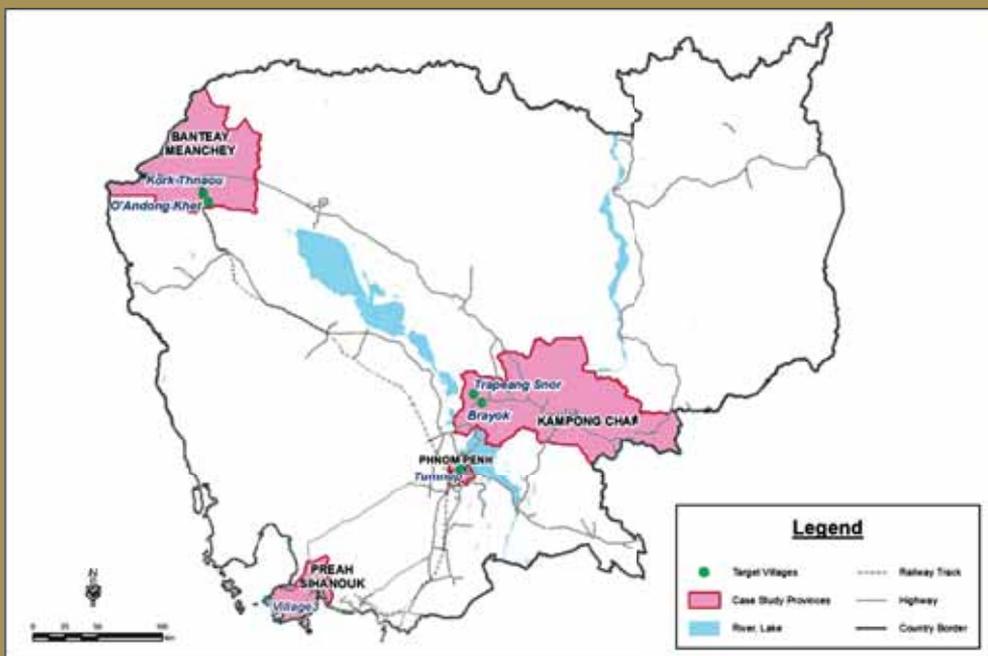




# Access to Land Title in Cambodia

A Study of Systematic Land Registration  
in Three Cambodian Provinces and the Capital



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### **A Study of Systematic Land Registration in Three Cambodian Provinces and the Capital**

Printed Date: November 2012

Authors: Mark Grimsditch, Kol Leakhana and Depika Sherchan

Published by: The NGO Forum on Cambodia

Land and Livelihoods Programme

Land Security Project

Research coordinated by: Ms. Sao Vicheka, Research Officer

Layout designed by: Mr. Phourn Yu, Information and Publication Officer

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## **Acknowledgements**

We, the research team would like to express our sincere thanks to NGO Forum on Cambodia and World Vision Cambodia for the opportunity to carry out the research, in particular Sao Vicheka, Research Officer at NGO Forum for her guidance and support.

Our profound appreciation to the residents of Tumnap Village in Phnom Penh; O'Andoung Khet and Kork Thnaou Villages in Banteay Meanchey; Village 3 in Preah Sihanouk; and Brayok and Trapeang Snao Villages in Kampong Cham for giving their time and sharing their stories with us. We are thankful to our research assistants Chhin Phearum, In Sophearun, Pan Sythan and Von Piseth who helped conduct the household surveys. We would also like to thank Yous Samrith for SPSS data entry, Monica Sherchan for data analytics support and Om Dara for providing the maps.

Our special thanks go to the local officials, Commune Council authorities, and staff members of the Ministry of Land Management, Urban Planning and Construction at the respective District, Municipal and Provincial levels for their participation in this research.

We are grateful for the cooperation and assistance provided by Urban Poor Women Development during our fieldwork in Phnom Penh, VIGILANCE in Banteay Meanchey and Kampong Cham, and ADHOC in Preah Sihanouk. Thanks also go to Mr. Sok Sokhom of the Cambodian National Research Organisation, who provided important statistics and data related to land registration in Village 3, Sangkat 3 of Preah Sihanouk.

Our sincere thanks also to Daniel Adler (formally of the World Bank), Franz-Volker Mueller (GIZ), and Jouni Anttonen (FINNMAP), who provided valuable feedback on the initial findings, and George Cooper (GIZ) for commenting on the draft report.

Finally, thank you to all those who gave comments and feedback on draft versions of the report, especially Jessie Connell for her valuable comments and for proof reading the final report.

## **Executive Summary**

In the late 1990s work began on laying the foundations for Cambodia's current land registration system. After the Land Law was passed in 2001, there followed a number of regulations which provided a legal framework for land registration and set out the roles and responsibilities of Cambodia's cadastral authorities. For more than a decade the Royal Government of Cambodia (RGC), with support from its development partners, has been working to develop the country's land administration capacities, with the aim of eventually registering all of Cambodia's land parcels. The rationale behind this is that by formalizing and documenting ownership, land tenure security will increase, which will in turn reduce poverty by improving access to credit, developing a functioning land market and increasing investment.

Systematic land registration (SLR) was initially conducted under the donor funded Land Management and Administration Project (LMAP), which originally focussed on 10 provinces and the capital, Phnom Penh. This project has since ended but SLR continues and is now active in 15 of Cambodia's 24 provinces, plus the capital. Systematic land registration involves identifying a specific area for land registration, after which land registration teams (LRT) enter and conduct coordinated survey and demarcation, land claims are adjudicated and land title certificates are finally issued. To date, Cambodia's land registration program has had considerable success in issuing over 1.7 million titles up to November 2011 (the latest figures available at the time of writing). In addition, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) has also established dispute resolution mechanisms that work specifically to resolve disputes over unregistered land and disputes that emerge during the registration process. These activities are now implemented under the MLMUPC's Land Administration Sub-Sector Program (LASSP).

The primary focus of the research was to identify when and how exclusions and other barriers are preventing people from accessing SLR, and how this is impacting on the broader benefits of the titling system. Here, "exclusion" refers to those who have been excised from adjudication areas prior to or during the process of survey and demarcation, and to those cases where land parcels are left unregistered due to having "unclear status". The study also sought to gather more detail on the incidence of disputes during the SLR process, and the issue of subsequent registration of land – the process of re-registering titled land when it is transferred to a new owner. This study has drawn on existing research and aims to build on those findings by looking in more detail at how the system is being implemented in practice in four target areas spread across the country.

In three of the four study areas (Banteay Meanchey, Kampong Cham, and Preah Sihanouk), for those people who did have access to the system, the process appears to have been conducted in compliance with the legal process, and no serious deviations were noted from the legal requirements for announcement, public meeting, demarcation, public display and issuance of title. Land disputes did emerge during the titling process, but in the majority of cases these were small boundary disputes and were resolved during the adjudication process. In the Phnom Penh study area, the adjudication process was halted early on, and delivered poor results, leaving at least 80% of the village untitled. However, household survey respondents in other study areas were almost unanimously pleased to have received their land titles.

In the urban villages visited in Phnom Penh and Preah Sihanouk there were high levels of exclusion from the SLR process, and there were also a number of disputes involving high numbers of households in conflict with one or two powerful and well-connected actors. The authors estimate that 80% of parcels remain untitled in Tumnu Village, Phnom Penh, and in Village 3 of Preah Sihanouk more than 33% of parcels were left untitled after the conclusion of the SLR process. In the rural villages targeted in Kampong Cham and Banteay Meanchey there were very few exclusions, and the SLR process appears to have run very smoothly, with almost all parcels registered.

Exclusions were most widespread in Tumnu Village, Phnom Penh, and although 861 families live in the village, only 195 parcels were adjudicated and only 41 titles issued, which means only 1 in 5 of the total adjudicated plots were registered. The reasons for the exclusions in Tumnu Village were not entirely clear, although several contributing factors appear to have impacted on the SLR process. These factors combined meant that the adjudication process was highly complex, and the SLR process was cut short during the survey and demarcation stage. The affected residents petitioned the authorities for a number of years and in late 2011 were finally told that in principle additional land registration can be conducted in the area. However, this has yet to take place, and officials have indicated that people residing within the area of the real estate development will remain excluded.

In Preah Sihanouk Province the research team visited Village 3, Sangkat 3, Khan Mittapheap. Exclusions were also observed to be extensive in this area, and over 33% of the Village's total land parcels were left unregistered after the conclusion of SLR. Many plots were left unregistered due to reasons such as on-going land disputes, overlaps with state property, or lack of data. However, 668 parcels were never adjudicated because they were located within the vicinity of the port development, Special Economic Zone development, railway right of way, or in the path of a road upgrade. As was the case in Tumnu Village, over the course

of two years the affected households lobbied the authorities requesting that they be able to have their land registered. They were also told in mid-2011 that they would be subject to additional SLR. However, this has yet to take place.

These exclusions were observed to have taken place in the absence of any clear legal process. The legal framework for SLR contains no legal provisions for excising areas from adjudication areas because they are “too complex” to adjudicate, and thus it is not clear what legal justification there is for such exclusions. In both Phnom Penh and Preah Sihanouk the exclusions were conducted in an atmosphere of low transparency, and access to information was very poor. There was no formal complaint mechanism for the people who were excluded, and for the most part they only found out that they were denied land titles after they heard that the SLR process had already concluded. There is currently no publicly available data on the prevalence of exclusion from the SLR process, and it is therefore difficult to assess how widespread the issue is and what impact it may be having on the broader success of the land registration system.

Across all study areas the issue of state land management was a recurring theme, and the research team came across numerous parcels that were left unregistered due to having “unclear status”. This label was generally applied to parcels that were claimed both by an individual and a state institution or authority. The authors also learned of plots being recorded as having unclear status because they bordered state land that has yet to be demarcated. In a number of cases, the assertion that the land was the property of the state was questionable. In addition to unclear status cases, in all of the districts/khan where the study areas were located, a significant number of land parcels were not registered due to overlaps with state land or because land parcels bordered state land that was not yet demarcated. Land cannot be registered if it is state property, but the concern is that claims by the state are often not supported by clear data and maps, and this continues in the absence of transparent and coordinated efforts in state land identification and demarcation.

The second issue the study sought to explore in more detail was the incidence of land disputes during the systematic land registration process, and the process of dispute resolution as applied in the study areas. Amongst survey respondents who were involved in a dispute during the SLR process, 87.5% of respondents said that dispute only became an issue after SLR commenced. This indicates that SLR may in the short term actually increase the incidence of disputes, although this is a predictable consequence of such a program and the issue was identified in both the LMAP project appraisal and baseline studies conducted by a Phnom Penh based research institute. Although SLR results in the “flushing out” of many

small scale disputes, the hope is that disputes are reduced in the long term as boundaries are fixed and ownership formally registered.

Unfortunately, comprehensive data on the incidence of disputes and the functioning of the dispute resolution mechanisms proved difficult to obtain, which means that a number of questions that this study set out to address cannot be conclusively answered based on the research findings alone. In particular, no data was available regarding the number and type of disputes within the Phnom Penh and Preah Sihanouk study areas. Although more information was gathered in Kampong Cham and Banteay Meanchey, those officials interviewed were unable to provide detailed figures for the number of disputes registered, and at what level these disputes were resolved. However, qualitative data was gathered that gave valuable insights into the experiences of beneficiaries who were involved in land disputes. Many disputes were resolved before the formal mechanisms were activated. This occurred through parties meeting to discuss and resolve their disputes without any outside assistance, or with help from LRTs and village officials. If this informal resolution was not effective, disputes were referred to the Administrative Committee (AC) who attempted to conciliate the dispute. The research team did not meet anyone who filed a complaint to the Cadastral Commission. The basic data obtained during this study indicates that the SLR system is proving effective in resolving the large numbers of small scale disputes that emerge during the process. However, in order to obtain a clear picture of how the process is being implemented and how accessible it is, a dedicated study needs to be conducted into this issue.

After land has been registered, any subsequent transfers must be registered through the cadastral authorities. This has the effect of updating the name of the rightful owner on the land register, results in the issuance of a new land title certificate, and also facilitates the collection of transfer taxes and unused land tax. This process is called subsequent registration and it is crucial for the long term sustainability of the land registration system. Researchers were also unable to gather as much data as originally hoped on this issue, but the data that was gathered indicates that there are still on-going problems with the low levels of subsequent registration of land parcels. For example, in the Kampong Cham study area, of 55 known transfers only three were subsequently registered. Although comprehensive data was not available for all study areas, anecdotal evidence and information gathered during interviews with local and provincial officials suggests that levels of subsequent registration are still low in rural areas, but they are increasing in urban areas.

The most common reason given for the low levels of subsequent registration was the high fees, which includes both official and unofficial payments. Local officials also stated that when people transfer land to their family or to people

whom they know and trust, they do not feel that it is necessary to formally register the transfer, and instead they rely on village or commune officials to bear witness. Additionally, many transfers involve land being gifted to children, and it appears that people resent the fact that they should have to pay tax and high unofficial fees for such transfers. Very often the land in question is small and low in value, and as there is no selling price the high transfer fees can constitute a huge burden on poor rural households. There is also an issue of lack of awareness, and although local officials explained that the subsequent registration process was covered in public meetings and PACP, of the 128 people interviewed during household surveys, more than 84% said that they did not have a clear understanding of the formal process for subsequent registration.

The study also allocated time to draw on women's experiences of the SLR process within the four study areas. Previous studies and assessments have highlighted challenges for women who seek to receive individual title for their land in cases where they are separated or have been abandoned by their spouse. In contrast, this research has found that, for the most part, the experience of women in the study areas was positive. People living in the SLR areas were informed of the process for registering parcels as joint ownership for common property, or individual ownership in cases where spouses inherited land after they were already married. In the focus groups, women expressed that this issue was explained well, and found little difficulty in registering the family land jointly and/or inheriting land as individual title. No cases were observed where common land was registered solely to the husband. Female focus group discussants and survey respondents generally stated that any land bought after they were married was registered jointly with the husband. Land that one of the parties owned prior to getting married and land that was inherited was registered as individual ownership to the relevant spouse.

In summary, this study has corroborated the findings of previous studies that Cambodia's SLR system continues to deliver impressive results, especially in rural adjudication areas with high numbers of land parcels, although the success of the system varies significantly depending on the local situation. In the study areas where there were low levels of dispute, minimal state land, and where land was not targeted for development, SLR proceeded very smoothly, and in the Banteay Meanchey and Kampong Cham study areas more than 99% of parcels were registered. In interviews and discussions with local officials and those people who received land titles through the SLR process, researchers observed that the general perceptions of land registration were positive. Not including residents of Tumnup Village in Phnom Penh respondents (none of whom received land titles), 91% of survey respondents said that they were satisfied with the process.

Local officials and survey respondents in Kampong Cham stated that receiving land title has increased their sense of security, and land titles have already been used by many people as collateral for bank loans. An official in Preah Sihanouk said that SLR has reduced boundary disputes and it is much easier now for the Sangkat Council to manage state land and conduct proper land use planning. A Village Chief in Banteay Meanchey said that now land boundaries are set, people also know clearly where public rights of way exist, which can reduce future encroachment. He also expressed confidence that if and when conflicts do emerge, the information on the land register will be used to resolve them. It goes without saying that those people in the Phnom Penh and Preah Sihanouk study areas who were excluded or unable to access SLR for other reasons had very different perceptions of the process.

While giving credit for the considerable achievements of the MLMUPC in developing the SLR system, the problems identified in this study urgently need to be addressed. Although the study sample was not large enough to safely assume that the findings are representative of the performance of SLR across the whole country, they do provide useful snapshots of how the process was conducted in four diverse study areas spread across the country. A full assessment of the scale and incidence of exclusions is certainly needed if LASSP is to achieve the goal of titling 100% of land parcels across the country. It is hoped that lessons can be learned from the cases discussed here, and that this can contribute to the Ministry's current efforts to develop a plan for dealing with exclusions. Likewise, it is hoped that the findings will contribute to future studies into subsequent registration and dispute resolution.

The report concludes with practical recommendations which it is hoped are of value to the Royal Government of Cambodia, development partners and civil society. This includes recommendations to make progress in developing a plan for avoiding further exclusions and dealing with areas already excluded from SLR. At the same time, it needs to be clarified under what circumstances the term 'unclear status' can be applied. Clear plans need to be developed for improving state land management, which incorporate the input of all relevant ministries. A comprehensive assessment of the dispute resolution mechanisms should be conducted, following on from and building on the results of the previous GTZ and the World Bank study. Those people who are filing complaints need support, and access to effective dispute resolution mechanisms must be guaranteed. Studies into the challenge of improving subsequent registration should be completed, and a clear plan put in place that will increase rates of subsequent registration and encourage landowners and local officials to follow the appropriate process. Finally, more comprehensive and transparent monitoring of the SLR system should be conducted, and access to information regarding SLR should be enhanced.

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## **List of Acronyms**

AC	Administrative Committee
ADB	Asian Development Bank
ADHOC	Cambodian Human Rights and Development Organization
AusAID	Australian Agency for International Development
AMK	Angkor Mikroheranhvatho (Kampuchea)
CAS	Centre for Advanced Study
CC	Cadastral Commission
CDRI	Cambodian Development Resources Institute
CEDT	Cambodia Empowerment Development Team
CIDA	Canadian International Development Agency
CLASP	Cambodia Land Administration Support Project
CLP	Council for Land Policy
CMDP	Community Managed Development Partners
COHRE	Centre on Housing Rights and Evictions
COI	Corridor of Impact
CNRO	Cambodian National Research Organisation
CSES	Cambodian Socio-Economic Survey
DKCC	District/Khan Cadastral Commission
DMS	Detailed Measurement Survey
ELC	Economic Land Concession
ERM	World Bank Enhanced Review mission
FAO	Food and Agriculture Organization
FINNMAP	FINNMAP International
FGD	Focus Group Discussion
FLMA	Faculty of Land Management and Administration
GDCG	General Department of Cadastre and Geography
GIS	Geographical Information System
GIZ	German Agency for International Cooperation
GMS	Greater Mekong Subregion
GTZ	German Agency for Technical Cooperation
HBF	Heinrich Böll Foundation
HHS	Household Survey
IRC	Inter-ministerial Resettlement Committee
JICA	Japan International Cooperation Agency
LAMDP	Land Administration, Management and Distribution Program
LAND Network	Land Action Network for Development of NGO Forum on Cambodia
LASSP	Land Administration Sub-Sector Program
LICADHO	Cambodian League for the Promotion and Defence of Human Rights
LMAP	Land Management and Administration Project
LRT	Land registration team
MAFF	Ministry of Agriculture, Forestry and Fisheries

MCFA	Ministry of Culture and Fine Arts
MDLM	Municipal Department of Land Management
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MOE	Ministry of Environment
MPP	Municipality of Phnom Penh
MPWT	Ministry of Public Works and Transport
NCC	National Cadastral Commission
NGO	Non-governmental Organizations
NGOF	NGO Forum on Cambodia
NSDP	National Strategic Development Plan
ODA	Official Development Assistance
PACP	Public Awareness and Community Participation
PAD	Project Appraisal Document
PAS	Sihanoukville Autonomous Port
PDLM	Provincial Department of Land Management
PMCC	Provincial/Municipal Cadastral Commission
PPAP	Phnom Penh Autonomous Port
PRK	People's Republic of Kampuchea
RGC	Royal Government of Cambodia
ROW	Right of Way
RUA	Royal University of Agriculture
SEZ	Special Economic Zone
SLC	Social Land Concession
SLR	Systematic land registration
SPSS	Statistical Package for Social Sciences software
STT	Sahmakum Teang Tnaut
UN	United Nations
UNDP	United Nations Development Program
UPDF	Urban Poor Development Fund
UPWD	Urban Poor Women Development
WB	World Bank
WHH	Woman-headed Household

## **Note on administrative structure in Cambodia**

Cambodia is divided into 23 provinces, plus the capital Phnom Penh. Beyond this each province is divided into *districts* (Srok), which are further broken down into *communes* (Khum), and *villages* (Phum). Phnom Penh is divided into *sections* (Khan), *quarters* (Sangkat), *villages* (Phum), and finally *groups* (Krom).

## **Exchange rates used in this report (January 2012):**

1 US dollar = 4,000 Cambodian riel

1 US dollar = 30.7 Thai baht

# SECTION 1: INTRODUCTION TO THE STUDY

## 1.1 Introduction

The Kingdom of Cambodia is located in mainland Southeast Asia and shares borders with Vietnam, Laos and Thailand. The country has a surface area of approximately 181,000 square kilometres,<sup>1</sup> and features significant geographical diversity. Outside urban areas this includes expansive paddy fields and dense forests, mountain ranges in the southwest and northern border areas, seasonally flooded forests, and over 400 kilometres of coastline. In 2010 the country's population exceeded 14.1 million,<sup>2</sup> with the most densely populated areas located in low-lying central plains and the fertile Tonle Sap basin.

After the Khmer Rouge swept to power in 1975, private ownership was abolished, and all land became the collective property of the state. Following on from the fall of the regime in 1979, the Vietnamese backed People's Republic of Kampuchea continued to follow a Marxist-Leninist line and all land remained state property. Efforts to rebuild the country's devastated economy and state institutions began soon after the fall of the Khmer Rouge, and subsequently the country proceeded through a series of difficult transitions from a single-party socialist state to a parliamentary democracy with a rapidly developing market economy. Towards the end of the 1980s the country began to make tentative steps towards land reform. Increasingly, citizens were given private control of their residential and agricultural land, and private ownership over certain types of immovable property was first introduced in 1989.

In 1992 the country adopted its most comprehensive land law since prior to the Khmer Rouge period and stepped-up efforts to formalize ownership records. However, this was complicated by the extensive destruction and dislocation left in the wake of the civil war. As the war escalated in the 1970s, thousands fled their residences and abandoned lands that in some cases they had farmed their whole lives. After taking control of the capital, the Khmer Rouge evacuated the city and other major towns, pushing people into agricultural collectives. After the regime was ousted in 1979, many areas were resettled, and lands were distributed to demobilized soldiers. In some areas land was granted to returned refugees, and in some cases land was reclaimed by the original owners. However, the process was haphazard in many areas and few people held documentation proving their rights to the land. By the 1990s, conflicts over land

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<sup>1</sup> World Bank, Cambodia Data Profile, [http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=&REPORT\\_ID=9147&REQUEST\\_TYPE=VIEWADVANCED](http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=&REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED) (accessed May 2012).

<sup>2</sup> Ibid.

were already becoming a serious problem, and land issues have since become one of Cambodia's most notorious human rights concerns. Many disputes are small scale and occur between neighbouring land owners or family members, but a significant number involve powerful actors or companies embroiled in conflict with large numbers of poor or disadvantaged residents and land users.

In the late 1990s the Royal Government of Cambodia (RGC), with support from its development partners, began to develop a comprehensive legal framework for land administration and started to lay the foundations for centralized and coordinated land registration. The rationale behind this is that by formalizing and documenting ownership, land tenure security will increase, which will in turn reduce poverty by improving access to credit, developing a functioning land market and increasing investment.

Since 2002, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) has been implementing systematic land registration (SLR) across the country. Systematic land registration was initially conducted under the donor funded Land Management and Administration Project (LMAP), which originally focussed on 10 provinces and Phnom Penh. This project has since ended but SLR continues and is now active in 15 of Cambodia's 24 provinces, plus the capital. Previously all registration was conducted sporadically in response to applications from individual households, but this system was inefficient, costly and unable to meet the needs of titling the whole country. Systematic registration was adopted in order to register whole districts or communes, sending in well qualified and skilled teams to survey land plots and measure boundaries, gather evidence and adjudicate ownership rights. Sporadic registration is still possible, but is mainly for use outside systematic registration areas, or by people who missed the systematic registration process when it was conducted in their area. Up to November 2011, Cambodia's land registration program has had considerable success in issuing over 1.7 million titles. More recent statistics were not available at the time of writing. In addition, the MLMUPC has also established dispute resolution mechanisms that work specifically to resolve disputes over unregistered land and disputes that emerge during the registration process. These activities are now implemented under the MLMUPC's Land Administration Sub-Sector Program (LASSP).

Despite progress made in establishing this system, issues have emerged that highlight significant obstacles for many communities who are at the most immediate risk of eviction or who are involved in land disputes with more powerful actors. There is evidence that some land holders have been excluded from the system, either prior to adjudication or during the process, in some cases without regard to the legally defined adjudication process and with no recourse to appeal.

The primary focus of the research was to identify when and how exclusions and other barriers are preventing people from accessing SLR, and how this is impacting on the broader benefits and impacts of the titling system. The study also sought to gather more detail on the incidence of disputes during the SLR process, and the issue of subsequent registration of land.

Land registration in Cambodia has already been the focus of numerous studies by various civil society organizations, research institutes, academics, and the Cambodian Government and its development partners. This study has drawn on existing research and aims to build on those findings by looking in more detail at how the system is being implemented in practice in four target areas spread across the country. In the process, the research aims to shed further light on the issues highlighted above, that is: exclusion from the titling system, incidence of disputes during SLR and access to dispute resolution mechanisms, and levels of subsequent registration. The research was requested by the LAND Network<sup>3</sup> of the NGO Forum on Cambodia, including World Vision Cambodia. These groups still feel that there is a lack of understanding amongst large sectors of civil society about the full process of systematic registration, including how it is working in practice, what blockages currently exist and how they can be overcome, and how civil society can play a constructive role in helping to address these issues. As such, the study has the following objectives:

1. To provide an overview of the systematic land registration and dispute resolution process for those who may not be familiar with the process;
2. To assess the current situation and status of beneficiaries' involvement in the systematic land registration process, and identify the challenges, obstacles and benefits experienced by beneficiaries;
3. To investigate, assess and understand issues of exclusion, incidence of disputes and access to resolution mechanisms, and subsequent land registration;
4. To analyse the current involvement of non-governmental organizations (NGOs) and relevant authorities in the systematic land registration process, and assess how they may be able to work more effectively to improve the system's efficiency and access for the targeted beneficiaries, and;
5. To draw constructive suggestions and recommendations from the findings on how systematic land registration can be better implemented.

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<sup>3</sup> The LAND Network, or the Land Action Network for Development of the NGO Forum on Cambodia, is a network of NGOs from all 20 provinces of Cambodia working on land issues.

## **1.2 Methodology**

The study is based on both desk and field research. Between the months of November 2011 and March 2012, extensive document collection was conducted and existing articles, studies and media coverage related to land registration were reviewed. A research team was assembled in early 2012 consisting of three lead researchers and a group of four enumerators. In January and February the research team conducted field research in four different provinces that have already been subject to SLR. Between February and July 2012, a number of follow-up interviews were conducted by telephone to chase up missing data or clarify information gathered during fieldwork.

### **1.2.1 Research Methods**

The field research used various means to gather both quantitative and qualitative data. In order to gather quantitative data, a household survey (HHS) was conducted of areas that have been subject to the systematic titling process. This was triangulated with qualitative data gathered during more in-depth discussions in focus groups. Additionally, key informant interviews were organized with various stakeholders, including village, commune and provincial authorities, MLMUPC staff at the provincial level, as well as development partners and local and international NGOs working on land issues.

**Table 1: Data collection tools utilized during fieldwork**

<b>Data Collection Tool</b>	<b>Number</b>
Household surveys	128
Focus group discussions	7
Key informant interviews	25
Case studies	6

Although the field research was primarily conducted by the research team, the Land and Livelihood Programme of NGO, World Vision Cambodia and LAND Network members were consulted in the various phases of planning, field work, analysis and report writing. As discussed above, the study employed both qualitative and quantitative research methods, as elaborated below.

*Document review:* A range of documents and literature related to LMAP, LASSP and the systematic registration process were reviewed. Media articles and civil society commentaries and critiques were also assessed.

*Household survey:* A 24-page primarily close-ended questionnaire was designed to gather quantitative data concerning household experiences with the systematic land registration process. The household survey was adjusted and expanded following pre-testing carried out over one day in Boeung Tumpon Village, Phnom Penh, in January 2012.

A snowball sampling method was used to select the households, whereby recommendations from village chiefs and community committee members were used to find people with specific (positive and negative) experiences of the systematic land registration process. The sample size for the household survey was 2-5% of the total households in the study area. This came to approximately 32 households per study area. In total, 128 households were surveyed in the four target study areas.

*Focus group discussions:* A 5 page open-ended focus group discussion guide was developed to gather qualitative data. These discussions were designed to triangulate and add depth to the quantitative and qualitative data collected through the household survey and key informant interviews.

*Key informant interviews:* Interviews were carried out with group chiefs, village chiefs, Community Committee representatives, Commune Council members, members of the Land Registration Teams, cadastral officers, officers from the provincial Departments of Land Management, NGOs working on land issues, and development partners.

*Case studies:* Six case studies were developed highlighting some of the challenges experienced in accessing the systematic land registration process. These case studies were drawn from the household surveys.

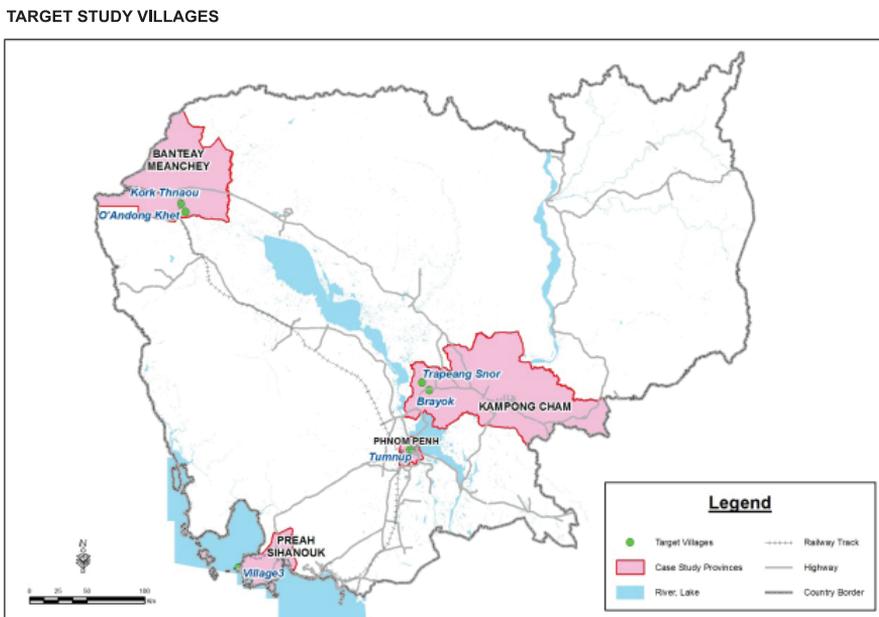
The results of desk and field research were processed and the final report was prepared between February and July 2012.

### **1.2.2 Selection of Study Areas**

Three provinces and Phnom Penh were chosen from among the 16 target areas of the Land Administration Sub-Sector Program (LASSP). The selection criteria were developed with input from NGO Forum on Cambodia, World Vision Cambodia and the LAND Network members. The target areas were selected based on the following three criteria:

- *Population size:* Initially, the 16 target provinces were weighted in proportion to their population size. The urban province and rural province with the highest population size were selected: Phnom Penh (1,501,725)<sup>4</sup> and Kampong Cham (1,821,993).<sup>5</sup>
- *Remoteness:* In the second stage of the selection process the remaining provinces were stratified according to the rural-urban interface, or the distance from the capital Phnom Penh. Banteay Meanchey is 359 km from Phnom Penh<sup>6</sup> and was selected as the third target province.
- *Number of land disputes and geographic spread:* Finally, the provinces were weighted and cross-tabulated with the number of recorded land disputes. This was based on the 2011 NGO report “Statistical Analysis of Land Disputes in Cambodia 2010.”<sup>7</sup> Battambang, Banteay Meanchey and Preah Sihanouk Province were the provinces with the highest number of land disputes. In order to ensure a good geographic spread, the coastal province of Preah Sihanouk Province was chosen.

**Map 1: The Four Study Areas**



<sup>4</sup> Phnom Penh Municipality, *City Facts*, <http://www.phnompenh.gov.kh/phnom-penh-city-facts-99.html> (accessed May 2012).

<sup>5</sup> National Committee for Sub-National Democratic Development (NCDD), *Kampong Cham Data Book 2009*, (p.15).

<sup>6</sup> Tourism Cambodia, *Geography Banteay Meanchey, Cambodia*, <http://www.tourismcambodia.com/travelguides/provinces/banteay-meanchey/geography.htm> (accessed June 2010).

<sup>7</sup> Research and Information Centre of NGO Forum on Cambodia, *Statistical Analysis of Land Disputes Occurring in Cambodia 2010*, June 2011.

Within each project province, the research team worked with NGO and LAND Network members to select the target villages in each of the four provinces.

**Table 2: Study target areas**

Province	Total Families	Systematic Land Registration		Parcels	
		Began	Ended	Total Parcels Adjudicated	Total Parcels Registered
<b>Phnom Penh:</b> Tumnup Village, Sangkat Phnom Penh Thmei, Khan Sen Sok	861	2006 <sup>8</sup>	February 2009	195	41
<b>Banteay Meanchey:</b> O'Andoung Khet & Kork Thnaou Villages, Banteay Neang Commune, Monkol Borei District	740	January 2009	October 2010	1,713	1,700
<b>Preah Sihanouk:</b> Village 3, Sangkat 3, Khan Mittapheap	1,329	January 2007	2009 <sup>9</sup>	1,759	1,636
<b>Kampong Cham:</b> Brayok & Trapeang Snao Villages, Tumnob Commune, Batheay District	670	August 2008	June 2010	3,288	3,271

### **1.2.3 Limitations of the Research Methodology**

At the outset it is important to consider the limitations of this methodology. First, the study used non-probability sampling, which inevitably gives rise to question of sampling bias and external validity. As snowball sampling does not select units for inclusion in the sample based on random selection, unlike probability sampling techniques, it may not be representative of the population being studied. Secondly, given the fact that the SLR program covers 16 provinces, and has issued upwards of 1.7 million titles, the study areas that were the focus of this

<sup>8</sup> Authors were unable to confirm the exact date that SLR commenced.

<sup>9</sup> Authors were unable to confirm the exact date that SLR concluded.

research represent a small percentage of those who have been affected by the SLR program. The research team sought to minimize this shortcoming by selecting 4 diverse areas from across the country, and to gather as much data as possible regarding the registration process across the adjudication areas in question, not just the sample villages.

In practical terms, one problem encountered was that in some cases up to three years had elapsed since the completion of the SLR process. This meant some interviewee's recollection of the SLR process was limited. This meant there were some information gaps and missing details. In order to fill these gaps, the researchers compared testimonies from household surveys, as well as data gathered in focus group discussions. Interviews with local officials and civil society organizations active in the study areas also provided rich data and helped to fill gaps in the narratives of how the SLR was implemented in each study area.

A major issue impacting on the results of this study was access to reliable data. When looking into the issue of exclusions, the research team found that obtaining data on the scale of exclusions in the Phnom Penh and Preah Sihanouk study areas, as well as the justification for these exclusions was extremely difficult. It became apparent that there were no publicly available official data related to these exclusions. Because of this, information had to be gathered from affected people, local officials who were willing to be interviewed, and NGOs active in the study areas and then "pieced together." Although this did eventually form an interesting overview of the issue, there are certainly information gaps in the narrative.

Researchers struggled to obtain reliable data on the incidence of disputes and levels of subsequent registration across all four study areas. Officials who discussed disputes and the dispute resolution process often spoke in general terms and did not always have figures at hand, which impacted on the study's ability to make strong conclusions on the incidence of disputes and the functioning of the resolution mechanisms. Likewise, statistics on subsequent registrations were difficult to obtain, and were only available for two of the four study areas. Of those people interviewed during household surveys and those who joined focus group discussions, relatively few had bought or sold land since the land registration process had been conducted, so subsequent registration was not a major issue. In the Phnom Penh study area most households were excluded from the registration process, and as few titles were granted, the issue of subsequent registration rarely came up. Despite the gaps in information, interesting qualitative data was gathered, from which general observations could be made. Areas where data were lacking have been highlighted for future study.

## **1.3 Report Structure**

The report is divided into 8 main sections. Following on from this introductory section, Section 2 looks at the development of land registration in Cambodia, providing a brief overview of the current land situation in Cambodia before moving on to trace the development of Cambodia's land sector reform since the end of the Khmer Rouge period. Section 2 also provides a summary of the SLR process and dispute resolution mechanisms. Section 3 gives an overview of the research findings, which are then dealt with in more detail in the following sections. Section 4 focuses on exclusions, Section 5 on disputes and the dispute resolution process, and Section 6 on the issue of subsequent registration. In Section 7, other issues that were encountered during the field research are dealt with. This includes gender issues, stakeholder involvement, and respondents' perceptions of the SLR process and the value of land titles. The final section of the report presents conclusions and recommendations. Following on from the conclusion, summaries of the background and findings from each study area are provided.

## SECTION 2: LAND REGISTRATION IN CAMBODIA

This section of the report looks at Cambodia's current land registration system, including a brief overview of how the country moved from total state control of land to private ownership and how the land registration system subsequently developed. It covers the process of land registration as set out in Cambodian law, and the role that Cambodia's development partners have played in supporting the process of building this system.

In recent years, reporting on the prevalence of land conflicts in Cambodia has been extensive. The local press carries almost daily stories of land conflict and threatened or actual displacement, and international media have also shown a keen interest in the subject. Both local and international organizations, development agencies and United Nations bodies have expressed concern in various venues regarding Cambodia's current land issues. Although this report does not intend to replicate these discussions at length, the starting point for this section is an overview of the current situation in Cambodia with regards to land and land conflict.

### 2.1 The Importance of Land

It is now more than twenty years since Cambodia emerged from decades of bloody conflict, and despite significant economic and social gains during this period, the country still struggles with widespread poverty. While GDP growth has maintained impressive levels since the late 1990s, poverty remains high and as of 2008, 25.8% of the population were still living on less than USD 1.25 per day.<sup>10</sup> For many of Cambodia's poorest people land is central to their very existence. In many cases it supports livelihoods that are based heavily on access to land and natural resources, whether this be for agriculture, collection of forest products, or access to fisheries. For this reason, equitable access to land, resources and secure tenure are absolutely crucial. Figures vary on how many Cambodians are currently involved in agriculture, for example, the Food and Agriculture Organization (FAO) of the United Nations states that just fewer than 80% of the population live in rural areas, and 66% depend on agriculture for their livelihoods.<sup>11</sup> The World Bank puts the figure for those involved in

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<sup>10</sup> International Fund for Agricultural Development, *Rural Poverty Report 2011*, November 2011 (p.248).

<sup>11</sup> United Nations Food and Agriculture Organization website, *Cambodia Country Brief*, <http://www.fao.org/countries/55528/en/khm/> (accessed May 2012).

agriculture at just over 70%.<sup>12</sup> Regardless of the true figure, it is certainly significant, and emphasises the importance of access to land for the majority of Cambodians.

Although figures are difficult to calculate and various studies have delivered differing statistics, it is widely acknowledged that the number of Cambodians who are landless or land poor is on the rise. In 2007 a joint report of the Ministry of Planning and United Nations Development Program (UNDP) quoted Cambodian Socio-Economic Survey (CSES) data indicating that landlessness in rural households had risen from 15.8% in 1997 to 20% by 2004. A different study, the Landlessness and Development Information Tool, was also conducted in 2004. This focussed explicitly on agricultural households, and found just short of 12% of households were landless. While significantly smaller than the CSES data, the figure is still high.<sup>13</sup> In addition, it has been estimated that in some areas over 25% of households are 'land poor'. This refers to those who own less than half a hectare of land, the minimum required for agricultural subsistence.<sup>14</sup> More recent research conducted by the Cambodian Development Resources Institute (CDRI) in 2008 found that of 2,235 households surveyed, 21.1% were landless and 26.3% held less than half a hectare of land.<sup>15</sup> The causes of land loss in Cambodia are myriad, and in many cases are the result of "distress sales", where unforeseen circumstances such as family illness force people to sell land in order to pay medical bills. In the absence of credit or savings, such distress sales are often the only option available to people facing emergencies such as family illness.<sup>16</sup> Others have lost their land after using it as collateral for loans that they were unable to repay.<sup>17</sup> Many people have also found themselves on the losing side in land conflicts and have lost part or all of their land to private individuals or companies.<sup>18</sup>

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<sup>12</sup> World Bank website, *Rural Development and Agriculture in Cambodia*, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:20534324~menuPK:293886~pagePK:1497618~piPK:217854~theSitePK:293856,00.html> (accessed May 2012).

<sup>13</sup> Ministry of Planning & United Nations Development Program Cambodia, *Cambodian Human Development Report 2007: Expanding choices for rural people*, 2007 (p.48).

<sup>14</sup> Insights for Action, Discussion Paper: Land and Human Development in Cambodia, UNDP Cambodia, 2007 (p.12).

<sup>15</sup> Chan Sophal, Policy Brief: Impact of High Food Prices in Cambodia, CDRI, 2008 (p.2).

<sup>16</sup> Sik Boreak, *Land Ownership, Sales and Concentration in Cambodia: A Preliminary Review of Secondary Data and Primary Data from Four Recent Surveys*, CDRI, September 2000 (p.38).

<sup>17</sup> See, for example: So Sovannarith et al., *Social Assessment of Land in Cambodia: A Field Study* (Working Paper N°20), CDRI, November 2001 (p.34).

<sup>18</sup> See, Cambodian Human Rights Action Committee, *Losing Ground: Forced Evictions and Intimidation in Cambodia*, September 2006.

## **2.2 Conflict and Tenure Security in Cambodia**

As mentioned above, at least two thirds of Cambodians depend on agriculture for their livelihoods. It was estimated in 2009 that the country's arable land was approximately 3.9 million hectares, or 22.1% of the country's total land area.<sup>19</sup> Competition for cultivable land has increased in recent years, and thousands of hectares of Economic Land Concessions (ELCs) have been granted for industrial-scale agriculture, many reportedly in violation of existing residents' land rights.<sup>20</sup> A local press report from early 2012 quoted figures compiled by a local NGO suggesting that 2 million hectares of Cambodia's land has been granted to private companies for ELCs, forestry concessions and special economic zones. The same report quoted the Ministry of Agriculture, Forestry and Fisheries (MAFF) as stating that land granted for ELCs was 1.2 million hectares.<sup>21</sup> At the same time, infrastructure developments have led to expropriation of residential and agricultural land,<sup>22</sup> and numerous households have reportedly lost land after coming into dispute with powerful actors engaged in land speculation.<sup>23</sup> The map below was produced by the local organization, LICADHO, and illustrates the current commercial pressures on Cambodia's land resources.

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<sup>19</sup> World Bank Data Website, *Agricultural Land*, <http://data.worldbank.org/indicator/AG.LND.AGRI.ZS> (accessed May 2012).

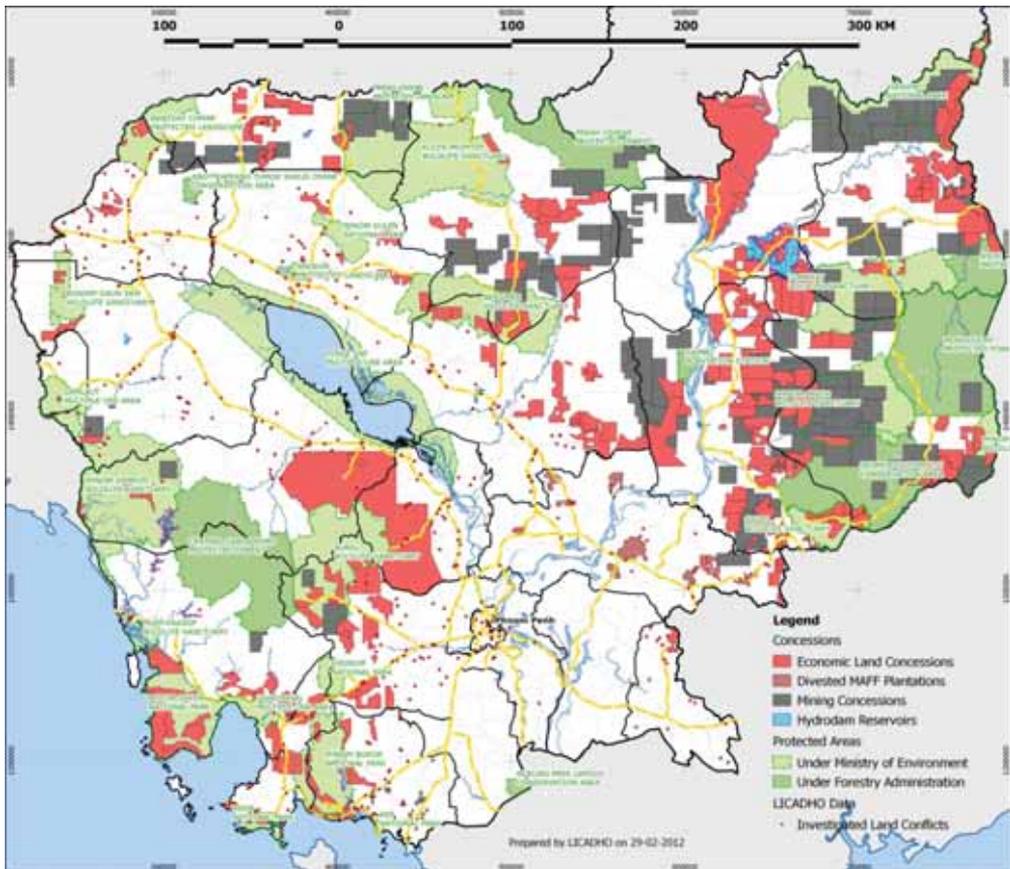
<sup>20</sup> See, United Nations Cambodia Office of the High Commissioner for Human Rights, *Economic Land Concessions in Cambodia: A human rights perspective*, June 2007.

<sup>21</sup> Paul Vriaze & Kuch Narin, Sold: In the race to exploit Cambodia's land and forests, new maps reveal the rapid spread of plantations and mining across the nation, *Cambodia Daily*, 10-11 March 2012.

<sup>22</sup> See, for example: Natalie Bugalski and Jocelyn Medallo, *Derailed: A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway*, Bridges Across Borders Cambodia, 2012.

<sup>23</sup> So Sokbunthoeun, *Land Rights in Cambodia, An Unfinished Reform*, East-West Centre, August 2010 (p.3).

Map 2: Map of Approved Large Scale Development Projects



(Map based on official documents and prepared by local NGO, LICADHO)<sup>24</sup>

Unfortunately there are no official statistics available on the number of evictions that have occurred in recent years, and reliable estimates are extremely difficult to come by. Much of the reporting on land conflicts and evictions is somewhat ad hoc, and a detailed analysis of the trends is impeded by lack of access to information. However, civil society organizations, development agencies and researchers have sought to estimate how many people have been affected. In 2008, Amnesty International estimated that 150,000 people across Cambodia were facing the threat of forced eviction.<sup>25</sup> More recently, Cambodian media quoted figures from LICADHO stating that in the 12 provinces where they have offices, they have recorded 654 disputes, involving the land of 85,000 families, or 400,000 people. Figures from another local organization, ADHOC, are even more alarming, and the organization states that since 2000 they have recorded

<sup>24</sup> LICADHO website, <http://www.licadho-cambodia.org/land2012/> (accessed August 2012).

<sup>25</sup> Amnesty International, *Rights Razed: Forced evictions in Cambodia*, February 2008 (p.2).

disputes involving 150,000 families nationwide, which involve about 700,000 people.<sup>26</sup>

Although discussion has so far focussed on rural land issues, it is not only rural residents who are affected by tenure insecurity and land conflict. People living in urban areas generally own smaller plots of land and may not be dependent on that land for agriculture, but it goes without saying that tenure over their place of residence must be secure. As well as providing a place to live, many self-employed people in urban areas use their homes as a place of business, and if they lose their homes they also lose the base for their livelihood. Over recent years tenure insecurity in Phnom Penh and other urban areas has come under the spotlight as urban renewal and beautification projects, real estate development, and infrastructure upgrades have led to large scale evictions of residents, many of whom have occupied their land for considerable periods of time. It has been estimated that between 1998 and 2003, 11,000 families were forcibly evicted in Phnom Penh,<sup>27</sup> and that between 2003 and 2008 a further 30,000 people were forcibly evicted from the capital.<sup>28</sup> Another local organization compiled information, media reports and data from other civil society organizations and estimated that between 1990 and 2011, almost 146,800 people had been evicted, resettled, or reluctantly agreed to move from their homes in the capital.<sup>29</sup>

Although the Cambodian Government has at times responded angrily to accusations from NGOs and media that the country is experiencing a 'land crisis', it does acknowledge that providing secure land tenure is crucial in order to maintain stability and reduce poverty. The guiding strategy behind Cambodia's current policies and reforms is the *Rectangular Strategy for Growth, Employment, Equity and Efficiency in Cambodia*, often referred to simply as The Rectangular Strategy. Under Rectangle one of the strategy, "Enhancement of the Agricultural Sector", the Government has committed to "accord priority to the strengthening of land tenure rights of the people."<sup>30</sup> Building on the original Rectangular Strategy, the Cambodian Government published the National Strategic

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<sup>26</sup> Paul Vriaze & Kuch Narin, Sold: In the race to exploit Cambodia's land and forests, new maps reveal the rapid spread of plantations and mining across the nation, Cambodia Daily, 10-11 March 2012.

<sup>27</sup> World Bank Asia and Pacific Region, *Cambodia: Halving Poverty by 2015? Cambodia Poverty Assessment*, February 2006, (p.48).

<sup>28</sup> Amnesty International, 2008 (p.7).

<sup>29</sup> Sahmakhum Teang Tnaut, Facts and Figures 19: Displaced Families, Phnom Penh 1990-2011, May 2011.

<sup>30</sup> Samdech Hun Sen, Prime Minister of the Royal Government of Cambodia, *The Rectangular Strategy for Growth, Employment, Equity and Efficiency in Cambodia*, address to the First Cabinet Meeting of the Third Legislature of the National Assembly at the Office of the Council of Ministers, July 2004 (p.14).

Development Plan (NSDP), which amongst its key priorities re-emphasises the importance of land reform:

“The Royal Government recognises that land reform is vital to enhance social stability, development of an efficient land market, environmental sustainability, and for increasing agricultural productivity through the issuance of land titles to the citizens; in particular, to farmers who are cultivating land that they occupy. Issuing land titles to citizens is vital for improving the management of land use, especially the management of state-owned lands to ensure security of land tenure in a transparent and equitable manner and to further reduce poverty by enabling citizens to have access to financial markets by using their land titles as collateral.”<sup>31</sup>

With this in mind, the following section focuses on the development of Cambodia’s land sector, and how the Cambodian Government, state institutions and development partners have sought to develop the country’s land administration systems and systematic land registration process.

## **2.3 Land Reforms, 1989-2001**

Cambodia’s current land situation is in large part the result of the turmoil the country experienced during the 1970s and 80s, and the turbulent and often complex process of political transition that the country has gone through since the end of the war. In order to provide a background on the evolution of the titling system, it is useful to first consider the changes that the country has been through with regards to land ownership, and how this has laid the foundation for the system that is in place today.

The rise to power of the Democratic Kampuchea regime, or the Khmer Rouge, was followed by the complete nationalization of all land. Individuals were not able to privately own land, and people were forced out of urban areas and into agricultural cooperatives, often many miles from their hometowns and villages. In 1979 the Khmer Rouge were ousted and soon after the People’s Republic of Kampuchea (PRK) was established, which although by no means as extreme as the defeated Khmer Rouge, still adhered to a socialist vision for the country.<sup>32</sup> Land was still held by the state, but as early as 1979 people began to return to

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<sup>31</sup> Royal Government of Cambodia, National Strategic Development Plan Update 2009-2013, June 2010 (p.33).

<sup>32</sup> David P. Chandler, *A History of Cambodia*, 1993 (p.225).

their homelands and started to farm individually. In most areas, land was farmed under 'krom samaki', or cooperative groups.<sup>33</sup>

In April of 1989, a sub-decree was issued that recognized ownership of residential properties as well as the right to transfer property through succession.<sup>34</sup> A new land management policy was also adopted, which confirmed that the state was the default owner of the country's land, but also affirmed the right to acquire *ownership* of residential land. This was distinguished from *possession* of agricultural land, which remained the property of the state but could be used and controlled privately as long as it was being put to productive use. The policy tasked the Ministry of Agriculture with the responsibility of establishing a cadastral department in order to manage agricultural land use throughout the country.<sup>35</sup> However, the Ministry of Agriculture found itself overwhelmed by the receipt of 3.7 million applications by the end of 1990.<sup>36</sup> By the mid-1990s, just over 518,000 land titles had been issued, representing a fraction of the approximate 4.5 million title applications submitted up to that point.<sup>37</sup>

The land distribution in the late 1980s was in part a *de facto* recognition of lands people already held under the krom samaki system, but new lands were also distributed. However, the gradual transition from collective to private control of land meant that the concept of private property was not uniformly recognised by either the populace or administrative bodies. Additionally, clear demarcation of plots was not officially conducted as the authorities still lacked capacity to do so.<sup>38</sup>

Following on from this initial attempt at land reform, the government began work on the country's first comprehensive land law since before the Khmer Rouge period. The Land Law was eventually adopted in 1992. The law clarified the means by which ownership could be acquired, principally through succession, contract or by converting "temporary possession" into full ownership.<sup>39</sup> At this time, land registration was conducted on a sporadic basis following application

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<sup>33</sup> See, Brett Ballard, *Land Tenure Database Development in Cambodia*, 2006. <http://www.fao.org/docrep/009/a0306t/A0306T08.htm> (accessed May 2012).

<sup>34</sup> People's Republic of Kampuchea, Council of Ministers, *Sub-decree N°25 on Providing House Ownership to the Cambodian Population*, 22 April 1989.

<sup>35</sup> People's Republic of Kampuchea, Council of Ministers, *Instruction N°03 on Implementation of Land use and Management Policy*, 3 June 1989.

<sup>36</sup> State of Cambodia, Council of Ministers, *Instruction N°03 on the Amendment of Instruction N°03, dated 3 June 1989, of the Council of Ministers*, 8 December 1990.

<sup>37</sup> Chan Sophal et al., *Land Tenure in Cambodia: A data update (Working Paper N°19)*, CDRI, October 2001 (p.30).

<sup>38</sup> *Ibid* (p.37).

<sup>39</sup> *Land Law 1992*, Article 59.

by individual landholders. There was no centralized national land register, and local capacities to maintain detailed land ownership registers were very limited. The process was also costly, and the system was mainly utilized by those with the means to pay the fees (both official and unofficial) for the title, which according to one report could cost as much as USD 300-400. At this time an application for a title certificate would routinely go through at least 8-10 offices, located at village, commune, district, provincial and national level, and the process was extremely time consuming.<sup>40</sup>

In 1999 the MLMUPC was established and given “competence in governing and administering matters related to land management, urbanization and construction in the Kingdom of Cambodia.”<sup>41</sup> Around the same time, work began on a new land law that would replace the 1992 law and create the foundations for a new national land register and systematic land registration system. The new Land Law was passed in August of 2001 and was developed with technical support from development partners including the Asian Development Bank (ADB). The Land Law has since been amended by Cambodia’s new Civil Code.

The 2001 Land Law includes provisions for acquisition of ownership through possession, much as the 1992 law did, but also states that only possession that commenced prior to the passing of the law may be converted into full ownership.<sup>42</sup> Any possession that commenced after 2001 is no longer legal.<sup>43</sup> According to the law, “[a]ny person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership.”<sup>44</sup> For the hundreds of thousands of Cambodians who have yet to receive a land title, the right of legal possession as set out in the 2001 Land Law is the basis of their claim for land title.

## **2.4 LMAP & LASSP**

In 2001, the Council of Ministers issued a Statement on Land Policy indicating the government’s objectives to strengthen land tenure security and land markets,

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<sup>40</sup> So Sovannarith et al., *Social Assessment of Land in Cambodia: A Field Study* (Working Paper N°20), CDRI, November 2001 (p.2).

<sup>41</sup> *Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction*, 1999.

<sup>42</sup> *Land Law 2001*, Article 29.

<sup>43</sup> *Ibid*, Article 34; See also: Royal Government of Cambodia, *Notification N°43 on Cessation of Acquisitive Possession of Immovable Property*, 6 September 2001.

<sup>44</sup> *Ibid*, Article 30.

and prevent or resolve land disputes; manage land and natural resources in an equitable, sustainable and efficient manner; and to promote land distribution with equity.<sup>45</sup> An interim land policy was adopted in 2002, which elaborated on this statement. In developing its policies for land reform, the government identified three main pillars: land administration, land management and land distribution. This came to be known the Land Administration, Management and Distribution Program (LAMDP).<sup>46</sup> These three pillars were again referred to in the government's 2009 Declaration on Land Policy.<sup>47</sup> The first pillar, Land Administration, is concerned with land registration and dispute resolution and is therefore most relevant to this report. Activities under this pillar initially commenced through the multi-donor supported Land Management and Administration Program (LMAP).

LMAP began operations in 2002 and was originally planned to run for 5 years, although in 2007 the project was extended for a further two years. The extension of LMAP ended prematurely in acrimonious circumstances after a disagreement between the World Bank and the Cambodian Government regarding the application of the project's resettlement policy.<sup>48</sup> The overall goal of the project was to reduce poverty, promote social stability, and stimulate economic development. In order to achieve this broad goal, the project had the specific objectives of improving land tenure security and promoting the development of efficient land markets. Towards this end, the project was broken into five main components:<sup>49</sup>

- Development of land policy and regulatory framework
- Institutional development of MLMUPC
- Land titling program and development of a land registration system
- Strengthening mechanisms for dispute resolution
- State land management

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<sup>45</sup> Royal Government of Cambodia, Council of Ministers, *Statement of the Royal Government on Land Policy*, May 2001.

<sup>46</sup> Royal Government of Cambodia, *Interim Paper on Strategy of Land Policy Framework*, prepared by the Council for Land Policy, 2002.

<sup>47</sup> Royal Government of Cambodia, Council of Ministers, *Declaration of the Royal Government on Land Policy*, 1 July 2009.

<sup>48</sup> World Bank, *Statement from the World Bank on Termination by Royal Government of Cambodia of the Land Management and Administration Project*, 6 September 2009.  
<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:22303344~menuPK:293861~pagePK:1497618~piPK:217854~theSitePK:293856,00.html> (accessed June 2012).

<sup>49</sup> World Bank, *Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 Million (USD 24.3 Million Equivalent) to The Kingdom of Cambodia for a Land Management and Administration Project*, 29 January 2002 (p.2).



## **2.5 Donor Engagement in the Cambodian Land Sector**

Initially LMAP was financed by the World Bank, and received technical support from the German Agency for Technical Cooperation (GTZ), as it was then known,<sup>54</sup> and Finland's Ministry of Foreign Affairs. The World Bank committed USD 24.3 million in financing for all components of the project.<sup>55</sup> GTZ provided technical assistance and focussed on developing land policy and a regulatory framework, building institutional capacity of the MLMUPC, and supporting the establishment and development of dispute resolution mechanisms.<sup>56</sup> Finland also provided technical assistance through the private land mapping and survey company FINNMAP,<sup>57</sup> and has focussed support on land registration and the development of the cadastral system.<sup>58</sup> The above development partners are long standing supporters of Cambodia's land reforms, and have been engaged in the land sector since the late 1990s. In 2008 they were joined by the Canadian International Development Agency (CIDA), which provides support through the Cambodia Land Administration Support Project (CLASP).<sup>59</sup> GIZ, Finland and CIDA continued their support for the Cambodian land sector through LASSP after LMAP ended.

LMAP was originally designed as a five year project and aimed during this time to issue 1 million titles. However, the project fell short of this target and was extended for a further two years, during which the 1 million title target was achieved. The project made significant progress in building the institutional capacities of the MLMUPC, cadastral bodies and dispute resolution mechanisms, and produced a comprehensive legal framework for land administration. Despite these successes, concerns were raised by a number of communities and civil society groups that in some areas the land registration system was not being properly implemented, and that access was being blocked for some applicants. Departures from proper procedure were observed in a number of cases, and in 2009 an international NGO filed a complaint to the World Bank Inspection Panel on behalf of residents living around Boeung Kak lake in central Phnom Penh. The complainants felt that they had been unfairly excluded from the

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<sup>54</sup> In January 2011, GTZ merged with the other German development agencies, DED and InWEnt, and was renamed the German Agency for International Cooperation (GIZ).

<sup>55</sup> World Bank, *Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 Million (USD 24.3 Million Equivalent) to The Kingdom of Cambodia for a Land Management and Administration Project*, 29 January 2002 (p.2).

<sup>56</sup> GIZ Website, *Land Management*, <http://www.gtz.de/en/themen/laendliche-entwicklung/11786.htm> (accessed May 2011).

<sup>57</sup> FINNMAP website, *About Us*, <http://www.finnmap.com/about.php> (accessed May 2011).

<sup>58</sup> FINNMAP website, *Major Reference Projects*, <http://www.finnmap.com/doc/REF%20LIST%20January%202012.pdf> (accessed May 2011).

<sup>59</sup> Cambodia Land Administration Support Project (CLASP), *Survey Report: Gender Equality in Systematic Registration*, April 2010 (p.1).

registration process despite the fact that many hundreds of families in the area had strong claims as legal possessors. Subsequently many of these residents were either persuaded to accept compensation and leave or were forcibly evicted. The Inspection Panel found that there were serious breaches of the Bank's safeguard policies, and while acknowledging the significant achievements of the project in issuing over a million titles, the Panel was highly critical regarding certain elements of the project's implementation and supervision.<sup>60</sup>

In September 2009, the World Bank suggested a joint suspension of the project "pending discussions on the application of its safeguard policies for handling resettlement issues." However, on 7 September the Cambodian Government responded by cancelling the project.<sup>61</sup> Soon after this the Cambodian Prime Minister appeared on national television stating that the project was cancelled as the Bank attached too many "difficult conditions." The consequences of this episode were serious, and as no compromise could be reached on how to resolve the Boeung Kak issue, the Bank announced in August 2011 that it had suspended future lending to Cambodia until such time as the case is adequately resolved.<sup>62</sup> Soon after this suspension was announced, the Cambodian Prime Minister issued a sub-decree granting 12.44 hectares of land within the Boeung Kak development zone to the remaining residents for on-site upgrading.<sup>63</sup> It remains to be seen if this step is enough to persuade the World Bank to re-engage in the Cambodian land sector.

Although financing for LMAP was cancelled, the titling program continued under LASSP and with the backing of the other three development partners, GIZ, Finland and CIDA. LASSP has continued to successfully issue land titles, and as mentioned above, up to November 2011 a total of more than 1.74 million titles have been issued. Finland is currently planning a package of support for the period 2012-2016, whereas CLASP is winding down and CIDA support to the land sector will end in June 2013. GIZ is currently assessing its support for the

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<sup>60</sup> Inspection Panel website, *Cambodia: Land Management and Administration Project (2009)*, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22512162~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (accessed May 2012).

<sup>61</sup> World Bank Website, *World Bank Board of Executive Directors Considers Inspection Panel Report on Cambodia Land Management and Administration Project*, 8 March 2011. <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:22851984~menuPK:293861~pagePK:2865066~piPK:2865079~theSitePK:293856,00.html> (accessed May 2012).

<sup>62</sup> Mark Tran, *World Bank suspends new lending to Cambodia over eviction of landowners*, The Guardian, 10 August 2011; Tom Fawthrop, *Phnom Penh residents score landmark victory over proposed land grab*, The Guardian, 14 September 2011.

<sup>63</sup> Royal Government of Cambodia, Sub-decree N°183 on Adjustment of the Size of the Boeung Kak Lake Development, 11 August 2011.

land sector and a decision will be made in 2013 as to whether or not support will continue.<sup>64</sup>

## **2.6 The Land Registration Process**

As stated during the introduction, one aim of this report is to set out the systematic land registration process for those who may not yet be familiar, or those who do not have a clear understanding of the full process. This is also important background information for the following sections of this report, which present the research findings and refer to the SLR process. The foundation for Cambodia's systematic land registration process was set out in the 2001 Land Law, and following on from this was elaborated by the 2002 *Sub-decree N°46 on the Procedures to Establish Cadastral Index Map and Land Register*. The process involves five main steps:

1. Preparation
2. Fieldwork
3. Public display
4. Decision
5. Registration and issuance of title

### **2.6.1 Preparation**

*Selection of adjudication area:* The first step in the systematic registration process is the selection of the adjudication area. According to *Sub-decree N°46*, the provincial or municipal governor is responsible for announcing adjudication areas within their jurisdiction, but there are few other details set out on how exactly adjudication areas should be selected.<sup>65</sup> During field research, interviews were conducted with a number of cadastral officials, and more detail was obtained regarding the procedure currently being followed for the selection of adjudication areas. This is covered in Section 4.4.

*Appointment of Administrative Committee:* After an adjudication area has been declared, registration teams work with local officials to prepare profiles for each village in the area. The next step is for the Provincial or Municipal Governor to appoint an Administrative Committee (AC). The AC is chaired by a representative of the Governor, and includes members from the local Department of Land Management, local officials and community elders from

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<sup>64</sup> Information regarding future commitments of GIZ, Finland and CIDA was provided during meetings with development partners.

<sup>65</sup> Royal Government of Cambodia, *Sub-decree N°46 on the Procedures to Establish Cadastral Index Map and Land Register*, 31 May 2002, Article 2.

each village. The AC has the responsibility to arrange the public display of the adjudication record and receive any complaints made against the record. If complaints are made, the AC should attempt to conciliate disputes and help the disputing parties to resolve the conflict.<sup>66</sup>

*Opening meeting:* The Provincial/Municipal Governor should next publish an official letter announcing the adjudication area. After the announcement, an ‘opening meeting’ must be held for residents of each area that is to be adjudicated. At these meetings the leader of the land registration team (LRT) or a representative of the AC should explain the adjudication process, clarify the rights and responsibilities of those living in the adjudication area, and take any questions from the audience.<sup>67</sup>

### **2.6.2 Fieldwork**

*Demarcation, survey and adjudication:* The LRT will visit each household in the adjudication area and record ownership claims, check and record documents, demarcate and survey land parcels and confirm the boundaries with holders of neighbouring plots.<sup>68</sup> Everyone in the area is legally obliged to participate and co-operate with the demarcation and adjudication process by giving oral testimonies, submitting documents and other evidence and information requested by the LRT.<sup>69</sup>

If landholders and holders of adjacent plots are present and agree on the boundaries, those plots should be demarcated according to that agreement. If agreement cannot be reached or if the landholders are not all present, boundaries shall be demarcated using all available documents and other physical, written and oral evidence related to the boundaries.<sup>70</sup> The data collected during the survey will be recorded at the cadastral office and a Cadastral Index Map and List of Owners prepared.

*Dispute resolution:* During the process of adjudication, conflicts may arise over boundaries and ownership. In such cases, the adjudicating officers will invite the disputing parties to conciliate their conflict. If this fails, the AC has the duty to attempt to conciliate the dispute. If the dispute cannot be resolved, the parcel will be recorded as disputed and cannot be registered.<sup>71</sup> The dispute will then pass to the next level of the dispute resolution process, the Cadastral Commission,

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<sup>66</sup> Sub-decree N°46, Article 3.

<sup>67</sup> Ibid, Article 6.

<sup>68</sup> Land Law 2001, Article 236; Sub-decree N°46, Article 4.

<sup>69</sup> Sub-decree N°46, Article 5.

<sup>70</sup> Ibid, Article 7.

<sup>71</sup> Land Law 2001, Article 237.

which is discussed in more detail later. Disputed plots cannot be registered until such time as the dispute is resolved.

### **2.6.3 Public Display**

*Public display of the adjudication record:* After survey and demarcation, the Cadastral Index Maps and List of Owners must be displayed in a public place within the adjudication area for 30 days. During this time all concerned parties should be able to view the documents to check that the data is accurate and may lodge a complaint if they are not satisfied. During this period the registration team may correct any errors and omissions. Any changes to the record may only be made if they have the consent of those whose interests are affected by the alteration.<sup>72</sup> During the public display, there should be an officer present every day in order to explain or clarify any data contained in the adjudication record.<sup>73</sup>

*Dispute resolution:* During the period of public display, any person who is named or claims an interest in any parcel referred to in the adjudication record may raise objections if they consider the information to be inaccurate or incomplete. Objections should be raised to the AC, who should attempt to conciliate the dispute. Any disputes that cannot be resolved should be submitted to the Cadastral Commission.<sup>74</sup>

### **2.6.4 Decision**

*Confirmation of adjudication record:* After the 30 days display period, the AC should confirm the adjudication record for all parcels that are not subject to disputes. The record should then be delivered to the Provincial/Municipal Office of Land Management for technical inspection and then to the Provincial/Municipal Governor to be signed.<sup>75</sup> The adjudication record is then regarded as being final for all parcels that are not subject to disputes. The adjudication record for disputed parcels can only be finalized after the dispute resolution process has concluded.<sup>76</sup>

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<sup>72</sup> Sub-decree N°46, Article 11.

<sup>73</sup> MLMUPC, *Instruction N°01 Relating to the Implementation of the Procedure of Establishing the Cadastral Index Map and the Land Register*, 19 August 2002 (Article III).

<sup>74</sup> Sub-decree N°46, Article 12.

<sup>75</sup> Ibid, Article 13.

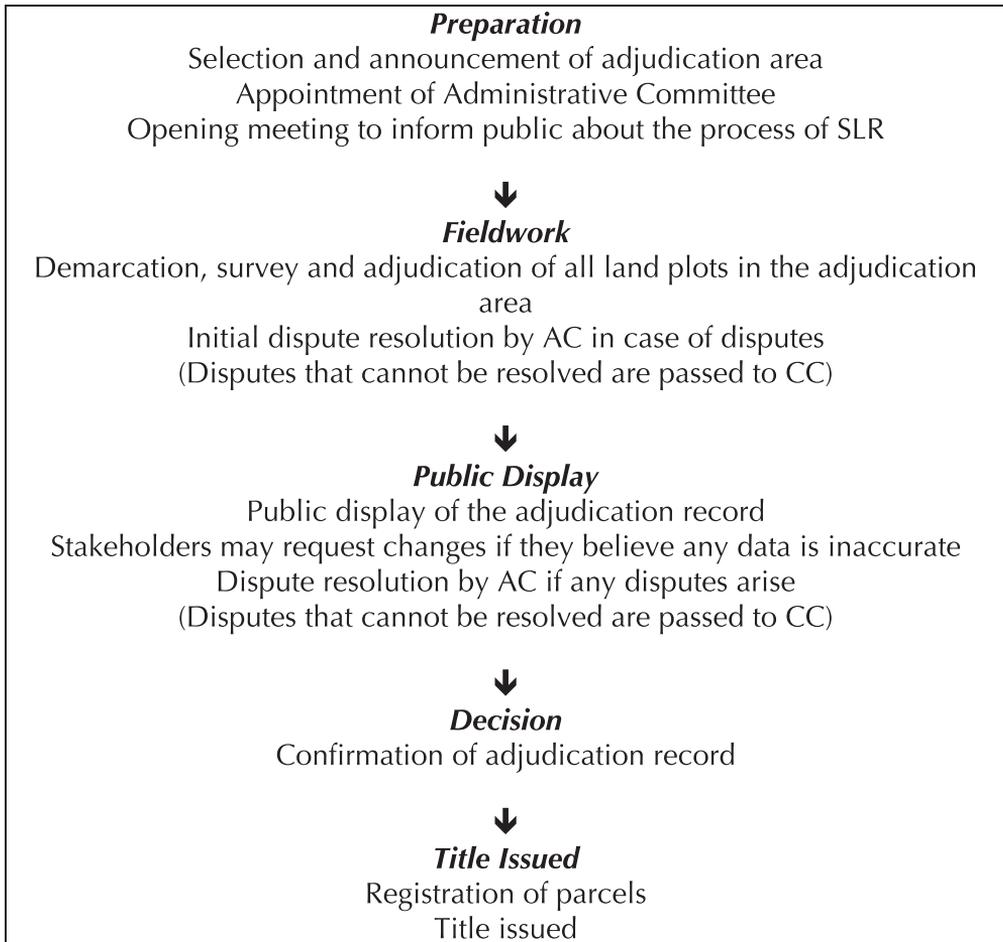
<sup>76</sup> Ibid, Article 14.

### 2.6.5 Registration and Issuance of Title

*Registration of adjudication record:* Once the adjudication record is final it should be entered into the Land Register.<sup>77</sup>

*Title issued:* After a parcel is registered the land title certificate should be issued to the owner.<sup>78</sup> Often the delivery of land titles is done in a public ceremony, but if owners are unable to attend the ceremony the title certificates are made available for collection at a later date. Recipients are required to pay a fee for the title, which is defined by the MLMUPC according to whether the land is urban or rural, and depending on the type and value of the land.

#### Box 1: The Systematic Land Registration Process



<sup>77</sup> Ibid, Article 14.

<sup>78</sup> Ibid, Article 14.

## 2.7 Dispute Resolution

In addition to laying the foundations for the systematic land registration system, the 2001 Land Law also established a new mechanism for resolution of disputes over unregistered land. According to the Land Law, any land disputes over unregistered land should be submitted to the Cadastral Commission (CC), a resolution body established under the MLMUPC.<sup>79</sup> The role of the CC is set out in the 2002 *Sub-decree on Organization and Functioning of the Cadastral Commission*.

The Cadastral Commission has the responsibility to resolve disputes over unregistered lands that occur outside of adjudication areas, as well as disputes that emerge during the adjudication process and cannot be resolved by the AC.<sup>80</sup> The CC has no jurisdiction over land disputes on registered land, and such disputes must be heard by the courts. Any disputes concerning a contractual or inheritance dispute should also be heard by the courts, regardless of whether the land is registered or unregistered.<sup>81</sup> The CC has three levels: District/Khan (DKCC), Provincial/Municipal (PMCC), and National (NCC).<sup>82</sup> Complaints to the CC must be initiated by a complaint from one of the concerned parties.

The first level, the DKCC, has the duty to investigate and attempt to conciliate conflicts arising outside adjudication areas.<sup>83</sup> If there is no resolution at the DKCC the case should be sent to the PMCC.<sup>84</sup> Originally the PMCC also only had powers to conciliate disputes,<sup>85</sup> but this was leading to a back-log of unresolved cases, and in late 2009 the PMCC was delegated power to issue decisions in cases where conciliation is not possible.<sup>86</sup> Cases that cannot be solved at the PMCC should be forwarded to the NCC, which has the power to issue a decision.<sup>87</sup> In cases where a party is not happy with the decision of the NCC they may appeal to the courts within 30 days of the decision being issued.<sup>88</sup>

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<sup>79</sup> *Land Law 2001*, Article 47.

<sup>80</sup> Royal Government of Cambodia, *Sub-decree N°47 on Organization and Functioning of the Cadastral Commission*, 31 May 2002, Article 3.

<sup>81</sup> Ministry of Justice & MLMUPC, *Joint Prakas N°3 on Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes*, 26 November 2003, Articles 1 & 4.

<sup>82</sup> *Sub-decree N°47*, Article 4.

<sup>83</sup> *Ibid*, Article 6.

<sup>84</sup> *Ibid*, Article 11.

<sup>85</sup> *Ibid*, Article 13.

<sup>86</sup> Decision making power was granted to the PMCC in December 2009. This followed a request from the MLMUPC to the Cambodian Government, which was approved by the Council of Ministers. It was confirmed in MLMUPC *Prakas N°32 on Delegation of Power to Governors of Provincial-Municipal Boards, Chairmen of PMCC to Decide Land Disputes in the CC Mechanism*, 21 January 2010. Procedures were set out in the MLMUPC *Circular N°1 on Implementation of Procedures for Deciding Land Disputes at Provincial/Municipal Cadastral Commissions*, 21 January 2011.

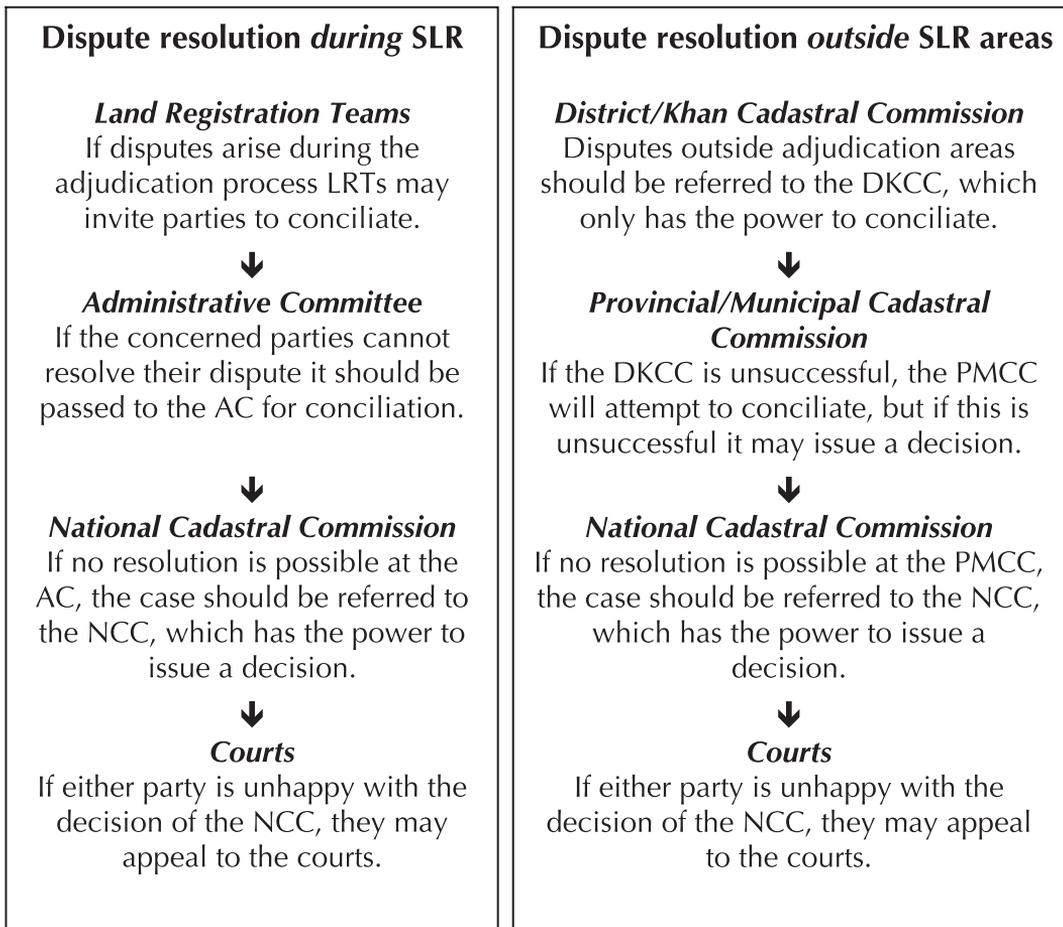
<sup>87</sup> *Sub-decree N°47*, Article 19.

<sup>88</sup> *Ibid*, Article 23.

As mentioned above, during the SLR process, any disputes that emerge during adjudication or public display should be referred to the AC for conciliation. Cases that cannot be successfully conciliated should be forwarded to the NCC.<sup>89</sup>

According to the sub-decree on the functioning of the CC, those in dispute have the right to appear before the CC in person, have a person or organization assist them during the dispute resolution process, and have the right to present oral or documentary evidence and have this recorded. The CC must maintain records of disputes, including all documents and evidence, which should be open to inspection by concerned parties. CC meetings should be open to the public, and all decisions given in writing and accompanied by a case report.<sup>90</sup>

**Box 2: Dispute resolution process for disputes concerning *untitled* land**



<sup>89</sup> Ibid, Article 12.

<sup>90</sup> Ibid, Article 27.

## SECTION 3: OVERVIEW OF RESEARCH FINDINGS

In addition to the literature and legal review conducted during the research phase of this project, field research was conducted in January and February of 2012. As mentioned earlier, the aim of the research was to examine the performance of the systematic land registration (SLR) process in four different geographical areas, focussing on the issues of exclusion, incidence and resolution of disputes, and subsequent registration. This section provides an overview of the study findings, beginning with the performance of the SLR process in the four study areas, and summaries of findings in each study area. Sections 4-7 present a more detailed analysis of the literature review and field research findings.

### 3.1 Overview of Main Findings

The results gathered in the four study areas show a clear urban/rural split. In the urban villages visited in Phnom Penh and Preah Sihanouk there were high levels of exclusion from the SLR process, and there were also a number of disputes involving high numbers of households in conflict with one or two powerful and well-connected actors. In the rural villages targeted in Kampong Cham and Banteay Meanchey, aside from relatively few problems, the SLR process appears to have run smoothly and the levels of exclusions and disputes were very low. It can be assumed that this is due to the fact that in the rural areas the land was more remote, mainly used for rice paddy or chamkar,<sup>91</sup> and of much lower value than in the urban study areas, where the land was valuable and in several places targeted for development projects. The authors estimate that 80% of parcels remain untitled in Tumnup Village, Phnom Penh, and in Village 3 of Preah Sihanouk more than 33% of parcels were left untitled after the conclusion of the SLR process.

In three of the four study areas (Banteay Meanchey, Kampong Cham, and Preah Sihanouk), for those people who did have access to the system, the process appears to have been conducted in compliance with the legal process, and no serious deviations were noted from the legal requirements for announcement, public meeting, demarcation, public display and issuance of title. Land disputes did emerge during the titling process, but in the majority of cases these were small and were resolved during the adjudication process. In the Phnom Penh study area, the adjudication process was abandoned early on, and delivered very poor results.

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<sup>91</sup> Chamkar land is land that is used for the cultivation of crops other than paddy rice. This includes vegetables, fruit trees or crops such as tobacco, cassava, rubber, etc.

People living in the SLR areas were informed of the process for registering parcels as joint ownership or individual ownership in cases where spouses inherited land after they were already married. Women's groups expressed that this issue was explained well, and found little difficulty in registering the family land jointly, and inherited land as individual title. Household survey respondents were almost unanimously pleased to have received their land titles, and expressed that they felt more secure after receiving title certificates.

However, the issue of state land management was a recurring theme, and in all study areas parcels were identified that had been left unregistered as they were recorded as being of 'unclear status'. This label was generally applied to parcels that were claimed both by an individual and a state institution or authority. The authors also learned of plots being recorded as having unclear status because they bordered state land that has yet to be demarcated. In a number of cases, the assertion that the land was the property of the state was questionable and such incidents could be avoided by more transparent and coordinated efforts in mapping state land.

Official figures were not obtained regarding the number of disputes that occurred in each study area during SLR, but during interviews with local officials and residents, it became clear that in all areas where SLR was conducted a considerable number of small-scale disputes emerged. This was an expected consequence of the land registration program, and this is why dispute resolution mechanisms were integrated into the registration process. Local officials who were interviewed were unable to provide detailed data on the incidence of disputes and the mechanisms used to resolve them, although they did explain that the vast majority were able to be solved by the ACs at the local level, and many cases were resolved privately before reaching the ACs.

Researchers were also unable to gather as much data as originally hoped on the issue of subsequent registration, but the data that was gathered indicates that there are still on-going problems with the lack of subsequent registration of land parcels. For example, in the Kampong Cham study area, of 55 known transfers only three were subsequently registered. Although data was not available for all study areas, anecdotal evidence and information gathered in interviews with local officials suggests that levels of subsequent registration are still low in rural areas, but they are increasing in urban areas. This was believed to be because people desire increased security for this higher value land, and buyers in urban areas are more likely to be able to afford to pay the taxes and associated fees.

## **3.2 The SLR Process as Implemented in Study Areas**

During the course of the field research, information was gathered from residents and local officials in order to assess how the process of SLR was implemented in practice, and how this corresponds to the procedure set out in Cambodian law and summarized earlier in Section 2.6. As can be seen in the summary below, data gathered in Banteay Meanchey and Kampong Cham shows that for the most part the process ran very smoothly in those areas. In Preah Sihanouk Province 1,636 titles were issued, but there were also a high number of land parcels excluded from the SLR process, and a significant number of plots were left unregistered for various reasons. Despite the high number of unregistered parcels, in those areas of Preah Sihanouk where there were no exclusions, household survey respondents gave a positive assessment of the process. In the Phnom Penh study area almost the entire adjudication area was excluded, so survey responses were overwhelmingly negative, and as the adjudication process was not completed it is not possible to assess its compliance with the legal process.

In the areas where the SLR process was able to run its full course, by and large it followed the procedure set out in *Sub-decree N°46*. Below is a summary of the research findings related to the practical implementation of the various stages of the SLR process. In order to provide context, the information below should be read in conjunction with the following sections of this report, which deal with some of the problems observed in the implementation of SLR in the four study areas.

### **3.2.1 Selection of Administrative Committees**

In all areas visited, Administrative Committees (ACs) were established after the announcement of the adjudication area, as required by *Sub-decree N°46*. Members of the ACs included representatives from the Governor's office and the District office, Commune Council members, Village and Group Chiefs, and local village elders. According to local officials interviewed in Banteay Meanchey, Preah Sihanouk, and Kampong Cham, the ACs played an important role in the process of SLR, supporting public awareness campaigns, and organizing public meetings and ensuring that local residents were invited to these meetings. The AC members assisted residents and LRTs during the survey and demarcation process, indicating to LRTs where village and commune boundaries lay, and also assisted land title applicants in gathering the documents necessary to support their claim. The ACs played a crucial role in helping to conciliate disputes that emerged during SLR.

The research team was unable to gather any detailed information on the selection and functioning of the AC in Phnom Penh.

### **3.2.2 The Opening Meeting & Public Awareness and Community Participation (PACP)**

*Sub-decree N°46* requires that a public meeting is held in advance of the adjudication process, and in all four areas such meetings were held. During these meetings the participants were shown maps of the adjudication area and had the process of SLR explained to them. Residents were told which documents they are required to submit with their application for land registration, and were instructed to start collecting and preparing these documents after the meeting. People were also encouraged to clarify the boundaries of their land and settle any boundary disputes with their neighbours prior to the arrival of the LRTs. Of those interviewed during household surveys, participation in public meetings was high, with the exception of the Phnom Penh sample, where less than 16% of household survey respondents participated.

#### **HHS Response 1: Did you or a member of your household participate in a public meeting in your village before the adjudication process began?**

	<b>Phnom Penh</b>	<b>Banteay Meanchey</b>	<b>Preah Sihanouk</b>	<b>Kampong Cham</b>	<b>Total (%)</b>
<b>Yes</b>	15.6	84.4	86.7	90	66.1
<b>No</b>	84.4	15.6	13.3	10	33.9

(All figures in %)

Public meetings were held in various locations including local pagodas and schools. Village officials also had the responsibility to attempt to contact landowners who hold land in adjudication zones but live or work in other areas. This was particularly challenging in Preah Sihanouk Province as a number of Khmer-Americans and French-Khmer hold land in Village 3 but live overseas for extended periods of time. There are also a significant number of people who hold land in the village but live in Phnom Penh. The Village Chief managed to contact some of these people through the guards they hire to protect their land.

Amongst the household survey respondents the public meetings appear to have been successful in explaining the process to local people, and 93% of survey respondents stated that the information provided was adequate to help them understand the process of SLR.

In addition to the opening meetings, special community awareness-raising sessions were organized in order to further explain the process and prepare people for the start of the adjudication process. These were organized and conducted by LRTs with support from local AC members. In all of the study areas apart from Phnom Penh, two or three PACP sessions were held before the adjudication process began. According to Community Committee members in Tumnup Village, Phnom Penh, only one public meeting was held, after which there were no more official public awareness meetings. Participants were generally of mixed gender, but in some areas the LRTs held separate sessions for women and men. These meetings were announced via media, radio, loudspeaker announcements and posters in the main community meeting places and some local restaurants. The Village Chief of Kork Thnaou Village, Banteay Meanchey, also spent several days going door to door to inform residents about the SLR process, especially to those households who did not join in any public meetings.

The MLMUPC has now also hired a group of actors to perform a drama titled *Our Land* in order to raise public awareness about and explain the land registration process. Local officials in Banteay Meanchey stated that this drama has been performed in their area.

In some areas additional awareness raising sessions were conducted by NGOs. In Phnom Penh, independent awareness-raising sessions were given to Community Committee members by the organizations World Vision Cambodia and Urban Poor Women’s Development (UPWD). The committee members subsequently brought the materials back to their communities and explained the SLR process to the other residents. In Brayok Village, Kampong Cham, the local organization VIGILANCE also conducted awareness training on land registration, and local organization Watanapheap conducted awareness-raising sessions in Preah Sihanouk. Household survey respondents were asked if they joined any of these additional awareness-raising activities. The majority of respondents (60%) answered no, although the figure for those involved in such sessions in Phnom Penh was high. 71% of the additional PACP was conducted by NGOs, 26% by local authorities or officials, and 2% by youth groups.

**HHS Response 2: Did you join any additional SLR awareness raising activities?**

	<b>Phnom Penh</b>	<b>Banteay Meanchey</b>	<b>Preah Sihanouk</b>	<b>Kampong Cham</b>	<b>Total (%)</b>
<b>Yes</b>	81.3	33.3	14.3	13.3	39.6
<b>No</b>	18.7	66.7	85.7	86.7	60.4

(All figures in %)

### **3.2.3 The Demarcation and Survey Process**

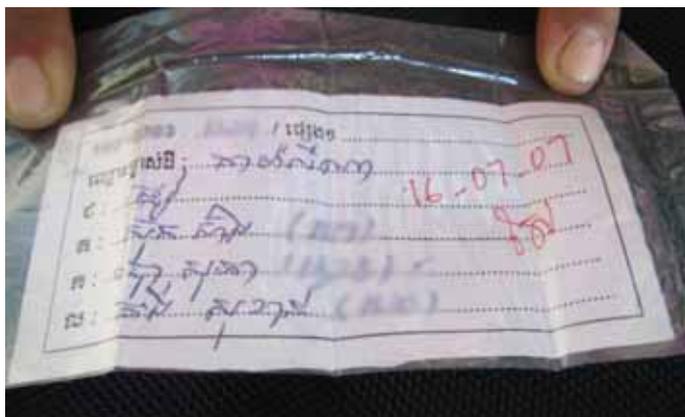
The process of survey and demarcation ran most smoothly in the Banteay Meanchey and Kampong Cham study areas, and in both areas more than 99% of adjudicated land parcels were registered and title certificates issued. As already mentioned, a large number of plots were excluded or left untitled in Preah Sihanouk Province and the SLR process in Phnom Penh was abandoned before the survey and demarcation process was complete. Specific problems that occurred during this stage are dealt with in Section 4.

### **3.2.4 Public Display of Adjudication Record**

The public display period of the adjudication record is an essential step in the SLR process as it gives stakeholders the opportunity to view and confirm the results of the survey and demarcation process and to raise objections if they see any inaccuracies or dispute the results. Public displays were held in all four study areas, including those where exclusions occurred.

In Phnom Penh a public display was held after the adjudication process was prematurely ended, and the cadastral index map and list of owners showed only 41 parcels, with no information shown for other parcels. The research team were unable to obtain further information on the circumstances of the public display, and it is not clear whether or not any of the excluded homeowners were able to view the document and raise concerns. In the other three study areas, local officials, household survey respondents, and focus group discussants confirmed that the public display was held, and people were able to raise complaints and request alterations.

During household surveys, respondents were asked a series of questions regarding the public display period. More than 93% of respondents confirmed that a public display period was held in their village, while the remaining respondents were unsure. *Sub-decree N°46* requires that the adjudication record be displayed for 30 days, and according to 78% of survey respondents the display lasted at least 30 days. Some local officials interviewed explained that sometimes the public display was ended early if all plots were confirmed before the 30 day period ended.



Picture1: Land Code of land owner for verification of land boundary during the public display of adjudication record.

**HHS Response 3: Was the adjudication record publicly displayed after the adjudication process was completed?**

	Phnom Penh	Banteay Meanchey	Preah Sihanouk	Kampong Cham	Total (%)
<b>Yes</b>	0	96.6	86.7	96.6	93.2
<b>Don't know</b>	100	3.4	13.3	3.4	6.8

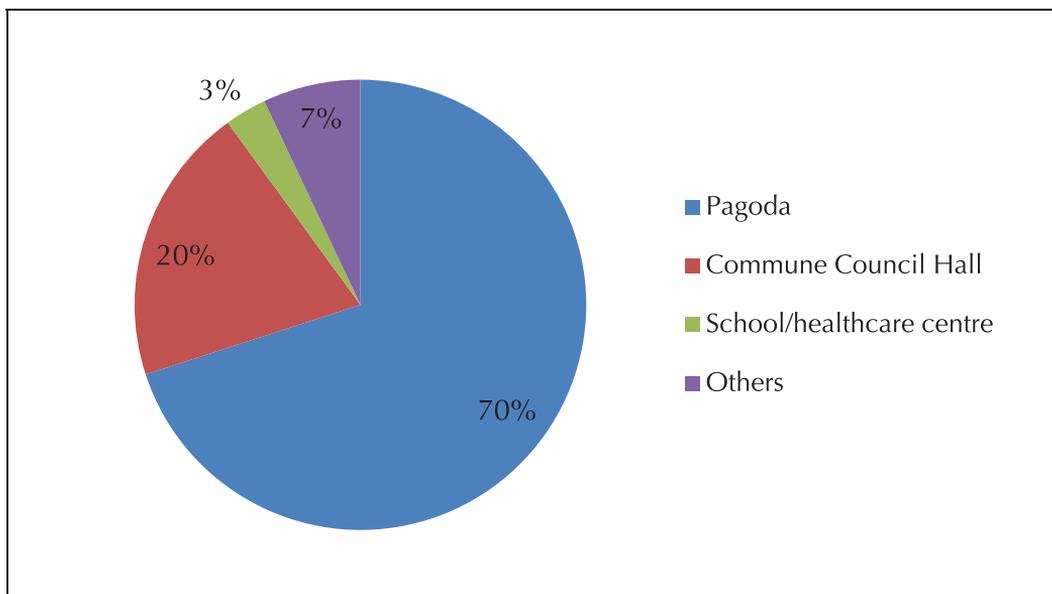
(All figures in %)

**HHS Response 4: How long was the adjudication record displayed for?**

	Phnom Penh	Banteay Meanchey	Preah Sihanouk	Kampong Cham	Total (%)
<b>30 days</b>	0	62.1	42.9	79.3	64.4
<b>More than 30 days</b>	0	27.6	14.3	0	13.7
<b>Less than 30 days</b>	0	3.4	21.4	17.2	12.3
<b>Don't know</b>	100	6.9	21.4	3.4	9.6

(All figures in %)

### HHS Response 5: Where was the adjudication record displayed?



Household survey respondents were asked whether or not they checked the adjudication record in order to confirm the information therein. Almost 80% of respondents confirmed that they did view the public record or a member of the household did, although this leaves 20% of people who did not. It is a requirement that stakeholders confirm the content of the adjudication record before any land parcel is confirmed, and it is not clear how this was done in cases where people did not view the public display. Of those people who did view the public display, 88% were satisfied with the information, while the others lodged request for alterations.

### HHS Response 6: Did you or a member of your household check the adjudication record during the public display?

	Phnom Penh	Banteay Meanchey	Preah Sihanouk	Kampong Cham	Total (%)
<b>Yes</b>	0	83.3	100	79.3	79.7
<b>No</b>	100	16.7	0	20.7	20.3

(All figures in %)

**HHS Response 7: Was information related to your land parcel included in the adjudication record, and was it accurate and complete?**

	<b>Phnom Penh</b>	<b>Banteay Meanchey</b>	<b>Preah Sihanouk</b>	<b>Kampong Cham</b>	<b>Total (%)</b>
<b>Yes</b>	0	93.1	91.7	83.3	86.81
<b>No</b>	100	6.9	8.3	16.7	13.19

(All figures in %)

**3.2.5 Distribution of Land Titles**

In the Banteay Meanchey, Preah Sihanouk and Kampong Cham study areas, land title certificates were issued at public ceremonies at the local pagoda or Commune Hall. Of those people interviewed during household surveys, 68% attended the public ceremonies. If people were unable to collect their titles at the ceremony they were generally held by the Village Chief for a number of days, after which they were sent to the district level where they could be collected later, although this was left up to the initiative of the individual landowner.

In Banteay Meanchey, those who were not able to attend the ceremony could collect their title from the Village Office within three days of the ceremony, after which all certificates were sent to the district cadastral authorities. A small number of people failed to collect their title as they were working in Thailand or because they did not want to travel to the district office due to the cost and distance. According to an administrative officer of provincial Office of Land Management in Banteay Meanchey around 1% of titles issued in the Banteay Neang Commune of Banteay Meanchey have yet to be collected. In the Kampong Cham study area a public session was arranged at the end of the public display period where people were informed about the process of collecting title certificates, what supporting documents they would need, and how much they would have to pay. As was the case in Banteay Meanchey, land titles were distributed at a public ceremony, and those who were unable to attend on the day had a three day period to collect their title certificate at the local village offices, after which they had to travel to the district to collect. Titles were also issued at public ceremonies in Preah Sihanouk Province. The research team was unable to obtain data regarding the issuance of the few titles that were adjudicated in Tumnu Village, Phnom Penh.

Title recipients have to pay a nominal fee in order to receive their land title certificate, with the fee varying depending on the location and type of land. All fees are set out in a directive from the MLMUPC. Household survey respondents

were asked if they were required to pay any informal fees, to which over 44% said yes. Payments were made to LRTs and local officials supporting the application or survey process. For the most part these informal payments were explained as being to cover the cost of food and drink, and 94% of those people who did pay informal fees said that the value of the payment was less than USD 5.

**HHS Response 8: Did you have to pay any fees at any stage of the land registration process?**

	Phnom Penh	Banteay Meanchey	Preah Sihanouk	Kampong Cham	Total (%)
Yes	N/A	58.1	46.2	28.6	44.4
No	N/A	38.7	53.8	71.4	54.2
Can't remember	N/A	3.2	0	0	1.4

(All figures in %)

**3.2.6 Satisfaction with the SLR Process**

Those households interviewed in Phnom Penh were all critical of the SLR process as the entire sample group was excluded and did not receive land titles. However, in the other three provinces where people had access to SLR, household survey respondents were overwhelmingly satisfied with the SLR process. With that said, levels of satisfaction were lower in Kampong Cham, where a number of respondents were unhappy because their disputed chamkar land had not been registered, and in some cases because some LRT members were reportedly rude and had a “bad attitude” towards the villagers.

**HHS Response 9: In general, were you satisfied with the land registration process?**

	Phnom Penh	Banteay Meanchey	Preah Sihanouk	Kampong Cham	Total (%)
Yes	N/A	100	100	76.9	91
No	N/A	0	0	23.1	9

(All figures in %)

### **3.3 Overview of Results in the Four Study Areas**

#### **3.3.1 Phnom Penh**

The first study area visited was Tumnup Village, Sangkat Phnom Penh Thmei, Khan Sen Sok, Phnom Penh. The research team visited three communities that have organized with the help of the local organization UPWD. The three communities are known as Phnom Penh Thmei, Tumnup 2 and Tumnup 3. Tumnup Village faced extensive exclusions from the SLR process, and although there are 861 families in the village only 195 parcels were adjudicated and only 41 titles issued, which means only 1 in 5 of the total adjudicated plots were registered. No reliable data was obtained for the total number of plots in Tumnup Village, but based on the fact that 861 families live there, the authors estimate at least 80% of parcels were left unregistered.

The reasons for the widespread exclusions in Tumnup Village were not entirely clear, although several contributing factors appear to have derailed the SLR process. There are a number of planned infrastructure developments in the area that are likely to impact on land of residents, including drainage and sewage/waste water processing projects, as well as a private real estate development. Additionally there are a number of large scale disputes involving in excess of two hundred families in dispute with a handful of powerful individuals. These factors combined meant that the adjudication process was highly complex, and the SLR process was cut short during the survey and demarcation stage.

The adjudication process that did take place was flawed, and although there was a public announcement of the adjudication area and a public meeting was held, many of the household survey respondents do not recall ever having joined a public meeting. Although residents were instructed to prepare their documents and be ready to receive the LRT for survey and demarcation of their land, in most cases the LRT never arrived.

Many people in Tumnup Village have lived in the area since the 1980s, a large number of whom were demobilized soldiers settled there by the government. Many others who bought land later have possession certificates and can demonstrate a chain of possession going back to the 1980s and 1990s. The excluded families have been petitioning the government since 2009 for the SLR process to be restarted, and for “additional registration” to be conducted. Responses from the government have been promising, and in December 2011 residents were told that in principal they could have access to additional SLR, but to date the additional registration has not taken place. Furthermore, those living

in the vicinity of a planned real estate development have been told that they will not be able to access the SLR process when additional registration does occur.

### **3.3.2 Banteay Meanchey**

In Banteay Meanchey, two villages were the focus of field visits: O'Andoung Khet and Kork Thnaou. Both villages are located in Banteay Neang Commune of Monkol Borei District. Data gathered in surveys and focus group discussions with SLR beneficiaries and interviews with officials shows that for the most part the process was implemented in accordance with the law and sub-decree for SLR. Of the four study areas visited for this study, SLR proceeded most smoothly in Banteay Meanchey.

The combined total of the two villages' land parcels was 1,713 and over 99% of these parcels were registered. Figures for the Banteay Neang Commune were similar, and only 0.07% of adjudicated plots were left unregistered. Land cover in the area is predominantly paddy rice fields, with low levels of disputes and no development projects planned or in progress, which makes these high figures unsurprising.

The SLR process was complicated to some extent by the fact that many residents in the two villages travel to Thailand to work as migrant labourers. This meant that some were not present to make applications, thumb-print documents, or confirm the boundaries of their land during the survey and public display period. However, the cadastral authorities provided additional opportunities for people to return and complete the process. Although there were still a number of people who missed the chance to have their land registered because they were absent, in most cases this challenge was overcome.

Most land disputes in the study area were of a minor nature and involved disagreements over land boundaries. The vast majority of these disputes were resolved during demarcation or through village or commune level negotiation. Across Banteay Neang Commune, a number of parcels were left untitled due to having 'unclear status', or because they overlapped state public property – in this case the railway right of way. However, these cases were relatively few.

Since the completion of the SLR process there have been very few land transfers in the study areas, and village chiefs interviewed for this study knew of only five such transfers. None of these were completed according to the formal process of subsequent registration.

### **3.3.3 Preah Sihanouk**

The third study area was located in Preah Sihanouk, a coastal province in the south of Cambodia. Here field research was conducted in Village 3, Sangkat 3, Khan Mittapheap. In this area the issue of exclusions from the SLR process was observed to be extensive. Of the total 1,759 parcels adjudicated through SLR 1,636 (7%) were left unregistered for various reasons, including land disputes, land having unclear status, and encroachment on state public land. In addition to these parcels, a further 668 were removed from the adjudication process at the outset as they were found to be located in the vicinity of a port development, Special Economic Zone development, railway right of way, or in the path of a road upgrade. This left over 33% of the Village's total land parcels unregistered after the conclusion of SLR.

Some of these plots will most likely be located within the railway right of way, and therefore are not eligible for land registration, but it appears that no adjudication process was ever conducted to confirm this. Furthermore, many of the 277 households located in the vicinity of the approved port and Special Economic Zone (SEZ) have documented possession rights and have lived in the area prior to the project being approved. Those households living within the SEZ area who were denied access to SLR petitioned the authorities from the local level up to the Prime Minister's Cabinet for a period of two years, and were eventually told in mid-2011 that they would be subject to additional SLR. However, this has yet to take place.

In addition to these exclusions, 25 households were denied title because of an unclear boundary with a supposed royal residence. However, the residence in fact appears to have been acquired by a powerful actor and is now being developed into a high-end resort. Other people were unable to access the land registration process because they were not present during the SLR process, or because their neighbours were absent and could not confirm land boundaries.

Although there were a high number of exclusions from the SLR process, according to local officials the level of disputes was low and what disputes did emerge were relatively minor. Officials stated that the vast majority of conflicts involved boundary disputes and were solved at the local level.

No data was available on the scale of subsequent registration, although anecdotal evidence suggests that it is higher in this area than in rural areas, as the land is valuable and buyers are more likely to be from outside the area and therefore are more concerned about following the appropriate procedure in order to secure their tenure.

### **3.3.4 Kampong Cham**

The fourth and final study area was located in the rural villages of Brayok and Trapeang Snao, both located in Tumnob Commune, Batheay District, Kampong Cham Province. As was the case in the other rural study area, the SLR process ran relatively smoothly, and over 99% of land parcels were registered. Nine plots were left unregistered as they overlapped an unclear administrative boundary, and in total this issue impacted on 30 hectares of land, including a further ten land parcels in neighbouring villages. One unregistered plot was subject to an inheritance dispute and one case involved an absent owner.

Apart from a long-running dispute with a local agricultural firm involving several families, most disputes were minor and resolved at the local level. The more complicated disputes involved a conflict between villagers and the Agro Star Investment Company, who claimed parts of chamkar land that have been used by local families for a number of years. A total of nine chamkar plots were recorded as being disputed during the adjudication process, of which five owners subsequently decided to sell to the company. Four refused to do so and therefore the parcels remained untitled. One other parcel remained unregistered due to a separate dispute with Agro Star, and one because of a dispute between an absent landowner and the local primary school. According to the Batheay Commune Chief, across the commune, 35 disputes emerged during SLR and most were resolved by the AC at the local field office. Six were raised to the commune level, and no cases were referred to the Cadastral Commission (CC). Two cases were referred to the courts.

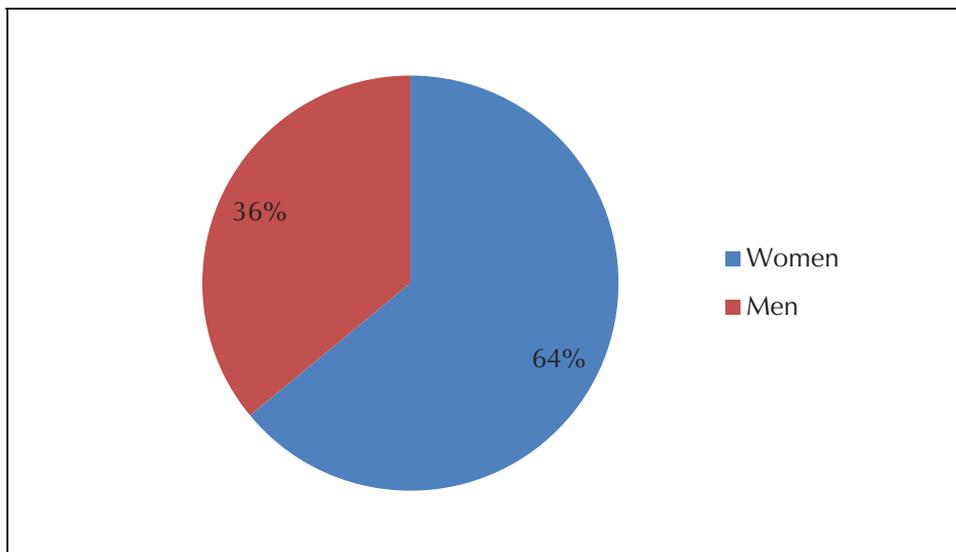
The most interesting results gathered in the two villages is that of 55 transfers of registered land, only three appear to have followed the legal process for subsequent transfers.

## **3.4 Background of Study Sample**

### **3.4.1 Survey Respondent Profile**

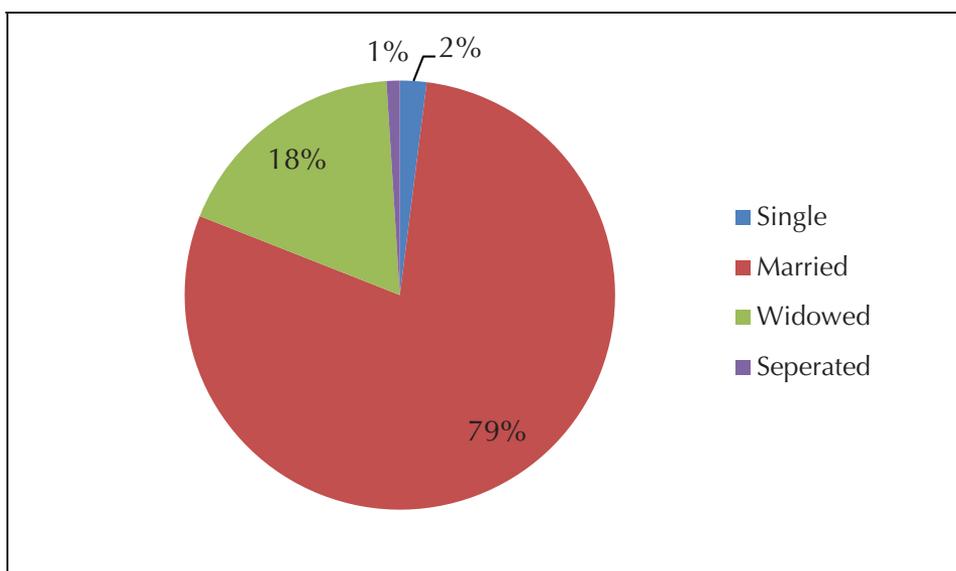
The household survey involved interviews with 128 respondents in target villages in Phnom Penh, Banteay Meanchey, Preah Sihanouk, and Kampong Cham (32 respondents in each village). Of the 128 survey respondents, 64% were women and 36% were men. The reason for this was that most of the men, particularly in the rural target villages, were either working elsewhere as migrant labourers or in the rice fields.

### HHS Response 10: Gender of Survey Respondents



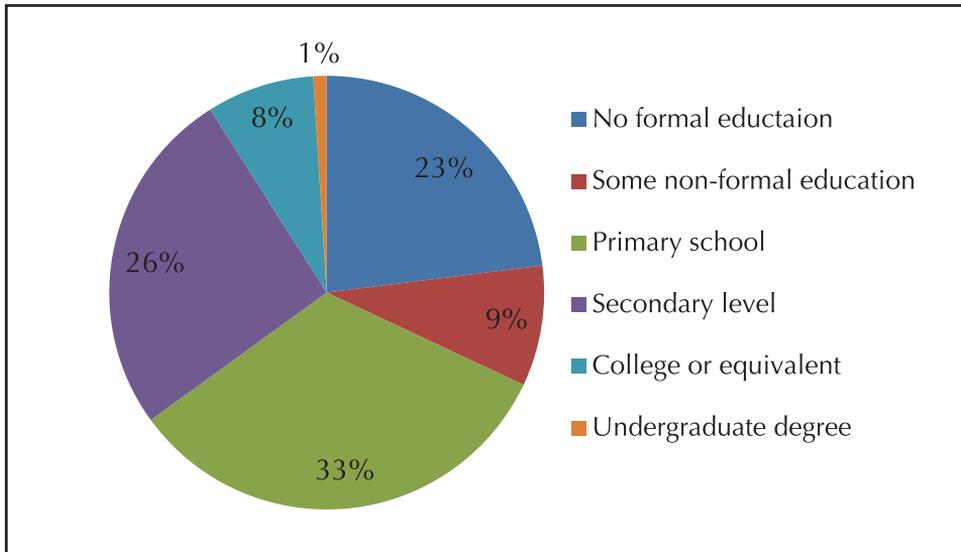
With regards to marital status, the majority (79%) of the survey respondents were married, 18% widowed and 2% single, and a small percentage (about 1%) were separated. Among the women survey respondents, 20% identified themselves as women heads of households (WHH). This is covered in more detail in Section 7.1.

### HHS Response 11: Marital Status



Over 23% of the survey respondent had no formal education and had never attended school, 9% had some non-formal education, 33% primary level, and 26% secondary level education. Very few people had a tertiary level education. The survey found that the female respondents had lower levels of education and literacy than their male counterparts.

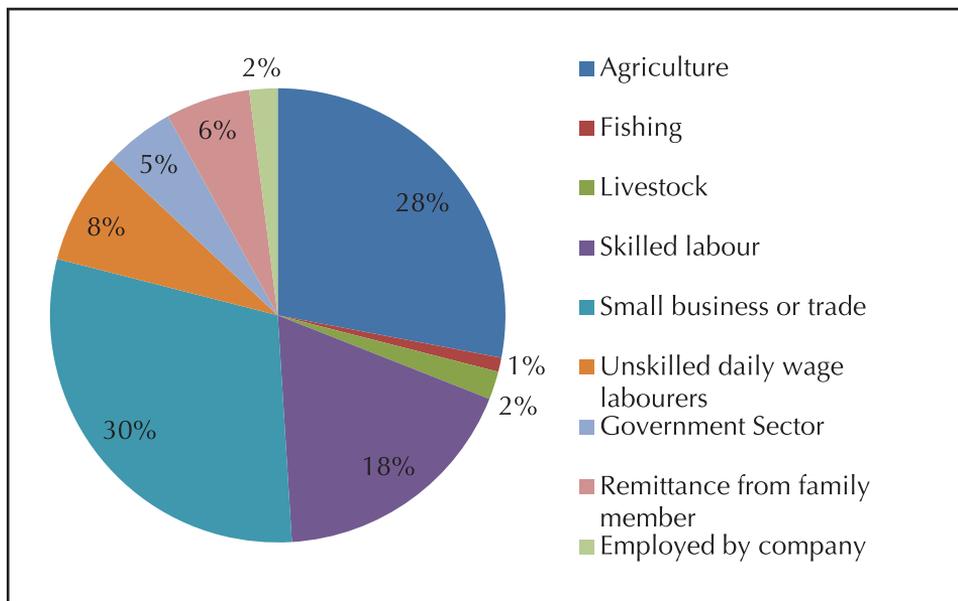
### **HHS Response 12: Education Level of Respondents**



### **3.4.2 Household Income**

Of the survey respondents, over 30% depended on small business and trade, such as running small tailoring services, grocery shops, and beauty salons from home, or vegetable and fish vending for their main source of income. This was followed by 28% who rely on agriculture and 18% on skilled labour such as garment factory work.

### HHS Response 13: Main source of household income



**Table 3: Average monthly incomes<sup>92</sup>**

Study Area	Average income of HHS respondents	Average income in Study Area
Tumnu Village, Phnom Penh	75-100	300+
O'Andoung Khet Village, Banteay Meanchey	50-75	150-200
Kork Thnaou Village, Banteay Meanchey	45-50	150-200
Village 3, Sangkat 3, Preah Sihanouk	300	300+
Brayok Village, Kampong Cham	60-75	100-150
Trapeang Snao Village, Kampong Cham	60-75	100-150

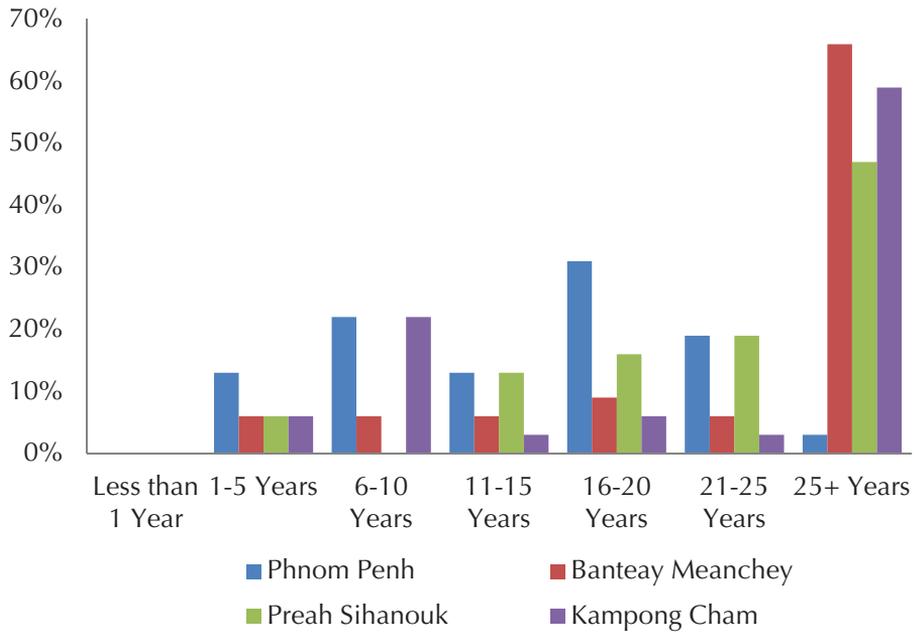
(All figures in USD per month)

<sup>92</sup> Based on household survey responses, information provided in focus group discussions and key informant interviews with local officials.

### 3.4.3 Housing and Settlement Profile

In the four study areas over 44% of the survey respondents started living on their residential land more than 25 years ago, following the fall of the Khmer Rouge regime. This was specially the case in the rural study areas of Banteay Meanchey and Kampong Cham, while the more recent arrivals were mostly in Phnom Penh.

#### HHS Response 14: How long have you owned you lived on your land?



The majority (80%) of the survey respondents said they owned their homes and land, while 15% of respondents, mainly in Phnom Penh, said that they lived on their land under a legal permit granted to them by the government in the 1990s. The remaining 5% reported that they did not own their land as they had occupied state public land – this was observed mainly in Preah Sihanouk, where 22% of respondent households claimed to be living on or using some state land. Of those who owned their home and land, over 48% had bought their land, 45% acquired through the 1989 subdivision of krom samaki land, and 2% had cleared forest land and settled there.

## SECTION 4: EXCLUSIONS FROM THE SYSTEMATIC LAND REGISTRATION SYSTEM

The issue of exclusions from the titling system is one that is not comprehensively documented and, to date, not extensively discussed in the literature. During the course of conducting field research for this paper, it became clear that there are multiple reasons why people may not be able to access the SLR process, and not all of these can necessarily be termed “exclusions”. For the purposes of the report it is therefore important to first define the term *exclusion* in this context. During the conduct of the field research, two main issues of exclusion were identified. The first was of areas being excised from adjudication zones either prior to or during the process of survey and demarcation. In cases where this has occurred it has generally been done in a non-transparent manner and with little recourse available to affected people. The second instance of exclusion is when land parcels are left unregistered due to having ‘unclear status’. This term is not defined by law or any legal instrument, but it appears that most cases of unclear status involve land that is also claimed by the state but has not yet been formally demarcated as such. Areas bordering state land are also sometimes recorded as having unclear status if the state land boundary is not yet defined. In such cases, the land is not registered to anyone, and is marked as ‘unclear’ on the cadastral index map.

As well as dealing with the two types of exclusion mentioned above, this section of the report also discusses other instances encountered where land was left unregistered after the completion of the SLR process. This includes:

1. *Landholder not present during adjudication*: In some cases owners were not present during the survey and demarcation process and therefore missed the opportunity to have their land claims recorded. This has also happened in some cases where landholders were present, but their neighbours were not and so were unable to confirm plot boundaries.
2. *Land is state property*: Prior to or during the survey and demarcation process it may be found that the land in question is state land, and so no title can be issued. In such cases the land is marked on the cadastral index map as being state property. In some cases the land is then formally registered to the state, but it appears that often this does not happen.
3. *Land subject to dispute*: It may be the case that a land plot is subject to dispute prior to adjudication, or a dispute may arise during SLR at the survey and demarcation or public display stage of the process. If land is subject to dispute it cannot be registered.

In addition to looking at the above incidences of exclusion and other issues that resulted in land parcels being left unregistered, the research also sought to explore the process of selecting adjudication areas. It has been suggested in a number of reports and analyses of the SLR process that areas with high incidence of land conflict, or areas that are potentially complicated to adjudicate are being overlooked during the selection of adjudication areas. The authors sought to assess the credibility of this claim.

The following section of the report provides analysis of the above issues, drawing both on available literature and fieldwork results.

Table 4: List of exclusions and unregistered plots observed in study areas

Area	Total land parcels adjudicated	Total plots registered through SLR	Total plots left unregistered after completion of SLR	Reason(s) why land was left unregistered
<b>Phnom Penh:</b> Tumnuap Village	195	41	154* (79%)	Although there are 861 households in Tumnuap Village, only 154 parcels were adjudicated and 41 land titles issued. A letter from the MDLM states that the 154 land parcels that were adjudicated but not registered had “no data”, and that the unadjudicated plots were excluded from SLR as parcel identification had proved too problematic. <ul style="list-style-type: none"><li>• Lack of data: Landholder not present (8); neighbouring landholder not present (2)</li><li>• Inheritance dispute (1)</li><li>• Unclear status: Village Chief claims land blocks access road (1); land claimed by Ministry of Culture and Fine Arts (1)</li></ul>
<b>Banteay Meanchey:</b> O’Andoung Khet & Kork Thnaou Villages	1,713	1,700	13 (0.08%)	<ul style="list-style-type: none"><li>• Lack of data: Landholders not present</li><li>• Land disputes</li><li>• Unclear status</li><li>• Parcels encroached on state land</li></ul>
<b>Preah Sihanouk:</b> Village 3	1,759	1,636	123* (7%)	The following reasons were given by local officials, although no precise figures were available: <ul style="list-style-type: none"><li>• Lack of data: Landholders not present</li><li>• Land disputes</li><li>• Unclear status</li><li>• Parcels encroached on state land</li></ul>
<b>Kampong Cham:</b> Brayok & Trapeang Snao Villages	3,288	3,271	17 (0.5%)	<ul style="list-style-type: none"><li>• Inheritance dispute (1)</li><li>• Unclear administrative boundary (10)</li><li>• Land dispute: Dispute with Agro Star company (5), dispute with local school (1)</li></ul>

\*Many more parcels were never adjudicated. No clear figure is available for the total number of land parcels in Tumnuap Village, therefore the authors are unable to accurately determine the full scale of exclusions in the area. However, it is estimated that more than 80% of the whole village remains untitled.

\*Many more parcels were never adjudicated. According to data gathered during field research, a further 668 land parcels were not subject to the adjudication process, which means that 33% of the total land parcels in Village 3 were left unregistered after the conclusion of SLR.

## **4.1 Excising Specific Zones from Within Adjudication Areas**

In recent years there have been several reports of areas being excised from within adjudication areas either prior to or during the survey and demarcation process. This was observed in the Phnom Penh and Preah Sihanouk study areas, where hundreds of land parcels were affected. Below is a summary of these exclusions.

### ***4.1.1 Excision in Tumnup Village, Sangkat Phnom Penh Thmei, Phnom Penh***

Within the four study areas, the most serious case of excision from an adjudication area was observed in Tumnup Village, Phnom Penh, where at least 79% of adjudicated parcels were left unregistered and many more were removed entirely from the SLR process. The decision to excise the village from the SLR process appears to have been made during the process of survey and adjudication. The research team were unable to obtain reliable statistics for the total number of parcels in Tumnup Village, but estimate that at least 80% of parcels across the village were left unregistered after SLR was completed. A letter from the Municipal Department of Land Management (MDLM) confirms that within Tumnup Village only 195 parcels were adjudicated and only 41 of these plots were eventually registered. The other 154 plots were recorded as “no data” and the remainder of the village was excluded from SLR.<sup>93</sup> The full reasons for this large-scale exclusion are not totally clear, nor is the process that took place that led to the decision being made to excise these households from the registration process. As no official data on the exclusion is publicly available, the following information was gathered in household surveys, focus group discussions, and interviews with Community Committee members and local officials.

According to focus group discussions, a public meeting was announced back in 2006. Those who attended explained that during the meeting they were shown the district map and told that the area had been declared as an adjudication area for SLR and that the process would soon commence. Residents were told to start collecting and preparing documents to prove their possession, and to start marking the boundaries of their plots and settle any boundary disputes or overlaps with their neighbours. Following the meeting they received no more information on SLR for the rest of the year. Residents who joined focus group discussions recalled that the LRT finally came to the area in 2008 to survey and demarcate the Tumnup 2 community. LRTs requested residents to submit

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<sup>93</sup> Letter from the Chief of the Municipal Office of the Land Management in Phnom Penh to the Director of the Department of Cadastre and Geography, MLMUPC, Phnom Penh, 22 September 2009.

documents, but according to focus group discussants, the applicants never heard from them again.

When the residents of Tumnup Village realized something was amiss, they began to make enquiries about the status of the registration process. Focus group discussants explained that later in 2008, a number of community members, mainly people holding low level government posts, were called to a meeting with the LRT. They were told then that the area had been excluded from the SLR process as the area was affected by a number of development projects, including a sewage and waste water management facility, a real estate development, railway rehabilitation, and also because there were a high number of land disputes. This information was not publicly announced, and most people learnt about the exclusion by word of mouth. The SLR process ended in February 2009. A public display was held after the adjudication process was prematurely ended, and as mentioned above the cadastral index map and list of owners showed data only for 41 parcels, with 154 marked as “no data”, and no information shown for the parcels that were not surveyed.

It is difficult to identify clearly the reasons for the exclusion of Tumnup Village from the SLR process. From information gathered from the affected communities, it appears that there are several potential reasons why the area was deemed to be too difficult to adjudicate in full. This includes:

- the existence of a planned dike development project;
- the existence of a planned drainage canal and sewage/waste water development project;
- an approved private real estate development;
- the GMS Railway Rehabilitation Project; and
- a number of large and long-running land disputes.

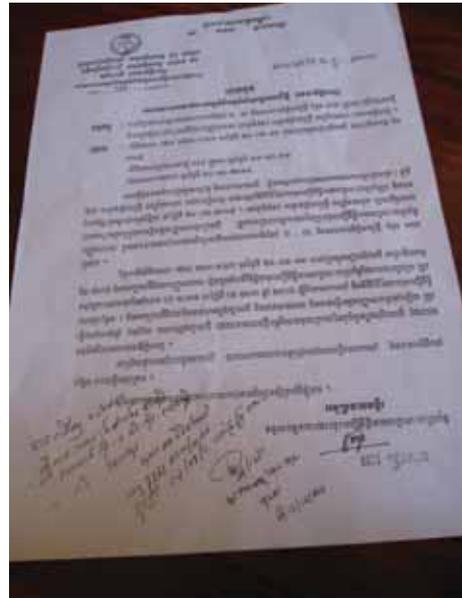
The dike development project is in the vicinity of Street 598 and affects 230 families in Tumnup Village. The drainage canal and waste water project is being developed by the Municipality of Phnom Penh and affects the land of 39 families. A private company has been granted approval to construct a real estate development in the area, which involves filling 7 hectares of a reservoir in Prayap Village. The company has apparently also acquired 2.6 hectares of currently occupied land situated next to the reservoir in Tumnup Village. The project has been planned since 2005 and was given final approval in early 2012 and impacts on the land of 30 families. The railway rehabilitation affects 29 families who currently live in the right of way. Finally, there are currently five large land disputes in Tumnup Village which are long-running and have yet to be resolved. All five disputes involve a single powerful actor in conflict with a large numbers of families. In total, these disputes affect over 200 households. These

projects and disputes are discussed in more detail in the *Background and Summaries* section at the end of the report.

On hearing that the SLR process had officially ended in February 2009, the affected residents started to petition the authorities to have the area subject to additional SLR. In 2009, a letter signed by 145 families was sent to the Municipal Department of Land Management requesting that SLR be conducted in Tumnup Village. Explaining why the community decided to write this letter, one affected resident said:

“We were concerned about our land security because we never got any information about our exclusion. We always hear that when development happens it always takes the land of the poor people and they are the ones who always get evicted into another area, and we do not want this to happen to us.”

Between September 2009 and December 2011 there followed a series of official letters between government departments, which were shared with the Community Committee. A December 2011 letter from the Municipal Department of Land Management to the Director of LASSP stated that that land parcels in Tumnup Village had been excluded as identification of land parcels had been too complex. The letter stated that additional registration would be possible, and the community is now waiting for the additional SLR to start. However, in 2012 Community Committee members met with officials at the Phnom Penh cadastral department to follow up on the December 2011 letter and inquire as to why the additional registration had not yet commenced. They were told that it will happen in the near future, but were also shown a map of the real estate development, and were told that those families living within the development area of the project will not be included in the additional SLR process. According to those officials, if the affected households are eventually affected by the development, they will be dealt with according to the Expropriation Law.



*Picture 2: Letter from Municipal  
Department of Land Management,  
6 December 2011.*

### **4.1.2 Excision in Village 3, Sangkat 3, Preah Sihanouk Province**

In the Preah Sihanouk study area of Village 3, Sangkat 3, according to the official statistics provided by local officials, 123 adjudicated parcels were left unregistered after the conclusion of the SLR process. There were various reasons for this, including land disputes, land having unclear status, and encroachment on state public land. However, researchers also identified at least another 668 land parcels that were excised from the adjudication process prior to the survey and demarcation process. It appears that the excised land parcels were not included in the total number of land parcels provided by the local officials, as this data only covered those parcels that were subject to adjudication. As the 668 parcels were never adjudicated they do not show up in the data.<sup>94</sup>

The land plots in question were left untitled as they are located within an area that has been designated as a development zone for several large scale infrastructure projects, including the port, a Special Economic Zone (SEZ), the GMS Railway Rehabilitation Project, and a road upgrade project. A more detailed description of these projects is included in the *Background and Summaries* section at the end of this report.

According to a census carried out in the SEZ area by a working group from the Sihanoukville Municipality in October 2008, the total number of families impacted by development projects in Village 3 is 668, out of which there were:

- 277 families affected by SEZ and port development;
- 164 families affected by road development; and
- 227 families affected by the GMS Railway Upgrade Project.

The SEZ was first approved by *Circular N°147*, which was signed by the Prime Minister in April 2000. According to this circular, land in Sangkats 2 and 3 was granted for development, which would affect 20,376 people. In September 2009 a second sub-decree was issued that formally established the SEZ, but over a reduced area and impacting less people.<sup>95</sup> The sub-decree states that the SEZ covers 67.49 hectares in Sangkats 2 and 3, and declared that all lands within that area were state private land under the management of the Sihanoukville Autonomous Port. The port and SEZ has been developed with support from the Japanese Government.<sup>96</sup> The map below shows the SEZ and is taken from the Sihanoukville Port SEZ website.

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<sup>94</sup> The information on this exclusion was gathered in focus group discussions with those living in the port development zone and along the railway tracks. It was also supplemented with data provided by local organization CNRO, and confirmed through further document collection and follow up with local authorities.

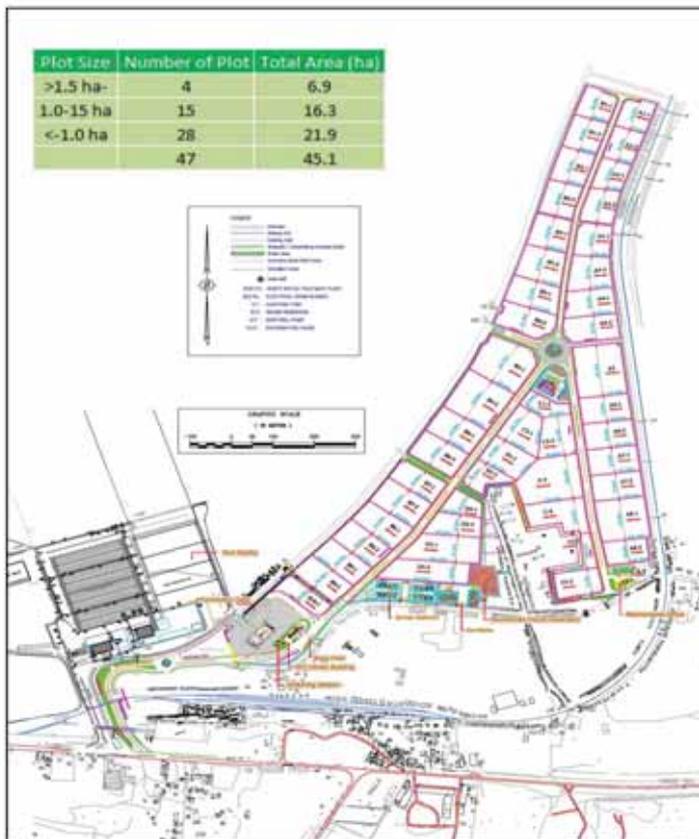
<sup>95</sup> Royal Government of Cambodia, *Sub-decree N°147 on Establishment of Special Economic Zone of Preah Sihanouk Municipal Port*, 2 September 2009.

<sup>96</sup> Sihanoukville Port SEZ website, *About Us*, <http://www.pas.gov.kh/spsez/aboutus.php> (accessed June 2012).



Picture 3: Households along the Railway Upgrade Zone in Preah Sihanouk Province.

**Map 4: The Sihanoukville SEZ area<sup>97</sup>**



After the SLR process was completed in 2010, the 668 parcels affected by these development projects were left unregistered. Over the last few years, those excluded from SLR due to the SEZ project have filed multiple complaints to the local authorities, national authorities, the courts, and to the Prime Minister’s Cabinet. In 2010, 17 families representing the 277 families from Village 3 affected by the SEZ and port development filed a complaint to the Preah Sihanouk Court of First

<sup>97</sup> Sihanoukville Port SEZ website, *Outline of the SHV Port SEZ*, <http://www.pas.gov.kh/spsez/outline.php> (June 2012).

Instance. The complainants requested that they be allowed to access the SLR process. The court called the community for a meeting on 19 July 2011 and a further meeting was held with the Preah Sihanouk Municipality, the Department of Land Management and community members on 27 July 2011. The complaint was discussed and the minutes of the meeting state that all parties agreed with the request for SLR to be conducted in the area. The court requested that all relevant parties work to implement this decision, but as of the time of writing the affected households have not yet undergone additional SLR.

As mentioned above, the Sihanoukville port and SEZ has had considerable support from the Japanese Government, with loans dispersed in 2006, 2008 and 2009 totalling over USD 114 million. In 2011 further technical assistance was approved for developing a masterplan for the port and improving its competitiveness.<sup>98</sup> According to an environmental and social survey conducted for this project, the Japan International Cooperation Agency (JICA) prepared a budget for compensation and resettlement of local people “even if they have been illegally living in the project site, according to the opinion of concerned parties of Preah Sihanouk Provincial Government, MOE [Ministry of Environment], Phnom Penh Autonomous Port (PPAP) and PAS [Sihanoukville Autonomous Port].” The report goes on to state that: “this is not legislative system [sic], but basic policy which has been put into effect in Cambodia. The project site for Sihanoukville Port SEZ, now under construction, was designated by Sub-Decree in 1960s as the state land for port facility and it was illegal for local people to live within the project site area.”<sup>99</sup> This suggests that those people living within the vicinity of the port and SEZ have been labelled as illegal settlers due to a sub-decree passed under the Sangkum Reastr Niyum Government which was in power during the 1960s. It may be the case that the same argument was used to exclude these areas from accessing the SLR process, but the research team were unable to confirm this.

As can be seen from the above overview of projects, developments in the area are extensive and include the port development, SEZ, road construction and railway rehabilitation. The map below is taken from the Sihanoukville Port SEZ website, and shows the location of adjacent development projects (excluding the new road).

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<sup>98</sup> JICA Website, *Cooperation Projects in Operation: The Project for the Study on Strengthening Competitiveness and Development of Sihanoukville Port*, [http://www.jica.go.jp/english/operations/social\\_environmental/archive/pro\\_asia/cambodia\\_14.html](http://www.jica.go.jp/english/operations/social_environmental/archive/pro_asia/cambodia_14.html) (accessed June 2012).

<sup>99</sup> JICA, *The Project for the Study on Strengthening Competitiveness and Development of Sihanoukville Port: Environmental and Social Considerations in Detailed Planning Survey*, 2011 (p.8-9). [http://www.jica.go.jp/english/operations/social\\_environmental/archive/pro\\_asia/pdf/cambodia14\\_01.pdf](http://www.jica.go.jp/english/operations/social_environmental/archive/pro_asia/pdf/cambodia14_01.pdf) (accessed June 2012).

Map 5: Map of the port, SEZ and railway development area in Preah Sihanouk<sup>100</sup>



Based on the available data, it is not possible for the authors to make an assessment of the legality of all households' occupation in this area, but this case provides further illustration of the problems that arise when large areas are excluded from adjudication area due to the presence of approved development projects. Within Sangkat 3 there will certainly be cases where people are residing on state public land, especially those who reside within the right of way of the railway, however, the situation of those living within the SEZ area is less clear. If they lived in the area prior to the land being approved for development, have documents proving their legitimate possession of the land, and as long as the land does not fit any legal definition of state property, they should in theory have access to the SLR process.

The authors were unable to find any clear information on why those land parcels in the vicinity of the road development were left unregistered. It is possible that they are located within an existing ROW, but again, if this is not the case and if the road development is for expansion beyond the pre-existing ROW or for construction of a new road, any residents with documented possession rights should in theory be entitled to access the SLR process. The exclusions along the railway tracks are dealt with later on in Section 4.3.3, which looks at the issue of state public property.

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<sup>100</sup> Sihanoukville Port SEZ website, *Location and Geographic Features*, <http://www.pas.gov.kh/spsez/location.php> (accessed June 2012).

### **4.1.3 The Problem of Excisions from Adjudication Areas**

There is currently no publicly available data on the prevalence of these types of exclusion from the SLR process, and it is therefore difficult to assess how widespread the issue is, and what impact it may be having on the broader success of the land registration system. However, it has been acknowledged by both development partners and the MLMUPC that the issue of exclusions is real and needs to be addressed. This is returned to below.

What can be seen from the exclusions in Tumnup Village, Phnom Penh and Village 3, Preah Sihanouk, is that these excisions have taken place in the absence of any clear legal process. *Sub-decree N°46 on Procedures to Establish Cadastral Index Map and Land Register* contains no legal provisions for excising areas from adjudication areas because they are “too complex” to adjudicate, and thus it is not clear what legal justification there is for such exclusions. Indeed, if the sub-decree was to be followed, any claims that residents are illegally settled on state land, and any claims that land is disputed would be assessed through the adjudication process. If such claims were substantiated the land would either be adjudicated as state property, or if found to be subject to dispute it would be referred to the dispute resolution mechanisms and only registered after the dispute is resolved. As it stands, it appears that the excised areas were removed from the adjudication process by an administrative decision, rather than in accordance with legal process and transparent assessment of the resident’s land claims.

In late 2009, another case of excision in Phnom Penh was reported in the local media. This case became public knowledge after a letter was sent from the Municipal Department of Land Management to the Administrative Committee of Phnom Penh requesting permission to excise 7 areas from the Tonle Bassac adjudication area.<sup>101</sup> The letter explained that the Tonle Basac Commune of Chamkarmorn District, had been declared as an adjudication area for the purposes of SLR, but that seven areas within were deemed to be “too complicated for the systematic titling process.” In two of the areas, the letter states, people are occupying and have built “temporary residences” on state land, and in another area on pagoda property. The reasons for excluding the Bodeng apartment block are not clearly stated. The justification given for excluding the T85 and T87 areas is because they are subject to “a notification issued by the government permitting companies to buy the land according to the agreed price.” For these reasons, the letter states: “in order for the systematic titling process to proceed smoothly and in compliance with the plan of the MLMUPC, I would like

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<sup>101</sup> The excluded areas were: Bodeng Apartment Block (22,492m<sup>2</sup>), Wat Proyouvong (13,199m<sup>2</sup>), Wat Keo Preah Plerng (17,714m<sup>2</sup>), T85 (59,064m<sup>2</sup>), T87 (76,357m<sup>2</sup>), Land behind Ministry of Agriculture (7625m<sup>2</sup>), and Land behind Chamkar Mon villa complex (16,854m<sup>2</sup>).

to request your permission as Chief of the Administrative Committee to provisionally exclude the areas listed above from systematic titling.”<sup>102</sup>

All three areas (Tumnu Village and Tonle Bassac in Phnom Penh, and Village 3 in Preah Sihanouk) share similar characteristics in that they are all located either on land of high value, or areas where development projects have already been approved. In the case of Village 3 in Preah Sihanouk Province, there are multiple adjacent development projects. In this area there will certainly be some people who are living on state public land, as people were identified as residing in the railway ROW. If accurate this means that under the Land Law they have no right to have that land registered in their name. However, there also appear to be people who live within the vicinity of an SEZ development that was only formally approved in the year 2000, despite the fact that many people have lived on their land since the 1980s – many with approval from local authorities. There is a suggestion that the port development was first approved in the 1960s, but the legality of referring to pre-1979 legal documents is very unclear. The 2001 Land Law states that “[a]ny regime of ownership of immovable property prior to 1979 shall not be recognized”.<sup>103</sup> However, it is not clear if this also applies to claims of ownership by the state, as is the case here.

In Tumnu Village, it is again difficult to make an assessment of the legality of residents’ ownership claims without looking at applications on a case-by-case basis. As stated above, if any residents are found to be living on state land as defined by law, or on land that is disputed, the land cannot be registered. However, many of the affected people interviewed for this report appeared to have strong claims of legal possession. An official at the Commune Council stated that he knew of no reason why the residents should be excluded from the adjudication process, as people were living on “village land”, not the lake, or any other state public property, and have documentation showing their possession rights. In Tumnu Village it has been suggested that some people remain excluded from any future SLR because of a private real estate project that was only given final approval in 2012. In this case it appears that a private development has taken precedence over local people’s possession claims. In cases where a developer wishes to acquire land that is already privately held, the land must first be purchased from the existing owner or possessor. In cases where the development is deemed to have a public interest as defined under the Law on Expropriation,<sup>104</sup> the land may be legally expropriated, provided the

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<sup>102</sup> Ministry of Land Management, Urban Planning and Construction, Phnom Penh Department of Land Management, Urban Planning and Construction, *Letter N°372 PPMO/PHN to Madam Chair of the Administrative Committee of Phnom Penh, Subject: Request for permission to exclude the following areas from systematic titling*, 6 October 2009.

<sup>103</sup> Land Law 2001, Article 7.

<sup>104</sup> Law on Expropriation 2010, Article 5.

provisions of the law are followed and after the payment of fair and just compensation.<sup>105</sup> It is a positive step that the MDLM has agreed in principle to conduct additional SLR in the area, but it is not clear at this stage why the plots located around the Boeung Payab lake are still going to be excluded from the process.

The World Bank raised concerns about the issue of such exclusions in a 2009 review report, stating:

*“the relevant municipal authority has granted itself the unilateral right to excise portions of lands surveyed by the Cadastral Administration. In doing so, it has decided not to apply the systematic titling to those excised areas. In addition, for those people affected by the decision to excise land, on which they were established, from the area to be adjudicated, there were no social safeguard that were triggered. Affected persons interviewed by the ERM [Enhanced Review Mission] mentioned that no consultation was conducted, or information provided to them, prior to the decision to excise an area from systematic titling and no legal assistance provided to them to file claims on the basis of their possession rights and their rights to any potential compensation or resettlement assistance.”* (emphasis added)

The report goes on to state:

*“The overall design of the titling process, consistent with the 2001 Land Law assumes that the initial geographical area to be adjudicated and subject to systematic titling, should be mapped in its entirety, indicating all existing plots and their current use in a participatory manner. This would give a documentation of existing land use at the surveying date. Users-possessors-renters rights must be assessed and documented properly. If done accordingly, no de facto state land identification would be done by excising areas from any adjudication area whether directed by the province/municipality or otherwise determined. Ensuring that any process undertaken by any authority to excise or exclude a portion of land from the systematic titling area is transparent, public, and widely disseminated is an important assumption strongly grounded in the applicable law supported by the LMAP. The state land identification (public and private) should be determined before or rather simultaneously to the individually plot titling. This has not happened to date in urban areas, which is why provincial/municipal authorities are trying to determine what would be state land, and asking it to be excised from the*

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<sup>105</sup> See Constitution of the Kingdom of Cambodia, Article 44; Land Law 2001, Article 5; and Law on Expropriation 2010, Articles 1 & 2.

systematic titling process. *State land (public and private) identification and mapping, must not be done through unilateral excision, it must be done in a separate, transparent and participatory process as mandated by relevant legal and regulatory provisions.*<sup>106</sup> (emphasis added)

Although exclusions in the Phnom Penh and Preah Sihanouk study areas were high, as mentioned in the overview of results, no such excisions were encountered in the Banteay Meanchey or Kampong Cham study areas. Such exclusions seem to be concentrated in areas where there are high numbers of planned development projects and/or large scale and complex land conflicts.

#### **4.1.4 Government Plans to Solve the Problem of Exclusions**

Recently, both GIZ and the MLMUPC have acknowledged that the issue of exclusions is a serious concern, and are currently developing a plan for dealing with areas already excluded from SLR and to prevent future exclusions. Starting in 2009 the German Government began working with the RGC to develop a series of “milestones” to be used as a reference point for future cooperation in the land sector. In late 2011, the German Government and the RGC agreed to a second round of milestones for the period of 2012-2015. According to a summary of the negotiations, these milestones were agreed between the Cambodian and German governments in order to support and accelerate the RGC's reform programme in the land sector, in particular in areas related to the poor and the landless. These milestones will be used to measure the progress made in land reform, including areas relating to human rights.<sup>107</sup>

The negotiations resulted in two short-term milestones, and four medium-term milestones.<sup>108</sup> Of relevance to this report are medium-term milestones 1 and 2, which are concerned with subsequent registration and exclusions, respectively. Milestone 1 is returned to in Section 6 on subsequent registration. The second milestone covers “avoidance of (temporary) exclusions from the registration

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<sup>106</sup> World Bank Enhanced Review Mission, *Cambodia Land Management and Administration Project - Enhanced Review Report*, 13 July 2009. (p.8)

<sup>107</sup> Cambodia Rehabilitation and Development Board, Council of Development of Cambodia, *Summary Record of the Negotiations on Development Cooperation between the Government of the Federal Republic of Germany and the Royal Government of Cambodia held in Bonn on 13 and 14 December 2011*. [http://www.cdc-crdb.gov.kh/cdc/Donor\\_Development\\_Cooperation\\_Programs/Germany/Negotiation\\_on\\_Development\\_Cooperation\\_2011/summary\\_record.htm](http://www.cdc-crdb.gov.kh/cdc/Donor_Development_Cooperation_Programs/Germany/Negotiation_on_Development_Cooperation_2011/summary_record.htm) (accessed June 2012).

<sup>108</sup> Short-term milestones: (1) Land title production in Svay Rieng to have at least doubled during the five months from January 2012 to May 2012; and (2) Elaboration of a concept for speeding up systematic land registration. Medium-term milestones: (1) Improvements in subsequent registration; (2) Avoidance of (temporary) exclusions from the registration process; (3) Strategy and plan for state land distribution for the landless and land poor; and (4) Creation of the necessary policy and legal environment for making results of official land use planning legally binding.

process”, and requires that a “concept and operations plan describe and define how to register the areas that have so far been (temporarily) excluded from systematic registration and on how to avoid future exclusions.” The milestone, which was agreed both by Germany and the RGC indicates that the issue of exclusion needs to be solved in order to ensure that country-wide registration can take place over the next 10 years, stating: “completing first registration of land means that the land in the whole country has to be registered. This will also include those lands that were considered too difficult to be registered under the current systematic land registration procedures.”<sup>109</sup> In May 2012, a draft document was circulated by the MLMUPC which outlined a very brief plan for speeding up systematic land registration and included plans to solve problems of exclusion, and increase levels of subsequent registration. At the time of writing this document was still in draft form and has not yet been adopted.<sup>110</sup>

## 4.2 Unclear Status

During the process of conducting fieldwork in the four study areas, researchers came across a number of instances of plots being excluded from the SLR process because they were of ‘unclear status’. Although this term was used by land registration teams, cadastral officers and other officials during interviews, it is not defined by any law or legal instrument related to the registration process, and the authors are unaware of there being any procedure for dealing with such areas. If this is indeed the case, the fact that land is adjudicated and found to be of unclear status leaves it in a kind of limbo. The research team did not come across any cases where people were told to move from or to stop using land that was found to be of unclear status, but these lands were not registered and occupants and users were not issued land titles. On analysis of the cases concerned, they appear for the most part to occur where land is claimed both by an individual as private land and also by the state or a state institution, or because land parcels bordered state properties that have not yet been demarcated.

Of course, if the boundaries of a land parcel cannot be determined the parcel cannot be registered. However, it appears that the slow progress of mapping state

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<sup>109</sup> Cambodia Rehabilitation and Development Board, Council of Development of Cambodia, Summary Record of the Negotiations on Development Cooperation between the Government of the Federal Republic of Germany and the Royal Government of Cambodia held in Bonn on 13 and 14 December 2011. [http://www.cdc-crdb.gov.kh/cdc/Donor\\_Development\\_Cooperation\\_Programs/Germany/Negotiation\\_on\\_Development\\_Cooperation\\_2011/summary\\_record.htm](http://www.cdc-crdb.gov.kh/cdc/Donor_Development_Cooperation_Programs/Germany/Negotiation_on_Development_Cooperation_2011/summary_record.htm) (accessed June 2012).

<sup>110</sup> MLMUPC, Land Administration Sub-Sector Program, *Draft Strategy to Speed Up Land Registration in Cambodia*, May 2012.

land is contributing significantly to the number of parcels being recorded as having unclear status. This is exacerbated by a lack of transparency in state land management, and as observed in some cases during the field research, the unclear status determination is open to abuse.

#### **4.2.1 Banteay Meanchey**

During field research in Banteay Meanchey, two cases were encountered in which land was left unregistered due to unclear status. One case involved a land parcel that was claimed both by a private individual and by the Ministry of Culture and Fine Arts (MCFA). In this case the MCFA claimed the land as there are a number of ancient stones in the area which have cultural and archaeological significance. The plot was recorded as having unclear status and the dispute remains on-going. The land was not registered and remains unoccupied although the family is allowed to continue to use the land to grow vegetables and crops. In another case, one woman's land was deemed by local authorities to be obstructing a public footpath, and as the case could not be resolved it was left untitled and recorded as having unclear status (this case is included as a case study in the *Background and Summaries* section at the end of this report).

#### **4.2.2 Preah Sihanouk**

In Village 3, Sankat 3, one case was found in which 25 families were excluded from having their parcels registered because the land in question backed onto what was described as a "royal residence", which under the Land Law is state public property if it is an official residence of the royal family.<sup>111</sup> After survey and demarcation the LRT stated that the boundary was unclear, and so the plots were not registered and instead were marked as having unclear status. Almost all of the affected families have documentation that shows their land transfers were officially witnessed. The LRT contacted the Royal Council and requested that a permanent fence be built along the boundary of the royal residence, but this did not happen. Researchers observed that the residence is in fact being developed into some kind of high-end resort. They also learnt that a senior official has a house in the same area, for which he received title, so the suggestion that the land is in fact royal property is highly questionable.

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<sup>111</sup> *Land Law 2001*, Article 15.

### **Case Study: The Royal Residence Village 3, Sangkat 3, Khan Mittapheap, Preah Sihanouk**

Ms. Pov<sup>112</sup> is around 50 years old and works as a housekeeper at a guesthouse in a nearby town where she is paid a salary and given board and meals. In 1993 Ms. Pov bought a plot of land measuring 6 x 25 metres and had the sale witnessed and signed by the Village Chief and Sangkat Council. Her land has a small wooden shack on it, which she rents to someone, while the remaining land is used for growing mangos and other fruit trees.

Ms. Pov was informed by the village and group chiefs that SLR was going to take place in her area, after which she joined in the public meeting in her village. Her land was included in the adjudication area, but when the LRT came to demarcate the land they said that there was a boundary overlap with the adjoining land, which belongs to the royal family. However, since she bought the land in 1993 there has been no dispute over the boundary, nobody ever raised a complaint, and until the SLR process started she had no idea that there was any problem with her occupancy.

The LRT team said that due to the boundary overlap 6 x 10 metres of the land had to be cut from her plot. Markers were put in place to show the new boundaries, leaving her with 6 x 15 metres. After the demarcation was complete she received a receipt. At the public display she saw that her land was included in the cadastral index map and ownership list.

However, when she went to collect her land title on the day of distribution, she was told that there was still a boundary dispute and no title could be issued. Ms. Pov was very confused by this, as she had already given up 10m<sup>2</sup> of her already small plot. She approached the Village Chief to seek assistance and found that over 25 other families with land along the same boundary were also denied land titles. The affected residents were called to a meeting at the Sangkat Council, which said there was no need to worry, that the land is safe and the problem will soon be solved. A cadastral officer also told the affected people there was no need to be alarmed.

However, to date the people have still not received land titles, even though it is over 2 years since the end of the SLR process. Ms. Pov feels extremely insecure, and the affected people have been told that they are not allowed to build or repair any structures on the land until the dispute is resolved. This is causing her considerable concern, and she feels her treatment is very unfair.

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<sup>112</sup> The subject's name has been changed to protect her privacy. Interview conducted 4 February 2012.

Additionally, the residents no longer hold the old transfer contracts and documents in hand that support their possession claims, as they have been kept by the cadastral authorities.

There is now a rumour circulating that the land is not in fact royal property anymore and has been “grabbed” by a high-ranking official who has sold part of it to a foreign company for the development of a high-end resort. The 25 families are worried that they are going to be evicted, and if they are, that they will not receive adequate compensation. There are now guards and workers on the land constructing fences and other structures, but not on the side of the land that backs on to the excluded residents’ land. Ms. Pov has never filed a formal complaint as she does not know how to do so.

### **Clarification from local official**

In order to confirm the information provided by Ms. Pov, a local official was interviewed.<sup>113</sup> He confirmed that the land was once used by Prince Norodom Sihanouk as a holiday home, but since the Khmer Rouge regime came to power in 1979 it was never used by the royal family again.

The official confirmed Ms. Pov’s story, but questioned the figure of 25 affected families, believing it to be less than this. He stated that the residence was previously 13.5 hectares, but is now 6-7 hectares. He stated that it is very beautiful inside and is used as a holiday and picnic spot for the family of the rich *oknha*<sup>114</sup> who has claimed the property.

He confirmed that there are currently two new buildings being constructed on the land, but had no idea what they were for. There are guards there and they do not allow outsiders to enter the property. A development area opposite the land has been renovated and now has a hotel and high-end residential developments. The official had not heard of any foreign company being involved but “would not be surprised”, as the land is very valuable and prime property by the beach.

### **4.2.3 Kampong Cham**

In Brayok and Trapeang Snao villages, 9 plots of *chamkar* were excluded from the SLR process because the land was located along an unclear administrative boundary between Chhoeung Prey District and Batheay District. In total, this

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<sup>113</sup> Interview conducted 4 February 2012.

<sup>114</sup> ‘Oknha’ is an honour awarded to those who are deemed to have made outstanding contributions to the reconstruction and the development of the Cambodia. The title is awarded to those who make material or financial donations to the country of USD 100,000 or above.

unclear administrative boundary meant that 30 hectares of chamkar land were not registered, which affected 19 families from Prasam, Chhoeung, Trapeang Snao and Brayok villages. The LRT have assured the local people and Village Chiefs that the excluded plots will be included when the SLR process commences in the neighbouring Kork Roveung Commune. This case is explained in more detail in the *Background and Summary* section at the end of the report.

#### **4.2.4 'Unclear Status' and State Land Management**

These cases raise useful examples of how land administration intersects with state land management. The problem was illustrated well in a discussion with the Chief Cadastral Officer for Batheay District, who explained that a number of exclusions across the Commune were due to unclear status, generally because people were occupying or using land also claimed by the state, or land bordering areas of state land. Many of these land plots were in/on or close to mountains, hills, forests and wetland areas. State public and private lands account for 3-4% of the land in Batheay District, but because of the difficulties in setting exact boundaries many people living alongside state land had their parcels recorded as having unclear status. As the boundaries of state lands are unclear, so are the boundaries of plots that adjoin them, and according to this official many rice fields bordering state land in Batheay District have not been registered.

Officials interviewed in all study areas mentioned that lands deemed to be the property of the state presented challenges to registration teams. In one case described by a cadastral official in Batheay District, Kampong Cham, in O'Mal Village over 500 hectares of rice fields were not registered because of unclear status. The land parcels in question are located close to the Tonle Sap river and natural reservoirs and were not registered as they were deemed to be in "danger zones" that are likely to flood, and were therefore deemed to be under the administration of the Ministry of Agriculture, Forestry and Fisheries (MAFF). It is not totally clear on what grounds such danger zones should be deemed state property, and this case has affected around 300 families. It is not clear if these areas were adjudicated as being state property or of unclear status, but again this illustrates the complex interface between private land and state land that has yet to be demarcated.

Most areas in Cambodia lack clear state land data and so far very little state land has been properly demarcated and registered, which means that cases of 'unclear status' are likely to continue to emerge during SLR. LMAP originally aimed to conduct state land mapping under component 5 of the project, although beyond the drafting of a sub-decree and prakas, most of the remaining activities under

the component were not implemented and were eventually cancelled.<sup>115</sup> A 2009 World Bank review mission concluded that the lack of state land mapping under LMAP and resulting absence of state land data “is a real source of concern for those under threat of eviction because absent these maps, the relevant municipal authority can exclude from titling any portion of land surveyed and proposed for adjudication by the cadastre team and therefore titling it, implicitly, in the name of state.”<sup>116</sup> It is evident that the issue has been a concern for a number of years, and an independent review of LMAP conducted in 2006 found that there were problems with almost one fifth of sample households being refused registration because of unclear status or because of state claims to the land.<sup>117</sup>

The following case study from Preah Sihanouk provides another example of the lack of certainty created by the unclear status issue.

**Case Study: Railway Property?  
Village 3, Sangkat 3, Khan Mittapheap, Preah Sihanouk**

Ms. Sopha<sup>118</sup> and her husband purchased a land plot measuring 260m<sup>2</sup> for just over USD 10,000. They used a sale contract and had this witnessed by the Village Chief and signed by Sangkat officials, and have documentation showing that possession of the land goes back to 1998. Later, Ms. Sopha and her family purchased another plot of land in the same area measuring 625m<sup>2</sup>.

Ms. Sopha has a secure livelihood, and the combined income from her pharmacy and her husband’s civil service salary is over 3 million riels (USD 750) a month. Other people in her neighbourhood live in good quality houses and have small businesses outside their homes. Some of her neighbours have occupied the area since the 1980s when they received the land from the government. After 1991 newcomers started to purchase land in the area. Until the SLR process began, Ms. Sopha and other residents in her area had experienced no land disputes, but after the adjudication process was announced they found out that their land had unclear status.

In 2007, Ms. Sopha and her neighbours were told by cadastral officers that they lived within an adjudication area, and requested everyone to prepare the

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<sup>115</sup> World Bank Enhanced Review Mission, *Cambodia Land Management and Administration Project - Enhanced Review Report*, 13 July 2009 (p.5).

<sup>116</sup> *Ibid* (p.6).

<sup>117</sup> Report not publicly available, quoted in World Bank Inspection Panel, *Investigation Report: Cambodia Land Management and Administration Project (Credit No. 3650 - KH)*, 23 November 2010 (p.49).

<sup>118</sup> The subject’s name has been changed to protect her privacy. Interview conducted 4 February 2012.

relevant documents for SLR. They awaited the arrival of the LRT, and during this time heard that a number of wealthy people who owned land close by had already had their lands surveyed and demarcated. This included a large land plot located just 100m from Ms. Sopha's owned by a well-known chumteuv.<sup>119</sup>

She went with her neighbours to talk with local cadastral officials and ask why their lands had not also been surveyed. The officer said that all those who were already surveyed had a pre-LMAP or sporadic title and could therefore exchange them for new land titles. The officer said that the teams were still working in other parts of Village 3 and would return to Ms. Sopha's area later. Affected residents raised their concerns to the Provincial Governor, who also told them to be patient and wait for the LRT to return. Later, Ms. Sopha and her neighbours realized that SLR had already been completed and the LRT had moved on to Village 1.

Later in 2007, Ms. Sopha and her neighbours decided to file a complaint to the Municipal Department of Land Management requesting that their lands be made subject to SLR. A total of 69 families thumb-printed the letter, which was verified by the Village Chief, as well as the Sangkat 3 and Khan Mittapheap authorities. The letter was submitted to the Chief of the Cadastral Department, who recommended people write a letter to the Provincial Governor.

The affected people followed this advice, and submitted a letter to the Governor. The Municipality in turn recommended that the people get a supporting letter from national authorities, so in 2008 they decided to submit another letter to the Prime Minister's Cabinet requesting that they have their land registered. The Chief of the Prime Minister's Cabinet sent a letter to the Governor in support of the people's request. However, there is still no resolution to the case.

After the letter from the Prime Minister's Cabinet was received, things became quiet for a time due to elections, but afterwards the people saw that their land had indeed been excluded from the cadastral index map. They raised their concerns again to the cadastral authorities, who now told them that they were residing within 23 hectares of railway property. They were shown documents indicating that the area was in railway development plans from 1923 and 1960, but officials were unable to show them any land use plans developed after 1979. Again, they were denied registration.

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<sup>119</sup> Chumteuv is a title which is bestowed on the wife of high-ranking government officers with the title of "Excellency". The title also applies to the wives of Oknha.

In November 2011, the people went to the Municipal Office of Land Management of Preah Sihanouk again to request that their lands be registered. The cadastral officers gave them a form for 'additional registration', which cost USD 10 per form, plus USD 20 for the officer to complete the form, as well as an additional USD 10 service charge. Around 20 of the 69 families who filed the original complaint completed this process, but the others refused as they did not agree with the charges.

An official letter was issued on 28 December 2011 by the municipal cadastral office informing those who applied for additional registration that an LRT would soon come to survey the land. Unfortunately, the team never showed up. Again the people complained to the cadastral authorities, who told them that they were awaiting a response from the railway authority, which still claims the land. The demarcation cannot be completed until the railway authorities come to indicate their boundaries, and so far they have not done so. Ms. Sopha and her neighbours are very unhappy about the situation, as they believe that their land lies outside of the boundaries of the railway property and she claims she has never even seen any railway staff in the area.

The land is still unregistered, and Ms. Sopha and her neighbours grow increasingly concerned that their land will be seized by powerful individuals in the future. She said that her community will continue to file complaints and will seek help from NGOs if they have to.

Perhaps the most notorious example of exclusion from the SLR system can be observed in the case of Boeung Kak in Phnom Penh.<sup>120</sup> The case involved 4,250 families living on and around a lake in the north of the capital, who after a flawed adjudication process found all land claims dismissed as they were living on state land. Although this area was not visited during field research, it is well documented and as it ultimately affected more than 20,000 people, it is worthy of further discussion. In May 2006 the area was declared to be part of an adjudication area for SLR. Survey and demarcation was conducted between May 2006 and January 2007, and the public display held between January and February 2008. World Bank management reported that during the demarcation and public display period, claims from the residents were not considered, and only village boundaries were recorded. Ownership was listed as "unknown" as the municipality regarded the area as state public land. Soon after the public display in 2007, a 99 year lease was granted to a private company for the

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<sup>120</sup> Full documentation of the Boeung Kak Inspection Panel case can be found at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22512162~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (accessed May 2012).

development of the area. The land was subsequently reclassified from state public land to state private land in August 2008.

No state land mapping is known to have ever been conducted in the area, and a significant part of the development zone does not appear to fit any legal definition of state land. The total area excluded from the SLR process measured 133 hectares, which includes the 90 hectare lake and surrounding areas. Lakes are clearly defined as state public property, and so those living on the lake itself had no claim to land titles as no private individual can claim ownership of state public land. The banks and surrounding areas of lakes are not state public property, and the MLMUPC prakas referenced earlier states that the area between the lowest water line in dry season and high water line in rainy season is state *private* land.<sup>121</sup> Beyond the high water line of the lake, the land can be legally owned and possessed as any other land can, provided this follows the legal requirements as set out in the Land Law. As many people in these areas held documents indicating that they were legal possessors of their land, they should have been given the opportunity to have their claims fully assessed through the SLR process. This eventually prompted a complaint to the World Bank Inspection Panel, filed by the Centre on Housing Rights and Evictions (COHRE) on behalf of the affected people.<sup>122</sup>

The Boeung Kak case is discussed here as it provides a useful illustration of how in the absence of state land mapping and land use planning, claims by the state can hinder the performance of the SLR process. In this case multiple blockages were observed in the SLR process. Residents were excluded from the survey and demarcation process, no complaints were heard at the public display stage, and dispute resolution mechanisms failed to achieve any result. The World Bank Inspection Panel noted that “Sub-Decree 46 and adjudication procedures developed under LMAP do not include any provisions for excising portions of a declared adjudication area, once the process has legally started.”<sup>123</sup> However, this appears to continue to occur, as illustrated in the Boeung Kak case, and in Tonle Bassac, Tumnup Village and Village 3 of Preah Sihanouk province.

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<sup>121</sup> MLMUPC, *Decision N°52 to Attach the Text On Criteria for State Land Classification as an Annex of Prakas N°42 Dated 10 March 2006 On State Land Identification, Mapping and Classification*, 25 December 2006, Article II.

<sup>122</sup> World Bank, *Management Report and Recommendation in Response to the Inspection Panel Investigation Report, Cambodia Land Management and Administration Project (IDA CREDIT No. 3605-KH)*, 21 January 2011 (p.6-7).

<sup>123</sup> World Bank Inspection Panel, *Investigation Report: Cambodia Land Management and Administration Project (Credit No. 3650 - KH)*, 23 November 2010 (p.xix).

## **4.3 Other Reasons for Land Being Left Unregistered After SLR**

In addition to the above incidences of exclusions, the research team came across a number of other reasons where landholders were unable to access to the SLR process. While the authors do not necessarily describe these cases as 'exclusions', they merit further examination and are dealt with below.

### ***4.3.1 Landholder Not Present During Adjudication***

In three of the study areas the research team came across cases where people were unable to complete the SLR process as they were absent for part or all of the process, or because a neighbouring landholder was absent. As discussed in Section 2.6, landholders must be present in order to provide the LRT with documentation and indicate the boundaries of their land, as must the owners of any adjacent land parcels. Applicants must also be able to thumbprint the title application and approve the cadastral index map during the public display period.

During fieldwork in Banteay Meanchey, local officials informed the research team that there were many cases where landholders were not present during the survey and demarcation process as they work as migrant labourers in Thailand. Fortunately, the registration process was somewhat flexible, and even if landholders missed the survey and adjudication process, provided that they returned during the 30 day public display period they were able to have their land surveyed and complete the registration process. Most of the people who were absent during the survey and demarcation returned during the public display period and so were able to complete the process. Unfortunately, four landholders returned too late and so the only choice left to them now is to apply for title through the sporadic registration system. According to a Banteay Neang Commune Council official this can cost up to 1 million riel, or USD 250 in unofficial fees, and so is beyond the limited means of these villagers. The land plots of the four absentees remain unregistered. According to the Commune Council Chief, across the Banteay Neang Commune 39 plots were unregistered due to lack of information, mainly because the landholders were absent migrant workers. Unfortunately, it was difficult for some workers to join the process as they have entered Thailand illegally, and would have to pay fees to brokers and border guards to return to Cambodia, and then once again to return to their jobs in Thailand.

Provided that public awareness has been conducted and is of an adequate standard, there is little that the authorities can do to compel landholders to be present during SLR. However, in Banteay Meanchey, researchers learned of two cases in which plots were left unregistered because, although the landholders

were present during the process, their neighbours were absent and could not confirm the boundary demarcation. These households have also missed the opportunity to have their parcels registered via SLR, and even though the holders were present at the time of SLR they will now have to apply for sporadic registration if they wish to obtain land titles. Such incidents are of concern, and landholders who have done everything required of them should not lose out because their neighbour fails to take part in the process.

This issue was also identified in the Preah Sihanouk study area. According to the Sangkat 3 Chief, in cases where neighbours were not present but where boundaries were indicated by a clear marker, such as a permanent fence, the present landholder was able to have their land registered provided they received a letter from the sangkat verifying the boundary. In cases where the boundary was not totally clear, the plot was demarcated according to the information provided by the present owner and the LRTs gave until the end of the 30 day public display for the absent neighbour to confirm the boundary. If the neighbour was unable to provide confirmation and sign the adjudication document, the plot was recorded as “no data” and not registered. However, in one case observed during the fieldwork, although the land boundaries were clearly defined by a shared wall, the landholder who was present was unable to have her land registered.

**Case Study: The Absent Neighbour**  
**Village 3, Sangkat 3, Khan Mittapheap, Preah Sihanouk**

Ms. Sokha<sup>124</sup> is a widow and lives with her three children and her eldest daughter’s husband. She used to work as a maid in a hotel but has since retired. She bought her land in 2004 using a transfer contract approved by the Village Chief and built a house on the land. She owns another plot of land elsewhere but was told that it was in the right of way and was told to vacate the land. Her brother lives there now and will do so until he is told to leave.

Her residential land was included in the adjudication process, and after survey and demarcation Ms. Sokha received a receipt. During the initial stages of demarcation she was present, as was her neighbour. However, the final step of the process required a thumbprint from the neighbour but he could not be contacted at that time. The LRT accepted her documents, and recognized the transfer contract as evidence of her legal possession.

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<sup>124</sup> The subject’s name has been changed to protect her privacy. Interview conducted 4 February 2012.

Ms. Sokha did not expect to encounter any problem, as she shares a common brick wall with her neighbour and her land has a very clear boundary, and they have never had any dispute in the past. She saw that her land parcel was included in the cadastral index map and the ownership list when she viewed the public display. However, when she went to collect the land certificate on the distribution day in 2011, the LRT officer said that she could not get the title as the neighbour had not confirmed the boundary. Unfortunately, the absent neighbour spends long periods out of the country as he is French-Khmer, and he cannot be easily contacted.

Ms. Sokha said that she has no idea what else she can do and does not know how to get the absent owner's thumbprint. She will seek more information from the cadastral authorities, and seek help from a local NGO if necessary. Ms. Sokha has heard that a neighbour who was also unable to obtain the thumbprint had similar problems, but was able to collect his title by paying USD 100 (the usual fee for titles in this area was USD 10-20).

#### **Verification by Group Chief<sup>125</sup>**

The local Group Chief verified the details of Ms. Sokha's case, explaining that during demarcation the neighbour is believed to have been in France. As she was able to get the thumbprints of her other neighbours and since there had never been a dispute over the land, the LRT continued to process her application. However, she still needed to obtain the neighbour's thumbprint for the final issuance of the title certificate.

This occurred in 2007, and the official explained that as the SLR process is now over it is too late for her to get a systematic land title. If she does manage to get her neighbour's thumbprint in the future, she will have to try to get title through the sporadic land registration system. The Group Chief was unable to confirm that Ms. Sokha's neighbour received a title, but did express some confusion as to why he would be able to receive land title but she was not.

### **4.3.2 Land is Subject to Dispute**

It may be the case that a land plot is subject to dispute prior to adjudication, or a dispute may arise during the SLR process at the survey and demarcation or public display stages. As discussed in Sections 2.6 and 2.7, until the dispute is resolved no land title can be issued. Disputes can take various forms, and may be between neighbours, family members, long-term residents and outsiders, and so

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<sup>125</sup> Interview conducted 4 February 2012.

on. In some cases, disputes may involve individuals, and others may concern multiple households against a single powerful or well-connected actor. Disputes may arise due to a simple disagreement over plot boundaries or an entire plot may be disputed. If there are competing claims the case should enter the dispute resolution process. After a complaint is filed, the land in question should be marked as disputed, and on resolution of the dispute should be registered to the relevant party. During field research, data was gathered on the incidence of disputes and functioning of the dispute resolution mechanisms, and this is discussed in more detail Section 5.

### **4.3.3 Land is State Property**

According to the Land Law, it is an offence for anyone to occupy state public land.<sup>126</sup> In three of the four study areas cases were observed where people were not able to have land registered as it was deemed to be state public property. For the most part this concerned plots within the ROW of the railway, which is currently in the process of being rehabilitated, and runs through the three study areas located in Phnom Penh, Banteay Meanchey and Preah Sihanouk provinces.

In Banteay Meanchey, the GMS Railway Rehabilitation Project has impacted on a number of households living alongside the railway tracks. The ADB and AusAID funded project seeks to rehabilitate the old lines so that they can once again be used for freight transport.<sup>127</sup> Railways are state public property, as is a right of way area on both sides of the tracks.<sup>128</sup> According to an MLMUPC prakas, the ROW along railway tracks is 30 metres outside of urban areas and 20 metres in urban areas.<sup>129</sup> In Banteay Neang, prior to SLR being conducted a team working for the railway rehabilitation project demarcated a 3.5 metre corridor of impact (COI) along the rail tracks and informed affected people that they would have to move out of this zone. Later, after the SLR process commenced, land registration teams surveyed the area and marked the larger ROW, as required by the prakas mentioned above. As this land is state public property, it could not be registered to the occupants, and no titles were issued for land within the ROW.

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<sup>126</sup> *Land Law 2001*, Articles 16 & 259. There is an exception to this rule in that indigenous communities can in some circumstances reside on and use areas of state public land that they have traditionally used, however, as no indigenous people were involved in this study this is not dealt with here.

<sup>127</sup> See ADB Website, *The Cambodian Railway Tracker*, <http://www2.adb.org/Projects/CAM-Railway/default.asp> (accessed June 2012).

<sup>128</sup> *Land Law 2001*, Article 15.

<sup>129</sup> The ROW is 20 metres in cities, 30 metres in non-urban areas, and 100 metres in mountainous and forested areas. MLMUPC, Decision N°52 to Attach the Text On Criteria for State Land Classification as an Annex of Prakas N°42, Dated 10 March 2006 On State Land Identification, Mapping and Classification, 25 December 2006, Article II.

This caused confusion amongst some local people as they had assumed that after the COI had been demarcated the issue was resolved.

In some areas people were requested to move the boundaries of their plots back by 25 metres, and the new land boundaries were then registered. In some cases this was not possible because residents did not own plots large enough to sacrifice a full 25 metres. In these cases people were allowed to continue occupying the land, but were not granted land titles over any land within the ROW. Researchers met one man who was given a land title for just 1 square metre of land, as the remainder was within the ROW. His case is discussed in more detail in the *Background and Summaries* section at the end of the report. The Banteay Meanchey Provincial Department of Land Management (PDLM) also stated that across Monkol Borei District any plots that overlapped mountains, lakes and ponds were not registered.

As discussed in Section 4, a large number of households in Sangkat 3 of Preah Sihanouk Province are located within the ROW of the railway tracks and other railway facilities such as the train station. As was the case in Banteay Meanchey the railway tracks and ROW were not registered to private occupants during the SLR process. The railway project teams also demarcated the COI here, and according to the Director of the MDLM, there is on-going discussion between the ADB and the government about issuing a certificate of usufruct to those people living in the area between the COI and the ROW. This would grant a limited right to use the land for a specific period, with the possibility of extending when it expires. The Sangkat 3 Chief also stated that within Sangkat 3 more than 200 families residing on forest land did not receive land titles as the land is state public property.

According to focus group discussions in the Phnom Penh Thmei community, 29 people occupy plots that encroach on the railway ROW. These parcels were apparently cut from the adjudication area before the adjudication process began.

In many cases, the claim that land parcels are located on state public land may be legitimate, and there may be a public benefit in preventing occupation of such lands. For example, the occupation of such land may impact on sensitive ecological areas and resources including forests and waterways. Occupation of state public land may also block or hinder the use of public areas, such as public rights of way, by the general public. In any cases where land meets the definition of state public land as set out in the Land Law and associated legal documents it cannot be registered. However, as discussed above with reference to areas of unclear status, the lack of clear data and lack of transparency in the identification of state land leaves this open to potential abuse and creates a potential barrier for people who in theory should have access to the SLR system.

## 4.4 Selection of Adjudication Areas

As well as exploring the issue of exclusions and unregistered parcels, the authors also aimed to gain a clearer picture of how adjudication areas are being selected. There have been suggestions from a number of observers that the SLR process has predominantly targeted areas that are more straightforward to register, and has avoided areas where land conflicts are common and where tenure insecurity is higher. It is beyond the scope of this research to fully assess the accuracy of such suggestions, as this would require a comparison of maps showing comprehensive data and locations of land disputes with the maps of areas that have been adjudicated. Neither are available to the authors at the time of writing.

With this limitation in mind, the authors sought to gather more information on how the selection of adjudication areas was conducted in the four study areas. As discussed in Section 2.6, according to *Sub-decree N°46*, adjudication areas must be announced by the relevant provincial or municipal Governor.<sup>130</sup> However, there is no detailed selection procedure set out in any official document that is readily available to the public. During interviews with officials in Banteay Meanchey, Preah Sihanouk and Kampong Cham, all interviewees described a similar process for selecting adjudication areas. Researchers were unable to find any information on the criteria for the selection of adjudication areas in Phnom Penh, but it is assumed that a similar process was used. The basic process is as follows:

- A preliminary survey is conducted by the Provincial/Municipal Department of Land Management;
- Survey teams gather demographic data, information on the local geography, land type, village and commune boundaries, the number of land parcels, types of ownership documents, and the number of existing land disputes in the area;
- The resulting report is discussed at the village, commune and district levels then submitted to the provincial level and the Governor;
- In consultation with the PDLM/MDLM the Governor makes a decision on which areas will be adjudicated; and finally,
- The Provincial/Municipal Governor makes a public announcement on which areas have been selected as adjudication areas.

According to those officials interviewed, the preference was clearly to conduct SLR in areas with high numbers of small land plots and with low numbers of land disputes. According to the Sangkat 3 Chief in Preah Sihanouk, Sangkat 3 was

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<sup>130</sup> Royal Government of Cambodia, *Sub-decree N°46 on the Procedures to establish Cadastral Index Map and Land Register*, 31 May 2002, Article 2.

identified by the MDLM as it “had the least number of problems”. This was confirmed by the Director of Preah Sihanouk MDLM, who verified that the preference is to title areas where there are low numbers of disputes and a large number of small land parcels. An official from the PDLM in Banteay Meanchey stated that areas where there are economic land concessions (ELCs), national parks and protected areas were avoided as they are difficult to deal with. However, a cadastral official interviewed in Kampong Cham stated that areas with ELCs are not excluded from the SLR process. This shows that approaches may differ across provinces, but it appears evident that preference is shown for areas that will yield the highest number of titles with the minimum difficulty.

In the early stages of SLR implementation, when the registration was still being conducted under LMAP, it was made explicitly clear that the project “will not title lands in areas where disputes are likely until agreements are agreed on the status of the land”.<sup>131</sup> This broad restriction has been criticized by some for excluding the people who could benefit most from receiving land titles. For example, in a 2010 thesis Biddulph suggests that LMAP, despite aiming to address the problem of tenure insecurity, was “only being implemented in areas where tenure security is not generally a problem.” In response to such suggestions, the LMAP Director justified the approach by using the analogy of a cock fight. Before sending the cock to fight a stronger opponent, it is wiser to first achieve several victories over weaker adversaries. If the cock goes into a difficult battle too soon, it will lose, and its fighting days will be over.<sup>132</sup> The justification for this approach is that by targeting less complex areas first, LMAP was able to concentrate on developing the capacities of the cadastral authorities and land registration teams, make swift progress in building a functioning land register, and deliver a large amount of titles at a low cost.

## **4.5 Summary: Exclusions Within the Study Area**

In the four study areas the issue of exclusions from SLR adjudication areas was most acute in the urban areas of Phnom Penh and Preah Sihanouk, but as the study sample was relatively small, it is not possible to make generalizations to the entire country. However, the research findings along with other anecdotal evidence suggest that large-scale exclusions such as these are for the most part concentrated in areas with high land values and/or where development projects

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<sup>131</sup> World Bank, *Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 Million (USD 24.3 Million Equivalent) to The Kingdom of Cambodia for a Land Management and Administration Project*, 29 January 2002 (p24).

<sup>132</sup> Robin Biddulph, *Geographies of Evasion: The Development Industry and Property Rights Interventions in Early 21st Century Cambodia*, University of Gothenburg, Department of Human and Economic Geography, School of Business, Economics and Law, 2010 (p.98).

(both public and private) have been approved. In addition to identifying incidence of exclusions from the adjudication process, the research also highlighted other reasons why land may be left unregistered at the conclusion of SLR, which include: owners being absent during adjudication, land parcels being subject to dispute, and parcels overlapping state public land.

At the outset of this research, the authors aimed to address the following questions, which are dealt with separately below:

- How many people were excluded from the registration process in each study area, and what reasons were there for these exclusions?
- At what stage in the process were parcels excluded?
- What is the background of those households who were excluded?
- Did excluded landholders have any venue to complain, and were they successful?
- What was the end result and what is the current status of excluded land parcels?

*How many people were excluded from the registration process in each study area, and what reasons were there for these exclusions?*

The largest case of exclusion was observed in Tumnu Village, Phnom Penh, where only 154 parcels were adjudicated, of which 41 were issued with land titles. The 113 parcels that were adjudicated but not issued land titles were listed as “no data”, but it is not apparent why. Without reliable data for the total number of land parcels it is difficult to accurately assess how many parcels were excluded, but the authors estimate at least 80% of the village was left unregistered.

In Preah Sihanouk, of 1,759 parcels adjudicated, 123 were not registered due to various reasons, such as owners being absent during adjudication, land overlapping state public land, and land being subject to dispute. This left 7% of adjudicated plots unregistered after the SLR process finished. However, an additional 668 parcels were never adjudicated as they were in the vicinity of a port and SEZ development, road upgrade, or railway rehabilitation project. Some of these plots were no doubt located in public rights of way, but the legal status for those within the SEZ and port zone is less clear. Including these exclusions, a total of 791 land parcels were left unregistered, which is approximately 33% of land parcels in Village 3.

In the Banteay Meanchey and Kampong Cham study areas, SLR delivered land titles to the vast majority of landholders and in both areas less than 1% of parcels were left unregistered. Of this small number of untitled plots, only 9 cases in

Kampong Cham fit the definition of ‘exclusion’ as used in this paper, as they were left unadjudicated due to an unclear administrative boundary.

In all four study areas, any household survey respondents who did not have some or all of their land registered were asked what reason they were given for this.

**HHS Response 15: What reason were you given for your land not being registered?**

	<b>Phnom Penh</b>	<b>Banteay Meanchey</b>	<b>Preah Sihanouk</b>	<b>Kampong Cham</b>	<b>Total %</b>
<b>Unclear status</b>	30.4	33.3	38.1	40	35.7
<b>Don't know/ No reason given</b>	69.6	50	0	5	28.6
<b>Area targeted for development project</b>	0	16.7	47.6	0	15.7
<b>Land in dispute</b>	0	0	14.3	30	12.9
<b>Area targeted for concession</b>	0	0	0	25	7.1

(All figures in %)

As shown in the table below, household survey results indicate that the land type most commonly left unregistered was residential land, this is in part because most exclusions occurred in the urban study areas of Phnom Penh and Preah Sihanouk.

**HHS Response 16: What types of land were left unregistered?**

	<b>Phnom Penh</b>	<b>Banteay Meanchey</b>	<b>Preah Sihanouk</b>	<b>Kampong Cham</b>	<b>Total %</b>
<b>Residential</b>	100	50	95.5	0	68.4
<b>Chamkar</b>	0	16.7	0	100	27.8
<b>Agricultural (rice paddy)</b>	0	16.7	0	0	1.3
<b>Commercial</b>	0	0	4.5	0	1.3
<b>Vacant land</b>	0	16.7	0	0	1.3

(All figures in %)

*At what stage in the process were parcels excluded?*

In Phnom Penh the exclusion occurred part way through the survey and demarcation process. As already mentioned, 154 parcels were adjudicated, but the process was cut short and eventually only 41 titles were issued. A letter from the MDLM states that those areas that were not adjudicated were too problematic to survey. In Preah Sihanouk the exclusion appears to have been done prior to the adjudication process commencing, and the 668 households living within the development areas were never adjudicated.

*What is the background of those households that were excluded?*

From the research findings no conclusive links can be drawn between the social background of households and the phenomena of exclusions. In both Phnom Penh and Preah Sihanouk the affected residents were from mixed social backgrounds, including a number of middle-class households. Average income was around USD 300 per month, with some monthly incomes exceeding USD 300. Therefore, these two cases alone cannot give a definitive picture of whether or not exclusions are concentrated in areas that are more socially disadvantaged. In order to assess this, a broader study on excluded areas would need to be conducted. It was suggested by some interviewees in areas that experienced exclusions that wealthy or well-connected landholders were able to receive land titles, but the authors have no way to confirm this.

From the results gathered, the authors are more inclined to believe that the location of the land is more relevant than the social status of the household. In both cases of large-scale exclusion, the land parcels in question were located in areas where the land was of high value, and targeted for multiple development projects.

*Did excluded landholders have any venue to complain, and were they successful?*

In all cases of exclusion observed in Phnom Penh and Preah Sihanouk there were no formal mechanisms for affected people to raise complaints. In both study areas the process of exclusion lacked transparency, and there was very limited communication to affected people regarding their status in relation to the SLR process. No mechanisms were provided for affected people to appeal the decision to exclude areas from the adjudication process. As there were no formal routes to complain, affected residents wrote letters and petitions to various state institutions, including the local cadastral authorities, the MLMUPC, courts, and even the Cabinet of the Prime Minister, seeking approval for additional registration to be conducted. The residents pursued this route of complaint for a number of years before receiving any conclusive response. It appears that if it

were not for the concerted efforts of affected people and the support of local organizations, they would most likely remain excluded.

*What was the end result and what is the current status of excluded land parcels?*

Following on from these letters and petitions, the authorities have since indicated that in principal additional registration can take place in both Tumnup Village and Village 3, although some areas may still be excluded from this process. This approval was granted in July 2011 in Preah Sihanouk, and December 2011 in Phnom Penh, and communities in both areas are currently awaiting the start of the additional SLR process.

## SECTION 5: DISPUTE RESOLUTION

The second issue the study sought to explore in more detail was the incidence of land disputes during the systematic land registration process, and the process of dispute resolution as applied in the study areas. It was found that some plots were already disputed before the announcement of systematic land registration, whereas other disputes emerged during the process. During the course of the field research the most common causes of dispute were observed as being:

1. boundary disputes between neighbours;
2. disputes within families;
3. disputes with local authorities and state institutions; and
4. disputes with private individuals or companies.

Unfortunately, comprehensive data on the incidence of disputes and the functioning of the dispute resolution mechanism proved difficult to obtain, which means that a number of questions that this study set out to address cannot be conclusively answered based on the research findings alone. In particular, no data was available regarding the number and type of disputes within the Phnom Penh and Preah Sihanouk study areas. Although more data was gathered in Kampong Cham and Banteay Meanchey, those officials interviewed were unable to provide detailed figures for the number of disputes registered, and at what level these disputes were resolved. An overview of the available data is given below, followed by a more general analysis of the dispute resolution mechanisms based on information gathered during desk-based research and document review.

### 5.1 Incidence of Disputes in Study Areas

#### *5.1.1 Boundary Conflicts Between Neighbours*

In discussions with communities within the study areas, researchers were informed that there were a high number of small conflicts over boundaries, usually between neighbouring landholders. These small disputes were generally identified at the survey and demarcation or public display stages and settled during the adjudication process. In many cases these disputes involved small areas and were negotiated privately without intervention from the dispute resolution mechanisms. As they did not enter the formal dispute resolution process no statistics are available. More serious disputes were referred to Administrative Committees (ACs) for resolution.

### **5.1.2 Family Disputes**

During the adjudication process it is not uncommon for conflicts to emerge within families, especially when inheritance is involved. Local authorities and the AC may attempt to help resolve disputes related to inheritance during the adjudication process, but if unsuccessful they must be referred to the courts, as the CC has no jurisdiction over inheritance disputes. One such dispute was recorded in one of the study areas, O'Andoung Khet Village, Banteay Meanchey, and one in Trapeang Snao, Kampong Cham. In the Banteay Meanchey case, the dispute could not be conciliated at the local level, and as neither of the conflicting parties had made a complaint to the court, the land remained unregistered. The Trapeang Snao case was referred to the courts and was still being heard at the time field research was conducted.

### **5.1.3 Disputes with Local Authorities and State Institutions**

A number of cases were observed where land ownership was disputed between a private individual and a state institution or authority. In some cases these parcels were recorded as being disputed, but some were recorded as being of unclear status, as discussed earlier in Section 4. For example, in Banteay Meanchey, one dispute arose where local residents were in dispute with the MCFA, and one case involved a dispute with the local Village Chief. In both cases the disputes could not be resolved and the land was recorded as having unclear status. In Trapeang Snao Village in Kampong Cham, one resident disputed a plot with local authorities who had constructed school buildings on a plot of land that she also claimed. In this case the land was recorded as being disputed. This is an important distinction, as land that is recorded as having unclear status is in effect excluded from the registration process indefinitely. If a dispute is recorded it should be referred to the land dispute mechanisms, after which it should be registered according to the result of the resolution process.

Within the study areas there are cases, especially in Phnom Penh and Preah Sihanouk, where lands were excluded or left unregistered due to the development of infrastructure such as waste water management facilities and roads, railway rehabilitation, and a special economic zone. However, it appears few disputes have been formally submitted to the dispute resolution mechanisms.

### **5.1.4 Conflicts With Private Individuals or Companies**

Within the study areas a number of disputes were encountered that involved long-time residents in conflict with private individuals or companies from outside the community. Within Tumnup Village researchers were informed of five large scale land disputes involving single powerful actors in conflict with multiple

local residents. These disputes are long-running and affect at least 200 households. It appears that none of these disputes have been referred to the Cadastral Commissions, although they all concern land that is apparently unregistered.

In Trapeang Snao, Kampong Cham, another long-running dispute between local residents and an agricultural company impacted on the SLR process. The dispute with Agro Star Investment started in 1996 after the company was granted a concession of 2,400 hectares, and conflicts emerged with local people when the company began clearing the land in 1997. Over 200 families subsequently filed a complaint to MAFF claiming the company had claimed 300 hectares of residents' land. In 2000, the Provincial Governor agreed to return around 0.7 ha of chamkar land to each family. During the SLR process disputes again arose between the company and nine families whose chamkar lands border the concession. The parcels were adjudicated but the company filed a complaint and the parcels were recorded as being disputed. After this, five of the nine families agreed to sell the land to the company, but four declined, and the disputed parcels remain unregistered.

## **5.2 The Functioning of the Dispute Resolution Process in Study Areas**

As mentioned in the introduction to this section, detailed data on the dispute resolution process proved difficult to obtain. The research aimed to shed light on the number of disputes that emerged during the SLR process and how mechanisms were employed to resolve them. However, definitive data could not be provided by those local officials interviewed, and their accounts of the functioning of the dispute resolution mechanisms were often vague. It became clear early on that in order to conduct such an assessment would require a study dedicated to the issue, and would need to be conducted with a more appropriate study sample, i.e. a number of study areas from across the country that have all experienced high numbers of land disputes during the SLR process. The study area would also require a sizable sample of people who have attempted to resolve them through the available mechanisms, and should also assess the incidence of non-reporting of disputes. Although the data gathered was not as comprehensive as hoped, it still yielded some interesting information on the functioning of the land dispute resolution mechanisms. This is summarized below.

In all study areas, local officials indicated that significant numbers of small scale disputes arose during the adjudication process. According to interviews

conducted during household surveys, of those disputes that emerged during SLR only 12.5% of disputes that emerged during SLR were pre-existing.

**HHS Response 17: Was the dispute pre-existing before the titling process commenced?**

	<b>Phnom Penh</b>	<b>Banteay Meanchey</b>	<b>Preah Sihanouk</b>	<b>Kampong Cham</b>	<b>Total %</b>
<b>Yes</b>	6.3	6.3	18.8	18.8	12.5
<b>No</b>	93.8	93.8	81.3	81.3	87.5

(All figures in %)

Many disputes were resolved before the formal mechanisms were activated. This was confirmed by officials in Banteay Meanchey and Kampong Cham, where many of the smaller disputes were resolved without the intervention of dispute resolution mechanisms. This occurred through disputing parties meeting to discuss and resolve their disputes without any outside assistance, or with help from LRTs and village officials. According to local officials, a large number of disputes were resolved in this way. Because this occurred outside the formal process, no statistics are available for how common such cases were. If informal resolution is not effective, disputes were referred to the AC who attempted to conciliate the dispute.

In the Banteay Meanchey study areas, AC conciliation sessions were held by local level members of the AC at the local pagoda, and if unsuccessful were referred to the commune and then district level for further attempts at conciliation. The Village Chief of Kork Thnaou explained that parties were free to attend conciliation meetings with legal support, if they had any. Those people without legal support and with limited means were provided contact details of local NGOs that could provide free support. After reaching agreement, both parties signed a document outlining the details of the resolution and the registration of the contested plot was completed. Any disputes that were not resolved by the AC were referred to the Cadastral Commission (CC). The unresolvable disputes that concerned inheritance were referred to the courts.

In Banteay Neang Commune, Banteay Meanchey, the Commune Chief explained that around 70% of all disputes were solved prior to the deadline of the 30 days of public display, with most cases taking 1-2 days, and more difficult disputes taking 5-7 days to resolve. Eventually, 80% of cases were resolved at the village or commune level, and 20% were referred to the Cadastral Commission for resolution. A Group Chief from Village 3 in Preah Sihanouk stated that across

Sangkat 3 the level of disputes was very low, and more than 95% of disputes were solved by the AC at the sangkat level or below.

In the Kampong Cham study areas, the majority of disputes also appear to have been resolved at the early stages of the dispute resolution mechanisms. Again, many small disputes were resolved privately or with the support of local officials. According to the Brayok Village Chief, most disputes that emerged during SLR concerned boundary or family disputes, but were resolved at the local level, and no cases were raised to the CC. The Batheay Commune Chief stated that across Batheay Commune, 35 disputes emerged during SLR and most were resolved by the AC at the local field office. Six were raised to the commune level, but were resolved there and no cases were referred to the Cadastral Commission. Two cases have been referred to the courts due to inheritance disputes.

Another area worthy of further study is the likelihood that people will submit a complaint if they feel unhappy with the adjudication results. Public meetings and PACP activities were conducted in all study areas, and these sessions included discussion of the dispute resolution mechanisms, so in theory at least, concerned people should be aware of the available mechanisms. However, of those survey respondents who were unhappy with the adjudication record or with the refusal to register all or part of their land, almost three quarters of respondents made no complaint. It should be noted that the complaints referred to in the table below also include letters of complaint to authorities other than the AC and CC.

**HHS Response 18: Did you lodge any complaints regarding inaccuracies in the adjudication record and/or refusal to register your land?**

	<b>Phnom Penh</b>	<b>Banteay Meanchey</b>	<b>Preah Sihanouk</b>	<b>Kampong Cham</b>	<b>Total (%)</b>
<b>Yes</b>	62.5	0	25	18.8	26.6
<b>No</b>	37.5	100	75	81.2	73.4

(All figures in %)

When asked why they did not register complaints, respondents gave various reasons including: “It was our fault as we had occupied state land”; “I had no idea about the process or where to file the complaint”; “I was afraid to file a complaint in case this led to bigger trouble, I don’t want to get into trouble”; “I was busy with other things”; and, “I think it’s useless to file a complaint, there is no point as it won’t be resolved. The power is in the hands of the big and powerful”.

Those people who did make complaints were asked if they received any assistance in filing it. As can be seen when comparing HHS response 18 and 19, the two areas that had the highest rates of residents filing complaints were Phnom Penh and Preah Sihanouk. These two provinces also had the highest number of respondents who received support from NGOs in filing and pursuing their complaint, which suggests that such support increases the accessibility of the dispute resolution mechanisms. This presents an area where NGOs may be able to play a constructive role in the SLR process by providing support in drafting and filing complaints and following their progress.

**HHS Response 19: Who assisted you with the complaint letter and dispute resolution process?**

	Phnom Penh	Banteay Meanchey *	Preah Sihanouk	Kampong Cham	Total (%)
<b>NGO</b>	85	N/A	37.5	16.7	61.8
<b>Family / friend</b>	0	N/A	12.5	50	11.8
<b>Village Chief</b>	15	N/A	0	16.7	11.8
<b>Commune Council members</b>	0	N/A	37.5	0	8.8
<b>Myself</b>	0	N/A	0	16.6	2.9
<b>Lawyer</b>	0	N/A	12.5	0	2.9

(All figures in %)

\*No survey respondents in Banteay Meanchey filed complaints.

### **5.3 Development of the Dispute Resolution Mechanisms**

In addition to gathering data in the field regarding land disputes and resolution, desk-based research and document review was conducted and looked at the evolution and performance of the dispute resolution mechanisms in recent years. This sub-section of the report deals with the findings of this review that have relevance to this study.

LASSP figures show that between April 2003 and September 2011 the CC received 5,715 cases, the results of which are outlined below.

**Table 5: Land Dispute Cases Filed with the Cadastral Commission, April 2003-September 2011<sup>133</sup>**

Land dispute resolution outcome	Number of cases	Percentage
Resolved through conciliation or decision	2,223	39%
Dismissed	1,750	31%
Withdrawn by complainant	474	8%
Case still pending	1,268	22%
<b>Total</b>	<b>5,715</b>	<b>100%</b>

According to these figures, almost 78% of cases received by the CC have been processed and either resolved, dismissed, or withdrawn by the claimant. Just over 22%, or 1 in 5, cases remain unsolved and at various stages of the resolution process. This reduction in pending cases is a marked improvement on past assessments. In contrast, a 2006 study published by the World Bank and GIZ found that of the cases received between December 2002 and April 2006, 51% of cases were fully processed (29% resolved, 20% dismissed, and 2% withdrawn), and 49% were still pending.

**Figure 1: Land dispute resolution by the Cadastral Commission (cumulative figures for April 2003 – September 2011)**

Land dispute resolution outcome	Up to April 2006 <sup>134</sup>		Up to December 2008 <sup>135</sup>		Up to September 2011 <sup>136</sup>	
	Number	%	Number	%	Number	%
Cases conciliated or decided	1,146	29%	1,653	33%	2,223	39%
Case dismissed	773	20%	1,211	24%	1,750	31%
Cases withdrawn	70	2%	220	4%	474	8%
Cases pending	1,960	49%	1,975	39%	1,268	22%
<b>Total cases received</b>	<b>3,949</b>	<b>100%</b>	<b>5,059</b>	<b>100%</b>	<b>5,715</b>	<b>100%</b>

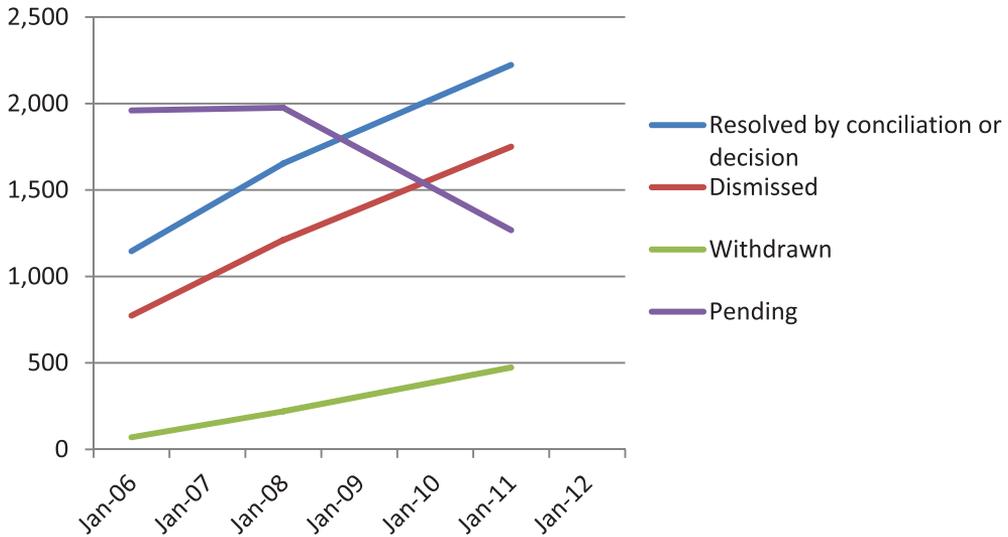
<sup>133</sup> Information from LASSP, Land is Life: Land Administration Sub-Sector Program Newsletter, Issue 2, November 2011.

<sup>134</sup> Centre for Advanced Study, Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution, Phnom Penh: World Bank and GTZ, October 2006 (p9).

<sup>135</sup> Internal LMAP assessment document, quoted in: Mark Grimsditch & Nicholas Henderson, *Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector*, Phnom Penh: BABSEA, COHRE and JRS, August 2009 (p.49).

<sup>136</sup> LASSP, Land is Life: Land Administration Sub-Sector Program Newsletter, Issue 2, November 2011.

**Figure 2: Land dispute resolution by the Cadastral Commission (based on above figures for the period of April 2003 – September 2011)**



The above figures suggest that considerable progress has been made in improving the performance and efficiency of the CC, but one area that is worthy of further study is the steady increase in the number of cases dismissed. The CC may only dismiss a case if it is baseless<sup>137</sup> or falls beyond its competency, i.e. is a dispute over registered land, or is contractual or related to inheritance.<sup>138</sup>

The Centre for Advanced Study (CAS) report referenced above also observed in 2006 that there was a steady increase in the number of case dismissals, and found that there was some confusion amongst local level officials about “how and why” cases should be dismissed. Importantly, the authors found that there was a lack of clarity over whether or not the CC should process cases when a dispute arises where there is a question of state land being involved. They found that in some cases the CC processed the case, and in others they dismissed it. This study also suggested that “the DKCC and PMCC are using their power to dismiss cases as a practical way of getting cases out of the system.” This was at a time when the back-log of cases was very high, and it was suggested that lower levels of the CC may have been improperly dismissing cases as a means to clear

<sup>137</sup> MLMUPC, *Prakas N°112 on the Guidelines and Procedures of the Cadastral Commission*, 21 August 2002, Article 18.

<sup>138</sup> Ministry of Justice & MLMUPC, *Joint Prakas N°3 on Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes*, 26 November 2003, Articles 1 & 4.

this back-log.<sup>139</sup> Although the back-log has now been greatly reduced, this is an area that merits further investigation, as the percentage of cases dismissed has risen from 20% in 2006 to 31% in late 2011.

Another long running issue related to the CC has been the challenges faced in resolving conflicts involving multiple parties, and/or where one or more powerful actors are involved.<sup>140</sup> It has been observed in a number of reports and studies, both by civil society and development partners, that in such cases the CC has often been unable to issue a decision in line with the legal process. For example, in the Boeung Kak case and the case of the Group 78 land conflict, both situated in Phnom Penh, the CC failed to issue decisions. This was despite the fact that in both cases the land in question was unregistered at the time of complaint. Anecdotal evidence suggests that there are numerous other less high profile cases where the CC has been unable to resolve disputes.

The MLMUPC has taken note of concerns that the capacity of the dispute resolution mechanisms have been stretched by the large number of cases, and that those cases involving powerful individuals or multiple actors sometimes prove too difficult or sensitive for the CC to resolve. In response, the MLMUPC sought to alleviate the workload of the NCC and make the dispute resolution mechanism more efficient. In addition to delegating decision making powers to the PMCC, Mobile Dispute Resolution Teams were established under the NCC. Pilot teams were mobilized in 2007 in the provinces of Kampong Cham, Battambang, and Banteay Meanchey. The teams focussed on areas with high numbers of disputes and moved from district to district in an attempt to clear the back-log of disputes.<sup>141</sup> According to a LASSP newsletter, these teams worked at the district level, targeting outstanding cases – including those involving multiple parties and conflicts involving powerful actors. Between 2007 and 2009 the mobile teams were involved in the resolution of 560 cases, including 18 multi-party cases, half of which involved locally powerful actors. According to the LASSP newsletter, the outcomes of these cases were evaluated and “in general” it was found that the results were consistent with the law, and that 83% of all parties involved in these 18 cases were satisfied with the resolutions and the process of dispute resolution.<sup>142</sup> Figures provided by GIZ show that mobile teams have been involved in the resolution of a large number of disputes since they were established in 2007.

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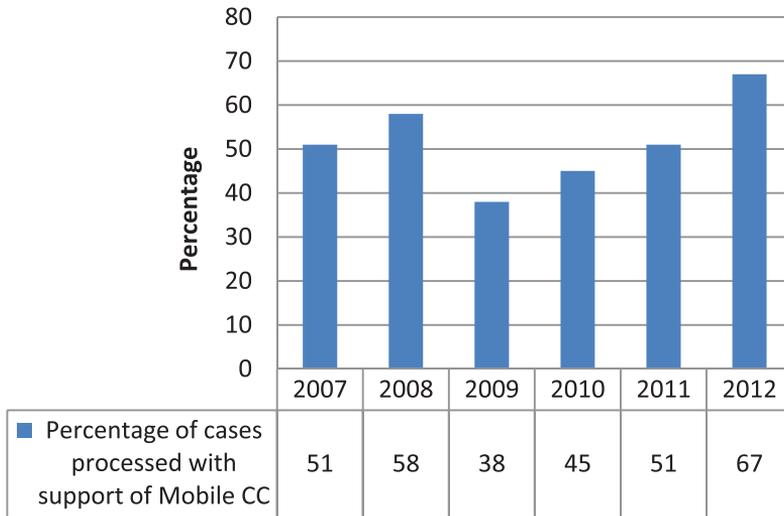
<sup>139</sup> Centre for Advanced Study, *Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution*, World Bank and GTZ, October 2006 (p.16-17).

<sup>140</sup> *Ibid* (p.9).

<sup>141</sup> MLMUPC, SSR N°69, *Decision on Creation of Mobile Teams Land Dispute Resolution*, 15 October 2007.

<sup>142</sup> LASSP, *Land is Life: Land Administration Sub-Sector Program Newsletter*, Issue 2, November 2011.

**Figure 3: Percentage of CC cases resolved with assistance of Mobile Dispute Resolution Teams<sup>143</sup>**



In May 2011 the MLMUPC and GIZ signed an implementation agreement for the first phase of the Land Rights Program, through which GIZ provides support for LASSP. The agreement includes various indicators for measuring the success of the Program, including that in 2011 and 2012 mobile teams will solve at least 15 multi-party cases involving more than 10 parties.<sup>144</sup>

### 5.4 Summary: Disputes and Dispute Resolution in the Study Areas

Drawing on literature review and fieldwork results, this section of the report provided an analysis of the issue of dispute resolution and access to resolution mechanisms. The study aimed to address the following questions, which are dealt with separately below:

- How many land parcels were subject to disputes during the SLR process?
- Were disputes generally pre-existing before titling commenced or did they emerge during adjudication?
- What types of disputes are occurring?

<sup>143</sup> *Cadastral Commission Statistics, May 2012*. Document provided to authors by GIZ, June 2012.

<sup>144</sup> MLMUPC & GIZ, *Implementation Agreement: Land Rights Program, Phase I (March 2011 to February 2013)*, 25 May 2011 (p.5).

- What mechanisms are being used to resolve disputes, and are they being implemented in compliance with the law?
- At what stage of the process were disputes generally resolved?

*How many land parcels were subject to disputes during the SLR process?*

During the research period the authors were unable to obtain reliable data on the incidence of disputes within the study areas. No data was available for Tumnup Village in Phnom Penh, and likewise, data was unavailable for the Preah Sihanouk study area. In Banteay Meanchey and Kampong Cham, local officials were for the most part only able to talk generally about the scale of land disputes and the mechanisms employed to resolve them, as well as a number of specific cases of land dispute. In all areas apart from Phnom Penh, local officials stated that disputes were common during the adjudication process, but most were small scale and the majority were resolved by the ACs at the local level.

*Were disputes generally pre-existing before titling commenced or did they emerge during adjudication?*

As stated above, the majority of disputes emerged only after the SLR process was announced. Household survey respondents who became involved in land disputes reported in 87% of cases that these disputes were not an issue prior to adjudication. This result is not unexpected, and in the original project appraisal for LMAP it was stated:

“In the long run, the project will reduce the number of land disputes. But in the short term, systematic adjudication of land rights under the project will ‘flush out’ many disputes: the prospect of a final settlement of rights will prompt the bringing forward of claims not previously articulated or not actively being pursued.”<sup>145</sup>

This prediction appears to have been accurate, and generally speaking, after SLR commences a considerable number of small-scale disputes tend to be observed. This is not necessarily a problem, provided the dispute resolution mechanisms are accessible and function efficiently and fairly. The LMAP rural baseline study conducted in 2007 also predicted this impact:

“We expect that dormant land issues or unresolved conflicts may emerge when the land titling program is implemented in particular villages because people perceive the LMAP land titles as final. Once titles are

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<sup>145</sup> World Bank, Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 Million (USD 24.3 Million Equivalent) to The Kingdom of Cambodia for a Land Management and Administration Project, 29 January 2002 (p.37).

issued, we then expect a decline in the number of disputes, particularly those involving boundary disputes between neighbours.”<sup>146</sup>

*What types of disputes are occurring?*

The majority of disputes were reported to be between neighbours or people from the same village who disagreed over land boundaries. There were also some disputes observed involving local residents and an agro-industry company in Kampong Cham, as well as a small number of disputes between local people and state institutions or local authorities. Amongst household respondents involved in disputes, 35% involved disagreement over land boundaries, 30% unclear status, 17% because the land was “targeted” for development, in 11% of cases two different parties claimed the land, and 7% involved conflicts with a land concession.

*What mechanisms are being used to resolve disputes, and are they being implemented in compliance with the law? At what stage of the process were disputes generally resolved?*

Many disputes are being resolved outside of the formal mechanisms through private negotiation between the concerned parties. In cases where this proves to be unsuccessful, the ACs become involved and attempt to resolve the dispute first at the village level, before sending to commune and district authorities for conciliation. The research team did not meet anyone in the four study areas who filed a complaint to the CC, although many people in Phnom Penh and Preah Sihanouk wrote letters of complaints to various state authorities. Cases related to family inheritance disputes that could not be resolved during adjudication were forwarded to the courts if a complaint was made.

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<sup>146</sup> CDRI in collaboration with the Ministry of Land Management, Urban Planning, and Construction (MLMUPC), *Cambodia Land Titling Rural Baseline Survey Report*, December 2007 (p.78).

## SECTION 6: SUBSEQUENT REGISTRATION

A crucial element of the land registration system is “subsequent registration”, the process of re-registering titled land when it is later transferred to a new owner. Once land has been registered and entered onto the land register, the law states that all subsequent transfers must also go through the cadastral system. This has the effect of updating the name of the rightful owner on the land register and the land title certificate, and also facilitates the collection of transfer taxes and unused land tax.

### 6.1 The Subsequent Registration Process

According to Cambodia’s Civil Code, any transfer or alteration of ownership takes effect according to the agreement of the parties involved.<sup>147</sup> However, this cannot be enforced against a third party unless the transfer is appropriately registered,<sup>148</sup> and the transfer only comes into effect after the transfer is formally registered.<sup>149</sup> According to an inter-ministerial prakas of the Ministry of Interior and MLMUPC, the Commune Council and District Chief are responsible for authenticating the various legal documents, including sale contracts, mortgages and leases, based on the agreement of the parties to the contract.<sup>150</sup> This authenticated document should be presented to the district cadastral authorities so that subsequent registration can be conducted. The District Cadastral Office can only complete the subsequent registration if the contract was completed in the authentic form and if it is ascertained that all necessary taxes or fees have been paid.<sup>151</sup> Commune Councils have the duty to inform the citizens in their jurisdiction about the effects of land registration, the necessity to take part in registration activities, and the consequences of not registering subsequent changes to land ownership.<sup>152</sup> The amended Land Law states that a contract for land sale can only be registered when all parties have proven that all the necessary taxes have been paid,<sup>153</sup> this includes a 4% transfer tax.<sup>154</sup> Transfer taxes are paid to the Ministry of Economy and Finance, and a cadastral transfer fee must be paid to the cadastral authorities.

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<sup>147</sup> The Civil Code of Cambodia 2007, Article 133.

<sup>148</sup> Ibid, Article 134.

<sup>149</sup> Ibid, Article 135.

<sup>150</sup> Ministry of Interior and MLMUPC, *Inter-ministerial Prakas N°219 on the Roles and Responsibilities of the Khum-Sangkat Administration in Land Registration Matters*, 9 July 2005 (Article 9).

<sup>151</sup> Ibid, Article 10.

<sup>152</sup> Ibid, Article 11.

<sup>153</sup> Land Law 2001 as amended by The Law on the Implementation of the Civil Code 2011, Article 69.

<sup>154</sup> International Finance Corporation/World Bank, Doing Business Project website, *Registering Property in Cambodia*, <http://www.doingbusiness.org/data/exploreconomies/cambodia/registering-property> (accessed April 2012).

## 6.2 Concerns Regarding Low Levels of Subsequent Registration

The lack of subsequent registration has been highlighted in a number of reports as being cause for concern. Subsequent registration is essential to ensure the sustainability of the land registration system as it raises tax revenue that can be put back in to the system, updates the name of the landowner listed on the title certificate and land register, and ensures that ownership rights are fully transferred. However, it has been reported in multiple sources that rates of subsequent registration have so far been very low. The original LMAP appraisal document set the “key performance indicator” that by the end of the project in 2007 subsequent registration would take place in 75% of subsequent transactions.<sup>155</sup> Although there is no reliable figure available for the exact number of transfers that have been subsequently registered, it is thought that in 2012 the figure is still far below 75%.

A 2007 study looking into the impacts of land titling in two sangkats in Preah Sihanouk province found very low levels of subsequent registration. The study observed that prior to LMAP registration being conducted most land transfers were being completed through notification at the village level (23%) and commune level (52%). Post-SLR there was almost no change. The study came across only one case where subsequent registration was conducted through the cadastral authorities, and found that in the entire district of Prey Nup, where the study was focussed, only 9 transfers had been subsequently registered. The report put this down to entrenched customs, and during interviews with those who had bought or sold registered land, respondents overwhelmingly stated that they felt it unnecessary to register the transfer properly as for the most part the parties involved knew and trusted each other.<sup>156</sup>

In 54% of subsequent transfer cases encountered by this study, respondents stated that they did not feel it was necessary to go through the subsequent registration process, 13% were unfamiliar with the process, and 13% said that the unofficial fees were too high. Few respondents mentioned the desire to avoid paying transfer taxes.<sup>157</sup> This suggests that in this district the lack of subsequent registration was caused by a lack of awareness of the importance of following the

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<sup>155</sup> World Bank, Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 Million (USD 24.3 Million Equivalent) to The Kingdom of Cambodia for a Land Management and Administration Project, 29 January 2002 (p.29).

<sup>156</sup> Analyzing Development Issues, with the Land Information Centre, *Land Titling and Poverty Reduction: A Study of Two Sangkat in Prey Nup District, Preah Sihanouk Municipality (Revised Version)*, NGO Forum on Cambodia & Cooperation Committee for Cambodia, November 2007 (p.33).

<sup>157</sup> *Ibid* (p.34).

formal procedure. Overcoming this problem requires a change in perception and habits, as well as enforcement of the proper legal requirements. As argued by the authors, “LMAP intended to augment the use of the Land Registry but underestimated the resilience of local custom. The practice of transferring land with notification at local levels was deeply embedded in the two sangkat researched.” The authors concluded that until the requirements for subsequent registration are more strictly enforced, or procedures changed, “the practice of making subsequent transaction ‘extra-legally’ would continue and ultimately threaten the viability of the systematic land titling program”.<sup>158</sup> Here the study is worth quoting at length:

“There are several implications for the continued prevalence of transferring subsequent titles through ‘extralegal’ means. The first is the loss of Government revenue due to the non-payment of 4 percent transfer and 2 percent unused land taxes. The second is that the Land Register cannot be considered to be the actual proof of genuine land holding in Cambodia. It does not reflect accurate data about the size, land value and demographic information about ownership and land transfers. More importantly however, if a conflict occurs over land which has been subsequently transferred, then the courts are legally obliged to recognize the owner as that named on the Land Register, regardless of the number of sales contracts transferring that plot of land to other individuals.”<sup>159</sup>

In a thesis from 2010, Biddulph found in one village that of the five transfers that occurred post-land titling, none were subsequently registered. Land titles were handed over to the new owners still bearing the original owner’s name. In three cases there was no witness, and two were witnessed “quasi-formally” by local authorities. In four of these cases no problems were encountered, and the new owners expressed that they were unconcerned about the semi-legal status of their transaction. However, in one case the titled land was transferred from the original title holder to a new owner in 2004. When the new owner attempted to transfer the land plot in 2009, the original owner obstructed the sale. They were able to do so as their name was still on the title.<sup>160</sup> Biddulph concludes that the main reason why people are not completing the appropriate process is financial: “if the village chief can guarantee your transaction for three USD, why would you risk spending three hundred dollars or more to get the same task done by the cadastral authorities”.

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<sup>158</sup> Ibid (p.33).

<sup>159</sup> Ibid (p.36).

<sup>160</sup> Robin Biddulph, *Geographies of Evasion: The Development Industry and Property Rights Interventions in Early 21st Century Cambodia*, University of Gothenburg, Department of Human and Economic Geography, School of Business, Economics and Law, 2010 (p.197).

A LASSP beneficiary assessment conducted in 2009 by GTZ (as it was then called) found that while a very high number of survey respondents saw the importance of registering subsequent transfers, less than 10% of subsequent transfers within the study area had been properly registered. The reasons for this shortfall included a lack of information about registering subsequent land transactions, and confusion among beneficiaries about the requirements and process for registering transactions. Respondents also stated that they felt the registration costs would be too high, cadastral offices too far away and the process complicated. This assessment also found that there was dissatisfaction with the 4% tax on transactions, especially when transfers concerned non-cash transactions such as inheritance and land gifted to children, and when transactions concerned small parcels of land.<sup>161</sup> These findings were echoed in the results of this study. The beneficiary assessment did find that the number of subsequent registrations was rising for parcels that have a high value and parcels that are bought by people from outside the area, and at the time of writing approximately 60 million USD had been generated from fees and transfer taxes since 2003.<sup>162</sup> Nonetheless, the vast majority of Cambodians involved in land transactions continue to follow the old system and rely on transfers witnessed by local officials, except in urban and peri-urban areas and where land value is high.<sup>163</sup> The assessment concludes that “[w]hile there is a trend towards increased registration of subsequent transactions, this is still the weakest aspect of SLR program and will reduce the long-term impact of the program.”<sup>164</sup>

Development partners supporting the Cambodian land sector have been aware of this issue for some time, and in mid-2007 a World Bank review of LMAP stated that the low levels of subsequent registration needed to be actively addressed.<sup>165</sup> More recently the issue of subsequent registration was referred to in the German milestone process, which was referred to earlier in the report. The first of the medium-term milestones agreed between the RGC and Germany was to increase the rates of subsequent registration. Specifically, this requires a “concept and operations plan” to describe and define how effective structures and processes will be established for the enhancement of subsequent registration. The justification for this milestone is explained as:

“Without subsequent land registration, the cadastre becomes outdated and no longer reflects the realities in land tenure. The work of years put into first land registration is in danger of becoming worthless. Currently

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<sup>161</sup> Robert Deutsch & Dr. Tep Makathy, *Beneficiary Assessment II for the Land Administration Sub-Sector Program (LA-SSP)*, GTZ Land Management Project, November 2009 (p.vii-viii).

<sup>162</sup> *Ibid* (p.47).

<sup>163</sup> *Ibid* (p.49).

<sup>164</sup> *Ibid* (p.59).

<sup>165</sup> World Bank Inspection Panel, *Investigation Report: Cambodia, Land Management and Administration Project (Credit No.3650 – KH)*, 23 November 2010 (p.48).

only few land transactions and changes in the size of parcels are subsequently registered in Cambodia.”<sup>166</sup>

In May 2012, a draft document was circulated by the MLMUPC which outlined a very brief plan for speeding up registration. This included plans to solve problems of exclusion and increase levels of subsequent registration. At the time of writing, this document was still in draft form, but includes plans to develop a “one-window service” to implement the subsequent registration process, along with a specialized commercial bank to receive fees. Alongside this new system, a land valuation system will be established in order to clearly identify appropriate taxes, and efforts will be made to reduce the number of transfers registered informally. PACP will also be increased to educate people about the need to conduct subsequent registration.<sup>167</sup>

### **6.3 Subsequent Registration in Study Areas**

During the field research stage of this study, attempts were made to gather data on the number of land transfers conducted after SLR, and to assess how many of these transfers were subsequently registered. Unfortunately this data proved extremely difficult to obtain. No figures were available for subsequent registration in either Tumnu Village in Phnom Penh or Village 3 in Preah Sihanouk. Although conclusive data could not be obtained across all four study areas, interesting responses were gathered in interviews with local officials, especially in Kampong Cham and Banteay Meanchey, and household survey respondents and focus group discussants also provided useful insights into public awareness and attitudes to the subsequent registration process.

Local officials in the Banteay Meanchey, Kampong Cham and Preah Sihanouk study areas all stated that the issue of subsequent registration was covered in public meetings and PACP sessions. However, the vast majority of household survey respondents stated that they did not have a clear understanding of the formal process for registering subsequent transfers.

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<sup>166</sup> Cambodia Rehabilitation and Development Board, Council of Development of Cambodia, Summary Record of the Negotiations on Development Cooperation between the Government of the Federal Republic of Germany and the Royal Government of Cambodia held in Bonn on 13 and 14 December 2011. [http://www.cdc-crdb.gov.kh/cdc/Donor\\_Development\\_Cooperation\\_Programs/Germany/Negotiation\\_on\\_Development\\_Cooperation\\_2011/summary\\_record.htm](http://www.cdc-crdb.gov.kh/cdc/Donor_Development_Cooperation_Programs/Germany/Negotiation_on_Development_Cooperation_2011/summary_record.htm) (accessed June 2012).

<sup>167</sup> MLMUPC, Land Administration Sub-Sector Program, *Draft Strategy to Speed Up Land Registration in Cambodia*, May 2012.

**HHS Response 20: Do you know about the formal process for transferring registered land?**

	<b>Phnom Penh</b>	<b>Banteay Meanchey</b>	<b>Preah Sihanouk</b>	<b>Kampong Cham</b>	<b>Total %</b>
<b>Yes</b>	6.2	6.2	15.6	34.4	15.6
<b>No</b>	93.8	93.8	84.4	65.6	84.4

(All figures in %)

Amongst the HHS respondents in Preah Sihanouk only two people reported being involved in a land transaction post-SLR (one purchase and one sale). Both of these respondents stated that they completed the subsequent registration process. However, when asked if they paid the official tax, only one of the respondents responded affirmatively, which suggests that the other transfer was not in fact subsequently registered, as payment of transfer tax is an essential step in the process.

An officer from the District Office of Land Management in Banteay Meanchey stated that since SLR was conducted only around 1% of land parcels have been transferred, mostly located in urban areas. The official stated that in cases where owners transfer a portion of their land parcel they are required to complete the subsequent registration process and the new owner should obtain a new title with their name on it. In cases where people sold whole parcels they were generally allowed to write the new owners name on the reverse of the original title and have this stamped for verification. According to the Village Chief of O’Andong Khet, three parcels were transferred and all were done so informally at the commune level. In Kork Thnaou two parcels were transferred after SLR was conducted, one transfer was witnessed at the village level and the other was witnessed by neighbours. This information indicates that of the small number of land transfers that have happened since SLR concluded in the Banteay Meanchey study area, none were subsequently registered. During interviews with the chiefs of both villages it was suggested that people decline to complete the proper process because they believe it to be too expensive.

Figures provided by local officials in the Kampong Cham study area show that very few of the land transfers that have taken place there since SLR have been subsequently registered. The Brayok Village Chief stated that approximately 20 parcels have been transferred since SLR was completed. Of these transfers, five were passed on through inheritance or gifted to family members, with transfers witnessed at the commune level only. Therefore the process of subsequent registration was not followed. Fifteen agricultural plots were subject to land sales, and in most cases the land was transferred to people already living in Brayok or

elsewhere in Tumnup Commune. Most of these transfers were also witnessed at the commune level only, apart from three parcels that were transferred to people from Phnom Penh which were subsequently registered.

In Trapeang Snao there have been 35 post-SLR land transfers. According to the Village Chief, 15 involved gifts to family members and 20 were sales of small plots to other villagers from Trapeang Snao. All transfers were registered at the commune level, and did not follow the subsequent registration process. According to the Commune Chief, across Tumnup Commune, of 178 transfers that occurred after the SLR process concluded, only 10 are known to have been subsequently registered at the cadastral office.

It appears that there are several reasons why these transfers were not conducted according to the formal subsequent registration process, but the high cost seems to have been the most formidable barrier. According to an official from the Tumnup Commune Council, residents who enquired at the cadastral office about the cost of subsequent registration were apparently quoted a flat rate of USD 400, regardless of the size of the land, which they were not prepared to pay. It is not clear if this fee was official, informal, or a combination of the two, but regardless it was prohibitively high as the land being transferred was generally small and of low value. In some cases there was no selling price as the land was being transferred to the owner's children as a gift. In an area where many people earn an average of USD 2.50 per day, the cost of conducting subsequent registration was impossibly high. The same Commune Council official referred to one case he knew of in which a commune resident made enquiries with the cadastral offices and was told that in total they would have to pay USD 700 in taxes and fees (formal and informal) to complete the subsequent registration process. Faced with these costs he decided instead to transfer his parcel informally for somewhere between USD 300 and 400. The Commune official was especially concerned about the cost of subsequent registration, and requested the research team raise this issue to the MLMUPC.

In addition to the issue of cost, it appears that people transferring land do not feel the need to register transfers when they pass land parcels to their family or children. When the village chiefs in Brayok and Trapeang Snao were asked why people are not registering land sales they said that as well as wanting to avoid the high cost, most people "only sold the land to local people". It appears therefore that in situations where parties to a land sale are known to each other and there is a relationship of trust, it is not seen as necessary to conduct the full subsequent registration process. Although no data was gathered for the number of subsequent transfers conducted in the Preah Sihanouk study area, local officials stated that transfers of high value land and land in urban areas are more likely to follow the subsequent registration process. Although no data was gathered that

supports this suggestion, it resonates with the findings of the beneficiary assessment referred to in Section 6.2 above.

## **6.4 Summary: Subsequent Registration in Study Areas**

As can be seen above, information on subsequent registration was difficult to obtain in all four study areas. The most comprehensive data came from Kampong Cham and Banteay Meanchey, where the rate of subsequent registration was extremely low. Of the 60 transfers known to local officials in the study areas only three were subsequently registered. The data gathered is not comprehensive enough to make generalizations to all SLR areas, but do seem to support existing research findings related to levels of subsequent registration. In the course of gathering this data, the study attempted to address the following questions:

- Are people generally aware that they must follow the official procedure for transferring registered land?
- Within the study areas, how many plots have been transferred since registration, and how many were subsequently registered?
- If households did follow the subsequent registration process, were fees and taxes paid? Was the fee appropriate, i.e. formal and not informal?
- If parties did not follow subsequent registration process, what method did they use to transfer land and why did they not follow the appropriate procedure?

*Are people generally aware that they must follow the official procedure for transferring registered land?*

Although local officials explained that the subsequent registration process was covered in public meetings and PACP, the level of awareness amongst household survey respondents was very low. Of the 128 people interviewed more than 84% said they did not know about the formal process for subsequent registration.

*Within the study areas, how many plots have been transferred since registration, and how many were subsequently registered?*

In the two study areas where data was available, the numbers of land transfers post-SLR were relatively low. In O'Andoung Khet and Kork Thnaou villages only five parcels are known to have been transferred (out of a total 1,700 registered) and in Brayok and Trapeang Snao villages 55 (out of 3,271 registered plots). Of these transfers only three were subsequently registered.

**Table 6: Number of subsequent transactions in study areas**

Area	Number of land transfers after registration	Number of transfers subsequently registered
<b>Phnom Penh:</b> Tumnup Village	No data available	No data available
<b>Banteay Meanchey:</b> O'Andoung Khet & Kork Thnaou Villages	5	0
<b>Preah Sihanouk:</b> Village 3	No data available	No data available
<b>Kampong Cham:</b> Brayok & Trapeang Snao Villages	55	3

*If households did follow the subsequent registration process, were fees and taxes paid? Was the fee appropriate, i.e. formal and not informal?*

As the number of subsequent registrations was so small no one was interviewed who had completed the subsequent registration process, so no data was gathered with regards to this question.

*If parties did not follow the subsequent registration process, what method did they use to transfer land and why did they not follow the appropriate procedure?*

Of the transfers that occurred in the Kampong Cham and Banteay Meanchey study areas, most were witnessed by officials at the commune level. A small number were witnessed by neighbours and had no official recognition. The figures quoted above came from local officials, and it is possible that additional unwitnessed transfers occurred that they are not aware of.

## SECTION 7: ACCESS FOR WOMEN, STAKEHOLDER INVOLVEMENT & BENEFICIARY PERCEPTIONS

During the course of the field work, the research team also sought to gather data on additional issues, namely: gender and land registration, stakeholder involvement in the Systematic Land Registration (SLR) process, and the perceived impacts of land registration. These issues are dealt with below.

### 7.1 Gender and Systematic Land Registration

As already discussed earlier in this report, land is central to the livelihoods of millions of people across Cambodia. Women and their children can be especially vulnerable in cases where the husband dies or family relationships break down due to divorce or abandonment, and secure land rights can provide protection against loss of land and associated assets.<sup>168</sup> Since systematic land registration commenced in Cambodia there have been a number of studies into the impacts of land registration on women, including a 2010 study by CIDA<sup>169</sup> and NGO case studies.<sup>170</sup> Gender issues have also been assessed in supervision reports and beneficiary assessments of the development partners supporting the land sector.

A 2008 report published by the Heinrich Böll Foundation (HBF) found that women's limited awareness of the SLR process restricted their access to land registration, and this was further exacerbated by the inconsistent approaches of officials and LRTs.<sup>171</sup> The study collected case studies of women's experiences of the land registration process and highlighted a number of key concerns. This included a case where one woman who was abandoned seven years prior had her plot registered jointly with her absent husband as his name was still listed in the household family book. The authors found 15 similar cases.<sup>172</sup> Another case study described the case of an abandoned household who had their land parcel registered jointly as local officials believed that only if the husband was dead could the land be registered individually to the woman.<sup>173</sup>

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<sup>168</sup> For more discussion on this topic see: Gender and Rural Development Thematic Group (PREM/ARD) and the Land Policy and Administration Thematic Group (ARD) of The World Bank, *Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report*, June 2005.

<sup>169</sup> Cambodia Land Administration Support Project (CLASP), *Survey Report: Gender Equality in Systematic Registration*, April 2010.

<sup>170</sup> Mehrak Mehrvar, Chhay Kim Sore & My Sambath, *Women's Perspectives: A Case Study of Systematic Land Registration*, Heinrich Böll Foundation, July 2008.

<sup>171</sup> *Ibid* (p.4).

<sup>172</sup> *Ibid* (p.10).

<sup>173</sup> *Ibid* (p.12).

A beneficiary assessment conducted by GTZ in 2006 identified the need for improved PACP for women and gender specific information on the land registration process.<sup>174</sup> A subsequent assessment in 2009 also found that the program still needed to develop a gender strategy and clear policy statement regarding gender awareness.<sup>175</sup> A more recent study by CIDA found that although obstacles remain, women’s satisfaction with the registration process was high, and for the most part their treatment was equitable.<sup>176</sup>

With these previous observations in mind, this study allocated time to draw on women’s experiences within the four study areas. This was done in order to better understand women’s access to and perceptions of the SLR process, land ownership patterns and any obstacles they faced in accessing the SLR process.

### **7.1.1 Respondent Background**

64% (or 82) of the survey respondents were women. Of these women, 20%, or 26 respondents, identified themselves as women heads of households (WHH).

#### **HHS Response 21: What type of household is this?**

	<b>Phnom Penh</b>	<b>Banteay Meanchey</b>	<b>Preah Sihanouk</b>	<b>Kampong Cham</b>	<b>Total (%)</b>
Single parent household	0	0	0	0	0
Women headed household	25	12	28	16	20
Nuclear/extended household	75	88	72	84	80

(All figures in %)

The majority of the WHH survey respondents were de-jure WHH, 65% were widowed, 12% were unmarried heads of households, and 4% separated from their husbands. 19% of respondents identified themselves as de-facto WHH, because even though they were married, their husbands had migrated to Thailand and the urban centres of Cambodia in search of employment. The responsibility of running the household and managing the finances fell on these

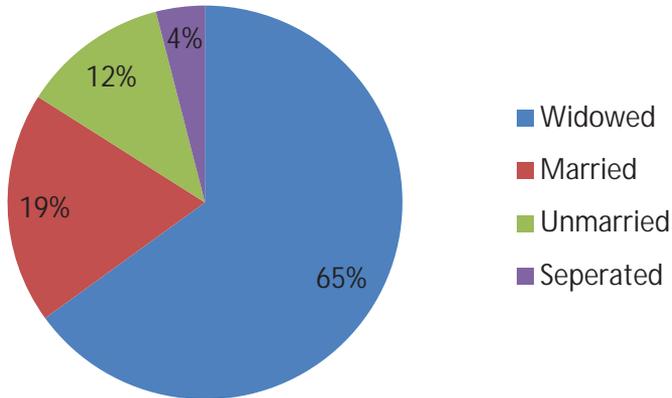
<sup>174</sup> Robert Deutsch, Beneficiary Assessment of Land Title Recipients Under the Land Management and Administration Project (LMAP), prepared for the MLMUPC with support from GTZ, January 2006 (p.ii).

<sup>175</sup> Robert Deutsch & Dr. Tep Makathy, *Beneficiary Assessment II for the Land Administration Sub-Sector Program (LA-SSP)*, GTZ Land Management Project, November 2009 (p.59).

<sup>176</sup> Cambodia Land Administration Support Project (CLASP), *Survey Report: Gender Equality in Systematic Registration*, April 2010 (p.vii).

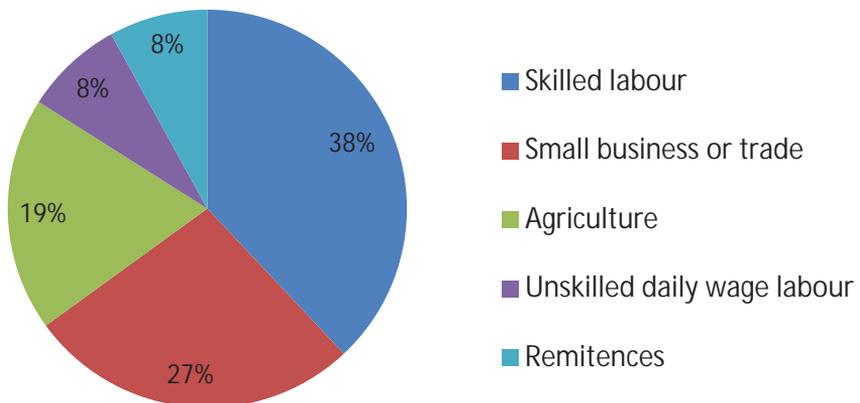
women and they therefore considered themselves to be heads of household. This was particularly the case in the rural study areas of Banteay Meanchey and Kampong Cham.

**HHS Response 22: Marital Status of WHH**



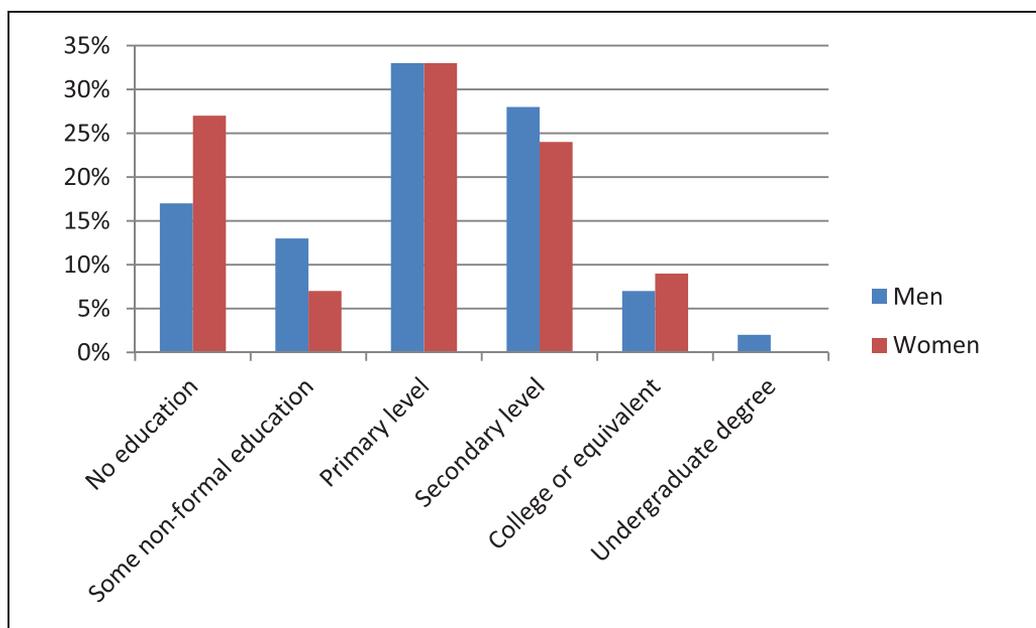
When asked about the main source of household income, 38% of the WHH survey respondents said they depended on skilled labour such as garment factory work. 27% relied on small business and trade, such as running small tailoring services, grocery shops, and beauty salons from home, or vegetable and fish vending. 19% depended on agriculture, 8% on unskilled daily wage labour, and a further 8% depended on remittances sent by family members working abroad in Thailand or in neighbouring urban areas. The women in the rural target villages said that due to seasonal variation in agricultural output they increasingly have to depend on other sources of income to cover their household expenses.

**HSS Response 23: Main source of income of WHH**



The survey found that the female population in the study areas had lower levels of education and literacy than their male counterparts. Over 27% of the women respondent had never attended school, compared to 17% of male respondents. Improving women’s education and knowledge of legal matters has been found to be a very important determinant in women’s access to land. While efforts have been made by the MLMUPC to develop and distribute materials on land rights and titling procedures in pictorial form to ensure that illiterate women and men are provided with appropriate information, the women interviewed stated that lack of education was a barrier for some in actively taking part in the SLR process. This was felt particularly in the preparation of the documents, completing application forms, and checking the cadastral index map and ownership list for any discrepancies.

**HSS response 24: What level of education have you attained?**



**7.1.2 Patterns in Women’s Ownership**

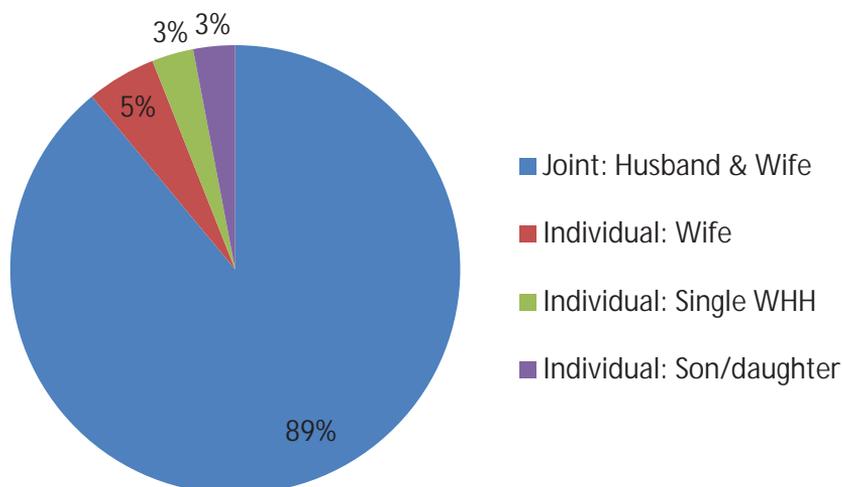
The results of the household survey showed that amongst respondents, 89% of land parcels were jointly registered in both the husband and wife’s name. In focus group discussions, women explained that LRTs had conducted separate PACP sessions for women in most villages. These women’s sessions stressed the concept and implications of joint and individual ownership. Most focus group discussants stated that they had a relatively clear understanding of the concepts, and during PACP sessions had the opportunity to ask questions and seek

clarification regarding issues such as rights over inherited land and the ownership rights of divorced, separated and abandoned women.

The majority of the women interviewed said that they had discussed with their husbands and had made the decision to register their common property as joint title. Focus group participants believed that receiving joint title greatly improved the position of women. As stated by one woman in the Kampong Cham focus group discussion: “Some of us do not believe in the loyalty of our husbands, who knows, they might change their mind tomorrow, marry another or gamble or sell our land. If the land is also in our names we can stop this from happening and protect it for our children in the future.”

The majority of the WHH survey respondents owned residential land and small plots of agricultural land. Residential lands were mostly inherited, while agricultural land parcels were acquired through the sub-division of krom samaki land. In most cases, inherited land was registered under the name of the individual – either the husband or the wife – who inherited it. Most agricultural lands and properties bought after the marriage were registered as jointly owned. Among the WHH surveyed, 17 respondents obtained individual land title certificates for land they had inherited. According to the PDLM in Banteay Meanchey, PACP makes clear that joint-ownership is not the default and rather it is based on the decision of those people whose ownership status is being adjudicated. If a couple purchased the land after marriage and the husband wants to register in his name only, the team will request the woman to complete a form confirming that she agrees that the property will be registered only in her husband’s name. During focus group discussions with the women’s group in Trapeang Snao, Kampong Cham, participants stated that older couples preferred to title all land jointly, even inherited land, but others appreciated the opportunity to title land under their own name as this made them feel more secure, and increased their power and influence within their marital relationships. One woman stated that she had a conflict with her husband when attempting to title her inherited land in her own name, but this was resolved after the Village Chief came to their home to explain the process to the husband who then changed his mind. The research team did not come across any cases where spouses who had abandoned a household were named on joint titles, as was the case in several of the case studies including in the HBF report mentioned above.

### HHS Response 25: Whose name(s) were your land parcels registered under?



#### 7.1.3 Women's Participation in the SLR Process

Responses from women household survey respondents and focus group discussants were generally positive regarding access to the SLR process. According to those officials who were interviewed, women play an important role in the SLR process, particularly in the survey, demarcation and adjudication process. According to an official from the Provincial Office of Land Management in Banteay Meanchey, it is often women who are responsible for interacting with LRTs. He explained that this might be because women have become more confident in engaging with officials, but also because many women stay in the villages in rural areas while their husbands migrate to other areas for work. WHH survey respondents stated that they worked with LRTs to indicate the boundaries of their land parcels to the demarcation officers, and negotiated the boundaries if the land parcel was adjacent to other private plots or state land. They also provided documents related to the land parcel and worked with the officers to fill in the parcel forms. Most women said that they felt comfortable working with the LRTs and that the LRT members were generally pleasant and respectful.

When asked about the SLR process in general, most WHH survey respondents said that they were very satisfied with the SLR process. 63% of the WHH respondents said the main challenge was in proving their single status, particularly if they were abandoned or separated. They said they were required to provide documentary proof such as the death certificate of the deceased husband, a divorce decree from the court, or a written separation agreement

signed by both parties. In cases of abandonment, WHH had to obtain supporting letters from the village chief and/or commune chief to prove abandonment by the husband, as well as a similar supporting letter to prove their current unmarried status. Some women commented that obtaining the written separation agreement was the most difficult step in the process of registering their land individually, particularly if the separation was acrimonious. Though obtaining these documents was difficult, all the survey respondents said that the LRT accepted these documents as proof of their single status and everyone interviewed was able to register parcels individually in their own name if they wished.

## **7.2 Stakeholder Involvement**

A crucial element of the SLR process has been the involvement of the various stakeholders, and basic stakeholder mapping was carried out to provide an overview of the various actors' involvement in the SLR process. The key stakeholders were identified and categorized into three groups: primary, secondary and active/key stakeholders.<sup>177</sup>

### **7.2.1 Active/Key Stakeholders**

*Ministry of Land Management, Urban Planning and Construction:* The MLMUPC is the lead government agency responsible for SLR in Cambodia. The MLMUPC is currently implementing the Land Administration Sub-Sector Programme (LASSP), the second phase of the Land Administration, Management and Distribution Programme (LAMDP) 2002-2017 with the technical assistance of three main development partners GIZ, FINNMAP and CIDA. The MLMUPC has played a key role in the development and implementation of the legal framework for SLR, and oversees the process of SLR nationwide.

*Provincial/Municipal Departments of Land Management:* The provincial and municipal departments play a key role in the implementation of the SLR process. At the outset they conduct preliminary assessments on areas yet to be adjudicated and advise the Governor on selecting adjudication areas. Land registration teams report to their respective Department of Land Management.

*Local authorities:* The SLR process is heavily dependent on the support and cooperation of the local authorities. Local officials will indicate village and

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<sup>177</sup> Primary stakeholders are the intended beneficiaries of the SLR process, secondary stakeholders are those who perform as intermediaries within the SLR process, and active stakeholders are those who determine and implement the decisions and actions in the SLR process.

commune boundaries to LRTs and provide demographic data. They also provide support to the LRTs during the adjudication process and support households in preparing their documentation. Local officials will help to resolve disputes that emerge, and are also represented on the Administrative Committees. Local officials are responsible for referring people within their jurisdiction to the cadastral authorities if they wish to subsequently register a land transfer.

*Development partners:* Although they do not play an implementing or monitoring role, development partners play a key role in supporting and advising the MLMUPC through their technical assistance. As discussed earlier in the report, LASSP currently receives support from GIZ, CIDA and Finland, who support various elements of the MLMUPC's land reform agenda.

### **7.2.2 Primary Stakeholders**

*Landholders:* The primary stakeholder or beneficiaries of the SLR process are the landholders of residential and/or agricultural land who have the right to convert their possession into full ownership through registration and receive land ownership certificates. Landholders are involved to a great extent in most steps of the SLR process, from the preparation, survey and demarcation, to the public display and issuance of the titles. Village elders from each adjudication area should be represented on the Administrative Committees.

### **7.2.3 Secondary Stakeholders**

*Non-governmental Organizations (NGOs):* During focus group discussions in the four study villages, the interviewees identified the important and invaluable role that NGOs can play in supporting the beneficiaries of the SLR process. This included awareness raising activities and supporting communities in writing complaints regarding exclusion from the process.

Due to the small number of PACP Officers in each LRT, NGOs have been involved in conducting additional public awareness activities in adjudication areas. In Brayok Village, Kampong Cham, VIGILANCE conducted training on the land registration process, and in Preah Sihanouk, CNRO and other NGOs conducted similar sessions. In Phnom Penh, independent awareness-raising sessions were conducted with community committee members in Tumnup Village by UPWD and World Vision. The NGOs were also involved in monitoring the second and third steps of the SLR process, particularly in assisting residents to collect documents to prove possession rights and helping them complete the adjudication forms. During the public display stage, in the event that there were inaccuracies and errors in the cadastral index maps, NGOs assisted the villagers in filling in complaint forms and following up with the Administrative Committees (ACs).

The interviewees in the urban study areas of Preah Sihanouk and Phnom Penh also acknowledged the efforts of CNRO, ADHOC, World Vision, UPWD, Community Managed Development Partners (CMDP) and Cambodia Empowerment Development Team (CEDT) regarding advocacy over exclusion issues. The villagers stated that if it was not for NGOs and their vigilant monitoring, they would not have been aware that they had been excluded from the SLR process they would not have known how to raise their case to the Municipal Departments of Land Management and other levels of the MLMUPC. “Without the support of the NGOs and our issue coming to the attention of the World Bank and LMAP I do not think we would have reached the point of talking about concrete solutions for additional registration in our community today”, said a community representative from Tumnup Village in Phnom Penh.

Although several NGOs have played important supporting roles in the areas visited for this study, their capacity to support beneficiaries is limited by financial and practical constraints, and in some cases due to limited access to information. The conclusion section of this report includes recommendations for improving interaction between civil society and LASSP in the future.

*Faculty of Land Management and Administration (Royal University of Agriculture):* Another stakeholder that is often overlooked is the Faculty of Land Management and Administration (FLMA), which was established and developed at the Royal University of Agriculture (RUA) in 2003. By the time LMAP ended in 2009, 150 students had graduated from the faculty with a Bachelor of Science in Land Management and Administration, and 199 were in the process of studying. MLMUPC has recruited more than 70 graduates, mainly to join the land registration teams.<sup>178</sup>

### **7.3 Beneficiaries’ Perceptions of the Benefits of Land Titles**

In interviews and discussions with those people who received land titles through the SLR process and with local officials, researchers observed that the general perceptions regarding land registration were very positive. Excluding respondents from Tumnup Village in Phnom Penh, 91% of survey respondents said that they were satisfied with the process. Again excluding the Phnom Penh respondents, 95% of respondents said that the process was affordable, 95% that the LRTs were active and helpful, and 92% said that they were given adequate notice about the SLR process.

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<sup>178</sup> Jouni Johannes Anttonen, *Multi-Donor Efforts for Improving Land Administration Systems in Developing Countries: Lessons Learnt from the Cambodian Land Management and Administration Project (LMAP)*, paper presented at International Federation of Surveyors Congress, Rome, Italy, 6-10 May 2012 (p.7).

In Kampong Cham, the Brayok Village Chief stated that after receiving titles, people in his village felt a much stronger sense of ownership over their land, and with that an increased sense of security. He stated that women especially felt more secure after receiving individual title for their inherited lands. People were also pleased to have land titles to use as collateral for loans. This was also reflected in responses from the women's focus group. During a focus group discussion in Brayok, where levels of debt are high, it was found that every participant had already used their title as collateral for loans. Loans were used for things such as purchasing fertilizers, renting fields for cultivating dry season rice, and renting machinery to clear land or create new chamkar.

During an interview in Preah Sihanouk, the Sangkat 3 Council Chief stated that the principle benefits of titling in the area were a reduction in land disputes, and an increased respect for the boundaries of neighbours' lands. This clarity has resulted in better day-to-day relationships between neighbours. People are now using their loans as collateral, and he also stated that it is much easier now for the Sangkat Council to manage state land and conduct proper planning for land use.

The Chief of O'Andoung Khet Village, Banteay Meanchey, stated that since receiving land titles, people are clear about the boundaries of their land, which will reduce the incidence of future land disputes. People also know clearly where public rights of way exist, for example, along roadsides, which can reduce future encroachment. He also expressed confidence that if and when conflicts do emerge, the information on the land register will be used to resolve them. The Village Chief stated that in general the people feel more secure now that their full ownership rights are recognized, and people are pleased that they can use their land titles as collateral for formal credit. The Chief stated that about 30 households from the village have already used their title as collateral to borrow money from micro-credit institutes. Previously they needed to find witnesses and obtain supporting letters from the local authority and Village Chief, whereas now the land title is sufficient. Women who participated in the focus group discussion also expressed that they were happy that now they have clear proof of ownership they can better protect the boundaries of their land and safely hold onto it so that they may pass it on to their children in the future.

It should be noted that the above responses, although totally valid, are *perceived* benefits of land registration. It may well be that not enough time has passed to fully assess the broader impacts of SLR, and one area that certainly merits further and more detailed study is the *actual* impacts of land registration, especially with regards to improvements in land tenure security and poverty reduction. It also goes without saying that those people in the Phnom Penh and Preah Sihanouk study areas who were excluded or unable to access SLR for other reasons had very different perceptions of the process.

## SECTION 8: CONCLUSION AND RECOMMENDATIONS

### Conclusion

Through LMAP, and subsequently LASSP, Cambodia has made impressive progress in building a functioning cadastral system over the last ten years. This process has proved complex and challenging, but since commencing, the land registration teams have successfully issued over 1.7 million land titles, a strong legal framework has been developed for the functioning of the land administration bodies and mechanisms, institutions have been built and strengthened, and a dispute resolution process has been established for dealing with disputes over unregistered land. Although these achievements are largely down to the hard work of the MLMUPC and its associated departments, the swift progress was made possible with the financial and technical support of numerous development partners. Despite these considerable achievements there have been set-backs and challenges along the way, many of which have been discussed elsewhere in academic literature, civil society and media reports. There is evidence that despite the development of a comprehensive legal framework and experienced institutions, the mechanisms established have been implemented more successfully in some areas than in others. In this study the authors sought to assess how the SLR process was implemented in four study areas, two urban and two rural, in Phnom Penh, Banteay Meanchey, Preah Sihanouk and Kampong Cham. In particular the study sought to gather more information on the issues of exclusion, dispute resolution and subsequent registration.

The final report draws on 128 household surveys, as well as focus group discussions, case studies and key informant interviews with community representatives, local and provincial officials, civil society and development partners. Although the study sample was not large enough to safely assume that the findings are representative of the performance of SLR across the whole country, the findings are highly pertinent for the areas visited – especially regarding the issue of exclusions, which impacted on a large number of households in Phnom Penh and Preah Sihanouk. Additionally, the report provides the first detailed analysis of the issue of exclusion from the SLR process, or at least the first analysis of this issue that is publicly available. The findings also corroborate a number of concerns raised elsewhere and highlight several areas where further detailed study is needed.

The results gathered in the four study areas show a very clear urban/rural split. In the rural villages targeted in Kampong Cham and Banteay Meanchey, aside from a few small problems, the SLR process appears to have run smoothly and the levels of exclusions and disputes were very low. In three of the four study areas

(Banteay Meanchey, Kampong Cham, and Preah Sihanouk), for those people who did have access to the system, the process appears to have been conducted in compliance with the legal process, and no serious deviations were noted from the legal requirements. The majority of those interviewed for this study expressed high levels of satisfaction with the SLR process, and were very pleased to have received titles for their land.

However, in the urban villages visited in Phnom Penh and Preah Sihanouk there were high levels of exclusion from the SLR process, and there were also a number of disputes involving large numbers of households in conflict with one or two powerful and well-connected actors. In Tumnup Village, Phnom Penh, in excess of 80% of land parcels were left untitled after the conclusion of the SLR process, and in Village 3 of Preah Sihanouk the figure was at least 33%. Exclusions took place in an atmosphere of low transparency, and affected people have struggled for over two years to obtain clear information about the reason for their exclusion, having had to organize and send multiple requests to state institutions for their areas to be subject to additional registration. Both Village 3 and Tumnup Village have been told that they will be subject to additional registration, but this has yet to happen. In both cases it is unclear if a specific order was given to excise areas from the adjudication zone, and if so, which authority issued this order. The authors are aware of only one documented case where the MLMUPC recommended that an area be excised, the case of Tonle Basac, discussed in Section 4 of the report. However, it is assumed that actors other than MLMUPC, for example provincial and municipal authorities, may be requesting that specific areas be omitted from SLR. For this reason, the recommendations below regarding exclusions should not just be read as applying to the MLMUPC.

Although official and comprehensive figures were not available regarding the number of disputes that emerged in each study area, it was clear that a considerable number of small boundary disputes emerged after SLR was announced. For the most part, according to local officials, these disputes were handled efficiently at the local level by the Administrative Commissions. However, a number of household survey respondents explained that although they were not entirely happy with the way their land was adjudicated, they did not file complaints. The authors also observed that although the nationwide figures for cases that reached the Cadastral Commission show a decline in the number of cases that are awaiting resolution, there is an upward trend in the number of cases that are being dismissed. No information is available on why many more cases are now being dismissed, but this warrants further investigation.

Reliable data also proved difficult to obtain regarding the number of transfers that occurred post-SLR, and how many of these transfers were registered. However, it

is clear that the levels of subsequent registration remain very low. This is especially true in rural areas where land values are lower, when land is being transferred to children through inheritance or as a gift, or when the purchaser is a local person and already known to the buyer. Local officials who were interviewed stated that the main reason for the failure to properly register transfers was the high costs (both official and unofficial), but it was also observed that awareness of the process was very low amongst survey respondents, and people do not see it as necessary to conduct subsequent registration if they feel that they trust the person who is receiving the land. Although subsequent registration rates were almost non-existent in the rural study areas, anecdotal evidence and information gathered in interviews with officials in Preah Sihanouk suggests that rates may be increasing in urban areas, and in cases where the land purchaser is from outside the area and so is unknown to the seller.

The study also sought to look in more detail at the experiences of women who have gone through the SLR process. It was found that beneficiaries were informed of the process for registering parcels as joint ownership or individual ownership. Women's groups expressed that this issue was explained well and found little difficulty in registering the family land jointly, and inherited land as individual title, provided they had the appropriate papers. In some cases women struggled to obtain the official documentation to prove that they were divorced or abandoned, although in all cases that the authors came across this difficulty was eventually overcome.

During the course of conducting the research it became apparent that the functioning of the SLR process is dependent on the cooperation and commitment of multiple actors. From the village level up, local officials must commit their time and knowledge of their area to support the LRTs in identifying village and commune boundaries, disseminating information to local people, and supporting the survey and adjudication process. The cadastral authorities also require good cooperation with various line ministries in order to conduct their work. This is especially true when adjudication areas include lands that are state public property or are claimed by a state institution as state private property. Additionally, civil society groups worked in three of the four study areas to raise local awareness regarding SLR and how people can actively engage in the process. In Phnom Penh and Preah Sihanouk, NGOs also helped communities to draft letters to various authorities regarding the status of their exclusion. With relatively limited means, these groups played a positive role in supporting communities going through the SLR process, and this support and monitoring role should be encouraged in the future.

As mentioned above, and throughout the study, the findings of this report cannot be judged to be representative of how SLR is being implemented across the

country, but it is clear that exclusion has affected many hundreds of families in Phnom Penh and Preah Sihanouk, and in all likelihood in other areas across the country. The issue of exclusions needs to be remedied urgently, as it threatens to undermine the goal of the MLMUPC to title the entire country in the coming years. Likewise, areas that are judged to be “difficult” to adjudicate must not be avoided in future if this goal is to become a reality, and areas that were previously avoided should be returned to. LASSP also needs to continue to improve the quality and effectiveness of public awareness activities in order to ensure that SLR beneficiaries fully understand the process. Those people who are not happy with the process should be aware of the available dispute resolution mechanisms, and should be supported in filing and pursuing complaints. In order to safeguard the long-term sustainability of the land registration program and ensure that the land register is kept up to date, it is also crucial that problems associated with the low levels of subsequent registration are remedied. Finally, by increasing access to information regarding SLR, the selection of adjudication areas, and the progress of adjudication in each area, the MLMUPC will be able to ensure increased transparency in the SLR system. This will contribute to increased confidence in the program, and also help to ensure that when problems do emerge they can be identified and addressed as swiftly as possible.

Discussions have been under way since 2011 for the potential expansion of systematic land registration with support of the German development bank KfW.<sup>179</sup> It is the view of the authors that if KfW does commit support to land registration program in Cambodia, emphasis should not only be on delivering a high quantity of titles, as this is not likely to resolve many of the issues that have been highlighted in this report and in others venues regarding blockages or challenges faced by the titling program. In order to achieve the goal of registering all privately held land across the country over the coming decade, as well as stepping up registration efforts, issues such as exclusion, state land management, and registering “difficult areas” need to be resolutely addressed, as does the long-running problem of low levels of subsequent registration.

## **Recommendations**

Following on from the above conclusions, the authors put forward the following recommendations, which it is hoped are of value to the Royal Government of Cambodia, development partners and civil society.

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<sup>179</sup> In November 2011 KfW presented the findings of a feasibility study into potential support for systematic land registration. See: KfW, *Feasibility Study for a Potential Land Sector Project: German Financial Co-operation with Cambodia* by KfW, presented at Workshop Presenting the Findings and Project Concept, Phnom Penh, 18 November 2011.

## ***Exclusions***

*Avoid further exclusions:* If it is found during the adjudication process that there are overlaps with state land or lands involving dispute, these should be dealt with according to the existing legal process. The decision to grant or withhold land titles should be based on the legal status of the occupant, i.e. whether or not they meet the legal requirements of possession as set out in the Land Law.

*Clarify the status of pre-approved developments vs. legal possession rights:* It appears that there are a number of cases where people have been denied title due to development projects being approved on the land where they have already lived or farmed for many years. It should be clarified that in such cases, private development should not override existing land rights as set out in the Land Law.

*Clarify the legal status of projects approved pre-1979:* The Land Law states that pre-1979 ownership regimes are no longer valid. It should be clarified if this also applies when the state claims land that was approved for development pre-1979 but has since been occupied by private individuals.

*Develop and publicise a plan for solving the problem of exclusions:* As a matter of high priority the MLMUPC's plan for speeding up land registration and solving the problem of exclusions should be developed and opened to civil society consultation, and once adopted should be widely publicised.

*Conduct research into full extent of exclusions:* A comprehensive analysis needs to be conducted in order to assess how many areas have been excluded from SLR across the country. A database/matrix of all excluded areas should be developed and an analysis conducted of why exclusions occurred, at what stage in the process this happened, and on what grounds. Ideally the results of such a study would be made public, but at the least the findings should be shared locally with residents and officials in each affected area.

*Develop an operational plan for dealing with exclusions:* A plan could be put in place to return at the soonest possible time to conduct adjudication in those areas where exclusions were not legally justified. In order to ensure transparency and maintain public confidence in the system, this process should be open to scrutiny and efforts should be made to ensure that excluded areas are not once again omitted from SLR without clear legal justifications.

*Train and provide support to specialized LRTs:* It may be necessary to mobilize special teams to conduct additional SLR in areas that were previously excluded. This could help to expedite additional SLR in areas that are seen as difficult or

complex to adjudicate and will also leave the main LRTs free to conduct first registration in other areas in line with existing plans.

*Conduct additional registration in Village 3 and Tumnup Village:* In both Village 3, Sangkat 3 in Preah Sihanouk, and Tumnup Village in Phnom Penh, affected residents have been promised additional registration, but it has yet to take place.

*Disclose information related to future exclusions:* If a decision is made to exclude a specific area from an adjudication area it should be publicly announced and information and the reason for exclusion should be made widely available to the public. Clear legal reasons should be given for all exclusions.

*Develop mechanisms for complaint:* If an area is excluded, affected people should have a venue to challenge the decision and should have their complaints appropriately assessed. If it is found that there is no clear legal basis for the exclusion, affected people should have access to SLR.

### ***Unclear Status***

*Clarify the use of the 'unclear status' decision:* It should be clarified under what circumstances the term 'unclear status' can be applied. In cases where land is claimed both by a private individual and by the state or a public authority it should be clarified whether the land should be recorded as being of 'unclear status' or 'disputed'.

*Return to register areas of unclear status:* If it is not possible to resolve an issue of unclear status during initial SLR, a process should be developed for returning to such parcels at a later date in order to look more closely at the case and reach a decision on the ownership of the land. This should focus especially on areas where large numbers of households are involved. If land is deemed to be of unclear status due to an unclear boundary with state land and the state land in question is later registered, adjacent private plots should also be registered and the owners given land titles. This registration process should be subject to the same fees as apply to SLR.

### ***Absent Landholders***

*Develop a mechanism for dealing with absent neighbours:* A mechanism should be developed for dealing with cases where landholders are unable to confirm their land boundaries due to a neighbour being absent during adjudication. This should be done either during SLR or through additional SLR at a later date when the neighbouring owner has been identified. Owners who are present during the original SLR process should not be required to pay sporadic registration fees later.

## ***State Land Management***

*Develop plan for improving state land management:* Developing a coordinated system of state land management is not going to be achieved in the short-term and requires the cooperation of multiple agencies, but the first step in doing so would be to develop a plan for such a program that has the input of all relevant ministries.

*Clarify how claims of state land should be dealt with during SLR:* The guidelines for identification of state land should be clarified and disseminated to LRTs and local officials, clearly explaining which types of land may be classed as belonging to the state.

*Explain clearly which areas have been identified as state land:* During the opening meeting and subsequent PACP, it should be indicated which parts of the adjudication area are identified as state land. During the initial public meeting and any subsequent PACP, local people and officials should be told clearly what will happen if land parcels are located on state land.

## ***Selection of Adjudication Areas***

*Increase transparency in the selection of adjudication areas:* The process of identifying adjudication areas should be clarified and made more transparent. If an area is deemed not to be suitable for adjudication, this should be recorded and the reason made public in order to ensure that areas are not passed over without good reason.

*Consider integrating needs-based test to selection of adjudication areas:* SLR should pro-actively target needy areas. This could be done by adding a needs-based test to the process of selecting adjudication areas.

## ***Dispute Resolution***

*Conduct a comprehensive assessment of the dispute resolution mechanisms:* The last published assessment of the CC was conducted by GTZ and the World Bank in 2006. A follow up on this earlier study would be beneficial. Amongst the questions that should be addressed by such a study include:

- Do people know how to file and pursue complaints or do they need additional support?
- How likely are people to file a complaint if they become involved in a dispute or if they are unhappy with the outcome of SLR adjudication? What factors may prevent them from doing so?

- Are procedures being followed at all stages of the process, from AC to the various levels of the CC?
- What is the reason for the steady increase in the number of cases being dismissed?
- How many cases have become ‘stuck’ in the CC system, and what are the reasons for this?

*Support people who wish to file complaints:* Local officials should be trained in how to support people filing complaints to the CC, and local civil society groups should also be involved in the process.

*Support NGOs/law firms providing legal services to CC complainants:* In cases where people have low incomes, free or low-cost legal services could be very valuable, and LASSP should consider how such services could be funded.

*Clarify the situation when dispute is between an individual and the state:* It should be clarified whether or not people can complain to the CC if their dispute is with the state.

### ***Subsequent Registration***

*Complete study on the issue of subsequent registration:* During discussions with development partners in June, the authors learned that there are plans to conduct a study on the issue of subsequent registration. It is hoped that the study will look in more detail at the issues raised here, as well as those raised in previous studies and assessments.

*Publicize plan for improving subsequent registration:* The final version of LASSP’s plan to improve rates of subsequent registration should be developed and released for civil society consultation. It should elaborate on how to increase incentives for local officials to refrain from witnessing transaction non-formally, and encourage landowners to follow the appropriate process. It should be noted that subsequent registration is not the sole responsibility of the MLMUPC, and the Ministry of Economy and Finance must also be involved in developing and improving the system.

*Clarify taxes and reduce informal fees:* LASSP plans to adopt a land valuation and one-stop window service for the process of subsequent land registration in order to clarify the tax rate for specific plots and reduce the opportunity for rent-seeking by officials. Alongside this system there must be clear information for the public, as well as repercussions for officials who seek informal payments. The land valuation system must also be carefully monitored in order to ensure that land is being valued at a price that reflects its market value. Additionally, it

must be clear that land transfer forms reflect that the full 4% of transfer tax is indeed being paid.

*Raise public awareness about subsequent registration:* A considerable number of respondents stated that they were not familiar with or did not clearly understand that subsequent registration process. More needs to be done to educate people about the need to conduct subsequent registration. This could take the form of public meetings, leafleting and public signboards.

*Make subsequent registration affordable and consider pro-poor exemptions or reduced fees:* Rates of subsequent transfer may be increased by waiving or reducing taxes on transfers that involve passing land to children as gift or inheritance. Reductions may also be provided to poor households who are transferring small and low-value plots of land for a low selling price.

### ***Gender Issues***

*Raise awareness about women's rights to register land individually:* In all adjudication areas continued efforts must be made to ensure that SLR is equally accessible to women, including through PACP. PACP should be arranged at a time and place that is practical for women, and in all adjudication areas, specific women only sessions should be organized. Specific literature could also be developed on women and land registration. It would be beneficial to conduct training on gender and land registration with LRTs themselves, ACs, and local officials, in order to increase awareness of the issues that women face. Staff from NGOs working on gender issues could contribute to such sessions.

*Support WHH in the application process:* Extra support should be provided for women who are responsible for engaging with LRTs, for example, because their husbands are migrant workers, or because they are widowed, divorced or separated.

*Increase female representation in LRTs:* The MLMUPC should take pro-active steps to hire more women to all levels of the cadastral authorities. It would be especially beneficial to have more female LRT officers and to have women play a role in conducting PACP activities.

### ***Monitoring***

*Establish regular monitoring of the SLR process:* Problems and blockages within the SLR system could be identified early on and remedied if a regular monitoring system was established. As well as meeting with cadastral authorities, LRTs, local officials, and civil society groups, monitoring teams should meet

independently with beneficiaries to assess their satisfaction with the process and in order to record any complaints or concerns.

*Encourage civil society to provide monitoring:* Civil society groups can play a valuable role in monitoring the process of SLR in areas where they work. Involving civil society in the monitoring of SLR may improve transparency and lead to increased public confidence in the system. It may be the case that NGOs wish to remain independent if they play a role in monitoring the land registration program, which should also be encouraged. LASSP can still benefit from interacting with such groups and hearing concerns and responding whenever possible.

*Involve civil society groups in future beneficiary assessment:* In order to gain a clear understanding of the experiences of local people it is important that future assessments include adequate space for civil society organizations to contribute their perspectives regarding the implementation of SLR in areas where they are active.

### ***PACP and Informational Materials***

*Review the content of public awareness materials:* Review content and ensure that it is as clear and accessible to beneficiaries, especially those with basic education levels. Civil society groups with experience conducting community awareness raising activities could contribute to this review.

*Ensure sessions are interactive and enjoyable:* Participants are more likely to stay focused during meetings and remember what they have learned afterwards if they are engaged in the sessions. This can be done through question and answers, discussions, role-plays, and other interactive methodologies. Again, experienced civil society groups could assist in the development of such methodologies.

*Support civil society groups in conducting PACP:* LASSP could also support civil society groups to conduct independent PACP sessions.

*Review the timing of opening meetings and PACP activities:* Multiple public meetings should be held at a time and place that ensures they reach the highest number of people possible. In areas where there are high numbers of migrant workers, wherever possible the meetings should be held around times when migrants usually return to their home villages. This includes the time leading up to and shortly after Khmer New Year and Pchum Ben.

*Consider using television and radio broadcasts for public awareness activities:* LASSP could explore the possibility of using television and radio spots to announce public meetings and the dates that adjudication will commence. It would also be useful to have short programs that explain the process as this would improve access to those with limited literacy.

*Publish community-friendly informational materials:* It would be beneficial if LRTs could also distribute basic printed materials regarding various aspects of the SLR process. These materials would have to be simple in tone and content, include pictures for the semi-literate, and be presented in a culturally-sensitive form. These materials could be made available at public meetings and also for people to pick up at local offices.

*Conduct awareness raising for local civil society organizations:* If time and resources allow, LRTs may consider conducting awareness training for local civil society groups who work in adjudication areas. Increased knowledge of the SLR process amongst civil society groups will better enable them to support beneficiaries and provide a monitoring role.

### ***Sporadic Registration***

*Investigate costs of sporadic titles and take steps to reduce informal fees:* Investigations should be conducted into why sporadic titles are still subject to such high informal fees, and what can be done to remedy this.

### ***Information Disclosure***

*Establish a LASSP website for disseminating data related to land registration:* For a number of years there was very little in the way of publicly available data on SLR. This situation has since improved, and a further positive step towards increased information disclosure could be achieved by setting up a specific LASSP website for disseminating information related to SLR. This could include:

- Data and reports on the functioning of the SLR process.
- Lists of all areas that have been adjudicated to date. This could include a breakdown of titles issued in each district, commune and village.
- Projected dates for the adjudication of remaining areas.
- Maps showing the areas that have so far been registered, and the areas that are state public land, unclear, or have been excluded.

# THE FOUR STUDY AREAS: BACKGROUND AND SUMMARIES

## Study Area 1: Tumnup Village, Sangkat Phnom Penh Thmei, Khan Sen Sok, Phnom Penh<sup>180</sup>

Between 18 and 20 January 2012, researchers conducted household surveys, focus group discussions and key informant interviews in Phnom Penh. The study area was Tumnup Village, Sangkat Phnom Penh Thmei, Khan Sen Sok. Systematic land registration commenced in this area in 2006 and ended in February 2009, however, most land parcels were excluded from the SLR process.

Tumnup is a very large village, so researchers focussed the field research in three communities that were originally organized by the local organization Urban Poor Women's Development (UPWD): Phnom Penh Thmei, Tumnup 2, and Tumnup 3. These communities comprise 127 families. Data on the whole village was gathered through interviews with local officials.

Description	Tumnup Village
Population	861 families / 4,222 people
Number of land parcels adjudicated	195
Number of plots <i>registered</i>	41
Number of plots left <i>unregistered</i>	154 (79%)*
Number of post-SLR land transfers/ Number subsequently registered	No data available

\*Many more parcels were never adjudicated. No clear figure is available for the total number of land parcels in Tumnup Village, therefore the authors are unable to accurately determine the full scale of exclusions in the area. However, it is estimated that more than 80% of the village remains untitled.

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<sup>180</sup> The information in the following section was gathered between 18-20 January 2012 through household surveys; key informant interviews with Tumnup 2 Community Committee members, the Tumnup 2 Community Focal Point, the Phnom Penh Thmei Commune Councillor, a Phnom Penh Thmei Community Committee Member; focus group discussions with a women's group in Tumnup 2, and a mixed group in Phnom Penh Thmei (including the Group Chief, Community Committee Members, and residents).

## ***Background of Tumnup Village***

Tumnup Village is located in Sangkat Phnom Penh Thmei in the northwest of Phnom Penh, and comprises of three adjoining communities: Phnom Penh Thmei, Tumnup 2 and Tumnup 3. Official population data indicates that 861 families live in Tumnup Village, which constitutes approximately 4,222 people. Of this figure, 266 families are renters.<sup>181</sup> Within the three communities where field research was conducted the population breakdown is as follows:

- Phnom Penh Thmei: 34 families, approximately 233 people;
- Tumnup 2: 49 families, approximately 149 people;
- Tumnup 3: 44 families, approximately 232 people.<sup>182</sup>

Of the total land parcels in these three communities, none were registered. Researchers were unable to obtain the total figure of land parcels in Tumnup Village, but across the whole village only 195 parcels were adjudicated out of which only 41 were registered, all other land parcels were not subject to the SLR process.

During interviews with household survey respondents, focus group discussants and local officials, the research team sought to gather information on the background of the settlement of Tumnup Village. Following the fall of the Khmer Rouge many families came to the area searching for land to settle on and rebuild their lives, and beginning in the mid-1980s former soldiers began occupying the land in Tumnup Village surrounding Boeung Prayap lake. Between 1989 and 1991, the Ministry of Defence began to settle more families of soldiers in the area – although no formal documentation was issued to land recipients. Later these families started to sub-divide their land and began selling it off to new families arriving from other provinces. These people came to fish and harvest morning glory vegetables on the lake, as well as looking for work in the capital. During this time, land transfer documents and contracts were attested by Group Chiefs and the Village Chief.

Poverty levels in all three communities are moderate, but to-date the residents of the village have not been assessed through the ID Poor Programme. In early 1998, UPWD started to organize the three communities. At that time the area lacked infrastructure and basic services such as access to mains water, adequate sanitation, and the electricity grid. The village also faced persistent flooding in the wet season. With the help of UPWD, access to services improved, and due

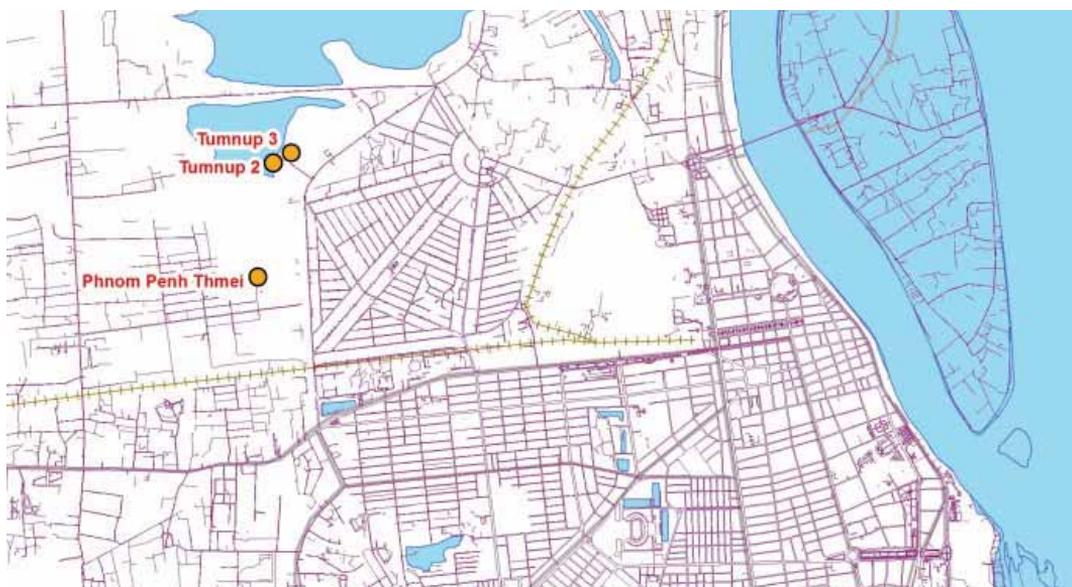
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<sup>181</sup> Interview with Tumnup Village Chief, based on the 2011 Commune Data (15 June 2012).

<sup>182</sup> Interview with Tumnup 2 Community Committee members and UPWD Village Profile data (20 January and 2 June 2012).

to the location being in the vicinity of the capital, community members generally have better access to services such as hospitals and schools than those living in the other three study areas. In 2003, all three communities were connected to the public water supply. This was in large part due to the efforts and financial contribution of the community, who provided 50% of the connection fee. The village was connected to the electricity grid in 2010. With the help of local organizations, the community also partially funded and contributed their own labour to the widening of access roads and construction of a low-cost drainage system.

### **Map 6: Location of the Phnom Penh study areas**



### ***Local Livelihoods***

In Phnom Penh Thmei community most of the women work in garment factories or as vegetable and fish vendors in the local market, Psar Moan Ang. The remaining female residents mainly run grocery shops or beauty salons from their homes. For the most part, the men work as moto-taxi drivers, security guards or construction workers. The average monthly household income is approximately 100,000-200,000 riel (USD 25-50) a month.

Work opportunities in Tumnup 2 are more favourable, with most of the young women doing administrative work in the nearby engineering and electronics companies, working in garment factories, or running tailoring and sewing services from home. The men work as moto-taxi drivers, constructions workers

and civil servants, and the average monthly household income is approximately 400,000 riel (USD 100) a month.

In Tumnup 3, the women work in garment factories or as fish and vegetable vendors in the local market. Most of the men work as civil servants, teachers, police, or serve in the military.

There are community savings group in all three communities, which were initiated by UPWD. The loans are given out once every two months for activities such as starting small businesses, repairing motorbikes or tuk tuks, and purchasing materials for house repairs. Additional loans are taken from microcredit institutions such as ACLEDA and Hattha Kaksekar to fund healthcare or for buying motorbikes and tuk tuks.

### ***Housing, Land and Property Ownership***

Most of the families living in Tumnup Village own residential land, and very few have any agricultural plots. The average parcel size is 3 x 5 metres, with the largest measuring 11 x 17 metres. As mentioned earlier, the majority of the people occupied the land after the Pol Pot regime, with many former soldiers being granted their land plots informally by the Ministry of Defence. The original families later sub-divided and sold the land to new comers from neighbouring provinces. Most of the families who bought land in the area have some type of transfer document or certificate, but most have only been notarized at the village level, with a few signed by the sangkat. The khan has only very rarely notarized land transfers in the village.

From 1997, the Sangkat began to distribute letters confirming residents' possessory rights, which the holders refer to as "plong ton" or soft title. These letters are highly valued by residents, and one interviewee reported how she fled the city when the factional fighting erupted in 1997, and in the process lost all of her documents. She returned to her home after the fighting subsided, and in 2005 made a request to the sangkat to issue her new documents, and a possession certificate was issued at the cost of USD 100. The document was issued and included a map showing the boundaries of her land. Since 2011, a new transfer form has been issued by the Municipality. This "Transfer of Residential and Land use Ownership Form" is notarised by the commune and is again being referred to by residents as "soft title". Residents complained that in order to receive this certificate they had to pay a service fee to the Village Chief and Sangkat Chief, in addition to the application fee.

Although most residents still lack ownership titles, they are permitted to transfer land, provided they have documentation to prove their possession rights, and

according to one Commune Councillor, provided they live at least 80 metres from the road. In this case the khan can approve the transfer. However, according to interviews conducted with a community representative from Tumnup 2, land transfer contracts are still being prepared by the seller and notarized by the Group Chief, and sometimes the Village Chief, but not at any higher level.

### ***The SLR Process in Tumnup Village***

The SLR process is currently underway in 6 of the 8 khans of Phnom Penh, this includes Chamkarmon, Sen Sok, Toul Kork, Dangkao, Meanchey and Daun Penh. In Khan Sen Sok, the process is underway in all three sangkats: Khmoung, Phnom Penh Thmei and Teuk Thla. There are 10 villages in Khan Phnom Penh Thmei totalling over 9,000 families. Out of the 10 villages in Sangkat Phnom Penh Thmei, 9 villages have completed the SLR process.

The focus group discussants explained that in 2006 a public meeting was announced, although the majority of the people interviewed during the household survey could not recall ever attending a public meeting on SLR. Those who did attend explained that during the meeting they were shown the district map and told that the area had been declared an adjudication area for SLR and that the process would soon commence. Residents were told to start collecting and preparing documents, and to start marking the boundaries of their plots and settle any boundary disputes or overlaps with their neighbours. Following the meeting they received no more information on SLR for the rest of the year.

The majority of the community members could not recall any public awareness and community participation events held by the LRT, although some public awareness meetings and workshops on SLR and the Land Law were carried out by the NGOs World Vision and UPWD for Community Committee members. The Committee members subsequently brought the materials to their communities and explained the SLR process to the other residents.

The communities started to collect the relevant documents and discuss and clarify their plot boundaries with neighbouring landowners. Some even began to erect fences or boundary markers while they awaited the arrival of the LRT, however, most people within the village never had their land claims adjudicated. What happened next is unclear, but certainly only a fraction of the adjudication area was ever surveyed. LRTs did survey a number of plots, but according to a Commune Councillor and a Community Representative from Tumnup 2, only 195 land parcels were adjudicated, and of these plots, only 41 were registered.

## ***Exclusion and Incidence of Unregistered Plots in Tumnup Village***

As mentioned above, the LRT team surveyed some, but not all, of the parcels within Tumnup Village. However, the full reasons for such widespread exclusion are not totally clear, nor is the process that led to the decision being made to excise these households from the registration process. Of the 195 parcels that were adjudicated, 154 were not issued with titles and the authors of this report were unable to find out if a clear reason was given for the denial of title. According to interviews with local officials, the parcels were recorded as having 'no data'. The majority of land plots were not adjudicated though, and below is an overview of the information gathered during interviews and household surveys with people and officials from the area.

Many of those who were surveyed handed over documents but then received no more communications regarding their application status. Following on from this, residents began to make enquiries about the status of the registration process. Focus group discussants explained that later in 2008, a number of community members, mainly people holding posts in the Village Development Committee, were called to a meeting with the LRT. They were told then that the area had been excluded from the SLR process as the area was affected by a number of development projects, including a dike, railway rehabilitation and road enlargement, and also because there were a high number of land disputes. Discussants stated that this information was not publicly announced, and most people learnt about the exclusion by word of mouth.

The excluded communities discussed the issue with NGO partners and drafted a letter in 2009 to the Municipal Department of Land Management (MDLM) requesting that they be included in the SLR process. During an interview with the research team, an official at the Sangkat Council stated that he knew of no reason why the residents should be excluded from the adjudication process, as people were living on "village land", not the lake, or any other state public property, and had documentation showing their possession rights.

As the affected people were given little in the way of detailed information regarding the reason for their exclusion, it is difficult to fully assess why the adjudication process delivered such poor results in this area. In 2009, a World Bank review mission visited the area to gather information related to the exclusion, however, they were also unable to obtain clear information on why the area was excluded.<sup>183</sup> As mentioned above, some residents were informed that the registration process was stopped due to the number of development

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<sup>183</sup> World Bank, *Cambodia Land Management and Administration Project: Enhanced Review Mission Report*, 13 July 2009 (p.7).

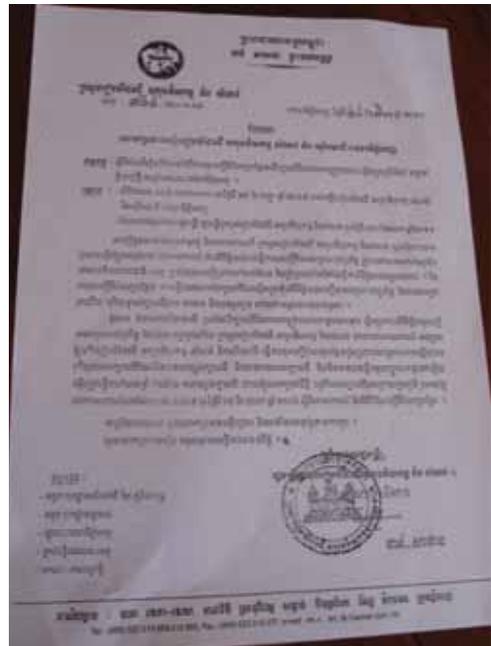
projects already approved in the area, as well as the presence of a number of large scale land disputes. The research team attempted to gather information on these projects, but this proved difficult. What information was obtained is summarized below.

- a) *Dike development project*: According to participants of a focus group discussion held in Phnom Penh Thmei, including community members, a Community Committee Member and the Group Chief, 230 families in Tumnap Village are affected by the development of a dike project on Street 598. This dike is connected to the drainage canal development project discussed below.
- b) *Drainage canal and sewage/waste water development project*: The focus group also informed researchers that 39 families mainly in Phnom Penh Thmei community are affected by a drainage canal and wastewater management project of the Municipality of Phnom Penh. While this research was in progress, the Tumnap Community Committee contacted the Khan Sen Sok land office, and they were shown a map and plan for the development project which was approved by the Governor of Phnom Penh in 2005.
- c) *Private real estate development project*: In early 2012, the real estate development company Piphup Thmei Group was granted permission by the MPP to construct a condominium housing project, including a road and a sewage/waste water system, over 9.6 hectares in Tumnap Village and Prayap Village. The project will involve filling 7 hectares of a reservoir in Prayap Village bordering Tumnap Village and will also acquire 2.6 hectares of the land around the reservoir in Tumnap Village. This area is currently occupied by around 20 families in Tumnap 2 community and 10 families in Tumnap 3 community.
- d) *GMS Railway Rehabilitation Project*: Parts of Tumnap Village fall within the Phnom Penh Line section of the ADB funded GMS Rehabilitation of the Railway in Cambodia Project, and at present 29 families are thought to be affected.
- e) *Land disputes*: There are a number of large land disputes in Tumnap Village, three disputes concerning communities on the west side of Street 1986, and two disputes on the east. The disputes are long-running and have still not been resolved.  
The three disputes on the west side of the Street 1986 involve more than 100 families in conflict with three powerful individuals with high-level connections. These three individuals have all filed complaints with the Phnom Penh Capital Court of First Instance claiming that the 100 plus families are living illegally on their land.

On the east side of Street 1986, there are two large-scale disputes involving around 100 families in conflict with two powerful and well-connected individuals. Researchers were unable to find reliable figures for the number of families involved in these disputes. In one case the wife of an official claims the land as her own, although during an interview a Community Committee member said that he believed the land was in fact recorded as state private property. He stated that the land should be under the management of the department that the woman's husband works for. In the remaining case, a famous performer claims the land as his private property and accuses the families currently living there as doing so illegally.

All of these disputes have been on-going since at least 2000, and some cases are still being heard by the courts. Little additional information is available about the process of resolving these disputes, and as with all disputed lands, no title can be issued until they are resolved.

After the World Bank review mission visited Tumnup Village, the Community Committee called its members to a meeting where it was decided to draft a letter to Municipal Department of Land Management requesting that their land be subject to additional SLR. The letter was prepared with help from NGO partners, thumb-printed by 145 families on behalf of the Tumnup Village residents, and signed in acknowledgement by the Village Chief and Sangkat Chief.



Picture 4: Letter of 24 August 2011 from the MLMUPC signed by H.E. Chhan Saphan, Secretary of the State to the MDLM.

In September 2009<sup>184</sup> the community received a copy of a letter from the MDLM to the Director of the Department of Cadastre requesting advice on the possibility of additional registration being conducted for the excluded land parcels in

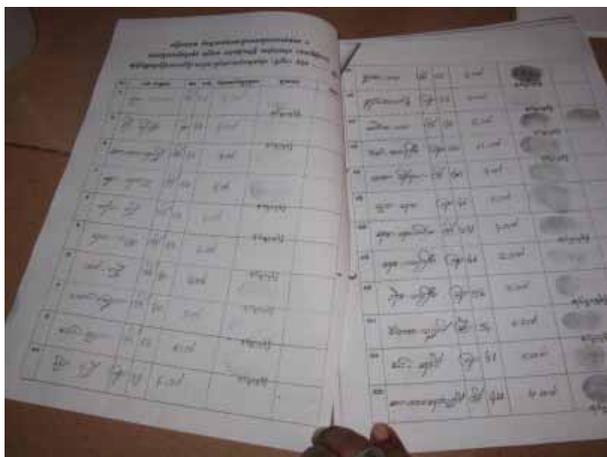
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<sup>184</sup> Phnom Penh Department of Land Management, Urban Planning and Construction, Letter to the Director of the Department of Cadastre, Subject: Request for advice on the possibility of additional registration of the excluded parcels in Tumnup Village, Sangkat Phnom Penh Thmei, Khan Sen Sok, 22 September 2009.

Tumnup village. Following on from this, a series of letters were issued regarding the possibility of additional registration.

On 24 August 2011 the community was copied in a letter from the MLMUPC signed by H.E. Chhan Saphan, Secretary of the State to the MDLM, referring to the September 2009 letter. In the letter the Secretary of State indicated that the additional SLR process could only be applied in cases where the land parcels are within the adjudication area but where the landowner missed out on the process for legitimate reasons as set out in *Circular N°06* issued by the MLMUPC in May 2006. This circular sets out the procedure for additional land registration.<sup>185</sup> The MLMUPC agreed in principle to allow additional SLR to be conducted in Tumnup Village, and requested full information on the excluded families.

Following on from this, residents heard little in the way of updates, and on 11 October 2011 the community wrote another letter to the Municipal Department of Land Management. Their letter referred to the 24 August 2011 letter from the MLMUPC requesting additional SLR for the excluded families in Tumnup Village, and requested an update on the situation. The letter was thumb-printed by 145 villagers and acknowledged by the Group Chief, Village Chief, and Sangkat Chief.



*Picture 5: Community letter signed by 145 residents and sent to the Department of Land Management on 11 October 2011.*

On 6 December 2011, the community received a response and was copied in a letter from the MDLM to the Director of LASSP, which referred to the previous two letters. The Municipal Department of Land Management stated that Sangkat Phnom Penh Thmei had already undergone the SLR process and the final land certificates were distributed on 20 February 2009. With regards to Tumnup

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<sup>185</sup> MLMUPC, Circular N°6 on Principles and Procedures of Cadastral Registration of Forgotten Parcels, 5 May 2006.

Village, the Department confirmed that some land parcels had been excluded, including the 145 parcels in Tumnup Village, as the identification of the land parcels had been problematic. The letter states that in order to carry out additional SLR the excluded land parcels will first need to be demarcated and surveyed and each given a unique land parcel number (following on from the last land parcel number in the village), after which they can start the additional SLR process.

The community is now waiting for the identification and numbering of the land parcels and the additional SLR to start. However, during a meeting with community members, the Deputy Chief of Sen Sok District Cadastral Office stated that those families living within the 2.6 hectare real estate development area will not be included in the additional SLR process. Officials told local residents that if people live on land within this area, they could not have their land registered. The officials apparently stated that if households are eventually affected by the reservoir development they will be dealt with according to the Expropriation Law.

## Study Area 2: O’Andoung Khet Village & Kork Thnaou Village, Banteay Neang Commune, Monkol Borei District, Banteay Meanchey<sup>186</sup>

The second study area was located in Banteay Neang Commune, Monkol Borei District, in the north-western province of Banteay Meanchey. Researchers visited two villages in this area, O’Andoung Khet and Kork Thnaou.

Description	O’Andoung Khet Village	Kork Thnaou Village	Total
Population	456 families / 1,910 people	284 families / 913 people	740 families / 2,823 people
Number of land parcels adjudicated	1,252	461	1,713
Number of plots registered	1,250	452	1,700
Number of plots left unregistered	4 (0.3%)	9 (2%)	13 (0.8%)
Number of post-SLR land transfers/ Number subsequently registered	3 / 0	2 / 0	5 / 0

### **Background of O’Andoung Khet and Kork Thnaou Villages**

Of the 456 families in O’Andoung Khet Village, the heads of household of about 80 families were born in this village and have lived there since before the Khmer Rouge regime came to power. The remainder are ‘new-comers’ who migrated from other provinces including Takeo, Prey Veng, Siem Reap and Phnom Penh. Most of the new-comers occupied free or unused agricultural land after the fall of the Khmer Rouge. The population of the village increased after the border with Thailand opened and work opportunities in the area increased.

Kork Thnaou Village has a population of 284 families, or approximately 913 people. The majority of residents in Kork Thnaou Village were born and lived in

<sup>186</sup> The information in the following section was gathered between the dates of 24 and 27 January 2012 through household surveys; key informant interviews with the Chief of the Land Registration Education Team at Banteay Meanchey PDLM, the Banteay Neang Commune Council Chief, Village Chiefs from O’Andoung Khet Village and Kork Thnaou Village; focus group discussion with a women’s group in Kork Thnaou Village.

the village prior to the Khmer Rouge regime, and although many left during this time they later returned to occupy the same land after the fall of the Khmer Rouge. Some have since passed their land on to the next generation of their families.

In both O'Andoung Khet and Kork Thnaou villages, the majority of the families who settled in the area during the 1980s received agricultural land through the 1989 subdivision of krom samaki land. Some families who arrived later purchased land, but no formal transfer documents or contracts were used.

Poverty levels in both villages are high, and services are extremely limited. The residents of both villages have been assessed through the ID Poor Programme and in O'Andoung Khet Village 101 families who were mostly landless, labourers, elderly, and women headed-households, were identified as ID Poor. Through the ID Poor Programme they receive support such as free access to medical care. In Kork Thnaou Village 35 families have been identified as ID Poor.

Researchers observed significant poverty levels in the area, and the most serious concern observed by researchers was the level of debt across both villages. In O'Andoung Khet village approximately 30% of families are in debt to informal money lenders and to micro-credit institutes such as AMK, Hattha Kaksekar, Intean Poalroath Rooung Roeng, PRASAC, Vision Fund and ACLEDA. In most cases the purpose for seeking credit was for healthcare, starting small businesses, or buying equipment such as motorbikes, fishing nets or materials for house repair. In Kork Thnaou village about 30 families were observed to be in debt because they needed cash to pay middle-men to help them get to Thailand to work as migrant labourers. In addition to debts to micro-credit institutes, many owed money to informal money lenders. There are no community savings groups in the two villages, and no rice banks set up in order to provide rice during the dry season.

Neither of the villages is connected to the state electricity grid or water supply and residents use batteries or generators for electricity and a pump well for drinking water. In the dry season there are water shortages, which interfere with their rice farming activities. There is no health centre or school in either village and residents have to travel to adjoining villages or the nearest town for these services.

### ***Local Livelihoods***

In O'Andoung Khet Village most families' livelihoods are based on rice farming and they grow one harvest in the dry season and one in the rainy season. They

also work on chamkar land, catch fish and raise animals. The average monthly household income is approximately 200,000-300,000 riel (USD 50-75) a month. Currently over 200 residents from the village have travelled to Thailand as migrant workers, where they work as farmers, construction workers, and on plantations. Migrant labourers can earn approximately 120-200 Thai baht (USD 6-10) per day, which is around USD 180-250 per month, although a considerable amount is spent on paying middle-men to secure work and facilitate their transit into Thailand. For the most part, migrants only return home during festival periods. Additionally, many young people work in the casinos of Poipet, the capital city of Banteay Meanchey Province.

Work opportunities are more limited in Kork Thnaou Village. While many residents work as rice-farmers, more than 90 people have opted to travel to Thailand as migrant workers, where men work in construction and women as domestics. According to the women that joined focus group discussions, migrants work in various parts of Thailand but for the most part stay in Bangkok, only returning to visit the village once a year during the Khmer New Year. Residents from this area reported that migrants can earn an average of 200 baht (USD 6.50) per day. People continue to migrate to Thailand as there is work available for the unskilled, although most do so illegally, paying middle-men as much as 2,500 baht (USD 78) to help them enter Thailand. Most migrant workers are young people and men, and they send earnings back to their family through a Thai bank that has a branch in the village.

### ***Housing, Land and Property Ownership***

In O'Andoung Khet Village the majority of the residents own residential land and agricultural land for rice farming. An average residential plot is 5 x 30 metres, with the largest measuring 20 x 50 metres. On average agricultural lands plots measure 2-3 ha each. The average size of residents' plots in Kork Thnaou village was 12 x 20 metres, with the largest measuring 22 x 50 metres. However, residents own significantly less agricultural land, and an average agricultural plot measured less than half a hectare. Some residents, especially those who work as migrant labourers in Thailand, have no rice fields. The Village Chief reported that the local agricultural land value was very low, at less than USD 1 per square metre, and residential parcels close to the main road were worth USD 33 per square metre.

### ***The SLR Process in O'Andoung Khet and Kork Thnaou Villages***

The SLR process in Banteay Meanchey Province started in Mongol Borei District in 2008. Mongol Borei District has three communes:

- Banteay Neang Commune, comprised of 19 villages;
- Russie Kraok Commune, comprised of 17 villages; and
- Bat Trung Commune, comprised of 11 villages.

The SLR process started in Banteay Neang Commune on 13 January 2009 and was completed on 29 October 2010. In Banteay Neang Commune the process covered all 19 villages, and of the 11,297 land parcels, a total of 11,222 land parcels were registered in the commune. In total 75 parcels were not registered. Registration has also been completed in Russie Kraok Commune, and is close to completion in Bat Trung. Within the study area of O'Andoung Khet and Kork Thnaou Villages, of a total 1,713 land parcels, 1,700 were registered.

As discussed in the main body of the report, researchers found during household survey interviews, focus group discussions and interviews with local officials that the process of SLR proceeded relatively smoothly in this study area. The main problem encountered was that many residents were absent for all or part of the process as they work as labourers in Thailand. The process as recounted during interviews and discussions with local people appears to have followed the legal process closely, from the initial announcement of the adjudication area and selection of the Administrative Committee (AC), through to final issuance of title.

### ***Exclusion and Incidence of Unregistered Plots in O'Andoung Khet and Kork Thnaou Villages***

According to the PDLM, no areas were excised from the adjudication area of Monkol Borei District prior to survey and demarcation, and all areas within district boundaries were included in SLR except for state public lands such as mountains, lakes and ponds. This was confirmed by the Chief of Banteay Neang Commune Council, who was also a member of the AC. Although there were no exclusions from the demarcation and survey process, some plots were not registered as there was insufficient data, the land was subject to dispute, or was of "unclear status".

In O'Andoung Khet Village four parcels were not registered. In three cases landholders were migrant workers and were not present during all or part of the SLR process so there was a lack of sufficient data to adjudicate the plots. The other case involved a dispute over inheritance that could not be resolved during the SLR process.

Nine parcels were left unregistered in Kork Thnaou Village. This included four cases where migrant workers were not present during the process, and one case where a villager had fled the area due to an unpayable debt. There were two cases where the land holder was present during the SLR process, but the

neighbouring landholder was absent and could not confirm the boundary demarcation. One plot was not registered as it was of “unclear status” due to a dispute with the Ministry of Culture and Fine Arts (MCFA), and the final case because the land blocked an access road.

In the four cases involving migrant workers, although they left the ownership documents with their relatives they were not present to thumbprint title applications during the SLR process, and therefore their land registration applications were not processed. Several other residents found themselves in the same position, but returned during the 30 day public display period and were able to complete the registration process. However, the four landholders in question returned too late and so the only choice left to them now is to apply for registration through the sporadic titling system, which they cannot afford so the land remains unregistered. In the one case involving land of “unclear status”, the land is claimed both by a resident of Kork Thnaou village and the MCFA. The MCFA claims it owns the land as there are some ancient stones in the area that have cultural and archaeological significance. This dispute is on-going and therefore the plot was not registered, although the family continue to use the land to grow some vegetables and crops. The final unregistered plot is discussed in the case study below.

### **Case Study: A Blocked Public Footpath**

#### ***Kork Thnaou Village, Banteay Neang Commune, Monkol Borei District, Banteay Meanchey***

Ms. Sothea<sup>187</sup> and her family moved from Battambang to live with her grandmother in Kork Thnaou Village in 1979 on a plot of land next to a small pond. Later, her grandmother bought the land in front of the pond from her neighbour. She filled the pond with earth and used this area to grow vegetables, constructing a house adjacent to the former pond. Families living nearby used a small footpath across this plot of land, but Ms. Sothea later erected a fence around her land and prevented public access.

Ms. Sothea applied for a land title through the systematic land registration process and during the demarcation and survey period the LRT and the AC requested she contribute 3-4 square metres of her land for a footpath for public use by the families living behind her house. However, she did not agree to give up this land.

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<sup>187</sup> The subject’s name has been changed to protect her privacy. Interview conducted 26 January 2012.

Ms. Sothea feels that the Village Chief gave inaccurate information to the land registration team, as she has lived on her land for years without any complaints from other villagers or neighbours. She would be willing to contribute land to make way for the footpath if her plot was larger, but believes that she will lose too much of her already narrow plot of land if she gives it up.

She raised her complaint to the LRT and they met with her and the Village Chief a number of times to discuss the problem. Later she was called with her husband to try to resolve the dispute at the Commune Office. This process was unsuccessful and so the plot was excluded from the adjudication process, an outcome that she said she does not understand. She did receive titles for her rice fields and chamkar, but her residential plot remains unregistered and she remains extremely concerned that her neighbour's homes are all now titled and hers is not.

In addition to gathering data on plots that were left unregistered within the two villages, researchers also asked the Commune Council for information on similar cases across the Commune. According to information provided by the Commune Council, a total of 75 land parcels remain untitled after SLR in Banteay Neang Commune. 36 plots were not registered because of land disputes, because the land has “unclear status”, or because the plots overlap state public property, and 39 due to insufficient data (mainly because migrant workers were not present during the adjudication process).

Of the untitled parcels involved in land disputes, the majority were stuck because of boundary conflicts. According to a Commune Council member, at least 10 families are involved in a land dispute over land that is also claimed by the former Provincial Governor. Other disputes are linked to inheritance or internal family disputes, three of which are currently at the courts.

In addition to the above case of Ms. Sothea, at least five parcels in Banteay Neang Commune were unregistered because of “unclear status”. In one case this includes a plot which is claimed by a private individual, but as it contains part of a local graveyard it is also claimed as state public land. Two families claim land that is elevated and therefore designated as a “safety area” by the Commune authorities in case of serious flooding – the Commune claim this as state private land. In one case a plot was found to be of unclear status as it was believed to be property of the Provincial Department of Culture and Fine Arts, and although the Department did not claim the land during the SLR process, it remains untitled. Another plot is in dispute because a stream, which is state public land, runs through it.

There are also a number of households that did not receive land titles because they lie in the path of development projects. An undetermined number of families live along the railway tracks which, along with a 30 metre right of way (ROW) area on either side, are state public property.<sup>188</sup> As the law is clear that these areas are state public property, LRTs must mark them as such and no title can be issued over these lands. In some areas people were requested to move the boundaries of their plots back by 25 metres, after which the new land boundaries were then registered. In cases where this was not possible land owners were given title only for those parts of their land that did not fall within the ROW. It appears that no one has been evicted due to this demarcation of state land around the railway tracks and landholders were told that they can continue to use the land for the time being, but land titles were not issued for any land within the right of way.

### **Case Study: Land Located within the Railway ROW**

#### ***Kork Thnaou Village, Banteay Neang Commune, Monkol Borei District, Banteay Meanchey***

Mr. Sokhim<sup>189</sup> is married with seven children and has lived with his family in Kork Thnaou Village since 1978. The family's main source of income is from rice farming and some of his children have migrated to work in Thailand, from where they send money home. His family has three plots of rice field, one plot of chamkar land, and a residential plot measuring 26 square metres. He holds an old certificate of possession for this residential plot, which was certificated by the Commune authorities.

In 2009, a survey team from the Ministry of Public Works and Transport (MPWT) came to conduct a detailed measurement survey (DMS) in his area and he was informed that he was living within the railway track corridor of impact (COI) and as such would be affected by the planned GMS Railway Rehabilitation Project. The survey team informed him that the COI would impact 10 metres of his land. Later he was informed that the area of impact was reduced to 5 metres after a second DMS. The survey team put down markers on his land to show the affected area.

The area was later adjudicated during the SLR process. Mr. Sokhim joined in the public awareness meeting conducted by the LRT and local authorities and

<sup>188</sup> According to an MLMUPC prakas, a right of way extends on both sides of all railways. The right of way is 20 metres in cities, 30 metres in non-urban areas, and 100 metres in mountainous and forested areas. MLMUPC, *Decision N°52 to Attach the Text On Criteria for State Land Classification as an Annex of Prakas N°42 Dated 10 March 2006 On State Land Identification, Mapping and Classification*, 25 December 2006, Article II.

<sup>189</sup> The subject's name has been changed to protect his privacy. Interview conducted 26 January 2012.

later he joined in the survey and demarcation process, indicating his land boundaries to the LRT, agreeing on boundaries with his neighbours, and helping officers to measure and mark out his land plot. He provided all the necessary documentation to the LRT.

During the survey, the LRT team told Mr. Sokhim that most of his land was located in the railway right of way and could not be titled. The LRT marked the railway ROW and explained that the majority (25 square metres) of Mr. Sokhim's land overlapped with this area. The team demarcated the small part of his land that fell outside the ROW, and the final adjudication record showed that Mr. Sokhim owned only 1m<sup>2</sup>. He received a land title for this extremely small piece of land, but was told that because he has lived on the land for a long period of time and constructed a permanent residence, he and his family could continue to live within the ROW for the time being.

Mr. Sokhim received land titles for his rice fields, chamkar and for 1m<sup>2</sup> of his residential land. He was happy with his other land titles, and had no complaints about the process. He has filed no complaints regarding the ROW adjudication, and was unaware of whether or not he has any right to apply for further compensation for lost assets due to the railway construction. He expressed that he was not concerned about his residential land, and did not expect there to be any problem in the future related to the railway upgrade.

### ***Disputes Emerging During SLR***

Small land disputes often emerged during the SLR process but most were resolved at the local level. At first, the LRTs would encourage the parties to resolve their dispute by themselves, but if this was not possible, the case was referred to the AC who would attempt to conciliate the dispute. Conciliation sessions were held at the local pagoda, and if unsuccessful were referred to the commune and then district level. Around 70% of the disputes were solved within the deadline of the 30 days of the public display, with most cases taking 1-2 days, and more difficult disputes taking 5-7 days to resolve.

The Village Chief of Kork Thnaou explained that parties were free to attend conciliation meetings with legal support, if they had any. Those people without legal support but with limited means were provided contact details of local NGOs that could provide support. After reaching agreement both parties signed a document to this effect and the registration of the contested plot was completed, and any disputes that were not resolved by the AC were referred to the Cadastral Commission. The unresolvable disputes that concerned inheritance were referred to the courts.

## **Study Area 3: Village 3, Sangkat 3, Khan Mittapheap, Preah Sihanouk Province<sup>190</sup>**

The third target province was located in Preah Sihanouk, where the research team visited Village 3, Sangkat 3, located in Khan Mittapheap. Systematic land registration was conducted in Sangkat 3 between January 2007 and 2009.

<b>Description</b>	<b>Village 3<sup>191</sup></b>
Population	1,329 families / 6,283 people
Number of land parcels adjudicated	1,759
Number of plots <i>registered</i>	1,636
Number of plots left <i>unregistered</i>	123 (7%)*
Number of post-SLR land transfers / Number subsequently registered	No data available

\*Many more parcels were never adjudicated. According to data gathered during field research, a further 668 land parcels were excluded from the adjudication process, which means that 33% of the total land parcels in Village 3 were left unregistered after the conclusion of SLR.

### ***Background of Village 3***

Sangkat 3 is located on the coast and is in the vicinity of the development of the port zone, railway station, and ferry transportation terminal. There are three villages in the Sangkat, Villages 1, 2 and 3, and they have a combined population of 14,546 people. The majority of residents are Khmer, but there are also small numbers of ethnic Vietnamese, Cham and Kampuchea Krom.

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<sup>190</sup> The information in the following section was gathered between the dates of 2 and 4 February 2012 through household surveys; key informant interviews with the Director of the Kampong Som PDLM, Commune Council Chief of Sangkat 3, Village Chief of Village 3, Group Chief of Group 24 (Village 3), local organization Cambodia National Research Organization (CNRO); focus group discussions with people affected by the railway development and people affected by the SEZ development.

<sup>191</sup> SLR Data provided by Municipal Department of Land Management, Urban Planning and Construction in Preah Sihanouk.

Village 3 is very large, with 1,329 families, or 6,283 people. 1,265 families reside in the village permanently and 64 families, or 190 people, have travelled to Phnom Penh and Thailand as migrant workers. Village 3 has a Village Chief, and due to the size of the village it is also divided into 31 groups (krom) for administrative purposes, and each group has a Group Chief and Deputy Group Chief.

People have lived in this area since the early 1980s following the collapse of the Khmer Rouge regime and people came to occupy the land because there were good opportunities to find work, although the population has increased rapidly since around the year 2000. The latecomers arrived from neighbouring provinces such as Kampot, Kep, Takeo, and Koh Kong, after purchasing land from existing residents.

### ***Local Livelihoods***

A large number of the villagers previously worked for the Ministry of Public Works and Transport and so moved to live near their place of work at the port and close to the railway station. Many of the men also worked for the military, police or as security guards for the railway station. There are also now job opportunities in fishing, labour at the port zone, small business, street vending, and working as moto-taxi drivers.

The average family income is approximately 30,000-40,000 riels a day (USD 10). Although this is higher than some of the other study areas visited for this research, there are still a number of residents deemed poor enough to be registered as ID Poor. More than half of Village 3 families have borrowed money from microcredit institutes for activities such as running small businesses and conducting housing renovations. The community was previously organized through the Urban Poor Development Fund (UPDF), which organized credit and savings activities. However, this group was discontinued in 2008.

### ***Housing, Land and Property Ownership***

As mentioned above, the original residents came to occupy the land in the early 1980s. According to the Village 3 Chief, of the people who bought land later, over 98% have some sort of document or transfer contract signed by the village and sangkat officials, but only a handful had their land sales certified at the khan level.

People interviewed during the household survey lived in permanent housing constructed of wood and concrete, with most people owning residential land and only a few households holding agricultural plots. The average residential plot

size was 20 x 30 metres, with the smallest measuring 5 x 20 metres. Those who do hold agricultural land use it for rice farming and chamkar.

According to the Sangkat 3 Chief, the RGC is in the process of identifying and demarcating state public and private land following the Sub-decree on State Land Management. Some state private land has already been registered based on the documents of the relevant line ministries, however, registering state public land is proving to be a challenge due to lack of data. The Sangkat 3 Chief stated that within Sangkat 3 there are more than 200 families residing on forest land and a considerable number of families residing within the railway ROW, both of which are state public property.

### ***The Registration Process in Village 3***

Prior to SLR taking place, there was some land registration conducted between 1999 and 2003 in Khan Prey Nup of Preah Sihanoukville. The MLMUPC worked in cooperation with the international NGO GRET to register rice fields around a dike construction project that was supported by the NGO. After this, LMAP titling commenced, and SLR was conducted in three of Preah Sihanouk's four khans: Mittapheap, Stung Hav and Prey Nup.

Within Mittapheap there are four sangkats, Sangkats 1, 2, 3 and 4, all of which were subject to SLR. SLR took place in Sangkat 3 between 2007 and 2010. According to the land register, there are a total of 6,414 land parcels in Sangkat 3, the breakdown of which is:

- 3,074 parcels in Village 1;
- 1,581 parcels in Village 2; and
- 1,759 parcels in Village 3.

There were significant exclusion from the titling process and, for various reasons, a substantial number of land parcels remained unregistered after the SLR process was completed in 2010. For the most part, the excluded and untitled parcels were located within the vicinity of several large development projects. Outside of these areas, the SLR process appears to have run relatively smoothly. After the adjudication area was announced a public meeting was held, and several public awareness events were conducted. The survey and demarcation was followed by the mandatory public display period, and titles were eventually issued at a public ceremony at the Sangkat Hall.

### ***Exclusion and Incidence of Unregistered Plots in Village 3***

According to the official statistics provided by the Village 3 Chief, for various reasons 123 parcels were left unregistered after the SLR process was complete. These parcels were left untitled due to land disputes, because owners were not present during SLR, the land had unclear status, or because the parcels encroached on state public land. However, researchers identified that at least another 668 land parcels were not titled as they were located within a Special Economic Zone (SEZ) area, close to a road development or within the railway track ROW. This is returned to below.

Based on the interviews with communities in Village 3, more than 25 families living on plots adjoining the grounds of the royal residence did not receive land titles as it was deemed that the land boundary was unclear. According to the Sangkat Council Chief, the MDLM contacted the Royal Council and requested that a permanent fence be built along the boundary of the royal residence, but this has yet to happen. Almost all of the affected families have documentation showing that they have strong claims to possession rights, and their land transfers were officially witnessed. However, to date their claims for land title have been unsuccessful. This case is dealt with in the main body of the report in the case study of Ms. Pov. Although this was described to the research team as being a case of “unclear status”, it was observed that the residence is in fact being developed into some kind of high end resort. It has also been suggested that a senior official has a house in the same area, for which he received title, so the suggestion that the land is in fact royal property is questionable.

There were a number of cases where owners were not present during the SLR process, some because they lived in other provinces, as well as a number of Khmer-Americans and French-Khmer who spend extended periods out of the country. In some cases these plots were not registered, as the owners were not present during the SLR process. The research team met a number of people who were present during adjudication, but were not able to obtain land titles as their neighbour was absent and therefore unable to confirm and agree to joint land boundaries. This is discussed in the main body of the report in the case study of Ms. Sokha.

Both the Sangkat Council Chief and the PDLM Director stated that there were no exclusions from the Sangkat 3 adjudication area prior to the start of the SLR process. However, it became apparent during the course of this study that this was not the case. A large number of families live within an area that has been designated as a development zone for several large-scale projects. In discussions with local people and officials, there was considerable confusion about the exact nature of this zone. Some referred to it as an ELC, others as a SEZ, and others simply as the “development zone”.

The research team viewed maps provided by a resident of Village 3 which indicated that there are in fact three major development projects in the area. This includes an SEZ for the development of a port and associated infrastructure, the GMS Railway Rehabilitation Project, and a major road upgrade project. Although a large number of people continue to live in the vicinity of the development area, they were not able to access SLR. It appears that the excised land parcels were not included in the data provided by the local authorities as this showed only the total number of land parcels adjudicated, and therefore the exclusions do not show up in the data.

As stated in the body of the report, according to a census carried out in the SEZ area by a Working Group from the Sihanoukville Municipality in October 2008, the total number of families impacted by development projects in Village 3 is 668 out of which: 277 families are affected by SEZ and port development; 164 families affected by road development; and 227 families affected by GMS Railway Upgrade Project.

In 2010, 17 families representing the 277 families from Village 3 affected by the SEZ and port development filed a complaint to the Preah Sihanouk Court of First Instance. The complainants requested that they be allowed to access the SLR process and register all residential and other immovable properties. The court called the community for a meeting on 19 July 2011 and a further meeting was held with the Preah Sihanouk Municipality, the Provincial Department of Land Management and community members on 27 July 2011. The complaint was discussed and the minutes of the meeting state that all parties agreed with the request for SLR to be conducted in the area. The court requested that all relevant parties work to implement this decision, but as of the time of writing the affected households have not yet undergone additional SLR.

Following is an overview of the main development projects affecting residents in the area.

- a) *Road development:* The Port Authority has plans to rehabilitate a small road from the port area and connect it to National Road 4. This project will affect 164 families in Village 3.
- b) *The Special Economic Zone and port development:* The SEZ was first approved by *Circular N°147*, which was signed by the Prime Minister in April 2000. According to this circular, land in Sangkats 2 and 3 was granted for the development, which would affect 20,376 people. In September 2009 a second sub-decree was issued that formally established the SEZ, but over a reduced area and impacting less people.<sup>192</sup> The sub-decree states that the SEZ covers 67.49 hectares in

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<sup>192</sup> Royal Government of Cambodia, *Sub-decree N°147 on Establishment of Special Economic Zone of Preah Sihanouk Municipal Port*, 2 September 2009.

Sangkats 2 and 3, and declared that all lands within that area were state private land under the management of the Sihanoukville Autonomous Port.

The port and SEZ has been developed with support from the Japanese Government. The project aims to “establish a special promotion zone which develops new industries in Cambodia in order to diversify the export commodities and accumulate new technologies by Foreign Direct Investment”.<sup>193</sup> In 2006, the Government of Japan agreed a loan of JPY 318 million (USD 2.76 million) for the design stage of the project, and subsequently signed a JPY 3,651 million (USD36 million) loan in March 2008 for the construction stage.<sup>194</sup> This was followed by a third loan in 2009 for JPY 7,176 million (USD 75.67 million) for development of port infrastructure.<sup>195</sup> All loans were provided through the Japan International Cooperation Agency (JICA).

- c) *The GMS Railway Rehabilitation Project:* Many of the families living within the development zone live close to the railway tracks and train station, which border the SEZ area. Railway stations, tracks and associated rights of way are state public property, and so no land was registered within these areas. As occurred in the Banteay Meanchey study area, a team working for the GMS Railway Upgrade Project visited the area prior to the SLR process taking place and demarcated a 3.5 corridor of impact along each side of the rail tracks. When the area was surveyed under the SLR process, the ROW was demarcated according to the MLMUPC guidelines on identifying state public land, which meant that many people did not receive titles for lands falling within the ROW.

According to the Director of the PDLM, there is on-going discussion between the ADB and the government about issuing certificates of usufruct to those people living in the area between the COI and the ROW. This would grant a limited right to use the land for a fixed period with the possibility of extending when it expires.

The research team also sought to obtain data on the number of plots that were excluded or left untitled across the Sangkat in which Village 3 is located. In Sangkat 3 a total of 729 adjudicated parcels were not registered, the main reasons for this being land conflicts and overlaps with state public land –

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<sup>193</sup> Sihanoukville Port SEZ website, *About Us*, <http://www.pas.gov.kh/spsez/aboutus.php> (accessed June 2012).

<sup>194</sup> Japanese Embassy to Cambodia website, [http://www.kh.emb-japan.go.jp/economic/oda/odalist\\_march2011-e.pdf](http://www.kh.emb-japan.go.jp/economic/oda/odalist_march2011-e.pdf) (viewed June 2012).

<sup>195</sup> Japan International Cooperation Agency website, *Press Release: Signing of Japanese ODA Loan Agreement with Cambodia Supporting industrial development of Cambodia through port infrastructure development*, 21 August 2009. <http://www.jica.go.jp/english/news/press/2009/090821.html> (accessed June 2012).

although this does not include those parcels that were left unregistered in the development zone in Village 3. The breakdown of the 729 unregistered parcels is:

- 544 parcels in Village 1;
- 62 parcels in Village 2; and
- 123 parcels in Village 3.

Information on the nature of these cases was not available, but a few interesting cases from across the Sangkat are discussed below.

In Village 1, an area of 16 hectares of land was initially recorded as being disputed and therefore ineligible for title due to a conflict between the Thai Boon Roong Company and 125 families. The company eventually came into violent conflict with the villagers in March 2008 after company workers built a fence around contested land and the local people responded by demolishing it. During one altercation, military police shot a villager and detained several others. Residents appealed to the Prime Minister and he personally came to visit the disputed area and ordered that the company return the land and declared that the affected families were eligible to have their land registered through SLR. All the families later received land titles.<sup>196</sup>

Another case in Village 1 involved over 100 families who were recorded as living on state public land, as the Forestry Administration declared the area to be within Poy Sampenh conservation area.

92 families in Village 2 were initially excluded as they were alleged to be living too close to an 82 hectare area around a large freshwater lagoon called Boeung Prek Tup, which Okhna Kit Meng had planned to lease for 99 years and develop into an eco-tourism site. After complaints from the affected people, the Inter-ministerial Resettlement Committee (IRC) rejected the company's development proposal and decided to grant 62 hectares from the 82 hectare lake area to the people. A spokesman from the MLMUPC said that no one will be evicted, and the next step would be to offer them land titles, although it is not clear if land in the area has yet been registered.<sup>197</sup>

### ***Disputes Emerging During SLR***

According to the Chief of Group 4, Village 3, the level of disputes that emerged in the Sangkat during SLR was relatively low, and most disputes that arose were minor. For the most part these conflicts related to blocking of public access to adjoining properties, or when neighbouring parties disagreed over boundaries. The same official said that at least 95% of disputes were resolved at the sangkat level or below.

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<sup>196</sup> Koh Santepheap, *Hun Sen Provides 125 Families With 16 Hectares of Land, After Unjust Bullets of Private Company Fired*, 25 March 2008.

<sup>197</sup> Chhay Channyda, *Rare win for villagers in battle with tycoon*, Phnom Penh Post, 14 March 2012.

## **Study Area 4: Brayok Village & Trapeang Snao Village, Tumnob Commune, Batheay District, Kampong Cham<sup>198</sup>**

Between the dates of 6 and 8 February 2012, researchers visited the fourth and final study area, in Tumnob Commune, Batheay District, Kampong Cham Province. The villages of Brayok and Trapeang Snao were the focus of this field trip and both villages were covered by the SLR process between August 2008 and June 2010.

<b>Description</b>	<b>Brayok Village</b>	<b>Trapeang Snao Village</b>	<b>Total</b>
Population	410 families / 1,744 people	260 families / 1,289 people	670 families / 3,033
Number of land parcels adjudicated	1,901	1,387	3,288
Number of land plots <i>registered</i>	1,894	1,377	3,271
Number of land plots left <i>unregistered</i>	7 (0.04%)	10 (2.8%)	17 (0.5%)
Number of post-SLR land transfers/ Number subsequently registered	55 / 3	5 / 0	60 / 3

### ***Background of Brayok & Trapeang Snao Villages***

Brayok and Trapeang Snao villages are both located in Tumnob Commune, Batheay District in Kampong Cham, and are located approximately 1km apart from each other.

410 families live in Brayok village, which constitutes 1,744 people. Brayok is an old village and has been established for many years. It is located in low-lying land and includes a small pond and irrigation systems, which have proved beneficial for rice farming and fishing activities. Previously the area was heavily

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<sup>198</sup> The information in the following section was gathered between the dates of 6-8 February through household surveys; key informant interviews with the Chief Cadastral Officer for Kampong Cham, Tumnob Commune Council Chief, Brayok Village Chief; and focus group discussions with a mixed group in Brayok, and a women's group in Trapeang Snao.

forested, but over the last decade clearing and logging has in effect reduced this to shrub land. Trapeang Snao has 260 families, or approximately 1,289 people, and has similar land use to Brayok village.

Poverty levels in both villages are very high, and public services limited. The residents of both villages have been assessed through the ID Poor Programme. In Brayok a total of 159 out of the 410 families have been identified as ID Poor, this includes 105 households categorized as Level 1 (very poor) and 54 as Level 2 (poor). In Trapeang Snao, 103 out of 260 families have been identified as ID Poor. In Trapeang Snao, around 30% of households are in debt and in Brayok the figure is approximately 50%.

### ***Local Livelihoods***

The majority of villagers in Brayok work in the rice fields, where they grow rice for their own consumption, on chamkar, and as labourers on the cashew nut farm of Agro Star Investment Company. A number of young people, especially women, have migrated to work in garment factories in the provincial town of Kampong Cham and Phnom Penh. 64 young men and women have migrated to work in Thailand in construction and food factories. The remaining residents work clearing land and logging, or as vendors, palm sugar producers, and collecting and selling waste products for recycling.

Most people in the village are poor, and the average family income is between 8000 and 10,000 riel per day (USD 2-2.50). In addition to this income, paddy rice and products from family chamkar are used for daily food needs. Some families still experience seasonal food shortages brought about by flooding, drought and low productivity, and each year have to buy more and more rice from the market to supplement their own harvests. Around 50% of families are in debt, some to private lenders who charge very high rates of interest, and others to microcredit institutes (including ACLEDA, PRASAC, KREDIT, Village Bank, AMK, and Hattha Kaksekar) at more reasonable rates. Between 2009 and 2010 there was a village savings group organized by an NGO called CEDAC. However, CEDAC has since phased out its activities, and the savings group collapsed in part because many borrowers did not pay back their loans, and this discouraged other people who subsequently left the group.

Trapeang Snao Village shares a border with Brayok and the land and land cover is of a similar nature. People here also work in the rice fields, producing for family consumption. As is the case in Brayok, many families need to buy extra rice to supplement their own harvests. Some families have chamkar, where they mainly cultivate cashew nuts, and home gardens, where they plant cassava and fruit trees. These crops can generate income of between 100,000 to 200,000

riels (USD 25-50) per season, depending on the size of the land and the crop yield. Some people, especially the poorest and those without land, work in the Agro Star cashew plantation, where they can earn between 8000 and 10,000 riels (USD 2-2.50) a day. Many of the young men and women have migrated to work in garment factories, construction, the palm wine industry, and other business activities in Kampong Cham town and Phnom Penh.

At around 30%, debt levels are lower in Trapeang Snao, most of which is owed to microfinance institutes including ACLEDA, PRASAC, KREDIT, AMK, and Hattha Kaksekar. In addition, there is a village saving group consisting of 19 families. Each family saves around 10,000 riels per month and receives 1% interest per month. The savings group offers villagers access to small loans with an interest rate of 3% per month for members and 5% for non-members.

### ***Housing, Land and Property Ownership***

The majority of residents in Brayok were born in the village, and although a few outsiders have come to settle in the village they came from bordering villages within the same commune. The Brayok Village Chief stated that the village boundary is not yet clearly demarcated, but the total area is approximately 150 hectares and the majority of the land is agricultural. The average size of residential land is approximately 6 x 8 metres, 0.5 ha of rice field, and from 0.5 ha to 8 ha of chamkar. 40 families are landless.

Land was originally re-distributed through the krom samaki system in the 1980s depending on family size, and according to the Tumnob Commune Chief, 60% of the commune's current residents received land this way. From 1993 onwards, additional land was acquired through clearing forest land for chamkar. Residents who were not the original recipients of krom samaki land acquired their plots later through inheritance or land sales. Prior to SLR taking place many people had receipts for their rice paddy land issued by the Ministry of Agriculture in the 1990s, but held no official ownership documents. The majority of the village land is private, although 1 hectare is pagoda property, and according to the Commune Chief a pond and one land parcel belong to the Commune Office. There are no ELCs in the village, although the Agro Star cashew nut plantation is close to Brayok and the company has come into conflict with neighbouring villagers due to encroachment on village land and loss of cattle grazing areas.

The majority of residents of Trapeang Snao also received their land through the sub-division of the krom samaki. On average, people own residential land measuring around 15 x 40 metres, home gardens measuring 15 x 50 metres, and 4 hectares of rice fields. Many people hold multiple land titles for various small plots of land.

## ***The Registration Process in Brayok & Trapeang Snao Villages***

The SLR process started in Kampong Cham in 2005, and according to LASSP figures the province has yielded the second highest number of land titles after Kampot.<sup>199</sup> Batheay was the first district to undergo the adjudication process, and according to the Chief of the Batheay District Office of the Land Management, Urban Planning and Construction, 80% of the land in the district is rice fields, 10% residential and 10% chamkar. He added that 3-4% of this land was state property.

Tumnob Commune has a total of 7 villages: Brayok, Trapeang Snao, Tumnob Leu, Doun Paen, Rung, Prasam, and Sroeng. The total population is 1,648 families, or 7,439 people. According to the Commune Council Chief, the commune includes 18 hectares of lake and 6-7 hectares of dikes, although there are no more state forests as they have been degraded by logging, and what was left was granted as concession to the Agro Star Investment Company.

SLR was conducted in Brayok Village between August 2008 and July 2009, and of the total 1,901 land parcels in the village, 1,894 were registered (out of which 1,437 were agricultural plots, and 457 residential plots). In total, 7 parcels were left unregistered. Although there are only 410 families in the village, titles were issued to 779 different families, as residents from neighbouring villages also hold agricultural land in Brayok.

Systematic registration took place in Trapeang Snao Village between March 2009 and June 2010, and of the total 1,387 land parcels in the village, 1,377 were registered, with 10 parcels left unregistered.

As was the case in the other rural study area in Banteay Meanchey, the SLR process appears to have proceeded relatively smoothly in both Brayok and Trapeang Snao Villages. Announcements were made that the area would be subject to adjudication, and this was followed by public meetings and awareness raising sessions, which were supplemented with land registration workshops conducted by the local NGO, VIGILANCE. Following the survey and demarcation there was a public display period and land titles were issued at public ceremonies.

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<sup>199</sup> LASSP, Land is Life: Land Administration Sub-Sector Program Newsletter, Issue 2, November 2011.

## ***Exclusion and Incidence of Unregistered Plots in Brayok & Trapeang Snao Villages***

In Brayok Village 7 parcels were left unregistered, one of which was residential, and 6 chamkar parcels. The residential parcel was not registered due to a family conflict that has been on-going since 2008, five chamkar plots were unregistered because the land was located along an unclear administrative boundary between Chhoeung Prey District and Batheay District, and the remaining chamkar parcel was left unregistered as the owner was not present during adjudication.

The unclear boundary issue mentioned above concerned the administrative boundary between Chhoeung Prey District and Batheay District. In total, this unclear administrative boundary meant that 30 hectares of chamkar land was left unregistered in the commune, which affected 19 families from Prasam, Chhoeung, Trapeang Snao and Brayok villages. Those people who were affected by this issue in Brayok Village explained the sequence of events during focus group discussion. The affected people only found out that their land was not going to be registered during the survey and demarcation stage. Some were informed about the demarcation dates, and when the day arrived they waited for LRTs to come but they never arrived. After realizing that their lands were not going to be registered, the affected people requested information from the AC, who promised to raise the issue to the cadastral authorities. Later they made a verbal complaint to the Commune Chief, after which they found out that the chamkar land was excluded due to an unclear administrative boundary between the adjoining districts of Chhoeung Prey and Batheay.

According to the Brayok Village Chief, the land originally fell within Batheay District, but during the identification of adjudication areas the district boundary was adjusted, and the area was deemed to henceforth belong to Kouk Rovieng Commune, Chhoeung Prey District, which has not yet been subject to SLR. According to the chief, the unclear boundary caused a great deal of confusion amongst the LRT and AC, and so it was decided to omit these plots from the SLR process. The LRT have assured the Village Chief that the unregistered parcels will be included when the SLR process commences in Kouk Rovieng Commune, Chhoeung Prey District. This unclear boundary issue also impacted on Trapeang Snao Village.

Although they have assurances that their lands will be registered later, during focus group discussions, affected people stated that they were concerned that this may not happen. They stated that when the SLR process was underway, they witnessed LRT officers demarcating other chamkar land in the unclear area. They said that a rich man who purchased many plots of chamkar in the same area had no problem having his land registered during SLR. The same man has

reportedly approached many of the surrounding landowners and offered to purchase their chamkar, but most people rejected the offer as they depend on the land to supplement their livelihoods. Focus group discussants said that they did not want to lose their land, as they would be left with no choice but to work for Agro Star, where the work is low paid and hard, with long hours, and would mean that they have to sacrifice much of the freedom that farming their own land currently gives them. They also expressed that after witnessing what they called “land grabbing” by powerful people and ELC companies in Kampong Cham, they are very worried about their land. They have therefore maintained contact with the Commune Chief in Kok Rovieng to get updates on if and when they will have access to SLR in the future.

In Trapeang Snao 10 parcels were left unregistered after the completion of the SLR process, out of which four cases involved the unclear administrative boundary between Chhoeung Prey District and Batheay District (as discussed above). Five cases involved conflict between residents and the Agro Star Company, and the last case involved conflict between a resident and a local primary school. These disputes are dealt with below.

According to the Chief of the Batheay District Office of the Land Management, Urban Planning and Construction there were a total of 16 parcels across the Commune that were left unregistered. Most of these parcels were not registered due to unclear status, generally because people were occupying or using land also claimed by the state. A number of these plots were in, on or close to mountains, hills, forests and wetland areas. State public and private lands account for 3-4% of the land in Batheay District, but because of the difficulties in setting exact boundaries they were recorded as being of “unclear status” during adjudication, and none have yet been formally registered. Because of this, many dry rice fields on the edge of state land have not been registered.

In one particular case described by the Chief of the Batheay District Office of the Land Management, in O’Mal Village, Batheay District, over 500 hectares of rice fields have not been registered. This has affected around 300 families whose land parcels are close to the Tonle Sap River and natural reservoirs and so have not been registered as they are deemed to be in “danger zones” that are likely to flood. According to this official, these areas are therefore regarded as being under the management of the Ministry of Agriculture, Forestry and Fisheries (MAFF).

### ***Disputes Emerging During SLR***

According to the Brayok Village Chief, a number of disputes came up during the SLR process, mostly concerning boundaries or family disputes, but were resolved

at the local level. One land parcel was left unregistered due to a family dispute over inheritance that has been running since 2008. The dispute could not be resolved during the adjudication process and is now being heard by the courts. According to the Village Chief, no cases were raised to the Cadastral Commission.

In Trapeang Snao five parcels were left unregistered as they were involved in a conflict between residents and the Agro Star Investment Company. The conflict between the residents and Agro Star started in 1996 after the company was granted 2,400 hectares for planting cashew nuts and doing animal husbandry.<sup>200</sup> In 1997 the company began clearing the land, including the residents' rice field and chamkar land. Over 200 families in Trapeang Snao village filed a complaint with MAFF over what they saw as the company grabbing residents' land. In 2000, the Provincial Governor agreed to return 20 hectares of land to the residents, and each family received back around 0.7 ha of their chamkar land. For the past few years Agro Star has been buying up the land of families close to the concession, and at the time SLR was conducted the company had already successfully negotiated land purchases with all but nine families. When the nine families refused to cut or sell their land, the company offered a land swap option to the families, offering land of the same size and value in another area. The families still refused, and during the negotiations the land parcels were adjudicated and included in the cadastral index map and ownership list. However, according to the Village Chief the company submitted a complaint and requested the Batheay District Office of Land Management not to register and issue the land certificates to the nine families. Subsequently five of the nine families agreed to sell their land to the company and the LRT registered the land to Agro Star. The parcels of the four families who refused to sell remain unregistered. In addition, the chamkar land of one more family was not registered due to a separate dispute with Agro Star.

The remaining untitled parcel in Trapeang Snao involved a dispute between a village resident and a local school. The Village Chief explained that in this case the landowner received her land parcels as inheritance from her parents in the 1970s, but then fled the village and returned following the fall of the Khmer Rouge regime. After returning she was successful in obtaining a land ownership certificate from the District Department of Agriculture during the 1990s. She moved to another village after she got married and left the land vacant for many years. In the meantime the village and commune authorities allowed classrooms to be constructed on the land for a local primary school. During the SLR process she attempted to claim this land back and lodged a complaint through the AC. As the classrooms had already been built, the local authorities and the AC asked

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<sup>200</sup> Ministry of Agriculture, Forestry and Fisheries, *Agro Star Company profile*, <http://www.elc.maff.gov.kh/en/profile/10-kcm/23-kcm-agrostar.html> (accessed August 2012).

her to accept the 1 hectare of land that remained vacant, however, she did not agree to this arrangement and wanted the whole land parcel registered in her name. As the conflict was not resolved during the SLR process the land was not registered.

**Case Study: Villagers in Conflict with Local Agriculture Company  
Trapeang Snao Village, Tumnob Commune, Batheay District,  
Kampong Cham Province**

Mr. Soth<sup>201</sup> is 47 years old and lives in Trapeang Snao Village. He owns three plots of land, one of which is residential, one rice paddy and one chamkar. The residential plot was inherited, the rice paddy granted through the krom samaki system, and the chamkar was cleared from the neighbouring forest. Mr. Soth is involved in a long-running dispute with the Agro Star company whose plantation adjoins his chamkar land. Agro Star was granted a land concession by the government in 1996 for agricultural activities including cashew nut planting and animal raising over 2,400 hectares.

In 1999, officials from the PDLM came to demarcate the company land concession, and during the process the officers claimed the villager's land overlapped with the company land and erected boundary markers within the villager's land. This affected the chamkar land of the local villagers. When the company began to clear the villager's chamkar land, over 200 villagers including Mr. Soth petitioned the Minister Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Prime Minister over what they saw as a "land grab" of villager's land. In 2000, following an order from the Prime Minister, the Provincial Governor agreed to grant back 20 ha of land to the residents and the families each received approximately 0.7 ha of their chamkar land back. Following the redistribution of the chamkar land the company began trying to buy the land from the villagers.

In 2009, when the LRT officers came to demarcate the area as part of the SLR process, they told nine households that their land plots were still overlapping with company property and that they would have to cut 0.07 ha of the villagers land. The demarcation officers placed poles that marked the limit of the villagers' lands, and six of the nine affected families accepted this and allowed their land to be cut, while three did not. Mr. Soth was one of the six who accepted their land parcel being cut.

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<sup>201</sup> Name changed to protect the interviewee's privacy. Interview conducted 29 February 2012.

After demarcation and adjudication Mr Soth saw that all three of his land parcels were included in the public display of the cadastral index map and ownership list. However, on the day that title certificates were issued, Mr. Soth received titles for his residential and paddy rice plots, but not for the chamkar. He was told that no title could be issued as the land was still disputed with Agro Star. He stated that when he went to collect his titles, he could see that the certificate for his chamkar land was also at the office, printed, stamped and signed, but the officer would not issue it to him.

Mr. Soth was told by the LRT not to worry, and that once the dispute was resolved the title would be issued. He returned home and did not make any formal complaint. Subsequently five of the nine villagers decided to sell their land to Agro Star, but Mr. Soth did not agree to this. At present the holders of the remaining four disputed plots are still able to use their chamkar, and neither the company nor local authorities have restricted their access. However, Mr. Soth said: "having no title worries me, I don't feel like I have ownership and I am worried this land will be grabbed by the company or by others."

The Batheay Commune Chief stated that across Batheay Commune, 35 disputes emerged during SLR and most were resolved by the AC at the local field office. Six were raised to the commune level, but were resolved here and no cases were referred to the Cadastral Commission. Two cases have been referred to the courts.

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## Annexes

### *List of Development Partners and NGOs Interviewed/Consulted*

<b>Development Partners</b>				
1	Daniel Adler	Male	World Bank	Previously Team Leader, Justice for the Poor
2	Dr Franz-Volker Mueller	Male	GIZ	Team Leader, GIZ Land Rights Programme
3	George Cooper	Male	GIZ	Consultant, Land Rights Program
4	Jouni Anttonen	Male	FINNMAP	Chief Technical Advisor
5	Tim Coulas	Male	McElhanney (Consulting Services Ltd)	Project Field Manager
6	Srey Chanthy	Male	CIDA	Senior Agriculture and Land Specialist
<b>NGOs</b>				
1	Abdul Rashid Khatri	Male	CMDP	Advisor
2	Lor Lymeng	Male	VIGILANCE, Phnom Penh	Program Officer
3	Wathana	Male	VIGILANCE, Banteay Meanchey	Field Officer
4	Houl Sophal	Male	VIGILANCE, Kampong Cham	Coordinator
5	Om Dara	Male	CEDT	Project Officer
6	Sim Dara	Male	World Vision	Program Manager
7	Sia Phearum	Male	HRTF	Executive Director
8	Kou Sina	Female	UPWD	Program Manager
9	Sok Sokhom	Male	CNRO, Preah Sihanouk	Project Officer
10	Cheap Sotheary	Female	ADHOC, Preah Sihanouk	Coordinator

### **List of Participants in Focus Group Discussions & Key Informant Interviews**

<b>Study Area 1: Tumnup Village, Sangkat Phnom Penh Thmei, Khan Sen Sok, Phnom Penh</b>			
<b>Women's Focus Group Discussion</b>			
1	Female	Tumnup 2	Villager
2	Female	Tumnup 2	Villager
3	Female	Tumnup 2	Villager
4	Female	Tumnup 2	Villager
5	Female	Tumnup 2	Villager
6	Female	Tumnup 2	Villager
7	Female	Tumnup 2	Villager
<b>Mixed Focus Group Discussion</b>			
8	Male	Tumnup 2	Villager
9	Male	Phnom Penh Thmei	Group Chief
10	Female	Phnom Penh Thmei	Community Chief
11	Female	Phnom Penh Thmei	Villager
12	Female	Phnom Penh Thmei	Villager
13	Female	Phnom Penh Thmei	Villager
14	Male	Phnom Penh Thmei	Villager
15	Male	Phnom Penh Thmei	Villager
16	Female	Phnom Penh Thmei	Villager
17	Female	Phnom Penh Thmei	Villager
18	Female	Phnom Penh Thmei	Villager
19	Female	Phnom Penh Thmei	Villager
20	Female	Phnom Penh Thmei	Villager
<b>Key Informant Interviews</b>			
21	Male	Tumnup 2	Committee Member
22	Female	Tumnup 2	Committee Member
23	Female	Tumnup 2	Women's Focal Point
24	Female	Tumnup 2	Women's Group
25	Female	Phnom Penh Thmei	Commune Councillor
26	Male	Tumnup	Village chief

<b>Study Area 2: O'Andoung Khet Village &amp; Kork Thnaou Village, Banteay Neang Commune, Monkol Borei District, Banteay Meanchey</b>			
<b>Women's Focus Group Discussion</b>			
1	Female	Kork Thnaou Village	Villager
2	Female	Kork Thnaou Village	Villager
3	Female	Kork Thnaou Village	Villager
4	Female	Kork Thnaou Village	Villager
5	Female	Kork Thnaou Village	Villager
6	Female	Kork Thnaou Village	Villager
7	Female	Kork Thnaou Village	Villager

<b>Key Informant Interviews</b>			
8	Female	Kork Thnaou Village	Villager
9	Male	Kork Thnaou Village	Villager
10	Male	O'Angdong Khet Village	Village Chief
11	Male	Kork Thnaou Village	Village Chief
12	Male	Banteay Neang Commune	Chief of Commune Council / Member of Administrative Commission
13	Male	Banteay Neang Commune	LRT, Provincial Department of Land Management,
14	Male	Banteay Neang Commune	Administrator of Provincial Department of Land Management
15	Male	Banteay Neang Commune	Field chief of LRT, Provincial Department of Land Management

<b>Study Area 3: Village 3, Sangkat 3, Khan Mittapheap, Preah Sihanouk Province</b>			
<b>Community Focus Group Discussion – Railway Community</b>			
1	Female	Group 6, Village 3	Villager
2	Male	Group 7, Village 3	Villager
3	Male	Group 7, Village 3	Villager
4	Male	Group 7, Village 3	Villager
5	Male	Group 7, Village 3	Villager
6	Female	Group 7, Village 3	Villager
7	Female	Group 13, Village 3	Villager
8	Female	Group 13, Village 3	Villager
9	Female	Group 13, Village 3	Villager
10	Male	Group 13, Village 3	Villager
11	Male	Group 13, Village 3	Sathani Routh Phleung Chief
<b>Community Focus Group Discussion – Port Community</b>			
12	Male	Group 9, Village 3	Villager
13	Male	Group 9, Village 3	Villager
14	Female	Group 9, Village 3	Villager
15	Male	Group 9, Village 3	Villager
16	Female	Group 9, Village 3	Villager
17	Female	Group 9, Village 3	Villager
18	Female	Group 9, Village 3	Villager
19	Female	Group 9, Village 3	Villager
20	Female	Group 10, Village 3	Villager
21	Female	Group 10, Village 3	Villager
22	Female	Group 10, Village 3	Villager
23	Female	Group 10, Village 3	Villager
24	Male	Group 10, Village 3	Villager
25	Male	Group 10, Village 3	Villager

<b>Key Informant Interviews</b>			
26	Female	Group 32, Village 3	Villager- Railway
27	Female	Group 3, Village 3,	Villager - Royal Residence
28	Female	Group 3, Village 3,	Villager - Boundary Dispute
29	Male	Village 3	Village Chief
30	Male	Group 24, Village 3	Group Chief
31	Male	Khan Mittapheap	Commune Council Chief / Member of AC
32	Male	Sihanoukville	Director of MDLM Sihanoukville

<b>Study Area 4: Brayok Village &amp; Trapeang Snao Village, Tumnob Commune, Batheay District, Kampong Cham</b>			
<b>Women's Focus Group Discussion</b>			
1	Female	Trapeang Snao Village	Villager
2	Female	Trapeang Snao Village	Villager
3	Female	Trapeang Snao Village	Villager
4	Female	Trapeang Snao Village	Villager
5	Female	Trapeang Snao Village	Villager
6	Female	Trapeang Snao Village	Deputy Village Chief
7	Male	Trapeang Snao Village	Village Chief
<b>Focus Group Discussion – Unclear Boundary Exclusion</b>			
8	Male	Brayok Village	Villager
9	Male	Brayok Village	Villager
10	Male	Brayok Village	Villager
11	Male	Brasam Village	Villager
12	Male	Brasam Village	Villager
13	Female	Brayok Village	Villager
14	Male	Brasam Village	Villager
15	Female	Brayok Village	Villager
16	Female	Brayok Village	Villager
17	Female	Brayok Village	Villager
18	Female	Brayok Village	Villager
19	Female	Brayok Village	Deputy Village Chief
<b>Key Informant Interviews</b>			
20	Male	Trapeang Snao Village	Villager-Agro Star dispute
21	Female	Trapeang Snao Village	Villager
22	Male	Brayok Village	Village Chief
23	Male	Tomnub Commune	Commune Council Chief
24	Male	Batheay District	Chief of LRT at PDLM



## **The NGO Forum on Cambodia**

Address: #9-11 Street 476 Sangkat Toul Tom Pong I,  
Khan Chamkar Morn, Phnom Penh City, Cambodia.

P.O Box: 2295 Phnom Penh-3

Tel: (855-23) 241 429

Fax: (855-23) 994 063

E-mail: [ngoforum@ngoforum.org.kh](mailto:ngoforum@ngoforum.org.kh)

Website: [www.ngoforum.org.kh](http://www.ngoforum.org.kh)