially in 2002 with additional funding from the World Bank ($34 million) and further support by the Canadian CIDA. With the later withdrawal of CIDA and the Finnish government GIZ remained the sole donor to MLMUPC. The former complementarity was lost.
Table 1 Components of Land Administration, Management and Distribution Programme (source: Müller, 2012, Görgen, 2015)

(Components in black: supported by GIZ, components in grey: development partners or RGC)

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<td>Sub-sector on Land – Administration GIZ, CIDA, Finland</td>
<td>Sub-sector on Land – Management GIZ</td>
<td>Sub-sector on Land – Distribution GIZ, World Bank</td>
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<td>2. Institutional Development (FINMAP, World Bank, GTZ/GIZ, CIDA)</td>
<td>2. Institution and Capacity Development</td>
<td>2. Institution and Capacity Development</td>
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<td>4. Strengthening Mechanisms for Dispute Resolution</td>
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<td>4. Locally initiated social land concessions</td>
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<td>5. Land Valuation and Land Market Development</td>
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<td>5. Nationally initiated social land concessions</td>
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<td>ILO, NGOs</td>
<td>NGOs</td>
<td>6. Partnership in small and large scale agriculture</td>
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Given the unresolved land ownership questions and a lack of a comprehensive cadastre the focus of the programme was on a swift allocation of as many individual land titles as possible through Systematic Land Registration. This was seen as a contribution to stabilising the situation in the post-conflict country. Nevertheless, the programme has been under pressure to address
more directly human rights issues and the emerging conflicts, most of them related to ELCs and forced evictions.

As the GIZ support to the programme evolved over time the focus changed. During the first phase (2002-2010) the emphasis was on output, implicitly addressing human rights, since it was assumed that securing land tenure through registration is a way to safeguard human rights.

Due to international and national protest against forced evictions in Cambodia, the growing awareness of the importance of human rights in development cooperation (Human Rights Concept of BMZ) and the VGGT among others, the programme addressed human rights issues explicitly since 2011 (called Land Rights Programme (Phase I and II) from 2011 – 2016). It concentrated on indigenous peoples’ rights to land, the rights of informal settlements in urban areas and conflict resolution. While the RGC put a lot of emphasis and resources on SLR, GIZ tried to foster Inclusive Land Registration.
Graph 2 Time Line
3. Systematic Land Registration

Context
The centrepiece of the Land Administration, Management and Distribution programme was Systematic Land Registration (SLR). It was the beginning of a supply-driven process in the land sector. Instead of households applying for a title as usually done for Sporadic Land Registration in the 1990s, survey teams (first teams of 26 persons which later were reduced to 15) were dispatched to a village where they mapped every plot of the village and provisionally assigned an owner to each plot. By doing this, they generated a village cadastral index map and list of owners, which were put on public display for 30 days. During that period anybody could raise an objection. Administrative Commissions², which included local authorities, were tasked with solving conflicts that arose during the SLR. Their deadline was the end of the 30 days display period. Following the public display, ownership titles were issued for the plots that had no conflicts, or if there had been conflicts they had been resolved. On average a household obtains three land titles, meaning ownership of three parcels.

MLMUPC has gradually expanded its SLR to all 24 provinces although the focus remains the lowlands (see map). By December 2015, more than 4 million titles had been distributed, including the titles allocated under the Directive 01 campaign of the Prime Minister. In recent years RGC has largely funded the expansion of the SLR activities through the state budget. Given the current pace of registration, the target of the Ministry of Land of 5.6 million titles distributed by 2018 (approximately 400,000 per year) seems to be achievable.

² see chapter on conflict resolution
Map of Systematic Land Registration (SLR) and Communal Land Titling for Indigenous People Communities (IPC), Mining Concession (MC) and Economic Land Concession (ELC)

Graph 3: Map of Systematic Land Registration and Communal Land Titling (source: GIZ)
From Systematic to Inclusive Land Registration

Systematic registration has excluded disputed areas from registration. While this might have been necessary at the beginning to enable massive registration, it caused problems as the legal status of excluded areas remains unclear. This practice has also been publicly criticised as it excludes people, leaving them without a legally recognised status of their land and therefore making them vulnerable to evictions.

GIZ suggested an inclusive approach including all parcels and rights and duties (Rights, Restrictions, Responsibilities). There is now a common understanding of the need to adopt new practices leading to an inclusive SLR process taking into account all parcels within the declared areas as well as all the rights over these parcels, i.e. not only ownership but also those rights coming as a limitation to or obligation of the ownership, the so-called ‘3Rs’ (Rights, Restrictions, Responsibilities). Initially, MLMUPC agreed to pilot an inclusive approach in urban, peri-urban and rural areas. Sensitive areas in the 3 provinces of Battambang, Kampong Cham and Phnom Penh were to be selected. While there has been some progress in Battambang and Phnom Penh, inclusive registration in rural areas never materialised.

Strategy

- The key strategy of LRP I and II as well as the former LMAP is the provision of secure tenure rights in Cambodia through supporting the Ministry of Land to establish the legal and technical framework for massive registration: systematic land registration.
- The aim is to establish rule of law and good governance in the land sector.
- The programme follows the multi-level approach. While policy development, legal reform and concept development are mainly at the national level, other components of the programme like spatial planning and informal settlements address the sub-national level.
- Cooperation with NGOs only evolved over time. Although the programme maintained a policy of open doors, formal NGO participation came in under LRP II.
- Based on the experience and the shortcomings of Systematic Land Registration the programme started to support Inclusive Land Registration.
- The programme was developed with other donor partners working complementarily (programme based approach).

Implementation: Methods applied

- The programme provided expertise and advice through short- and long-term experts, training and supply of equipment and materials.
- Because of the lack of qualified persons the programme supported the Royal University of Agriculture to establish Land Management and Land Administration studies at the University.
- Inclusive Land Registration was promoted through pilot activities to gain experience in different environments: urban, peri-urban and rural.
- Support for MLMUPC to foster consultation and participation processes involving NGOs.
• LRP II decided to work on specific land rights related issues\(^3\) using the implementation structure of national partners including NGOs.

• Joint Supervision missions including FINMAP, CIDA, MLMUPC and LRP were conducted every six months. Those missions were an opportunity to monitor and assess progress made and to steer German-funded interventions.

**Timeline**

2002 till 2016

**Impacts and achievements / Facts and figures**

• De facto use of state private land has been legally transformed and formalised as de jure private ownership of mainly agricultural and residential parcels through systematic land registration. (Müller, 2012:3)

• More than 4 million plots have been titled, although this cannot only be attributed to German development cooperation. GIZ support played an important role supporting the development of the political, legal and technical framework.

• According to both beneficiary assessments people felt more secure in their ownership with land titles issued under the SLR process. (Beneficiary Assessment, 2009:53)

• According to the same source the widespread perception is that the number of land related disputes dropped after land registration.

• The SLR process has been systematically expanded to lowland provinces in the country and is since 2010 entirely financed by the RGC.

• According to a household survey on food security and land conflicts in villages where the SLR process took place compared to villages without SLR there is no significant difference between the two regarding food security. However, 44% of interviewed households in villages with SLR said their income had increased since SLR while in the control villages it was only 36%.\(^4\)

• Capacity Development in MLMUPC has been vital: from only 20 persons knowledgeable on land registration in 2001, today there are more than 1000 persons in the Ministry trained on SLR.

• Corruption in the ministries and in the awarding of land titles is widespread. Through establishing transparent and clear rules for systematic land registration irregular payments for titling was reduced (as compared to sporadic land registration).

• The geo-database was established on the basis of MS Access, which has only limited capacity. As a consequence the registry is overloaded and dysfunctional, data are stored on DVDs. A new system has been developed to avoid breakdowns by overload of the registry.

• Costs at US$ 10 to 12 per title/plot are low, although this amount does not reflect the whole costs as it only includes travel costs and salary of the team. The team members are paid by the number of plots titled. Recipients were charged a nominal fee of 1 riel per m\(^2\) of agricultural land (= US$ 2.5 per ha agricultural land) and 100 riels per m\(^2\) residential land.

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\(^3\) see Land tenure rights of Indigenous Peoples Communities, Informal settlements

\(^4\) see: Survey of Household Food Security and Land Conflicts in LASSP Areas: 31f
Success factors

- Legal and political framework in place.
- Being a programme based approach synergies between FINMAP, CIDA, and GIZ could be used and complementarity was agreed between the three development partners. Nevertheless donor coordination was extremely difficult and time consuming, in particular with the World Bank.
- MLMUPC works increasingly with participatory methods including NGOs in consultation processes. However, the policy of the MLMUPC concerning civil society participation is ambiguous:
  With support of the programme the MLMUPC elaborated its land policy as well as different sub-decrees – all were publicly consulted. According to the NGO Forum the MLMUPC was one of the first Ministries in Cambodia to consult with NGOs. As an example the NGO forum stated that 60% of their proposals to the White Paper were accepted.
  On the other hand the Ministry was reluctant to establish regular NGO consultations and to discuss human rights issues raised by NGOs.

Problems / challenges

- Systematic registration only applies for non-disputed land.
- Selection process for land for SLR is not transparent – Legal criteria for the selection of registration areas for SLR are missing.
- The implementation process of Directive 01 was non-systematic, non-transparent, non-participatory, done by people who were not familiar with the subject, which caused confusion and conflicts in affected communities.
- Perceived benefits of having land registered in one’s own name were offset by the cost of the land transfer tax and a process which is perceived as complicated and non-transparent.
  The overall sustainability of the current cadastre is threatened by the fact that according to latest figures only approximately 15% of all land transactions are officially registered, although this could be slightly higher in Phnom Penh. This tendency renders the information quality of the cadastre obsolete in a relatively short time and jeopardises all progress made in first registration. The current cadastre system is also threatened by software limitations. (PFK, 2014:13)
- Until 2016 no inventory and registration of public state land has been done.
- A lack of qualified people working on land registration persists. The programme and MLMUPC started to cooperate with the Royal University, but the capacity of the universities in the country is still very low. This is mainly due to the Khmer Rouge Regime when most of the teachers and lecturers were declared class enemies and killed.
- Transparency
  The programme was not very successful in improving transparency of the Ministry. The Ministry was reluctant to publish exact data on land titled and conflicts in the land sector.
- Publications
  As integrated part of the Ministry, publications of the GIZ programme had to be accepted by the Ministry. As a result only few studies were published. Only since 2015, the first lessons learned of the programme were published.
Learning and innovation

- Application of human rights principles like participation, transparency and non-discrimination need to be addressed and should be at the core of the programme.
- While the programme was integrated into the Ministry, NGO participation was important to address human rights issues in the land sector. GIZ was able to function as a bridge between NGOs working on land rights of informal settlers and indigenous communities and the MLMUPC.
- Communication is essential and needs to critically reflect on the land issue. As no single programme can meet all demands, it is necessary to reflect and communicate explicitly why which approach has been chosen. The programme was in a very defensive mode. Staff reacted mainly on request of NGOs, parliamentarians and the Ministry. It lacked a pro-active communication strategy to explain its scope and objectives. A documentary was produced to demonstrate the achievements of the project but came in late and was considered to be more propaganda than realistic.

References

Important documents

GIZ

GIZ (2014) Survey of Food Security and Land Conflicts, LASSP Areas
GIZ (2009) Beneficiary Assessment for the Land Administration Sub-Sector Programm

Tool Box

Further reading

Diepart, Jean-Christophe (2015) The fragmentation of land tenure systems in Cambodia: peasants and the formalization of land rights

http://www.fian.de/fileadmin/user_upload/dokumente/shop/Landpolitik_dt_EZ-PRINT.pdf (access 03.06.2017)

Grimsditch, Mark, Henderson, Nick (2009) Untitled. Tenure Insecurity and Inequality in the Cambodian Land Sector, Bridges across Borders
https://www.academia.edu/8476467/Untitled_Tenure_Insecurity_and_Inequality_in_the_Cambodian_Land_Sector (access 03.06.2017)


Yniesta, Luc (2015) Comprehensive Assessment of Main LAMDP Activities in the View of the VGGT, study commissioned by GIZ
**Legal framework**

Land Law 2001

Sub-Decree No.118 on State Land Management, 2005

Sub-Decree on Economic Land Concessions, 2005

Directive 001/BB, 2012
4. Spatial Planning / Land Use Planning

Context
In 2003, the German Development Service (DED) was requested by the government to provide support to strengthen the local administration in Battambang and Siem Reap – shortly after the RGC introduced a decentralisation and de-concentration process, which set out a framework to transfer important governance functions to the sub-national level. The spatial planning corresponds to the land management component of the Cambodian land policy including land use planning, territorial policy, and territorial governance.

The aim of DED’s engagement in the decentralisation process and spatial planning was to safeguard sustainable municipal development for the benefit of the local community and create better living conditions for people in the whole municipality. The work on spatial planning started from scratch: there was no legal framework or policies in place except the Law on Land Management, Urban Planning and Construction (1994). The municipalities and the provinces also had no experience of how to design the process.

In 2010, the work was extended to two more provinces (Takeo and Kampong Chhnang). In 2011 DED’s activities on spatial planning were incorporated into GIZ’s Land Rights Programme (LRP). In May 2013, the spatial planning work was extended to Kandal Province to develop Ta Khmau Municipal Land Use Master Plan.

The scope and the content of spatial plans include the envisaged development of the overarching settlement structure within the province, district and municipality, the open space structure, envisaged transport and supply structure and areas with particular functions. (MLMUPC, 2016).

The information is to be assembled in a Municipal or District Master Plan with a time horizon of at least 15 – 20 years. The map is based on a scale of 1:50,000 to 1:25,000.5

The planning procedure to design a spatial plan is a sequence of six main steps over the course of approximately 2 years – assuming a smooth and un-interrupted process, which requires sufficient capacities and resources. If capacity development measures have to accompany the process, the time needed for the planning would correspondingly increase.

Strategy
• When DED started working on spatial planning, no provisions were in place and the authorities at all levels lacked experience – the DED started “learning by doing”.
• Based on this experience of DED in Battambang, GIZ decided to scale up the Provincial Spatial Plan and Municipal Land Use Mater Plan projects in other provinces and municipalities including Kampong Chhang, Takeo and Kandal provinces.
• The approach was to initiate an inclusive, participatory process, which required to identify the actors in the administration as well as in civil society and in the economic sector and

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5 If it is a Provincial Spatial Plan, the time horizon is 20 years with a scale of 1:250,000 to 1:100,000.
institutionalise their participation. Capacity development has been conducted subsequently based on the learning needs of the team throughout the planning process.

- Along with the technical support in the actual planning process of the spatial planning at sub-national level (municipal, district and provincial level), GIZ also supported the setting up of the legal and policy framework at the national level including the development of the concept of the Law of Land Management.
- At the sub-national level, GIZ supported the establishment of a core working group on spatial planning and land use master plan enabling the planning process for a smooth and participatory process.
- Based on the experiences in Battambang province (both at the province and municipal level), GIZ supported the MLMUPC in developing guidelines for practitioners on Provincial Spatial Planning, Municipal/District Land Use Master Planning and an Introductory Handbook on Spatial Planning System in Cambodia for implementation in the whole country.

Implementation

The planning process basically follows six steps:

1. **Creation of a Land Management and Urban Planning committee**
   The members of the committee consist in most cases of directors of departments, who might be able to take decisions but are not able to spare time to do the actual work.
   Hence, it was important to establish a working group able to assume responsibilities with people who really can dedicate time to the planning process. The composition of the working group should be mixed, including young and old people to capture different views on future developments.
   It is necessary to set up internal rules.
   German development cooperation advised the Land Management and Urban Planning committees and provided technical support to the working group.

2. **Support included the design of a participatory process to involve all relevant stakeholders including public consultations and stakeholder workshops.**

3. **Data collection and analysis of the current situation of the area.** A relevant summary of spatial information, figures and facts needs to be produced, based on primary and secondary data / information. In particular, it was very helpful to engage the working group in demarcation exercises, for example of administrative boundary, road, technical infrastructure, social infrastructure, green space, heritage building and tourist sites. This information forms the basis for the analysis. All geo-data are compiled in databases.
   Data processing was an important part of capacity development of the working group.

4. **Dynamic analysis to determine how the current situation has changed over time and what will change in future.** The analysis has to consider the different variables and interests which might influence the development. The dynamic analysis bridges past and current challenges and conflicts and projections into the future. It is the core activity in the planning process and needs to be thoroughly consulted on with all stakeholders.

5. **Definition of future development scenarios, visions and strategies supporting stakeholders to get a clear vision of what they want to see in the future in the territory.**
6. Planning and regulation of the implementation including the translation of the strategic framework into an activity plan.
7. Once the plan is finalised it needs to be endorsed and approved by the corresponding authorities and, finally, by the National Committees on Land Management and Urban Planning.

Methods applied:
- On the municipal and provincial level mixed teams were set up, including international and local advisors, together with various counterparts from the Masterplan Working Group or Spatial Planning Working Group, which are the core technical entity.
- Capacity building was mainly done through on-the-job training throughout the whole process from the very first step till elaboration of the Master Plan. For every activity, training was needed.
- Study tours of interested provinces and municipalities to Battambang to learn from their experience and study tours of Battambang province, municipality and representatives from the national level went on study tours at international level learning from other experiences in Spatial Planning and Urban Heritage Conservation.
- Policy advice at municipal and provincial level.
- Policy advice at national level to design national policy and a legal framework on spatial planning.
- Technical support to develop a Guideline/Handbook for country-wide implementation on the process of Provincial Spatial Planning, and District/Municipal Land Use Master Planning.

Timeline
2003 till 2011 DED in Battambang
2011 till 2016 GIZ LRP in 4 provinces including Battambang

Impacts and achievements / Facts and figures
National level:
- The National Policy on Spatial Planning was approved by the Council of Ministers in April 2011.
- National Committee for Land Management and Urban Planning was installed (NCLMUP).

Battambang:
- First Municipal Land Use Master Plan (MLUMP) in Battambang in Cambodia was finalised in 2009 and approved by NCLMUP in 2015. In parallel, a Provincial spatial plan was developed to promote the development of the region (Battambang Spatial Plan BSP, finalised 2012). Based on the Master Plan, Battambang authorities hope to attract donors and investors. As an example, ADB supports the improvement of the drainage and waste water system using the Master Plan.
- UNESCO demonstrated interest in the old city of Battambang as a heritage building zone.
• GIS units have been created at municipal/provincial level managing the acquired databases.
• Staff in Battambang feel confident to be able to organise the planning process by themselves.
• On the ground, the municipality has used its MLUMP above all for “hardware applications” like road construction or upgrading, and the implementation of a suggested green concept. Likewise, tourism promotion has met with success above all on provincial level where authorities have started to develop tourism potentials in the province based on the Master Plan.
• City received the Clean City Award.
• Progress has been made in regard to informal settlements. The municipality has not forced evictions and/or relocations of informal settlers. Rather, it has ventured to implement the national government’s Circular 03 on the regulation of informal settlements, supported by a number of NGOs.
• The development of Master Plans is increasingly gaining speed in Cambodia. The NCLMUP came up with respective official procedures, which give formal orientation for the planning process, and which are under dissemination, creating more momentum for municipal/distric level planning in Cambodia. The experiences of Battambang are widely requested.

Other municipalities / provinces

• Battambang serves as a role model for other municipalities and provinces; at least 4 provinces have started implementing the planning process. The current status of implementation supported by GIZ LRP II is summarised in Table 2.
• The joint EU and WWF project on spatial / land use planning in Mondulkiri will be built on the experience of Battambang.

Facts and figures

Table 2  Planning processes supported by GIZ (2016)

<table>
<thead>
<tr>
<th>Province</th>
<th>Provincial Spatial Plan</th>
<th>Municipality (Urban) Land Use Master Plan</th>
<th>District Land Use Plans</th>
<th>Other activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Battambang</td>
<td>approved by provincial council sent to National Committee on Land Management and Urban Planning</td>
<td>approved and disseminated building regulation for heritage conservation zone finalised</td>
<td>Bavel: close to finalisation Moung: work in progress</td>
<td>Detailed land use plans for Sangkats</td>
</tr>
<tr>
<td>Kampong Chhnang</td>
<td>Work in progress</td>
<td>Work in progress</td>
<td>Roleap-er: work in progress</td>
<td>Provincial Atlas</td>
</tr>
<tr>
<td>Takeo</td>
<td>Work in progress</td>
<td>Work in progress</td>
<td>1 (Kiri Vong, started)</td>
<td>Provincial Atlas</td>
</tr>
<tr>
<td>Kandal / Khmau</td>
<td>Work in progress</td>
<td>Work in progress</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Success factors

- Tone from the top: Master Plan process was supported by the governors (Battambang) or mayors (Battambang). The governor of Battambang province pushed the whole planning process.
- State reform including decentralisation and de-concentration generated momentum for decentralised planning processes – although they were mainly donor-driven.
- There is a clear appreciation that master planning and land use planning in urban areas on provincial level provide a better base for linking spatial considerations with development planning and investment planning.

Problems / challenges

- The main challenge was the lack of experience and the absence of people qualified in spatial planning at the provincial and municipal/district level. There was virtually no experience the DED could build on initially.
- It was difficult to get the administration understand the importance of the exercise for the whole territory in the long run and allow the members of the working group to spare enough time to participate in the process.
- Data collection and analysis was very difficult, there was not much data available and some data is with restricted access. Migration patterns are poorly registered.
- On the institutional level, there is resistance to sharing information, as release of data is often perceived as a loss of power.
- The whole process takes too long – things changed during planning in Battambang and other municipalities/ districts. The actual planning process took from 2006 to 2009 but final approval by national authorities only happened in 2015.
- Cambodia’s Government and administration is still highly centralised and the modernisation of governmental institutions is a very slow process. Authorities at sub-national level are hesitant to make decisions.
- There is a gap between planning and real development. In Battambang, for example, while the planning process supported the idea of applying for UNESCO World Heritage status, by 2014, due to investment pressure, the overall surface of the recommended “Heritage Protection Area” had been reduced by 14%. Equally, as no binding legal framework supports MLUMP’s implementation, regulations on building height could not be enforced.
- For the time being, spatial planning is not a high priority of the government. The processes take too long and spatial planning is usually overtaken by physical development. Spatial planning being a decentralised action, there are very little resources for spatial planning within the municipalities and cities: missing reliable data, lack of human, technical and financial resources. Compliance with standards is not enforced, schemes and standards (e.g. building regulations) are not integrated. Regulations of approved Master Plans (Municipality Master Plan for Battambang) are partly violated.
Learning and innovation

• The RGC wanted GIZ to start the spatial planning process at the national level. As there was the danger of getting blocked in a bureaucratic process, the GIZ LRP decided to focus on the sub-national level instead. The focus enabled GIZ LRP and the municipal and provincial authorities to develop a pragmatic and comprehensive approach.

• The planning process was supported through incentives like green city award or the possibility to be recognised by UNESCO as a world heritage site.

• In Battambang it was crucial to identify interested parties in the planning process, such as the tourist department.

• On the job training and capacity building was the core of the GIZ LRP work on spatial planning but it was difficult to assess to what extent the staff trained are able to implement the skills. Additionally, this was hampered by high staff turnover. In order to be able to build a pool of national experts on spatial and land use planning GIZ tried to integrate as much national staff as possible.

• There is a need for a clearly designated governmental budget for spatial planning.

References

Important documents

GIZ


Legal framework

Law on Land Management

Spatial Planning Policy, 2011, Council of Land Policy

Housing Policy, 2012, Council of Land Policy
5. Land Rights and Land Registration of Indigenous Communities

Context
Cambodia is home to 24 different indigenous peoples speaking 24 different languages. According to different sources their numbers are between 150,000 and 250,000 people, representing approximately 1.4% of the total population. They live in 15 provinces, while two-thirds of the indigenous population of Cambodia is found in the northeastern provinces of Rattanakiri and Mondulkiri. According to the Land Law (2001) an indigenous community is “a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practise a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use” (Article 23). Ethnographical surveys have revealed that kinship relations which constitute the basis of social, political, economic and ritual organisations of indigenous peoples are deeply connected with territorial arrangements like spiritual areas and grave yards. In most cases their traditional authorities do not go beyond the village level.

Economic activities
Traditionally indigenous people practise shifting cultivation to sustain their livelihood, although nowadays many cultivate cash crops like cashew, cassava or rubber. But even if most of the families are involved in more permanent cultivation as a way to secure the land and to obtain cash with the single crop, they generally keep a portion of their occupied land for cultivating different varieties of dry rice plus vegetables, fruits and medicinal plants. Non-timber products are another important source of income.

The political representation of indigenous peoples in Cambodian politics is rather weak and indigenous peoples’ organisations are still in their infancy – they only recently (from 2005 on) started to organise themselves.

The problems they are confronting are often related to land issues like:

- Competition for land by agribusiness, mining and other small-scale farmers
- Economic Land Concessions encroach on indigenous peoples’ land (National, Chinese, Vietnamese, partly funded by international and national banks from industrialised countries)
- Indigenous communities’ areas are subject to massive immigration by small-scale farmers
- Other people claim “traditional land acquisition by the plough”
- Competition for forest and water resources
- Administrations allow timber to be cut from indigenous land, illegal logging stays unprosecuted
- Hydroelectric dams dispossess indigenous communities from their aquatic and forest resources. (Müller et al., 2014)

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6 Note that the literal translation from Khmer is “original ethnic minorities”. The ethnic minorities of the muslim Cham, the Chinese and Vietnamese people in Cambodia are not considered “indigenous”.

7 For example, legislation requires that any candidate for local council – or any other elected position – must be able to read and write Khmer. As most indigenous peoples do not satisfy this requirement, the majority are in effect excluded from direct participation in the formal political structure.
Legal framework

Cambodia supported the Declaration on Indigenous Peoples Rights in the United Nations but didn’t sign the ILO Convention 169 on indigenous and tribal peoples.

The Constitution of the Kingdom of Cambodia states that “Khmer citizens are equal before the laws and shall enjoy the same rights, freedom and duties” (Art.32) without referring to the concept of indigenous peoples. It is the Land Law (2001) which further specifies the rights of indigenous peoples on land recognising as well the social, spiritual, cultural and economic values of their land.

Article 25 of the 2001 Land Law specifies that indigenous communities can exercise collective ownership over land where they have established residence and where they carry out traditional agriculture.

The National Policy on Development of Indigenous Minorities (2009) sets out government policies related to indigenous peoples. Together with the Land Law this policy gives recognition to the rights of indigenous peoples to traditional lands, culture and traditions.

The sub-decree on land of indigenous communities (2009) further specifies the procedures and categories of land:

- the residential land,
- agricultural land and reserved land for shifting cultivation,
- spiritual forest land and
- burial forest land.

The collective ownership is granted by the state to indigenous communities but the community does not have the right to dispose to any person or group land relating to any collective ownership that is state public property like forests. As in many villages indigenous people live with Khmer people the application of collective land title is a right that is only granted to villages having at least 60% indigenous peoples.

Process of land titling

The process to achieve the collective title comprises different steps involving various Ministries:

1. The Ministry of Rural Development must certify that a community is indigenous. The certification is based on self-identification of the community. The process takes between 1 and 1.5 years, the costs for transport, accommodation and per diem of all people involved amount to US$ 10,000 to 20,000, usually paid by donors or NGOs.

2. The Ministry of Interior (MoI) has to register the community as a legal entity. By the end of 2015, 92 communities have been legally recognised. It takes 1 to 1.5 years to get the legal entity certification, costs for MoI staff are covered by NGOs or donors.

2.5. The indigenous community need\(^8\)

- to prepare a preliminary map including boundaries and land use according to the five categories of indigenous communities’ land,

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\(^8\) This step is supposed to be part of the 2nd step but as it is very time consuming and costly the donor partners refer to it as step 2.5
agree on internal rules including the structure how to use and manage the land properly and
submit the land title application to provincial land department.

Conflicts with neighbouring communities, individuals and ELCs should be settled during the preliminary mapping. As soon as the community submits its application the Provincial Governor can issue an Interim Protection Measures letter to inform local authorities not to certify any land transaction inside the community and not allow outsiders to invade indigenous land. The whole process takes on average one year. The costs for the preliminary maps and internal rules are usually paid by donors or NGOs.

3. MLMUPC is responsible for the land registration of indigenous communities. A provincial land registration team does the survey and boundary demarcation, the collected data are then displayed publicly for 30 days. After public display, the Provincial Governor and Ministry of Land submit the request to the Ministry of Agriculture, Forestry and Fisheries (MAFF) and/or the Ministry of Environment to approve the parcels data. The government will then issue a sub-decree for reclassification giving the land to indigenous communities as communal title. Without any disruption this step takes 1 to 1.5 years and the costs are approximately US$ 30,000, covered by MLMUPC/ Ministry of Economy and Finance (MEF).

If there are no major conflicts inbetween, the whole titling exercise takes at least 4 years, while in practice it takes 6 years and more.

Although the national policy on indigenous peoples is quite advanced, in practice many problems remain, most of them related to land and the encroachment by external agents, such as Economic Land Concessions and Khmer farmers. Land fragmentation through encroachment is not a new phenomenon on indigenous communities’ land, creating a lot of conflicts in the communities, between communities and between communities and outsiders.

Individual / collective land title

According to the land law, communal and individual titles are rendered mutually exclusive. On the ground indigenous communities often switch between communal and individual possession depending on whether land is actively cultivated or not (Ironside, 2010). As the titling process under Directive 01 formalised the land tenure system forcing members of indigenous communities to choose between the two it has the potential to fuel internal conflicts.

Especially during the implementation of the Order 01 registration campaign (see chapter 1) some indigenous peoples decided to accept individual land titles. The individual registration was combined with the requirement for the concerned households to quit their IP community and relinquish their communal land rights by signing a declaration. They still had the possibility to complain during the public display. However, at the time of communal registration, many of them are expressing the wish to reintegrate the community and benefit from communal land titling.
Strategy

- Land titling of indigenous community land was mainly supported by GIZ and the Canadian International Development Agency (CIDA) promoting the piloting of three respectively five titling processes.
- During LRP I, GIZ worked mainly through the ILO (2013 till mid 2015) supporting indigenous communities to become officially recognised as a legal entity (steps 1 and 2). This cooperation wasn’t prolonged as ILO only funded two local NGOs to accompany IPCs through steps 1 and 2 of the registration process. The outcome was considered not cost-efficient.
- In parallel LRP I worked with a selected consultant to start the development of preliminary maps and internal rules in selected communities (step 2.5).
- In LRPII BMZ decided to support indigenous communities to cope with step 2.5 to fulfil the necessary requirement as this was identified as a major bottleneck. GIZ works through partnership agreements with eight NGOs.
- Furthermore, knowing that a title is not enough to improve indigenous peoples’ livelihoods LRPII started to include the “post title” process, supporting NGOs to strengthen indigenous communities further.

Implementation

- GIZ supports NGO partners and indigenous communities to prepare preliminary maps, define their internal rules how to manage their land and prepare the application form for titling. The communities selected are those which have been legally recognised by MoI and proposed by NGO partners.
- The GIZ team provides capacity building to eight NGOs and 41 indigenous communities.
- Two cooperation partners (UN-OHCHR and German Agro Action) received technical support by GIZ to implement their projects in Kampong Speu, Battambang and Ratanakiri.
- Field research was done on
  - Conflicts related to the land registration of indigenous communities (2014)
  - In-depth study on Land Tenure Security for Indigenous People Community in Cambodia (2014)
- The MLMUPC was supported to implement training courses on “Procedures on Indigenous communities land registration” provided for Provincial State Land Management Committees, District State Land Working Groups, NGOs and indigenous communities’ representatives in seven provinces.
- GIZ fostered regular meetings between NGOs working with indigenous communities and MLMUPC.
- GIZ implemented a workshop on “challenges and procedures on how to speed up the indigenous communities land titling process” with MLMUPC and the seven provincial departments and workshops on lessons learned and needs assessment with NGO partners.
- LRPII supported communities to do their preliminary mapping and use the map as an instrument to apply for communal land registration and to negotiate with companies holding Economic Land Concessions.
- LRPII financially supported an NGO to empower a community committee to implement their internal rules to secure their land title.
LRP II supported MLMUPC to develop the instruction to convert individual land title into communal land title and conduct public consultations on the instruction with NGOs, partners and government at sub-national and national level.

Methods applied

- Training and coaching of NGOs including joint planning, participatory methods, preparation of preliminary maps, digitalising maps, filling-in and submitting land application.
- On the job training of NGOs and indigenous communities with specific focus on young indigenous people including use of GPS, boundary demarcation techniques, conflict resolution.
- Participatory approach in developing the internal rules and defining the boundaries of their land according to the categories defined in the sub-decree.
- Reflection workshops to share lessons learned and experiences.
- Supporting legal framework (land law, sub-decree and respective instructions).
- Supporting MLMUPC to train provincial state land management committees, district state land working groups, NGO partners and indigenous communities’ representatives on legal frameworks to support communal land titling.
- Local subsidy to the NGO Cambodia Indigenous Peoples Organisation (CIPO) to strengthen capacity of community committee to implement bylaw and internal rule.

Exit strategy

- LRP II supported CIPO to function as a bridge between indigenous communities, NGOs and the MLMUPC.
- The GIZ team organised training on fund raising strategies, monitoring and report writing, hoping that NGOs have enough capacity to apply for funds and manage them.
- The GIZ team organised additional technical training on QGIS, sketch mappings, preliminary mappings, development of internal rules and filling-in applications, so that NGOs have capacity to continue their work.
- Documentation of the project and the lessons learned.
- Publication of a practical indigenous communities manual on preliminary mappings, QGIS, development of internal rule, conflict resolution and filing land applications.

Timeline

2004 – 2011 pilot phase providing technical and financial support to three piloting communities.

2013 – 2015 financing the programme “Promoting Indigenous Peoples’ Rights to Land and Natural Resources” of the ILO supporting the recognition of indigenous peoples and their registration as legal entity.


Impact and achievements / Facts and figures

- 42 indigenous communities submitted successfully their land application forms to the Provincial Departments of Land Management, Urban Planning, Construction and
Cadastre in 4 provinces. 
40 already received Interim Protection Measure letters from Provincial Governors.

- 11 out of 42 indigenous communities received collective land titles while 14 other indigenous communities are in the process of land registration for indigenous community – 3 of the 11 were during the pilot phase and five were supported by CIDA.

- The format standard of preliminary maps has been elaborated.

- The Provincial State Land Management Committee, District State Land Working Group, and local authorities and NGO partners in 7 provinces were trained on the legal framework to support IP land registration and the process of preliminary mapping.

- 8 NGO partners were trained in fundraising strategies and writing project proposals.

- IP training manual, which consists of preliminary mapping, development of internal rules, QGIS, land conflict resolution, and filing land application forms, will be published.

- IP youth have been trained on usage of GPS devices and techniques for land use data collection.

- The mechanisms shall be defined to enable IP members who have received private titles through the previous registration campaigns to return their title and reintegrate into their community if they wish to do so. MLMUPC and GIZ in consultation with NGOs are developing the instructions for land conversion.

Success factors

- An important success factor was the outstanding engagement of the GIZ IP team, their willingness to stay and work in IPC for extended times and to manage critical situations in the field (land mines, wild animals, traps).

- The GIZ IP team managed to learn indigenous languages, this was important for gaining trust of IPC.

- The legal framework is in place (Land Law, sub-decree 83, 2009) guaranteeing indigenous peoples’ land rights. Cambodia is one of the few SE Asia countries recognising collective land rights of indigenous communities. This is internationally acknowledged.

- GIZ collaborated with MLMUPC to provide training to all provinces where IPC are located (provincial state land management committee, district state land working group, community council, NGO partners and lawyer group). After receiving the training it was easier to work with those entities, specifically in Ratanakiri, Kratie and Mondulkiri.

- Indigenous peoples’ rights are of high concern to international human rights organisations including the United Nations Office of the High Commissioner for Human Rights (UN OHCHR).

- Cooperation with indigenous peoples’ organisations and NGOs was instrumental to get access to indigenous communities.

Problems / Challenges

- Indigenous communities have lost a lot of their internal social cohesion. Many community members want individual land title but as the law only foresees that they can apply either for individual title or be part of the communities’ land title they have
to decide against or in favour of the community. This decision making process can intensify existing internal problems of the community.

- The procedures to apply for a collective land title are long and complicated involving three to five different ministries and their local/regional dependencies. A major problem is the lack of coordination and communication between the ministries. It was beyond the scope of the LRP to improve the communication between ministries.
- As the process takes more than 4 years, communities find it hard to maintain their motivation to apply for a title.
- Communities are not aware of the need for land titles.
- Illiteracy of community members is high, increasing their dependency on NGOs or others to support their application process.
- Different types of conflicts affect their land:
  - Conflicts among communities themselves on boundaries exist. They can be solved internally or by the district governor.
  - Intrusion by Economic Land Concessions. Many severe land conflicts with ELCs are pending. These conflicts are beyond the scope of the project.
- Of 8 IPCs with land titles, 5 have experienced encroachment or sold land to outsiders. Only those communities able to secure their borders were able to restrict encroachment. Law suits before courts are not promising solutions for IP cases unless the Cambodian court system is fundamentally reformed. The parties to disputes, mostly indigenous communities, don’t trust the local administration. They feel the local administration is in favour of the rich and powerful, especially in the case of ELCs. Alternative Dispute Resolution (ADR) by neutral and independent third party dispute mediation could build trust and bring all the parties to the table.
- NGO support seems absolutely necessary here, too.
- The communities still face land disputes after they gain communal titles: Small and medium land encroachers occupy their titled land, illegal logging still takes place.
- Some applications for land titling were rejected because communities didn’t agree with their neighbours on the boundaries or the provincial department considered the claim too big.
- Although land rights of indigenous communities are guaranteed by law, representatives of MLMUPC still view them as a concept imposed by western donors.
- The Interim Protection Measures are not fully respected by local authorities and land speculators.
- Community members resigned during the land registration process, which made the process slow down.
- Capacity of NGOs is limited, this holds true especially for technical skills such as data collection on land use and digitising of maps.
- High turn-over of NGO staff due to difficult working conditions hampered the efficiency of trainings.
- Costs:
  - Step 1 and 2: US$ 10,000 to 20,000 paid by NGOs (or donor agency)
  - Step 3: US$ 30,000 based on US$ 40 per ha, average size: 750 ha per community
- There is no calculation of the real costs of step 2.5.
IP land is in very remote areas with difficult access and working environment. Reluctance of authorities and outsiders to join meetings to discuss the boundaries – representatives of sub-national level hesitate to take decisions, in consequence overlapping land claims cannot be discussed and resolved on the spot. As boundaries remain controversial, maps are not accepted and the titling process comes to a halt.

Learning and innovation
- Cooperation with NGOs – although complicated because of their low capacity – was crucial to be able to work with indigenous communities.
- GIZ was able to be a bridge between NGOs, indigenous communities and MLMUPC. The trust building process was necessary to be able to advance non-conflictive IPC land titling. Reflection workshops have been vital to build trust among the stakeholders.
- Although the demarcation of the boundaries is a participatory process, if possible done by the indigenous communities themselves, QGIS and the digitisation of maps require more technical skills. In order not to waste time in technical trainings, technically sophisticated tasks should be outsourced.
- Internal rules of the indigenous communities should not only focus on land use and management but also on conflict resolution. They have to build on the customary and practised law of the community and be presented in a way all community members understand (e.g. pictures).
- Communication and coordination between ministries is essential. An inter-ministerial group would have been helpful especially in the case of conflicts.
- Need for transparent land registration data and easy access to them.
- Cooperation at local level (cadastral officers, commune councillors).
- Mapping indigenous communities land is very hard, it is only possible if communities are involved.
- To train young people on the use of GPS was especially successful as it helped to speed up the mapping process.
- Sustainability depends foremost on the capacities of NGOs to maintain their support for IPCs and the policy of MLMUPC to continue issuing land titles.
- GIZ tried to establish an NGO focus group to maintain the link to the Ministry and enable NGOs to put forward technical and political issues concerning IPC land titling.
- Borders and neighbouring land should be registered as well.

Gender issues have not been specifically addressed in the programme and gender relations in IPCs are not studied in depth. Although indigenous women participate in meetings equally it remains unclear to what extent women participate equally in internal decision making processes.

Land titling is an important step towards land security but it has to link to long term development options of indigenous communities including access to education, health service and livelihood support.
Replicability

- Despite all shortcomings and problems of the indigenous communities land titling process, the Cambodian case is an example of recognising land rights without having further indigenous peoples’ rights in place.

References

Important documents

**GIZ**

GIZ (2016) Lessons Learned on Indigenous Communal Land Titling
GIZ (2016) Handbook on indigenous communities’ land titling
Workshop report "Challenges and Procedure how to speed up the Indigenous Communities Land Titling process"
Workshop report "Lesson Learned and Needs Assessment with NGOs partners on Indigenous Community Land Registration"
GTZ (2005) Legal Issues Related to Registration of Lands of Indigenous Communities in Cambodia
IPC Database

**Further reading**


**Legal documents**

Land Law (2001)

Policy on Registration and Right to Use of Lands of Indigenous Communities in Cambodia, 2009

Policy for Development of Indigenous Communities, 2009

Sub-decree 83 on Procedures of Registration of Land of Indigenous Communities, 2009

Sub-decree on the Procedure for Commune Land Use Planning

Circular on Interim Protective Measure
6. Land Conflict Resolution

Before Systematic Land Registration was introduced in Cambodia in 2001, land titling was done as Sporadic Land Registration. While Systematic Land Registration is a mass registration, Sporadic Land Registration corresponds to individual land claimants demanding individual registration. Currently, both systems of land titling coexist.

The office of the United Nations High Commissioner for Human Rights found in its report (2014) that during the reporting period (2013/14) there were 71 on-going and unresolved land disputes between affected communities, authorities and businesses in both rural and urban areas combined. Of those disputes, 31 related to economic and other land concessions (including 12 on land occupied by indigenous peoples), while 40 disputes related to other land transactions.

Violent forced evictions and land disputes in general became an issue at the beginning of the allocation of land concessions and establishing a free land market, but they became severe in 2008 when land prices peaked. In 2014, OHCHR recorded a sharp rise in the number of violent forced evictions of individuals, families and communities from disputed rural land.

There is no regulation for compensation from evicted land in private cases. Compensation needs to be negotiated between the parties, but the process mostly discriminates against the poor. Against this background civil society organisations demand a law regulating compensation schemes.

While these cases generate severe human rights violations, it wasn’t possible to address them in the scope of the project and its close link to MLMUPC.

Apart from conflicts between rich, powerful persons and companies and the poor, systematic and even more so sporadic land registrations provoke a lot of conflicts between land claimants, mostly between poor people.

Three different institutions are entitled to solve land disputes over still unregistered land, mainly through conciliation:

The communes

The communes have a specific legal mandate to try to resolve all kinds of residents’ complaints. The communes have interpreted this as a mandate to resolve land disputes and effectively they do if the conflicts are relatively small-scale without involving powerful people. The communes have no authority to issue decisions but rely on old Khmer conciliation mechanisms. Communes work in coordination with district and provincial cadastral commissions.

Administrative Commissions

Each time an SLR area is designated, an administrative commission (AC) is created to supervise registration including dispute resolution in case it is needed. Resolution is generally by conciliation, however the ACs have also recently been given the power to dismiss claims. As of the end of 2015 the ACs had handled formal cases involving approximately 26,400 parcels, and resolved cases involving 10,622 parcels, leaving 15,778 parcels unresolved.
Cadastral Commissions (CC)

Cadastral Commissions were created by the Land Law (2001, Art.47). Their mandate is to resolve disputes involving unregistered land. Like communes the CCs’ conciliations generally involve traditional Khmer conciliation techniques.

In 2003/4 GTZ made an attempt to set up an electronic case management database for the CCs for three provinces. Unfortunately, this was not kept up to date.

An early evaluation (2005) assessed that in a quarter of the cases the parties involved reported that they have had to pay informal fees, although payments were generally small to moderate (less than US$ 20). 41% of the respondents stated that they felt that the outcome of their case was fair whereas 46% said that the outcome was somewhat or absolutely unfair.

Critics of the administrative and cadastral commissions stress that the criteria upon which a decision is based remain unclear.

National Authority for Land Dispute Resolution (NALDR)

The NALDR was created in 2006, in part to handle cases too large and complex for CCs. The work of NALDR is considered non-transparent, with no accountability.

Cases involving already registered land are the jurisdiction of the courts – only judges decide if cases are their responsibility.

Strategy

- At the beginning of the project in 2002 GTZ and other donors which supported the creation of the CCs believed that CCs would handle all types of land conflict: not only poor against poor but also powerful and rich against poor. Based on this assumption GTZ supported the establishment of CCs. However, after the start of CCs in 2003 the CCs decided not to handle cases involving very powerful people, and it became evident that the MLMUPC as partner of the GTZ land project has no de facto authority to interfere in big cases, involving for example economic land concessions (ELC). GTZ decided to support at least the poor to poor conflict conciliation by training CCs as well as ministerial staff.
- As many cases remained unresolved the project supported the creation of mobile teams to accelerate these cases. Mobile teams are composed of retired land officers with good insight into the subject.

Implementation: Methods applied

- Support to build the legal framework for land rights as a means of land conflict prevention
- GTZ assisted the National Cadastral Commission Secretariat (NCCS) in training commune councillors in 10 out of 24 provinces
- GTZ gave technical advice (for example short term contracts with international lawyers)
- Support of the legal framework for CC
- Capacity building of officers in CC including international training in conflict management and sharing of experience
- Establishing a pool of trainers on land dispute resolution mechanisms through a training of trainers approach
In view of the slow handling of cases through the CCs, GTZ decided to build up mobile teams with experienced but retired staff to accelerate land conflict resolution (2007).

- Technical and political advice for the design of the land dispute resolution mechanism addressing poor to poor conflicts
- Training of MLMUPC staff and of CCs
- Training of trainers

Timeline

2002 until 2007: focus on cadastral commissions and training

2007 until 2016: the programme focussed mainly on supporting the mobile teams

Impacts and achievements

- On the local and regional level the structures to resolve minor land disputes are in place.
- The majority of the complaints could be resolved. The mobile teams have accelerated land dispute resolution including in difficult, multi-party cases.
- Between 2002 and December 2015 in the context of the systematic land registration, formal complaints concerning approximately 26,400 parcels were submitted.
- Administrative Commissions resolved 10,622, leaving 15,778 unresolved by the ACs. Of these the mobile teams resolved cases concerning 493 parcels (between August 2013 and December 2015). A total number of 15,285 parcels are still unresolved by the end of 2015.
- From January 2003 till December 2015, the CCs at all three levels received 7,243 cases. Of these, 3,335 were resolved by conciliation, 2,372 were dismissed and 738 were withdrawn. 798 cases are still pending. Operating from September 2007 until February 2013 on ordinary CC cases the mobile teams accounted for 1,042 cases of the CCs’ 6,445 cases resolved. In general during that period there were 4 Mobile Teams at work.
- Exact figures for the volume of cases handled by the communes are not available.
- Costs: at approximately US$ 200 per conflict solution, the system is quite efficient.

Success factors

- The out of court system of land dispute resolution is in line with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT).
- The poor to poor dispute resolution mechanism of communes, administrative commissions, and cadastral commissions was widely accepted by the parties involved.
- The mobile teams are composed of experienced people able to speed up the process.

Problems / Challenges

- Rule of law hardly applies to cases of land conflicts if Economic Land Concessions or powerful persons are involved – Few of the big cases have been resolved.
- Corruption in the process of settling cases is a problem although the amounts reported in an older CC evaluation of informal payments are moderate.
• In its project GTZ was bound to MLUMPC and didn’t get access to the land-managing ministries like the Ministry of Agriculture, Forestry and Fisheries, the Ministry of Environment and the Ministry of Mines and Energy.
• There is evidence of authorities interfering in competences of the cadastral commissions.

Learning and innovation

• Before getting involved in improving a land dispute resolution mechanism, a careful assessment of the totality of the disputes and the existing land dispute resolution mechanism should be made.
• The following questions need to be answered: What is working in rights-based ways or in traditional ways that are acceptable to the parties, and what is not and why. Such an assessment should be the foundation on which all decisions are made as to what support to offer the host government in the field.
• If big and complex land disputes (powerful against poor) are many and if those are not being handled in rights-based ways, German development cooperation should assess if there is a realistic possibility for interventions improving resolutions of these cases. If it is believed not worth it to intervene in these cases, but that it is worth it to intervene in the smaller cases, then it should be made clear to all including the general public what the scope of the intervention will be.
• This is particularly important as the project felt tied to MLMUPC which doesn’t have responsibility for dealing with all kinds of land conflicts.
• In the case of Cambodia a transparent communication of what is and what is not the goal of the intervention into land dispute resolution and why – against all odds – it was worth it to focus on poor versus poor cases, would have been necessary.
• Regular quality assessments of on-going land dispute resolution is necessary.
• The approach of the project to support traditional dispute resolution approaches was successful and should have been disseminated more broadly.
• NGOs are able to address cases involving Economic Land Concessions if international funding through IFC or other banks are involved and civil society organisations are able to develop a lobby strategy accordingly.
• In Cambodia, there is only little mediation capacity in organisations able to resolve bigger cases out of court.

Sustainability

• The administrative commissions and the cadastral commissions will continue.
• The sustainability of mobile teams is low, as MLMUPC has already declared that it is not able to financially maintain them.
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Important documents

GIZ


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Cooper, G. (2002) Land Policy and Conflict, the Cambodian portion of an eight country study by the North-South Institute for the World Bank


Lüke, M: (2013) Human Rights Assessment of the German-Cambodian Land Rights Programme (LRP), German Institute for Human Rights

Numerous studies by NGOs on land conflicts in Cambodia, for example by Global Witness, ADHOC, Heinrich Böll Foundation

Legal framework

Land Law, 2001

Sub-Decree 22 on Decentralization of Powers, Roles and Duties of Commune/Sangkat Councils, 2002

Sub-Decree No. 47 on Organization and Functioning of the Cadastral Commission, 2002
7. Gender Mainstreaming

Context
According to UNIFEM almost 80% of women in rural areas work in agriculture, playing a significant role in income generation. Despite their important role in agricultural production, they receive little support in terms of agricultural and rural livelihood-related services and assets.

Land liberalisation in 1989 and the unclear legislation process resulted in negative impacts on women’s land rights, especially for female heads of household. The distribution of land during the early years of land reform in the 1990s was often criticised for having an unintended adverse effect on women-headed households because the distribution of agricultural land was based on family size. According to the Cambodian Gender Assessment (2004) this often resulted in the women-headed households having too small a parcel to produce enough food, consequently going into debt, selling the land and becoming landless. Furthermore, women’s rights to land were unstable because in cases of divorce, death or family break-up, women could lose their land rights, which leads to the impoverishment of women and children. This changed with the Land Law 2001.

Gender equality is guaranteed to Cambodian citizens by the constitution as well as through the Land Law (2001). Women and men have equal rights to enter into contracts and assume obligations related to land use rights. This has been reinforced by the Civil Code (2011) which states that property brought into a marriage and property acquired during the marriage by gift, succession or testamentary gift is individual property; newly acquired property becomes joint marital property.

With the land law systematic land registration (SLR) was introduced and formal titling to land became more common. As a result of SLR, more land titles have been registered in the name of women than men. The majority of land is titled jointly in the name of husband and wife (62%), 25% of titles are titled solely in the name of the wife, and 10% in the name of a man. The rest are collective land titles or others.

A survey conducted by CIDA in 2010 on “Gender Equality in Systematic Land Administration” found obstacles for women to participate in the SLR process like illiteracy, lack of time and understanding of the process. Nevertheless the survey underlined that the “women’s satisfaction with SLR was high and, for the most part, they are treated equitably in the process.” The Beneficiary Assessment conducted by GIZ in 2009 revealed that both men and women perceived the new land titles as offering improved protection of women’s ownership rights. On average, 96% of respondents agreed that in cases of family crisis such as death of a spouse or divorce, the new land titles would ensure that women would be able to retain ownership of properties in their name and claim their share of property held jointly (in the case of divorce) (GTZ, 2009:41).

Strategy
• In the context of donor coordination, it was mainly the Canadian CIDA which supported gender mainstreaming in MLMUPC and the land registration process. When CIDA phased out in 2013, GIZ took over. Currently, there are two persons (1 female / 1 male)
in the LRPII team, who function as Gender Focal Persons collaborating mainly with the Gender Focal Persons in the Ministry.

- Nevertheless, in the context of the components of the GIZ land rights programme II like conflict resolution and spatial planning, the programme addressed gender issues mainly through capacity building of government staff at national and sub-national level and empowering women to speak up during the consultative processes of developing spatial planning at sub-national level; and giving priority to first solving any land conflict case which involved women.
- In the context of collective land titling of indigenous communities, emphasis was placed on the participation of women, for example in defining the boundaries and land use zoning and in defining internal rules.

Implementation: Methods applied

- Positive Discrimination e.g. orienting the conflict dispute settlement teams (Cadastral Commission, mobile teams) to handle conflicts involving women first; in land registration, giving preference to women, especially to widows and divorced women.
- During LRP I gender focal persons developed specific concepts to support women-headed households after social land concession. For example, providing financial support so that women can employ people who help them to clear the land or support them to generate income (by cultivating vegetables or tree nurseries or preparing soya milk)

- Capacity building of cadastral commissions and mobile teams to be gender sensitive in their work
- Training on leadership for gender focal persons in MLMUPC at national and on provincial level
- Supporting the elaboration of guidelines on gender sensitive land management and training manuals e.g. on gender mainstreaming in Systematic Land Registration
- Study on gender equality in spatial planning

Timeline
2002-2016

Impacts and achievements / Facts and figures

- Of the land titles issued through Systematic Land Registration (SLR), 62% are common property, 25% women’s property, 10% men’s property and 0.5% others (indigenous communities and pagoda’s property) (MLMUPC, 2013)
- Only 13% of all MLMUPC staff is female, only one woman is Undersecretary of State and one Secretary of State.
- The process of systematic registration and specific awareness-raising have contributed to improving land rights for women. They gain legal certainty through formal registration.

Success factors

- Since 2005, a Gender Mainstreaming Action Group (GMAG) has been established at MLMUPC. It has 11 members of whom seven are women. Their responsibilities are:
elaboration and monitoring of implementation of the Gender Mainstreaming Action Plan, mainstream gender into all sectors in the ministry, and seek financial support from donor agencies.

• The legal and policy framework on land and land policy recognise that for “land policy to meet the needs of all Cambodians it must be responsive to the needs of women.”

Problems / challenges

• Progress for women is hampered in many areas, as evidenced by gender-based violence, traditional roles and stereotypes.
• Research into land disputes indicates that single women are less likely to utilise existing land dispute resolution services than men. This suggests that women lack information about land dispute resolution mechanisms and institutions, that the hurdles to present a complaint are still too high and that conflict resolution institutions are not gender sensitive enough.
• Little coordination within the context of the Land Rights Programme II with NGOs focussing on gender issues as well as with the Ministry of Women Affairs.
• Gender was assigned as an additional task to the focal persons in the programme.

Learning and innovation

• Focussing on women headed households and positive discrimination of women’s registration of land delivered good results.
• In order to enable women to maintain their land and for them to be able to use it for income generation follow-up support is necessary. It is important to support women to be able to manage basic but very hard work like land clearance through supporting them financially.
• Further livelihood support and means for agricultural income generation are needed.
• Mainstreaming gender into new policies, guidelines, handbooks and training materials was partly successful. Nevertheless, the experience is that ministerial and provincial staff need to be accompanied by training and coaching. It is because there is no financial support to implement the gender at the sub-national level. The budget is not allocated to the provincial department of land management.
• A quota and leadership training targeting women has been successful.
• Although the Ministry tried to develop an internal upgrade policy for male and female staff, it didn’t result into a higher percentage of women employed. Even worse, only few women participated into internal capacity building measures (MLMUPC, 2013). Capacity building has to be designed more gender specific and supporting to women to participate.
• Information on land law and the land titling process is not enough. The information has to be gender sensitive and land tenure rights of women have to be secured.
• Gender should not be defined as an added task to “normal work” but should stand for its own.
• Linking land titling, livelihood support and agricultural extension work helps women-headed households to improve their income from agricultural work.
Sustainability
The Sustainability is high as the Gender Working Group in the MLMUPC is working since 2005 and the Gender Mainstreaming Strategic Plan in the Land Sector 2013-2018 is approved.

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Framework
Gender Mainstreaming Strategic Plan in Land Sector 2013-2018
8. Land Tenure in Urban Areas with Informal Settlements

The development of informal settlements in urban areas is a result of the violent history of the country. During the Khmer Rouge regime the majority of the people were displaced and forced to work in agriculture. Phnom Penh and other cities were virtually emptied. After the Khmer Rouge lost control over the cities and a significant part of the country in the early 1980s, people started to return to the cities where they began to settle on land without clear tenure rights, afterwards declared state private land or state public land. Furthermore, other factors such as population growth, refugee repatriation, land loss by natural disaster, and migration of rural people to urban areas for job seeking increased the problem.

Informal settlements have long been a problem without solution. It was only addressed in 2010, when the RGC promulgated an administrative instruction Circular on “resolution on temporary settlements on land which has been illegally occupied in the capital, municipal and urban areas”, called Circular 03. This Circular can be regarded as a reaction to the eviction of inhabitants of the Boeung Kak Lake area in Phnom Penh in 2009, which caused international and national protest.

Circular 03 establishes a complex process including data collection about the number of temporary settlements, the identification, mapping and classification of the informal settlement sites, a household and population census as well as coordinated discussions to identify solutions for the people living in informal settlements. It requires its inhabitants to be organised as communities – individuals cannot claim their own plot. Every informal settlement community has to agree on internal regulations about life in the community, and elect an executive committee of the community including a head of community, two sub-representatives, and a financial and administration representative. Possible solutions for the people living in informal settlement communities consist in relocation, on-site upgrading and the granting of ownership or usufruct rights. According to Circular 03, solution-finding must also go along with the installation of basic public infrastructure and services while avoiding options that encourage the establishment of new informal settlements. All in all, Circular 03 describes a decentralised approach with the participation of multiple stakeholders like government authorities, development partners, and representatives of civil society.

According to Circular 03, there are 3 types of solution policies: 1) Usufruct rights based on agreed terms, 2) Ownership rights (after 10 years of permanent residence) or 3) Rented rights in agreed timeframe with symbolic (token) renting fee.

The Land Rights Programme (LRP) has been built on the experience of DED. It supports the municipality of Battambang in the implementation of the pilot process of Circular 03 since 2011 through technical advice to the municipal state land working group and provincial state land management committee, and local subsidies to local NGOs and legal organisation/firm.

Some of the NGOs sub-contracted by GIZ LRP II are working on the mapping of the informal settlements, on the registration of the households, filling the application forms and supporting communities in developing their own proposals for solution finding.

In Phnom Penh no informal community fitted the criteria established by the municipality. It was only in 2015 that GIZ LRP II and the municipality of Phnom Penh signed an implementation agreement to implement Circular 03 in one unspecific community. In December 2015 Samrong Meancheay Community was identified as a pilot community.
Strategy

• In accordance with the main objective of GIZ LRP, Circular 03 was considered as an opportunity to support secure land tenure of informal settlements.
• LRP cooperated with UNESCAP and community development NGOs in Phnom Penh and Battambang to assist in community empowerment and legal support.
• The role of GIZ was to build a bridge between civil society and governmental institutions.
• The idea was to pilot the procedures in securing land tenure of nine communities in Battambang as a model approach to be replicated nationwide to uphold the rights of informal settlers and prevent future illegal occupation on state land.
• In Battambang LRP could build on existing good relations between GIZ staff (former DED) and the municipality.
• The partner at the national level was the newly formed Department of Housing under MLMUPC responsible for housing policies and upholding housing rights.
• The LRP did not only focus on land tenure security but also on on-site improvements of settlements.

Implementation: Methods applied

• GIZ LRP provided technical advice and capacity development to municipal and provincial authorities of Battambang through training, on-the-job coaching and facilitation.
• GIZ LRP supported and partly subcontracted NGOs\(^9\) working with informal settlements by providing both technical and institutional capacity development through training and coaching, and local subsidies for community organising, community savings, community mapping, legal awareness, and community housing proposal development, with supporting documents required by Circular 03.
• Local subsidies for NGOs supporting their work on socially stabilising informal settlements.
• GIZ worked with development advisers, national GIZ staff and local experts.
• Cooperation with law firm to analyse the legal background of the informal settlement was crucial to legal aspects and to be able to file the case.
• Piloting detailed implementation of Circular 03. The practical experiences from the pilot process were incorporated in the development of Technical Manual on Circular 03 developed by the programme that was then distributed to relevant stakeholders.
• Capacity development of NGOs, community leaders and municipal staff was an important part of the component.
• Coaching is a practical approach used by GIZ advisors providing technical support to partners (NGOs and government counterparts);
• Community representatives are empowered to active participate in solution-finding meetings; however, the participation of NGOs or law firm is crucial to ensure transparent process;
• The LRP supported solution-finding meetings. During these meetings community representatives present their proposals in front of a forum of representatives of the concerned government authorities, NGOs, and members of informal settlement communities.

\(^9\) NGOs involved are: Community Empowerment and Development (CEDT), Community Managed Development Partners (CMDP), Urban Poor Women Development (UPWD), Legal Aid of Cambodia (LAC), VISHNU Law Group.
Timeline

Through the DED since 2003 but it was only since 2011 that the Land Rights Programme started to work specifically on informal settlement.

Impacts and achievements / Facts and figures

- In Battambang household identification has been completed for 33 communities. Eight communities submitted proposals to Provincial State Land Management Committee. These 13 communities have been prioritized by GIZ to get land tenure solutions. Seven communities have presented their housing proposals in the process of solution finding meetings.
- In Phnom Penh, one pilot community housing proposal for on-site upgrading was submitted to Capital State Land Management Committee awaiting official letter confirming policy solutions provided;
- So far, no community received its land rights due to reluctance in providing solution policies by the Provincial State Land Management Committee (PSLMC). According to Circular 03, solution policies should be decided by PSLMC.
- So far, no community supported by GIZ has been relocated or evicted.

Success factors

- All informal settlement communities have their community organisations recognised by the local authority with support from NGOs and Sangkat authority (local administration).
- During implementation of the component, good working relations with NGOs were established. The work with NGOs was crucial as they maintained the contact with the communities, and to engage in infrastructure improvement.
- One NGO trained paralegal teams in the context of informal settlements and legal awareness for extension. Some of the trained persons became community leaders afterwards.
- Many community leaders are confident enough to speak out for the community and do not rely on NGOs, thus avoiding paternalistic relations.
- In Battambang, the GIZ (former DED) could build on long standing working experience at the municipal level, which made it easier to build trust and to open doors for a constructive dialogue between the municipality and province on one hand and communities and NGOs on the other.

Problems / Challenges

At community level

- Communities are not homogenous; members often have competing interests. Members of informal settlement communities are mostly vulnerable in terms of income and housing. Nevertheless, they are not uniform and better off people are often less willing to
compromise. Furthermore, internal conflicts can be related to the influence of the political parties.

• Most of the community representatives are highly motivated, but they also risk overloading. The function of representative demands literacy, and involves an extra and unpaid workload and time as well as the skill to deal with authorities. Only a few people are ready to perform these functions. In consequence, in many communities the officially selected representatives exist only on paper.

• Mistrust in communities is a problem, for example: Saving funds were initiated as means to enhance communities’ participation in infrastructure measures but didn’t work because the social cohesion of the communities is not strong enough to manage a common fund. Furthermore, there is no legal requirement allowing communities to open a bank account.

• Limited participation in community because of livelihood problems. In practice, this translates into a situation where NGOs have to pay for community members to participate in meetings.

• Migration, and in particular work migration to Thailand, is still high in Cambodia, also in informal settlements. Hence, it is quite difficult to identify the households and to arrange the plot according to its size as required by Circular 03.

At the municipal/Khan and provincial/capital levels

• One of the ambiguities of Circular 03 is that it tries to provide solutions for tenure security but according to the law it’s still the prime minister who has to agree on the conversion of public to private state land. Hence, authorities at different levels are reluctant to take decisions.

• High turnover of staff and frequent changes of Sangkat chiefs continuously required basic training; the change of the municipal governor constituted a break in the implementation of C03 as well.

• Land prices in Phnom Penh are very high and a hidden political agenda may be the main cause of failure in providing tenure security to communities.

• All in all the process takes too long, decreasing the commitment and patience of communities and NGOs.

At national level

• Although there is an official agreement between the Department of Housing (created in 2014) in MLMUPC, there is a lack of communication and cooperation between the department and GIZ due to different priorities. The Department of Housing concentrates on housing as such and not on informal settlements.

At the level of NGOs

• Development NGOs are very active and dedicated but lack skills in proposal and report writing.

• NGOs compete with each other, e.g. for access to funds. Representatives of NGOs had personal conflicts with each other, influencing their cooperation.

• Community members sometimes mistrust NGOs and have more trust in government authorities.
In general

- Circular 03 is not really operational, responsibilities remain unclear and there is a lot room for interpretation.
- The whole procedure is very complex, slow, and expensive.

Impact and achievements

- Communities are strengthened and in the pilot communities people started to improve their living conditions. For example, in one community there is no more flooding thanks to a drainage system, other communities built drainage systems as well and improved roads.
- Although there is no legal recognition, the informal settlements have been recognised by local authorities – no further forced eviction happened either.
- Relations between communities, NGOs and local authorities in Battambang are improved, direct links are established.
- In Phnom Penh, communities and local authorities (Sangkat and Khan Authorities) have close collaboration while there is a wide gap between communities and the capital level. GIZ played a crucial role as coordinating body, mostly at Khan and Capital levels.
- Communities speak for themselves and not through NGOs.

Learning and innovation

- In order to tackle the challenge of competing interests in the communities, the solution-finding meetings in Battambang served as important facilitation forums with representatives of NGOs and GIZ acting as mediators.
- The piloting of the procedures foreseen in Circular 03 was necessary as they are not very detailed, even partly contradictory. A previous analysis of the shortcomings of Circular 03 and the legal environment would have been necessary in order to set achievable goals and indicators.
- In the case of informal settlements the question remains of whether an official guarantee of residential rights would benefit communities more than a lengthy land titling process.
- Just legal land tenure security as such cannot be enough, however. People also need adequate and affordable housing solutions in addition to sustainable and long-term ownership rights.
- GIZ LRP II responded to the shortcomings of Circular 03 and developed a manual giving clear instructions on the implementation procedure as well as on the role of institutions. A detailed legal analysis and the draft of a manual in the very beginning might have helped to recognise challenges at an earlier stage, however.
- In the context of extremely high land prices and a highly dynamic and non-transparent land market, the implementation of C03 couldn’t be successful in most areas of the capital. The recourse to inclusive land registration and community empowerment in general proved as the best strategy wherever private land or the possible conversion from public to private land is concerned.
- NGO involvement has been crucial in supporting the communities, raising awareness and building strong relations with local authorities. Nevertheless, NGO engagement runs the risk of relieving local authorities of their responsibility by delegating tasks to NGOs. Furthermore, NGO work suffered from internal and personal wrangling over competences.
Sustainability

- The sustainability of the programme component seems low, as there are some improvements but there is no driving force promoting land tenure security in the government.
- Because of the ambiguous provisions of Circular 03, it remains unclear whether the pilot processes can be scaled up.

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