

## **Land Possession in Cambodia: Legal Criteria and Effects**

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### **Abstract**

This paper is an analysis of the legal features of land possession in Cambodia. Cambodian property laws have two kinds of legal concepts over land possession. The first is ‘extraordinary’ possession authorized under the 2001 Land Law. The second is ‘prescriptive’ or ‘adverse’ possession authorized under the 2007 Civil Code. Extraordinary possession is applied to original or unregistered state private land, while prescriptive or adverse possession is applied for the subsequent registration of individual private land. Both types of possessions have remarkable legal criteria, requirements, and effects for assessing entitlement to ownership acquisition, as described in this paper. Understanding of these is fundamental for resolving competing claim disputes over land. Decisions made based on these features are considered as justification of legal fight among competing claim disputants in Cambodia.

### **I. Introduction**

The term ‘possession’ sounds simple; however, it has a lot of remarkable features in law. The purpose of this paper is to present the legal features of land possession under the Cambodian property laws. This paper will conduct a detailed legal analysis over the criteria, requirements, and effects of land possession under the current laws. Understanding these is fundamental for resolving competing claim disputes over land possession in Cambodia.<sup>2</sup>

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<sup>2</sup> Competing claim disputes are a controversial issue in Cambodia. These disputes sometimes occur when a person moves onto land that seems ownerless and left abandoned, or sometimes when outsiders bring some land documents to claim land from physical land possessors. In such kind of disputes, we often see overlapping land documents (titles or certificates) claimed over the land. In many redress fora, the holders of stronger land documents often win cases against customary land owners who have weaker documents (only receipts or without receipts) for proving their right to the land. As a consequence, these often result in protests or intervention-seeking by customary land

Thus, this paper suggests that when resolving competing claim disputes, the legal features of land possession should be put forward as fundamental grounds for consideration and resolution.

## **II. Legal Background of Land Possession under Cambodian Laws**

The concept of land possession is as old as when Cambodians first settled on the land. Historically, all land belonged to the King (van Acker, 1999, p. 33; Markussen, 2008, p. 2280; Diepart, 2015, p. 6). The King allowed people to occupy land in consideration for royalties (Diepart, 2015, p. 6). People occupied and tilled land according to their needs (Russell, 1997, p. 102; Diepart, 2015, p. 6). In this regard, they were assumed to be the owners of possessed land (Russell, 1997, p. 102; van Acker, 1999, pp. 32-3; Sik, 2000, p. 3; Markussen, 2008, p. 2280; Rabé, 2009, p. 34). This gave rise to the concept of so-called ‘customary’ land possession in Cambodia.

However, such a customary practice changed when Cambodia adopted the first civil code in 1920 governing land possession (hereinafter is called the ‘1920 Civil Code’).<sup>3</sup> The 1920 Civil Code turned the customary land occupancy into legal possession for private ownership acquisition. In this sense, land possession could lead to private ownership acquisition if it satisfied the legal requirements stated under this code.

The implementation of the principle of land possession for private ownership acquisition under the 1920 Civil Code ceased when Cambodia fell under the Khmer Rouge regime (Russell, 1997, pp. 104-105). Likewise, after the collapse of the Khmer Rouge, Cambodia did not allow land possession for private ownership acquisition (Frings, 1994, p. 49; Simbolon, 2009, p. 72.). However, Cambodia initiated the re-privatization of land in 1989 (Frings, 1994, p. 50; van Acker, 1999, p. 35; Williams, 2000, p. 145). Since then, the concept of land possession for private ownership acquisition has re-existed in Cambodia.

In order to support this, the government has developed several main legislations for regulating the criteria and requirements of land possession for private ownership acquisition. The first land law was passed in 1992 (hereinafter is called the ‘1992 Land Law’).<sup>4</sup> The 1992 Land Law provided the criteria and requirements of land possession for

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owners when forced evictions occur. Against this backdrop, the present paper suggests that resolvers should check the legal features of land possession under the current Cambodian property laws in order to decide who should be the legitimate owners of a piece of land.

<sup>3</sup> Civil Code of Cambodia, 1920, Arts. 708–725.

<sup>4</sup> Land Law, 1992.

private ownership acquisition.<sup>5</sup> Looking closely at these, the 1992 Land Law copied the concepts of land possession under the 1920 Civil Code for use in the post-war land reform (Hem, 2017, p. 110).

However, the implementation of the 1992 Land Law was short-lived when Cambodia promulgated the Constitution in 1993 (Hem, 2017, pp. 104, 106). There was the conflict of ownership concept between them (Hem, 2017, pp. 104, 106-107). Thus, it prompted Cambodia to initiate, draft, and pass the second new land law in 2001 (hereinafter is called the ‘2001 Land Law’).<sup>6</sup> The 2001 Land Law stipulated the criteria and requirements for land possession that could lead to ownership acquisition in Chapter IV of its law.<sup>7</sup>

Due to its legal tradition, Cambodia created the second civil code in 2007 (hereinafter is called the ‘2007 Civil Code’).<sup>8</sup> The adoption of the new civil code led to the conflict of some of the legal concepts under the 2001 Land Law (Hem, 2017, pp. 116-107, 111-112). The 2007 Civil Code included the concept of land possession with some remarkable differences from that in the 2001 Land Law.<sup>9</sup> However, such differences were reconciled by a commentary on the Civil Code in 2010<sup>10</sup> and the Law on Enforcement of the Civil Code in 2011 (hereinafter is called the ‘2011 Enforcement Law of Civil Code’).<sup>11</sup>

These are the notions of the legal background of land possession under the Cambodian property laws. However, the enforcing laws governing land possession are the 2001 Land Law, 2007 Civil Code, and 2011 Enforcement Law of Civil Code. Thus, this paper will discuss the legal features, criteria, and effects of land possession under these legislations as legal grounds for taking into consideration and resolving competing claim disputes in Cambodia.

### III. Legal Features of Land Possession

This paper pays much attention to the term ‘possession’ under the current legislations. The term ‘possession’ has some remarkable differences in use between the 2001 Land Law and

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<sup>5</sup> *Ibid.*, Arts. 61–76.

<sup>6</sup> Land Law, 2001; Hem (2017, pp. 106-107).

<sup>7</sup> 2001 Land Law, Chapter IV, Arts. 29–47.

<sup>8</sup> Civil Code of Cambodia, 2007.

<sup>9</sup> *cf.* 2001 Land Law, Chapter IV; 2007 Civil Code of Cambodia, Book III, Chapter III.

<sup>10</sup> Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, 2010, pp. 130-131; Hem (2017, p. 112).

<sup>11</sup> Law on Enforcement of Civil Code, 2011.

2007 Civil Code of Cambodia. Both legislations employ the same term ‘possession’ in English, but it has different terms and uses in Khmer.<sup>12</sup>

The 2001 Land Law uses the term ‘*phou-gak*’ for ‘possession’ in its law.<sup>13</sup> It is a legal term that has an ordinary meaning as ‘tenure’ or ‘occupation or occupancy.’ On the other hand, the 2007 Civil Code uses ‘*kar-kan-kab*’ for ‘possession’ in its code.<sup>14</sup> The term ‘*kar-kan-kab*’ is a lexical term that has the literal meaning as ‘holding’ or ‘occupation or occupancy.’ The difference in the terms used is due to the 2001 Land Law covering only immovable properties, while the 2007 Civil Code covers both movable and immovable properties. The following section will demonstrate the legal features of land possession under both laws.

### **1. Features of Possession under the 2001 Land Law**

The 2001 Land Law mentions the features of land possession extensively in Chapter IV. The Chapter calls this as ‘extraordinary acquisition of ownership *via* possession.’<sup>15</sup> In this paper, it is hereinafter referred to as ‘extraordinary possession’ (see also Hem, 2017, pp. 120-121). The following will illustrate the legal features of the extraordinary possession on two points: (1) criteria and (2) requirement of land possession.

*i. Criteria of Legal Possession/Possessor* As mentioned above, the 2001 Land Law does not give a clear definition of the term ‘possession’, although it provides a chapter elaborating on the criteria and requirements of land possession.<sup>16</sup> The 2001 Land Law stipulates that only ‘legal possession’ can lead to ‘ownership acquisition.’<sup>17</sup> This places much emphasis on the term ‘legal possession’ as the condition for transforming land occupation into private ownership. Therefore, the question is what criteria constitute a legal possession under the 2001 Land Law?

Article 38 of the same law answers this question by providing the ‘criteria’ of the legal possession.<sup>18</sup> According to this Article, legal possession must satisfy five criteria: (1) unambiguity, (2) non-violence, (3) well-known to the public, (4) continuity, and (5) good faith. The following paragraphs consider each of these criteria in turn.

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<sup>12</sup> 2001 Land Law, Chapter IV; 2007 Civil Code of Cambodia, Book III, Chapter III.

<sup>13</sup> 2001 Land Law, Chapter IV.

<sup>14</sup> 2007 Civil Code, Chapter III, Book III.

<sup>15</sup> 2001 Land Law, Chapter IV.

<sup>16</sup> 2001 Land Law, Chapter IV.

<sup>17</sup> *Ibid.*, Arts. 6 and 37.

<sup>18</sup> *Ibid.*, Art. 38.

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The 2001 Land Law requires that ‘possession’ must be ‘unambiguous’ (*pit-bra-kot*). Unambiguity refers to the ‘real intention’ of a possessor when he or she starts to occupy a piece of land. The law requires that a possessor must have the real intention to occupy land for his or her ‘exclusive ownership.’<sup>19</sup> Thus, in principle, the law requires occupant to possess it by himself or herself. Nonetheless, the 2001 Land Law also seems lenient since it can authorize that such possession can be made by another on behalf of the future occupant. In this case, the occupant needs to prove that such possession was made on his or her behalf.<sup>20</sup>

Possession must be ‘non-violent’ (*kmien-hoeng-sar*). In this sense, a possessor must enter into occupying land without using force to dismiss the original possessors. If he or she uses force or violence to dismiss the original possessors in order to occupy the piece of land, he or she is not considered as a ‘legal possessor.’ Thus the possession is not legitimate, and he or she is not entitled to ownership acquisition. However, the law provides that if he or she is an original possessor of a piece of land, they can protect that land by using force to dismiss encroachers. In this case, the law does not consider him or her as the illegal possessor, and he or she is still entitled to ownership acquisition.<sup>21</sup>

Possession must be ‘well-known to the public’ (*doeng-leu-chea-sar-thea-ranak*). The law stresses that a possessor must not hide himself or herself when taking occupation of a piece of land. The land must be open to the public and not already in the possession of anyone else. He or she must make himself or herself publicly known, so that if others had a prior interest in that land, they can object and claim against his or her occupation.<sup>22</sup>

Possession must be ‘continuous’ (*khmien-ak-khan*). The law emphasizes that, once a possessor enters into occupying a piece of land; he or she must continue to live and work on it without abandonment. If he or she occupies a piece of land for residence, they need to construct a house and live there until the required period for ownership acquisition under the law is reached (see below). Likewise, if he or she occupies some land for farming, they need to use the land for this purpose without abandonment. However, if he or she keeps land fallow without farming for a short period in order to recover fertility, the law does not

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<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

consider this as the abandonment of possessed land. He or she is still entitled to ownership acquisition.<sup>23</sup>

Possession must be ‘in good faith’ (*so-cha-rit*). The term ‘good faith’ refers to the possessor not being aware of any third party’s right over the land when he or she enters into occupying it. When he or she starts to occupy a land without knowing a third party’s right over it, he or she is considered as a ‘possessor in good faith.’ In this case, he or she is entitled to ownership acquisition when the statute of limitations is reached (see below).<sup>24</sup>

To recapitulate, a legal possession must be unambiguous, non-violent, well-known to the public, continuous, and in good faith under the 2001 Land Law. A possessor satisfies these five criteria in order to make his or her possession lawful under that law.

**ii. Legal Requirements for Ownership Acquisition** Besides these five criteria as a legal possessor, the 2001 Land Law puts some restrictions for private ownership acquisition.

First, the 2001 Land Law requires a legal possession to be made between 1989 and 2001.<sup>25</sup> Entering into new possession of land after that period is not considered as ‘legal possession,’ and the possessor is not entitled to ownership acquisition.<sup>26</sup>

Second, the 2001 Land Law only allows for possession for state private land during the above-mentioned period to be entitled to ownership acquisition. Possession of state public land is not authorized and is not entitled to private ownership acquisition regardless of how long it has been occupied.<sup>27</sup>

Third, the 2001 Land Law puts a statute of limitations of five years for contesting ownership acquisition.<sup>28</sup> If a possessor has occupied land for at least five years, they are entitled to ownership acquisition.<sup>29</sup> They can request authority to register their land and receive a definitive land ownership title.<sup>30</sup> The prescriptive 5-year period is only applied for possession over original or unregistered land.<sup>31</sup>

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<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, Art. 29.

<sup>26</sup> 2001 Land Law, Art. 29; Hem (2017, p. 122).

<sup>27</sup> 2001 Land Law, Arts. 15, 16, 18, and 43; Hem (2017, pp. 126-127).

<sup>28</sup> 2001 Land Law, Art. 30; Hem (2017, p. 121).

<sup>29</sup> 2001 Land Law, Art. 30; Hem (2017, p. 121).

<sup>30</sup> 2001 Land Law, Art. 30; Hem (2017, p. 121).

<sup>31</sup> Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, 2010, pp. 130-131; Hem (2017, p. 112).

In short, a possession is entitled to ownership acquisition only if it is occupied state private land between 1989 and 2001 and exceeds the five-year statute of limitations.

## 2. Features of Possession under the 2007 Civil Code

The 2007 Civil Code defines ‘possession’ as one of the ‘real rights.’<sup>32</sup> Article 138 identifies the real rights as consisting of (1) ownership,<sup>33</sup> (2) possession, (3) usufructuary real rights,<sup>34</sup> and (4) security rights<sup>35</sup>. However, this paper covers only ownership and possession, especially the relationship of possession leading to ownership acquisition over immovable properties. The following will demonstrate the features of possession for ownership acquisition under the 2007 Civil Code.

*i. Features of Possession (kar-kan-kab)* The 2007 Civil Code entitles its Chapter III as ‘Possessory Right’ (*sith-kan-kab*). The Chapter provides a general tenet regarding possession under this code. As mentioned above, due to the 2007 Civil Code covering both movable and immovable properties, thus it defines the term ‘possession’ (*‘kar-kan-kab’*) in a broad sense referring to the ‘holding of a thing.’<sup>36</sup>

The term ‘holding’ is further defined as the ‘state of controlling a thing as a matter of fact, whether directly or indirectly.’<sup>37</sup> This code also defines a ‘thing’ as ‘a corporeal object or substance comprising a gas, liquid, or solid,’<sup>38</sup> and it can be divided into movable and immovable properties.<sup>39</sup> Immovable properties comprise land or anything fixed in place to land, such as a building or structure, crops, timber, *etc.*<sup>40</sup> This paper focuses on immovable property. Thus, it will replace ‘thing’ with ‘immovable property,’ while ‘holding’ will be replaced by ‘tenure’ or ‘occupation or occupancy’ for this analysis.

Regarding possession over immovable properties, the 2007 Civil Code provides similar features as those of the 2001 Land Law. The 2007 Civil Code provides that possession can

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<sup>32</sup> ‘Real rights’ refer to the ‘right to directly control a thing, and may be asserted against all persons.’ *See* Civil Code of Cambodia, Art. 130.

<sup>33</sup> ‘Ownership’ refers to the “right of an owner to freely use, receive income and benefits from and dispose of the thing owned, subject to applicable laws and regulations.” *See Ibid.*, Art. 138.

<sup>34</sup> The usufructuary right consist of perpetual lease, usufruct, right to use/right of resident, and servitude. *See Ibid.*, Art. 132.

<sup>35</sup> The security rights comprise right of retention, statutory lien, pledge, hypothec, and transfer of title for security purpose. *See Ibid.*

<sup>36</sup> Civil Code of Cambodia, Art. 227.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, Art. 119.

<sup>39</sup> *Ibid.*, Art. 120.

<sup>40</sup> *Ibid.*

be direct or indirect.<sup>41</sup> Direct possession mean a possessor needs to occupy the immovable property by him or herself. In this case, he or she is called the ‘direct possessor.’<sup>42</sup> Indirect possession means a possession is made by another person. They can hire a person to occupy land on behalf of him or her. He or she is called the ‘indirect possessor.’<sup>43</sup>

However, ownership acquisition of land is based on the intentions of the possessor.<sup>44</sup> The law requires that possession must be made with genuine intention to ownership.<sup>45</sup> If a possessor does not have the intention of becoming the owner of immovable property, he or she cannot become an owner. The law also provides that entering into occupying land without the intention of ownership cannot be altered into possession with intention to ownership.<sup>46</sup>

However, there are exceptions to the above-mentioned provisions. First, if a possessor declares to the person who puts them into possession that he or she intends to become the owner, they can become the possessor with intention to ownership.<sup>47</sup> Second, if he or she commences the possession anew on the basis of a new ground of ownership acquisition with the intention of becoming the owner, they also become the possessor with intention to ownership.<sup>48</sup>

In addition to this, the 2007 Civil Code demands possession must be in good faith, peaceful, and open. Possession in good faith (*kar-kan-kab-doy-so-cha-rit*) refers to occupying land without the knowledge of anyone else having the prior right of ownership to it.<sup>49</sup> Peaceful possession (*kar-kan-kab-doy-san-te-vi-thi*) refers to occupying a land without using violence.<sup>50</sup> Open possession (*kar-kan-kab-doy-doeng-leu-chea-sar-thea-ranak*) refers to entering into occupying a land without concealment so that others who have rights over the

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<sup>41</sup> *Ibid.*, Art. 228.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> There are two types of possessions: (1) possession with intention of ownership and (2) possession without intention of ownership (Art. 232). The assessment of both types depending on the basis of the “objective nature of the ground of acquisition of the possession.” See Civil Code of Cambodia, Art. 232.

<sup>45</sup> *Ibid.*, Art. 232

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, Art. 233.

<sup>50</sup> *Ibid.*

land can know or see the fact of such possession.<sup>51</sup> These conditions are crucial for assessing criteria for ownership acquisition over possessed land.

The 2007 Civil Code also requires possession to be ‘continuous’ (*kar-kan-kab-chob-ro-hout*) where a possessor occupies the land without subsequent abandonment. The law requires him or her to show at least two different times of such possession.<sup>52</sup> Namely, they need to show evidence for their previous and current periods of possession.<sup>53</sup> If there is consistency over the evidence of such possession without abandonment and the required period for ownership acquisition, their possession is assumed to be ‘continuous.’<sup>54</sup>

Besides these, the 2007 Civil Code provides some features of possession that are deemed to be flawed. ‘Flawed possession’ (*kar-kan-kab-doy-mean-vi-ka-rak*) is contrary to possession that is peaceful and open.<sup>55</sup> The law identifies two types of flawed possession. First is ‘possession in bad faith’ (*kar-kan-kab-doy-tuch-cha-rit*) that refers to occupying land where the possessor knows that they have no right of possession over it.<sup>56</sup> Second is ‘negligent possession’ (*kar-kan-kab-doy-mean-kom-hos*),<sup>57</sup> which refers to occupying land where the possessor lacks knowledge resulting from negligence.<sup>58</sup> However, flawed possession is not necessarily a hindrance; it means that it will take a longer time for ownership acquisition, if it is approved.<sup>59</sup>

In short, legal criteria of land possession under 2007 Civil Code are not much different from those of 2001 Land Law. Possessors are presumed to be in possession with the intention to ownership, in good faith, peaceful, continuous, and open.<sup>60</sup>

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<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, Art. 234.

<sup>53</sup> Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, p. 180.

<sup>54</sup> *Ibid.*, Art. 234.; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, p. 180.

<sup>55</sup> *Ibid.*, Art. 233.

<sup>56</sup> *Ibid.*

<sup>57</sup> There is awkward translation of the English term ‘negligence’ in Khmer language in this Article. Negligence is translated as ‘កំហុស’ (*kom-hos*). The latter term means ‘mistake,’ ‘err,’ or ‘guilt’ in English. However, the term ‘negligence’ is in general translated in Khmer as ‘ធ្វេសប្រហែស’ (*tve-pro-has*), ‘ខ្ចីញ៉ា’ (*khchi-khchea*), or ‘មិនយកចិត្តទុកដាក់’ (*min-yok-chet-tuk-dak*). Such translations fits the definition in this Article. *See Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> Civil Code of Cambodia, Arts. 162, 234, and 235; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, pp. 130-131.

<sup>60</sup> Civil Code of Cambodia, Art. 234.

*ii. Legal Requirements for Ownership Acquisition* The code further provides that ‘ownership over immovable property may be acquired not only *via* contract, inheritance or other causes set forth in this Section IV....’<sup>61</sup> In Section IV on ‘ownership acquisition,’ the 2007 Civil Code provides a statute of limitations for ownership acquisition differently from the 2001 Land Law. Article 162 of the 2007 Civil Code requires a prescriptive period for ownership acquisition of 10 to 20 years based on intention of the land possessors.<sup>62</sup> If a possessor enters into occupying a land in good faith, he or she can acquire ownership within ten years.<sup>63</sup> If a possessor enters into occupying land through flawed possession, he or she may acquire ownership within twenty years.<sup>64</sup>

However, the 2007 Civil Code defines the type of land which applies for this statute of limitations. According to the commentary on the Civil Code, this prescriptive period applies to registered private land.<sup>65</sup> Article 162 does not apply this to state land of any kind (state private and state public land).<sup>66</sup> Thus, since the effect-taking of the 2007 Civil Code through its enforcement as law in 2011, registered private land is subject to ownership acquisition authorized under this Code.<sup>67</sup> This is the newly-added feature of Cambodia property, which is called the ‘adverse possession’ (Hem, 2017, p. 112). However, this new feature is not broadly understood yet in Cambodia.

In short, the 2007 Civil Code authorizes the statute of limitations for possession for registered private land of from 10 to 20 years, based on the intention of possession. In good faith, ownership acquisition is made after 10 years; while ownership acquisition by flawed possession is made after 20 years.

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<sup>61</sup> *Ibid.*, Art. 160.

<sup>62</sup> Civil Code of Cambodia, Art. 162; Hem (2017, p. 124).

<sup>63</sup> Civil Code of Cambodia, Art. 162; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, pp. 130-131.

<sup>64</sup> Civil Code of Cambodia, Art. 162; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, pp. 130-131.

<sup>65</sup> Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, 130–31; Hem (2017, p. 124).

<sup>66</sup> Civil Code of Cambodia, Art. 162; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, 130–31; Hem (2017, p. 124).

<sup>67</sup> Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, 130–31.

#### IV. Protection of Land Possession

Based on an understanding of the features of land possession under both laws, it is necessary to look at how both legislations provide a strong framework of protection for legal possession or legitimate ownership against a third party's claim.

The 2001 Land Law provides protection for a legal possessor who has not yet completed the required period for ownership acquisition. The law allows them to continue occupying land until completing the prescriptive period.<sup>68</sup> In case that he or she transfers this possession to another, the period will carry on to the receivers for ownership acquisition.<sup>69</sup> When the prescriptive period is reached, the original possessor or his or her successor can request to register the occupied land.<sup>70</sup>

When the possession meets the criteria for legal possession and has reached the statute of limitations, the law considers the possessor as the legitimate owner. Article 14 of the 2011 Enforcement Law of the Civil Code requires that a possessor needs to receive an ownership title.<sup>71</sup> In case that a possessor fails or neglects to register, legitimate ownership is still protected under the law.<sup>72</sup>

If there is a claim from a third party over such possessed land, the law requires the legal features of land possession to be taken into consideration against land certificate or titles. Article 40 of the 2001 Land Law states that a possession certificate is only a proof of tenure; it does not indicate ownership.<sup>73</sup> Although ownership title may have been uncontested under the 2001 Land Law, the 2007 Civil Code cut off this clause by making provisions for 'adverse possession' over titled land.<sup>74</sup> Thus, previously-recognized land titles still can be argued against under the new code.

Above all, the system provides a strong framework to protect legal possessors from arbitrary eviction (Hem, 2016, p. 25). The 2001 Land Law authorizes that eviction of a possessor can

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<sup>68</sup> 2001 Land Law, Arts. 30 and 31.

<sup>69</sup> *Ibid.*, Art. 30.

<sup>70</sup> *Ibid.*

<sup>71</sup> Law on Enforcement of Civil Code, Art. 14.

<sup>72</sup> Constitution of Cambodia, Art. 44; 2001 Land Law, Art. 42, and Civil Code of Cambodia, Art. 242.

<sup>73</sup> 2001 Land Law, Art. 40.

<sup>74</sup> Civil Code of Cambodia, Art. 162; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, pp. 130-131.

be made only with an order from court.<sup>75</sup> In this case, the law requires that a possessor needs to undergo the due process of dispute resolution and appropriate decision-making through judicial recourse.<sup>76</sup> Where there is contradictory evidence between land documents, the law requires the court to conduct physical investigation and verify the type, origin, date, and situation of issuing the land titles or certificates before decision-making.<sup>77</sup> If the decision rendering an eviction causes turbulence, such order can be temporarily suspended.<sup>78</sup>

This is clearly evident that Cambodian laws has a strong legal framework for the protection of legal possession from a third party's claim or forced eviction.

## V. Conclusion

Following Cambodia's most turbulent recent history, legal concepts regarding land possession are unique to Cambodian property laws. Under the 2001 Land Law, it is the extraordinary possession that is applied for original or unregistered land since the re-privatization of land in Cambodia. Under the 2007 Civil Code, it is the prescriptive or adverse possession that is applied for registered private land. The latter is newly-added feature to Cambodian property laws since the introduction of the new civil code.

Extraordinary possession, under the 2001 Land Law, must meet with the conditions of legal possession and complete the statute of limitations after five years, for the individual to be entitled to ownership acquisition and obtain a definitive land title from the state. Likewise, with prescriptive or adverse possession under the 2007 Civil Code, they must meet with the conditions of land possession and complete the statute of limitation after either 10 years or 20 years, based on integrity of possessors. If they satisfy these requirements, then they can request to register the possessed land.

However, failure or negligence to register their possessed land is still protected by laws. Cambodian property laws provides protection for actual possessors. The case for extraordinary possession can argue against land possession certificates, while adverse possession under 2007 Civil Code can argue against ownership titles. Thus, when resolving land disputes, especially competing claims, the legal features of land possession prescribed under both laws should be put forward as legal grounds for decision-making.

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<sup>75</sup> 2001 Land Law, Art. 35; Hem (2016, p. 25).

<sup>76</sup> 2001 Land Law, Art. 35; Hem (2016, p. 25).

<sup>77</sup> 2001 Land Law, Arts. 35 and 39.

<sup>78</sup> 2001 Land Law, Art. 36; Hem (2016, p. 25).

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**Glossary**

English Term	Khmer Term (with Transliteration)	Comments
Possession	គោត: ( <i>phou-gak</i> ) or ករកាន់កាប់ ( <i>kar-kan-kab</i> )	គោត: is used in the 2001 Land Law, while ករកាន់កាប់ is used in the 2007 Civil Code.
Possessor	គោតី ( <i>phou-gi</i> ) or អ្នកកាន់កាប់ ( <i>nak-kan-kab</i> )	គោតី is used in the 2001 Land Law, while អ្នកកាន់កាប់ is in the 2007 Civil Code.
Possessory right	សិទ្ធិកាន់កាប់ ( <i>sith-kan-kab</i> )	សិទ្ធិកាន់កាប់ is a key term in the 2007 Civil Code, as the explanation for the term គោត: in the 2001 Land Law.

Unambiguity or Unambiguous	ពិតប្រាកដ ( <i>pit-bra-kot</i> )	One of the criteria for land possession under the 2001 Land Law.
Direct possessor or possession	អ្នក/ការកាន់កាប់ដោយចំពោះ ( <i>nak/kar-kan-kab-doy-chom-puos</i> )	Used in the 2007 Civil Code; the 2001 Land Law uses a similar explanatory phrase for អាគៈមានលក្ខណៈពិតប្រាកដ.
Indirect possessor or possession	អ្នក/ការកាន់កាប់ដោយប្រយោល ( <i>nak/kar-kan-kab-doy-bror-yaul</i> )	Used in the 2007 Civil Code; the 2001 Land Law uses a similar explanatory phrase for អាគៈមានលក្ខណៈពិតប្រាកដ.
Possession with intention to ownership	ការកាន់កាប់ដោយមានឆន្ទៈយកជាកម្មសិទ្ធិ ( <i>kar-kan-kab-doy-mien-chhan-tak-yok-chea-kama-sith</i> )	Used in the 2007 Civil Code; the 2001 Land Law uses a similar explanatory phrase for អាគៈមានលក្ខណៈពិតប្រាកដ.
Possession without intention to ownership	ការកាន់កាប់ដោយគ្មានឆន្ទៈយកជាកម្មសិទ្ធិ ( <i>kar-kan-kab-doy-gmien-chhan-tak-yok-chea-kama-sith</i> )	Used in the 2007 Civil Code; the 2001 Land Law uses a similar explanatory phrase for អាគៈមានលក្ខណៈពិតប្រាកដ.
Non-violence or Non-violent	គ្មានហិង្សា ( <i>kmien-hoeng-sar</i> )	One of the criteria for possession under the 2001 Land Law.
Peace or Peaceful	សន្តិវិធី ( <i>san-te-vi-thi</i> )	One of the criteria for possession under the 2007 Civil Code; synonymous with គ្មានហិង្សា.
Open or well-known to the public	ដឹងគ្នាជាសាធារណៈ ( <i>doeng-leu-chea-sar-thea-ranak</i> )	A criterion for possession in both laws.
Continuity or Continuous	គ្មានអាក់ខាន ( <i>khmien-ak-khan</i> ), ជាប់រហូត ( <i>chob-ro-hout</i> )	គ្មានអាក់ខាន is used in the 2001 Land Law, while the synonymous ជាប់រហូត is used in the 2007 Civil Code.
Good faith	សុចរិត ( <i>so-cha-rit</i> )	A criterion for possession used in both laws.
Flawed possession	ការកាន់កាប់ដោយវិការៈ ( <i>kar-kan-kab-doy-mean-vi-ka-rak</i> )	See the 2007 Civil Code.
Possession in bad faith	ការកាន់កាប់ដោយទុច្ចរិត ( <i>kar-kan-kab-doy-tuch-cha-rit</i> )	See the 2007 Civil Code.
Negligent possession	ការកាន់កាប់ដោយមានកំហុស ( <i>kar-kan-kab-doy-mean-kom-hos</i> )	See the 2007 Civil Code.

## **The Land Registration Process in Cambodia: Background, Procedures, and Outcomes**

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### **Abstract**

Cambodia has implemented land registration since 1989. So far, more than 4 million titles out of estimated 7 million plots have been recognized for registration as of the end of 2017. Although Cambodia has achieved a remarkable result, the public at large seem to have limited knowledge of the land registration process, the issuance of titles, and the related cadastral fees. A comprehensive understanding of these is necessary to encourage more people to participate in and complete the land registration process. The purpose of the present paper is to give a comprehensive account of land registration procedures, title issuance, and the associated cadastral fees in Cambodia, so that readers will know how to deal with the process in practice.

### **I. Introduction**

Cambodia reprivatized land ownership in 1989 and appealed to local residents to register their occupied land.<sup>2</sup> Since then, Cambodia has achieved registration of more than 4 million of land titles.<sup>3</sup> However, it is observed that the public at large, especially ordinary people, have limited knowledge of the procedure, the principle of title issuance as well as cadastral fees related to the land registration process.<sup>4</sup> The purpose of the present paper is to provide a comprehensive account of land registration procedures, the issuance of titles and the associated cadastral fees.

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<sup>2</sup> Decision on Policy for Farmers, 1989; Decision Concerning Policy on Land Management and Use, 1989.

<sup>3</sup> Ministry of Land Management, Urban Planning, and Construction, *Report on Total Result of Implementing 2017 Action Plan and Ongoing 2018 Action Plan*, (January 12, 2018), p. 7.

<sup>4</sup> Local land occupants often transfer properties or register their land at the lower level of responsible authorities, namely, at district/*khan* level. Moreover, they often hire brokers to proceed with this. On the

Currently, Cambodia has two main systems for registering land throughout the country. The first is the sporadic land registration system; the other is the systematic land registration one. Both systems are working simultaneously throughout the country. However, they have different processes of implementation. The following sections will describe the background, procedure, the principle of title issuance, and results of land registration of each system in turn.

For ease of reference, a Glossary provides an annotated list of the English terms used here and their Khmer equivalents.

## II. Sporadic Land Registration

This is where an individual land occupant initiates the process of land registration.

### 1. Background

Sporadic land registration originated from the *de facto* practice of registration in the initial land reform of 1989. The then-government reprivatized land and appealed to people to register their occupied land at state cadastral offices in 1989 (Russell, 1997, p. 107; van Acker, 1999, p. 37; Chan *et al.*, 2001, p. 30; Biddulph, 2014, p. 4). In response to this, people came and applied for land registration, with around 4.5 million application forms being filed at local cadastral offices; remarkably, only receipts were then issued to the applicants (Russell, 1997, p. 107; van Acker, 1999, p. 37; Chan *et al.*, 2001, p. 30; Biddulph, 2014, p. 4).

Looking through existing legal documents, the procedure for sporadic land registration did not have comprehensive laws and regulations for governing its process in the initial stages. At first, some governmental circulars and instructions, especially the Instruction on Implementation of Policy on Management and Use of Land in 1989,<sup>5</sup> provided some guidelines which were incorporated in the Land Law of 1992.<sup>6</sup> However, the latter did not specify a detailed procedure for the land registration

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other hand, they feel reluctant to use the systems or to register their land through the entire process because they think it will cost a lot of money for processing. This shows the limitations of their knowledge about the registration process.

<sup>5</sup> Instruction on Implementation of Policy on Management and Use of Land, No. 03/SnN, 1989; Notification on Acceptance of Land Registration Application Form and Ongoing Practice, No. 3451 KSK/SChN, 1990; Council of Ministers Informed Minister of Agriculture on Extension of Land Application Form Acceptance Until June 30, 1990, No. 94 SChN/KS, 1990; Instruction/03 SnN/Dec 08 1990/ on Readjustment of Circular 03 SnN dated June 30, 1989 of the Council for Ministers, No. 03/ SnN, 1990.

<sup>6</sup> 1992 Land Law, arts. 203-217.

process, so that that under the 1989 Instruction was implemented.

The implementation of sporadic land registration achieved its present form when Cambodia adopted the 2001 Land Law, which introduced the term ‘sporadic land registration.’<sup>7</sup> This land law also provided for specific procedures of the sporadic land registration to be made by a separate sub-decree.<sup>8</sup> In response to this, the Sub-decree on Sporadic Land Registration was adopted in 2002 (hereinafter this is called the ‘2002 Sporadic Registration Sub-decree’).<sup>9</sup> This sub-decree regulated the *de facto* practice of post-1989 land registration as a legal procedure.

Based on this, the Ministry of Land Management, Urban Planning, and Construction (hereinafter is called ‘the Land Ministry’) developed the Circular on Procedural Implementation of Sporadic Land Registration in 2004. This circular detailed the procedures for sporadic land registration.<sup>10</sup> Subsequently, an updated version of this circular was made in 2009.<sup>11</sup> Above all, a number of articles of the 2002 Sporadic Registration Sub-decree were amended in 2016 in order to speed up the process of land registration through this mechanism.<sup>12</sup>

Given the above background on the law and regulations governing the sporadic land registration in Cambodia, the following section will elaborate the procedure of sporadic land registration under the current legal instruments.

## 2. Current Procedures

Figure 1 provides an overview of the different stages in the process. An individual who has occupied land can request authorities to register their land at state cadastral offices (Adler *et al.*, 2008, p. 3). They can submit an application form at the office of the commune/*sangkat* where the property is located,<sup>13</sup> together with relevant documents to prove legal possession of such land.<sup>14</sup> The

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<sup>7</sup> 2001 Land Law, art. 229.

<sup>8</sup> *Ibid.*

<sup>9</sup> Sub-decree on Sporadic Land Registration, No. 48 ANK.BK, 2002.

<sup>10</sup> Circular on Procedural Implementation of Sporadic Land Registration, No. 01 DNS/SD, 2004.

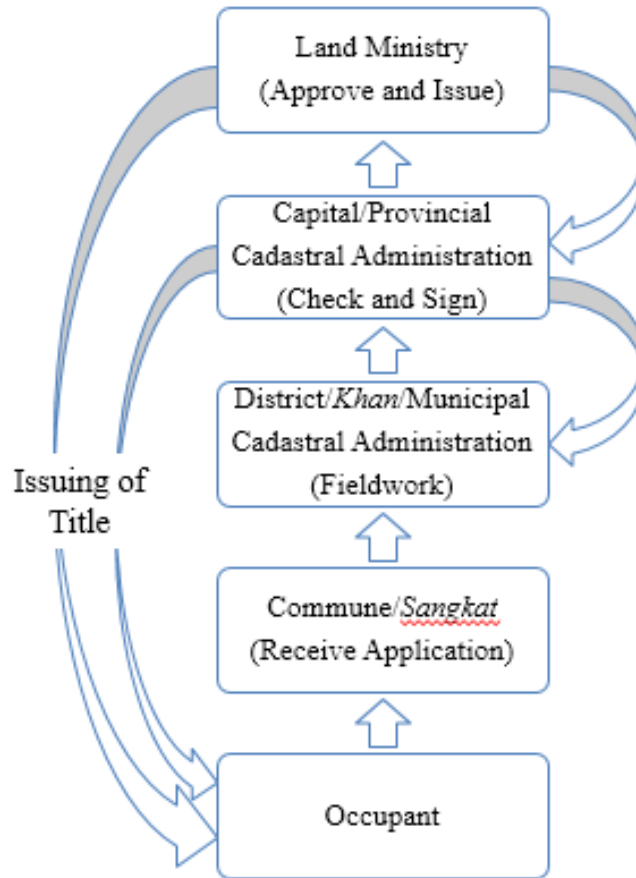
<sup>11</sup> Circular on Procedural Implementation of Sporadic Land Registration, 14/DNS/SRNn, 2009.

<sup>12</sup> Sub-decree on Amendment of Article 9 and Article 13 of 2002 Sub-decree on Sporadic Land Registration, 121/ANK/BK, 2016.

<sup>13</sup> Sub-decree on Sporadic Land Registration, art. 7; Circular on Procedural Implementation of Sporadic Land Registration, p. 1.

<sup>14</sup> Sub-decree on Sporadic Land Registration, art.5; Circular on Procedural Implementation of Sporadic Land Registration, p. 1.

commune/*sangkat* chief will check these and instruct him or her to fill in an application form.<sup>15</sup> The commune/*sangkat* chief will then send this with any comments to the District/*Khan*/Municipal Cadastral Administration for checking.<sup>16</sup>



**Figure 1** Overview of the sporadic land registration procedure (adapted from Hem, 2015); see text for further details.

If the District/*Khan*/Municipal Cadastral Administration finds the application form inappropriate or the land occupation illegal, it will deny the application with express reasons and return it to the applicant.<sup>17</sup> If the applicant is dissatisfied with the decision, they can appeal to the Capital/Provincial Cadastral Administration or the Land Ministry for review.<sup>18</sup> If the District/*Khan*/Municipal Cadastral

<sup>15</sup> Circular on Procedural Implementation of Sporadic Land Registration, p. 1.

<sup>16</sup> Sub-decree on Sporadic Land Registration, arts.7, 8; Circular on Procedural Implementation of Sporadic Land Registration, p. 2.

<sup>17</sup> Sub-decree on Sporadic Land Registration, art. 8; Circular on Procedural Implementation of Sporadic Land Registration, pp. 2-3.

<sup>18</sup> Sub-decree on Sporadic Land Registration, art. 8; Circular on Procedural Implementation of Sporadic Land Registration, p. 3.

Administration finds that the requested land is in dispute, the District/*Khan*/Municipal Cadastral Administration will send the case to the Cadastral Commission for resolution as provided by law.<sup>19</sup>

If the District/*Khan*/Municipal Cadastral Administration finds the application appropriate, it will record the application in the reception book and will set the date and place for fieldwork.<sup>20</sup> They will send the proposed date and place of fieldwork to the district/*khan*/municipal governor for signature within 3 days.<sup>21</sup> Within seven days thereafter, the governor will notify the date of fieldwork to the applicant and have announcements posted at municipality, district, *khan*, and commune/*sangkat* offices, as well as at an easily visible place in village where the fieldwork will be conducted.<sup>22</sup>

On the specified day, the District/*Khan*/Municipal Cadastral Administration will send officials for conducting fieldwork (hereinafter ‘fieldwork officials’). The fieldwork officials need to collect and compile precise information on the land and the occupants.<sup>23</sup> In doing so, they can cooperate with local authorities such as chiefs of the village and commune/*sangkat*, and any other relevant persons in order to collect and complete information and the due process.<sup>24</sup>

Thus the fieldwork officials will ask land occupants and interested persons for relevant information, in order to survey and demarcate the land.<sup>25</sup> Interested persons can raise objections to the land survey and demarcation.<sup>26</sup> If there is a boundary dispute during the fieldwork, the fieldwork officials will try to preliminarily conciliate the dispute.<sup>27</sup> If the dispute is not settled, the fieldwork officials will send the case to the District/*Khan*/Municipal Cadastral Commission for conciliation.<sup>28</sup>

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<sup>19</sup> Sub-decree on Sporadic Land Registration, art. 8; Circular on Procedural Implementation of Sporadic Land Registration, p. 3.

<sup>20</sup> Sub-decree on Sporadic Land Registration, art. 8; Circular on Procedural Implementation of Sporadic Land Registration, p. 2.

<sup>21</sup> Circular on Procedural Implementation of Sporadic Land Registration, p. 2.

<sup>22</sup> Sub-decree on Amendment of Article 9 and Article 13 of 2002 Sub-decree on Sporadic Land Registration, art. 1.

<sup>23</sup> Sub-decree on Sporadic Land Registration, art. 10; Circular on Procedural Implementation of Sporadic Land Registration, p. 3.

<sup>24</sup> Sub-decree on Sporadic Land Registration, arts. 3 and 4; Circular on Procedural Implementation of Sporadic Land Registration, pp. 3-4.

<sup>25</sup> Sub-decree on Sporadic Land Registration, art. 10; Circular on Procedural Implementation of Sporadic Land Registration, pp. 4-5.

<sup>26</sup> Circular on Procedural Implementation of Sporadic Land Registration, p. 6.

<sup>27</sup> Sub-decree on Sporadic Land Registration, art. 10; Circular on Procedural Implementation of Sporadic Land Registration, p. 5.

<sup>28</sup> Sub-decree on Sporadic Land Registration, art. 10; Circular on Procedural Implementation of Sporadic Land Registration, p. 5.

After the completion of data collection, the District/*Khan*/Municipal Cadastral Administration will review the collected documents and produce a parcel map and sporadic index map for the requested land.<sup>29</sup> The District/*Khan*/Municipal Cadastral Administration will approve the resulting document,<sup>30</sup> hereinafter called the ‘screening document’.<sup>31</sup> This document, which includes not only the parcel map and sporadic index map but also a list of landowners, is put on public display within 15 days at the municipality, district, *khan* and commune/*sangkat* offices, as well as at an easily visible place in the village.<sup>32</sup> The district/*khan*/municipal governor needs to notify the applicant within upto three days before such a public display.<sup>33</sup>

During the public display, any land possessor, legal representative, or person interested in the land parcel can lodge an objection to the displayed document with the office of the District/*Khan*/Municipal Cadastral Administration.<sup>34</sup> The Cadastral Administration will review any such objections, based on the documents and information that they had collected during the fieldwork.<sup>35</sup> Where the Cadastral Administration finds such an objection appropriate, the error can only be corrected by approval from relevant authorized persons over such correction in the screening document.<sup>36</sup> Where an objection is deemed inappropriate, the dispute will be submitted to the Cadastral Commission for resolution.<sup>37</sup>

After the period of public display, the screening document is considered valid if there is no

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<sup>29</sup> Sub-decree on Sporadic Land Registration, arts. 12 and 13; Circular on Procedural Implementation of Sporadic Land Registration, pp. 7-8.

<sup>30</sup> Sub-decree on Sporadic Land Registration, arts. 12 and 13; Sub-decree on Amendment of Article 9 and Article 13 of 2002 Sub-decree on Sporadic Land Registration, art. 1; Circular on Procedural Implementation of Sporadic Land Registration, p. 8.

<sup>31</sup> Sub-decree on Sporadic Land Registration, arts. 12 and 13; Sub-decree on Amendment of Article 9 and Article 13 of 2002 Sub-decree on Sporadic Land Registration, art. 1; Circular on Procedural Implementation of Sporadic Land Registration, p. 8.

<sup>32</sup> Sub-decree on Amendment of Article 9 and Article 13 of 2002 Sub-decree on Sporadic Land Registration, art. 1.

<sup>33</sup> *Ibid.*

<sup>34</sup> Sub-decree on Sporadic Land Registration, art. 14; Circular on Procedural Implementation of Sporadic Land Registration, p. 8.

<sup>35</sup> Sub-decree on Sporadic Land Registration, art. 14; Circular on Procedural Implementation of Sporadic Land Registration, p. 8.

<sup>36</sup> Sub-decree on Sporadic Land Registration, art. 14; Circular on Procedural Implementation of Sporadic Land Registration, pp. 8-9.

<sup>37</sup> Sub-decree on Sporadic Land Registration, art. 14; Circular on Procedural Implementation of Sporadic Land Registration, p. 9.

objection.<sup>38</sup> The responsible officials will prepare all relevant documents and submit them to the District/*Khan*/Municipal Cadastral Administration for verification and signature.<sup>39</sup> The Cadastral Administration will send the documents to the district/*khan*/municipal governor for confirmation, to thereafter be forwarded to the Capital/Provincial Cadastral Administration.<sup>40</sup>

After receiving the documents, the Capital/Provincial Cadastral Administration will check and raise issues to the capital/provincial governor whether it is appropriate to issue titles, or raise any objection to the document, or dismiss the document.<sup>41</sup> In a case where the capital/provincial governor approves, the Capital/Provincial Cadastral Administration can issue the title to the applicant if they have been so empowered by the Land Ministry.<sup>42</sup> However, if the Capital/Provincial Cadastral Administration has yet to be delegated such powers, they must submit the documentation to the central Cadastral Administration; namely, the Department of Cadastre and Geography at the Land Ministry.<sup>43</sup> If, after further checking, the document, the Department of Cadastre and Geography finds it appropriate, it will register and issue title to the applicant.<sup>44</sup> However, if the Department of Cadastre and Geography finds the documentation incorrect or inadequate, it will instruct the Capital/Provincial Cadastral Administration to revise the document.<sup>45</sup>

In cases where the capital/provincial governor objects to any point or otherwise dismisses the document, they must inform the applicant of the reasons.<sup>46</sup> The Capital/Provincial Cadastral Administration will return to the issues and submit a revised document to the governor for further review.<sup>47</sup> If the governor still rejects their decision, the Capital/Provincial Cadastral Administration can forward the case with dissenting opinions to the General Department of Cadastre and Geography

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<sup>38</sup> Circular on Procedural Implementation of Sporadic Land Registration, p. 9.

<sup>39</sup> Sub-decree on Sporadic Land Registration, art. 16; Circular on Procedural Implementation of Sporadic Land Registration, p. 10.

<sup>40</sup> Sub-decree on Sporadic Land Registration, art. 16; Circular on Procedural Implementation of Sporadic Land Registration, p. 10.

<sup>41</sup> Circular on Procedural Implementation of Sporadic Land Registration, p. 11.

<sup>42</sup> Sub-decree on Sporadic Land Registration, arts. 17 and 18; Circular on Procedural Implementation of Sporadic Land Registration, p. 11.

<sup>43</sup> Sub-decree on Sporadic Land Registration, art. 16; Circular on Procedural Implementation of Sporadic Land Registration, p. 11.

<sup>44</sup> Sub-decree on Sporadic Land Registration, art. 19; Circular on Procedural Implementation of Sporadic Land Registration, p. 11.

<sup>45</sup> Circular on Procedural Implementation of Sporadic Land Registration, p. 11.

<sup>46</sup> Sub-decree on Sporadic Land Registration, art. 19; Circular on Procedural Implementation of Sporadic Land Registration, p. 11.

<sup>47</sup> *Ibid.*, pp 11-12.

for their review and decision.<sup>48</sup> All issues related to objection or disputes must be resolved before proceeding with a course of registration.<sup>49</sup>

Once approved, the land parcel will be recorded in the Land Register, and a land title issued to the applicant.<sup>50</sup> Where they are so empowered, this is by the delegated Capital/Provincial Cadastral Administration; otherwise, the Department of Cadastre and Geography will do so, while also informing the relevant Capital/Provincial Cadastral Administration of their decision. The Capital/Provincial Cadastral Administration will also send registration details to the relevant District/*Khan*/Municipal Cadastral Administration to update their records and ensure consistent information regarding the land parcel.<sup>51</sup>

### III. Systematic Land Registration

In addition to the sporadic land registration process, Cambodia has another mechanism: systematic land registration. The latter refers to the registration of land in an entire village or commune. Under this process, the government needs to declare a specific location for such registration.<sup>52</sup> Local residents do not submit their applications, unlike with sporadic land registration. Instead, they wait at their location and cooperate with fieldwork officials in measuring land and providing relevant documents to prove the legitimacy of their land possession.<sup>53</sup> This section will cover the background and procedure for systematic land registration in Cambodia.

#### 1. Background

Systematic land registration stemmed from the *de facto* practice of land registration under donor-sponsored projects in 1990s.<sup>54</sup> Remarkably, there were a number of donor-funded projects in helping land registration in Cambodia then (Biddulp, 2014, p. 5). For instance, the Land

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<sup>48</sup> *Ibid.*, p. 12.

<sup>49</sup> Sub-decree on Sporadic Land Registration, art. 15; Circular on Procedural Implementation of Sporadic Land Registration, p. 13.

<sup>50</sup> *Ibid.*, art 19.

<sup>51</sup> Sub-decree on Sporadic Land Registration, arts. 17 and 18.

<sup>52</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, No. 46 ANK/BK, arts. 1 and 2; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, No. 001DNS/SD, 2002, p. 1.

<sup>53</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, arts. 4 and 5; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 5.

<sup>54</sup> These projects were under the bilateral cooperation between the Royal Government of Cambodia and a number of donor countries who provided assistance in registering land in a specific area in the country.

## The Land Registration Process in Cambodia

Management Project was funded by Germany and operated in Kandal, Kampong Thom, and Takeo provinces in 1994;<sup>55</sup> the Cambodia Cadastral Project was funded by Finland and operated in Takeo province in 1996;<sup>56</sup> and the Cadastral Mapping Project was funded by France and operated in Phnom Penh in 1996.<sup>57</sup>

The cooperation was to establish a modern cadastral index map and land documents through the technical assistance from those countries (Lim, 2006, p. 7; Biddulph, 2014, p. 1). Having seen the significance of land tenure security, the government enacted a number of legislations for governing this process. The initial Sub-decree on Procedure to Establish Cadastral Index Map and Land Register (hereinafter the ‘2000 Systematic Registration Sub-decree’) for governing the systematic land registration was enacted in 2000.<sup>58</sup>

When Cambodia adopted the 2001 Land Law, which was under the assistance of the Asian Development Bank (ADB), the term ‘systematic land registration’ was clearly provided in it.<sup>59</sup> This law authorized the process for systematic land registration under a separate sub-decree.<sup>60</sup> As a consequence, a new sub-decree was created in 2002 (hereinafter is called the ‘2002 Systematic Registration Sub-decree’) to replace the 2000 Systematic Registration Sub-decree.<sup>61</sup> In addition to this sub-decree, the process of systematic land registration was further detailed under the Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register in 2002.<sup>62</sup>

The systematic land system received more funds from donors when Cambodia had developed a strong legal framework for governing it. Those main donors were Germany, Finland, Canada, the ADB, and the World Bank. The total amount for its initial operation was US\$33.9 million, of which the World Bank contributed US\$23.4 million (World Bank, 2001, p. 7; Multi-donor Appraisal Mission, 2002, p. 2; Inspection Panel, 2010: xiv; Trzcinski and Upham, 2012, p. 135).

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<sup>55</sup> Germany funded this project with US\$2.7 million. The implementing agencies for this project were the Cadastral Department and GTZ (Lim, 2006, p. 7; Trzcinski and Upham, 2012, p. 135).

<sup>56</sup> Finland supported this project with the fund of US\$2.7 million. The implementing agency were the Cadastral Department and Finnmap (Lim, 2006, p. 7; Trzcinski and Upham, 2012, p. 135).

<sup>57</sup> France sponsored this project with US\$700,000. The implementing agency is the Phnom Penh Cadastral Department and IGN.FI (Lim, 2006, p. 7; Trzcinski and Upham, 2012, p. 135).

<sup>58</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, No. 11/ANK/BK, 2000.

<sup>59</sup> 2001 Land Law, art. 229.

<sup>60</sup> *Ibid.*

<sup>61</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, No. 46 ANK/BK, 2002, art. 1.

<sup>62</sup> Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register.

The systematic land registration operated under a special project entitled the ‘Land Management and Administration Project (LMAP)’ (Inspection Panel, 2010, p. v; Markussen, 2008, p. 2280; Trzcinski and Upham, 2012, p. 135). The LMAP was originally planned for implementation over 5 years, starting in 2002 and being completed on December 31, 2007 (Lim, 2006, p. 8; Inspection Panel, 2010, p. 13; Biddulph, 2014, p. 6). However, due to the project benefited local residents; it was extended for another two years, to complete its mission on December 31, 2009 (Inspection Panel, 2010, p. 13; Biddulph, 2014, p. 6).

The LMAP did not cover all areas throughout the country. Initially, it covered only ten provinces and the capital, Phnom Penh (Multi-donor Appraisal Mission, 2002, p. 3; Markussen, 2008, p. 2280; Biddulph, 2014, p. 7). These locations were called the ‘project provinces.’<sup>63</sup> Properties located in these project provinces were earmarked for systematic land registration (Multi-donor Appraisal Mission, 2002, p. 3; Markussen, 2008, p. 2280). The LMAP was expected to ensure that all land occupants in these earmarked areas would have access to and receive land titles from the systematic land registration (World Bank, 2011, p. iii; Biddulph, 2014, p. 6).

In spite of such an expectation, the operation of the LMAP encountered some flaws in practice.<sup>64</sup> The registration of land in some earmarked areas were denied due to the status of land tenure was unclear or unknown (Bugalski and Pred, 2010, pp. 4-5; Biddulph, 2014, p. 8). This often resulted in forced evictions and relocation of the local residents, for example the Boeung Kak land dispute in the center of Phnom Penh capital showcased this (World Bank, 2011, pp. iv-v; Bugalski and Pred, 2010, p. 3; Inspection Panel, 2010, pp. xiv and xxxi; Trzcinski and Upham, 2012, p. 137; Biddulph, 2014, p. 8). This case apparently led to a controversy resulting in the breakdown of partnership between the government and the World Bank on September 7, 2009, several months before the deadline of the project (Inspection Panel, 2010, pp. xiv and 5; Land Policy Council, 2011, p. 1; Trzcinski and Upham, 2012, p. 140; Biddulph, 2014, p. 1). The World Bank suspended its funding and withdrew from the LMAP (Inspection Panel, 2010, pp. xiv and 5; Trzcinski and Upham, 2012, p. 140).

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<sup>63</sup> Phnom Penh together with Takeo, Prey Veng, Kandal, Kampong Speu, Preah Sihanouk, Kampong Thom, Kampong Cham, Kampot, Siem Reap, and Battambang (World Bank, 2002; Inspection Panel, 2010, pp. xiv and xxxi).

<sup>64</sup> Due to the arrangement of the LMAP and a lack of close monitoring by the relevant donors; in practice, the LMAP excised ‘disputed’ or ‘unclear’ areas from registration (Inspection Panel, 2010, pp. vi-vii).

Despite this, the systematic land registration has continued to operate under the ‘‘Land Administration Sub-sector Program’ (LASSP)’ (Land Policy Council, 2011, pp. 9–10). Currently, the LASSP covers the capital and all provinces (Land Policy Council, 2011, p. 4). Recently, the government amended a number of articles of the 2002 Systematic Registration Sub-degree in order to expedite the registration process in 2016.<sup>65</sup>

The above is the background on systematic land registration and its governing law and regulations. The next section will describe the procedure of the systematic land registration under the current law and regulations.

## 2. Procedures

Systematic land registration has some remarkably different processes from those for sporadic land registration. It is the state mechanism for registering land in a certain area.<sup>66</sup> In this context, the state determines a specific area, for example a commune, for registration at a particular time (World Bank, 2011, p.14). In this process, land possessors wait for such a registration and cooperate with cadastral officials by proving evidence or documents relevant to land tenure when registration starts.<sup>67</sup> Figure 2 provides an overview of the processes involved.

Under systematic land registration, there is an ad-hoc committee responsible for registering land throughout the entire process. The committee is determined according to the 2002 Systematic Registration Sub-decree, and includes both local and central land authorities.<sup>68</sup> The process follows three important steps: (1) identify a particular area; (2) set up an administrative commission; and (3) operate the land registration process.

Determining a particular area is the preliminary step in the systematic registration process. The 2002 Systematic Registration Sub-decree provides the power to the capital/provincial governor to

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<sup>65</sup> Sub-decree on Amendment of Article 6, Article 7, and Article 11 of 2002 Systematic Land Registration Sub-decree.

<sup>66</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, arts. 1 and 2; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 1.

<sup>67</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, arts. 4 and 5; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 5.

<sup>68</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, arts. 2 and 3; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 1.

determine a certain area for registration.<sup>69</sup> The governor will announce a specific area – for instance, a commune – for systematic land registration after obtaining the approval from the Land Ministry.<sup>70</sup> When the determined area is approved, the governor will appoint an ad-hoc administrative commission responsible for registering land in this area.<sup>71</sup> The membership of the administrative commission is provided in Article 3 of this sub-decree as follows:

- a representative of the capital/provincial governor, as chairman;
- a cadastral official who is responsible for the determined area, as a member;
- a capital/provincial cadastral official who is responsible for administrative work, as a member;
- the governor of the district/*khan*/municipality or his representative, as a member;
- the chief of the village or his representative, as a member;
- two elders in the determined area, as members.<sup>72</sup>

This administrative commission is responsible for all work relating to land registration in the determined area.<sup>73</sup> After its establishment, the administrative commission will hold internal meetings to explain procedures, divide roles for each member, prepare an action plan for implementation, and propose a date and place to the capital/provincial governor for a public meeting concerning the announcement of the determined area.<sup>74</sup> The governor will write a formal letter to describe and allow the operation of systematic land registration to lower local authorities in the determined area within upto seven days before the public meeting takes place.<sup>75</sup>

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<sup>69</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 2; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 1.

<sup>70</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 2; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 1.

<sup>71</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 3; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 1.

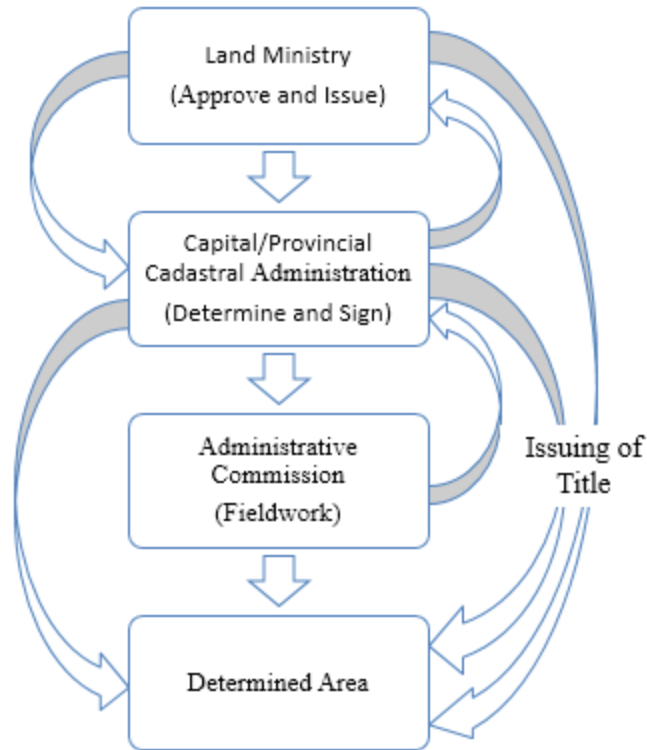
<sup>72</sup> In this Article 3, the names of the territorial administration were not changed yet. However, in order to have consistency, and avoid confusion, this paper used the new names of the territorial administration when it was readjusted in 2009: Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 3; Constitution of Kingdom of Cambodia, arts. 145 and 146; Law on Administration of Capital, Province, Municipality, District/*Khan*, 2008, arts. 4 and 5.

<sup>73</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 3; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, pp. 1-3.

<sup>74</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 6; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 2.

<sup>75</sup> Sub-decree on Amendment of Article 6, Article 7, and Article 11 of 2002 Systematic Land Registration Sub-decree, art. 1.

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**Figure 2** Overview of the systematic land registration procedure (adapted from Hem, 2015); see text for further details.

The governor will announce the date and place of public meeting within upto three days before the operation starts in order to allow local residents in the determined area to know the procedure of systematic land registration and to prepare documents and cooperate with ad-hoc administrative commission.<sup>76</sup> The public meeting must be made at the determined area for the systematic land registration.<sup>77</sup> During the public meeting, the cadastral official responsible for the determined area or a representative of the administrative commission will explain the process, legal aspects, and answer relevant questions.<sup>78</sup>

There are three types of cadastral officials responsible for systematic land registration: (1) an official liable for the determined area; (2) an official liable for surveying and demarcation; and (3) an official liable for adjudication.<sup>79</sup> The official liable for the determined area, who has been

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 4; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, pp. 3-4.

instructed by the General Department of Cadastre and Geography, will manage the determined area, and lead and instruct the other officials how to do their jobs.<sup>80</sup>

On the operation day, the official liable for surveying and demarcation can access to land in the determined area for surveying and demarcating the border of each land parcel, and can invite relevant land owners to clarify the border of their occupied land parcels.<sup>81</sup> The official responsible for adjudication will ask for further information relevant to the identification of land owners: they can invite relevant parties to orally clarify or provide evidence and documents on their occupied land parcel and fill in the data-collecting form.<sup>82</sup> When the form is complete, the adjudicating official will allow land owners to thumbprint, and also thumbprint it themselves to assume responsibility for the document.<sup>83</sup> In case that there is a dispute over the border or proprietary right of land which cannot be reconciled, the official liable for adjudication will note it as the ‘disputed land’ in the data-collecting form and forward it to the Cadastral Commission for further conciliation.<sup>84</sup>

After completing data collection, the cadastral officials will make the cadastral index map and a list of land owners in order to add to the Land Register.<sup>85</sup> When it is complete, the produced documents will be signed by the official liable for the determined area and prepared for public display (hereinafter is called the ‘screening document’).<sup>86</sup> The capital/provincial governor, upon the request of the administrative commission, will announce the display of the screening document,

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<sup>80</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 4; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 3.

<sup>81</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 4; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, pp. 3-4.

<sup>82</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, arts. 4, 5, and 9; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 4.

<sup>83</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 10; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 4.

<sup>84</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 7; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, pp. 4-5.

<sup>85</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 10; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 5.

<sup>86</sup> This document is called ‘ឯកសារវិនិច្ឆ័យ’ (*ek-ka-sa-vi-ni-chhai*) in Khmer, where its direct translation should be the ‘adjudicated document.’ However, the author has used ‘screening document’ here rather than ‘adjudicated document’ to avoid confusion that it is the final document. It is not a final document yet; it is the primary public displayed document for informing the land owners or other relevant persons to check veracity of the document and they can object to it if they see an error in it. *See* Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, arts. 10 and 11; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 6.

including the cadastral index map and list of land possessors, within 15 days at easily visible places in the determined area.<sup>87</sup>

During the public display of the screening document, any possessor or person interested in land parcel can object to the administrative commission if the screening document has an error.<sup>88</sup> The official liable for the determined area can correct any error, but such corrections must not affect any legal interest of relevant persons and also must receive approval from the authorized person.<sup>89</sup>

The administrative commission will resolve any objections by conciliation.<sup>90</sup> If an objection cannot be reconciled, the administrative commission will forward the case to the National Cadastral Commission.<sup>91</sup> However, since 2010, such kinds of dispute have been referred to the Capital/Provincial Cadastral Commission for resolution.<sup>92</sup>

If land possessors or persons interested in a land parcel have not objected the screening document within the fixed period, the displayed data is considered ‘undisputed’ or ‘valid.’<sup>93</sup> However, if those persons had a clear document for proving reasons that they could not have objected during the displayed period, they could file an objection to the responsible cadastral commission for resolution as determined by law.<sup>94</sup>

After the displayed period or dispute resolution is concluded, the administrative commission will approve and sign on the screening document and send it to the Capital/Provincial Cadastral Administration for technical checking and signature.<sup>95</sup> The Administration will then send the

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<sup>87</sup> Sub-decree on Amendment of Article 6, Article 7, and Article 11 of 2002 Systematic Land Registration Sub-decree, art. 1.

<sup>88</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 12; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 6.

<sup>89</sup> *Ibid.*

<sup>90</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 12; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 6.

<sup>91</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 12; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 6.

<sup>92</sup> *Prakas* on Power Delegation to Capital/Provincial Governor and As Chairman of Capital/Provincial Cadastral Commission for Deciding Land Disputes in Cadastral Commission Mechanism, No. 032BK/DNS/GSch, 2010.

<sup>93</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 13; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 7.

<sup>94</sup> Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 7.

<sup>95</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 13; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, pp. 7-8.

document to the capital/provincial governor for approval and signature.<sup>96</sup> The governor will then send the document to the Land Minister for signature.<sup>97</sup> Thereafter, the approved document will be sent back to the Cadastral Administration for registration.<sup>98</sup> When it is registered, the Land Ministry, or the Capital/Provincial Cadastral Administration which have been delegated the power by the Land Ministry, will issue land titles in the determined area.<sup>99</sup>

#### IV. Principles of Title Issuance

Title issuance is fundamental for land registration. A title is issuable or not depending on the principles stated under current law and regulations. Land owners should also know what type of land titles they receive when they register their occupied land. This section will demonstrate the feature of land titles, entitlement to title issuance, and type of land titles are issued under the current land registration systems.

The use of the term ‘title’ here is note-worthy. The term ‘title’ is translated as ‘*Ban*’ in Khmer. However, the Khmer term ‘*Ban*’ has some notably different features compared with the use of the term ‘title’ in English. Also, terms other than ‘*Ban*’ may be used in Khmer, based on the context, as –technical, spoken, or business terms. This paper seeks to document these for the reader.

There are two types of land titles issued under the registration systems in Cambodia. The first type is the certificate recognizing possessory right of immovable property (*ban-sam-gal-sith-kan-kab-ak-chola-nak-vatho*). It is often called the ‘possession certificate’ (*ban-phou-gak*).<sup>100</sup> The second is the certificate recognizing ownership of immovable property (*vi-nhier-ban-na-bat-sam-gal-ma-*

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<sup>96</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 13; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 8.

<sup>97</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 14; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 8.

<sup>98</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art.14; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 8.

<sup>99</sup> Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, art. 14; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 9.

<sup>100</sup> The certificate recognizing possessory right of immovable property, ប័ណ្ណសម្គាល់សិទ្ធិកាន់កាប់អចលនវត្ថុ (*ban-sam-gal-sith-kan-kab-ak-chola-nak-vatho*), refers to the possessory certificate or the certificate of possession (*ban-phou-gak*), which identify the specific occupier of the land. It is shortly called ប័ណ្ណកាន់ (possession certificate).

*chas-ak-chola-nak-vatho*). It is called the ‘ownership certificate’ (*ban-kama-sith*).<sup>101</sup> Both possession and ownership certificates are jointly called the ‘land titles,’ which are referred to ‘*ban-dei-thli*’ or ‘*plang-dei*’ in Khmer.<sup>102</sup>

The issuance of both types of titles depends on the period of land occupation. If one has possessed a land for less than five years, one will receive the possession certificate (*ban-phou-gak*).<sup>103</sup> If one has possessed a land for over five years, one will receive the ownership title (*ban-kama-sith*).<sup>104</sup> However, when one holds a possession certificate (*ban-phou-gak*), one can exchange it for the ownership title (*ban-kama-sith*) when one’s possession period reaches the required minimum of five years.<sup>105</sup>

Regarding the principle of title issuance under both land registration systems, there are a number of situations where the current law and regulations prohibit the issuance of titles to land possessors. First, the 2001 Land Law provides that the entitlement to ownership acquisition over possessed land was made between 1989 and August 30, 2001, which is the cut-off date for the 2001 Land Law taking effect.<sup>106</sup> In this sense, those who had occupied land after that are not entitled to ownership acquisition and obtaining a land title. Second, the 2001 Land Law considers any possession of state public land illegal, regardless of the possessory period, and so not entitled to ownership acquisition.<sup>107</sup> Third, land titles are not issued over disputed land where resolution has

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<sup>101</sup> The certificate recognizing ownership of immovable property, វិញ្ញាបនបត្រសម្គាល់ម្ចាស់អចលនវត្ថុ (*vi-nhier-ban-na-bat-sam-gal-ma-chas-ak-chola-nak-vatho*), refers a definitive title that you receive when your possession reaches at least a period of five years and you request to register at the cadastral office. It is shortly called ‘ownership certificate’, ប័ណ្ណកម្មសិទ្ធិ (*ban-kama-sith*). However, the term ‘certificate’ is rarely used with ownership in English, the term ‘title’ being used instead. To accommodate the common use in English, this paper, hereinafter, will replace the term ‘ownership certificate’ with the ‘ownership title’.

<sup>102</sup> Land titles can be translated as several words in Khmer such as ‘ប័ណ្ណដីធ្លី’ (*ban-dei-thli*), ‘ប្លង់ដី’ (*plang-dei*).

The word ‘ប័ណ្ណ’ (*Ban*) are used for both titles, as explained in the summary report of the training workshop by the Land Ministry. See the Ministry of Land Management, Urban Planning, and Construction, *Compilation of Questions and Answers from Workshop on Training Principal Trainers at Central Committee*, (February 20, 2003), p. 1.

<sup>103</sup> 2001 Land Law, arts. 30 and 31.

<sup>104</sup> *Ibid.*

<sup>105</sup> Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 9; Circular on Procedural Implementation of Sporadic Land Registration, p. 13.

<sup>106</sup> 2001 Land Law, art. 29; Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, 9; Circular on Procedural Implementation of Sporadic Land Registration, pp. 12-13.

<sup>107</sup> 2001 Land Law, arts. 16 and 43.

not yet been achieved.<sup>108</sup> Under both systems, possession of the disputed land must be resolved before registration and issuing of titles.<sup>109</sup>

The issuance of land titles is made only on the legal possession of state private land between 1989 and 2001 (Hem, 2017). If one has occupied land in compliance with legal requirements on state private land, one has the right to register and request titles from the authorities. One can request to register their land based on the land registration systems as mentioned above. However, one should be careful of the type of land titles issued under both registration systems.

Systematic land registration now uses modern technology tools for measurement such as Total Station (Theodolite), Electronic Distance Measure (EDM), Global Positioning System (GPS), or Orthophotograph. The data are computerized to produce a cadastral index map with a uniform scale of land parcels and a correct geometry.<sup>110</sup> Thus, the title issued under systematic land registration is definitive and uncontested. It is often called the ‘hard title’ (*plang-reung*) in the business context in Cambodia.<sup>111</sup>

Titles issued by sporadic land registration fall into two types. If the process of sporadic land registration also used modern technology tools, it is also a definitive title if it is over the required period of five years.<sup>112</sup> However, if it is not made by these tools, being measured by hand for example by using meter-tapes, and the cadastral index map (land parcel map) is also made by hand, it is not a definitive title.<sup>113</sup> It is often called a ‘soft title’ (*plang-tun*).<sup>114</sup> However, the soft title can be exchanged for a hard title when systematic land registration has reached that area.<sup>115</sup>

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<sup>108</sup> Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 9; Circular on Procedural Implementation of Sporadic Land Registration, p. 13.

<sup>109</sup> Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 9; Instruction on Registering Resolved Land Dispute, 021 DNS/OSP, 2012, 1; Sub-decree on Procedure to Establish Cadastral Index Map and Land Register, 14; Sub-decree on Sporadic Land Registration, art. 15; Circular on Procedural Implementation of Sporadic Land Registration, p. 13.

<sup>110</sup> Circular on Procedural Implementation of Sporadic Land Registration, p. 5.

<sup>111</sup> The ‘hard title’ ‘ប្លង់រឹង’ (*plang-reung*) is not exchangeable. It can be invalidated and replaced by the new one. It is uncontested and the most reliable land document for transaction.

<sup>112</sup> Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 5.

<sup>113</sup> *Ibid.*

<sup>114</sup> The ‘soft title’ ‘ប្លង់ទន់’ (*plang-tun*) is exchangeable for the ‘hard title.’ It is considered as proof of land tenure, although it is not definitive yet. Someone can argue against it. It is not the most reliable land document for business. However, in practice, it can be used as collateral security.

<sup>115</sup> Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, pp. 5 and 12-13.

Title delivery is made at the cadastral office for the area where requested land for registration is located. Cadastral officials will only deliver titles to land owners and allow them to register, sign, and thumbprint in the reception book.<sup>116</sup> In legally-certified cases where the land owner is dead, absent, unknown, or incapable, their legal representative can come to receive the titles instead.<sup>117</sup>

In short, in comparison, systematic land registration is a cutting-edge system. It has a shorter process than the sporadic land registration. It proceeds with the specific determination of areas for registration and has an ad-hoc commission responsible for this process. Above all, it will produce a correct land cadastral index map and titles with specific geographic information.

## V. Cadastral Fees and Land Registration

In addition to the process of land registration and title issuance, knowing the service fee for this process is fundamental for land possessors to avoid overcharging or unofficial fees. Above all, it is crucial for people to use the land registration systems in place. This section will detail the cadastral fees for land registration in Cambodia.

### 1. Cadastral Registration Fee

Cadastral fees can vary depending on time and the principle set by the relevant ministries. This section will present the current enforcement of the cadastral fees at the Land Ministry. The current cadastral fees for land registration were determined by a joint proclamation by the Land Ministry and the Ministry of Economy and Finance in 2017.<sup>118</sup> This by-law is the Joint *Prakas* on the Provision of Public Services at the Ministry of Land Management, Urban Planning, and Construction on July 7, 2017 (hereinafter called the ‘2017 *Prakas* on Cadastral Fees’).<sup>119</sup>

According to the 2017 *Prakas* on Cadastral Fees, the service fees for land measurement and registration are not very expensive for either sporadic or systematic land registration.

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<sup>116</sup> Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, pp. 9-10; Circular on Procedural Implementation of Sporadic Land Registration, pp. 13-14.

<sup>117</sup> In case that landowners cannot come to receive the title, they must grant their right to their legal representative. They must express the reason in writing to the cadastral office. *See* Circular on Procedural Implementation of Establishing Cadastral Index Map and Land Register, p. 10; Circular on Procedural Implementation of Sporadic Land Registration, p. 14.

<sup>118</sup> Joint *Prakas* on Provision of Public Services at Ministry of Land Management, Urban Planning, and Construction, No. 648/SHV/BK., 2017.

<sup>119</sup> *Ibid.*

**Table 1** Cadastral services related to sporadic land registration of one parcel or plot (source: Joint *Prakas* on Provision of Public Services at the Land Ministry on July 7, 2017).

	Service Price*	Period of Service (Working days)	Comments
<b>1. Productive or Agricultural Land</b>			
1.1 In Phnom Penh and cities in Kandal, Preah Sihanouk, and Siem Reap provinces	400,000 riels	60 days	A land area larger than one hectare has a charge of 40,000 riels for each additional hectare.
1.2 Cities in other provinces	300,000 riels	60 days	A land area larger than five hectares has a charge of 30,000 riels for each additional hectare.
1.3 Rural areas or outside of cities	200,000 riels	60 days	A land area larger than five hectares has a charge of 20,000 riels for each additional hectare.
<b>2. Residential or Construction Land</b>			
2.1 In Phnom Penh and cities in Kandal, Preah Sihanouk, and Siem Reap provinces	600,000 riels	60 days	A land area larger than one hectare has a charge of 80,000 riels for each additional hectare.
2.2 Cities in other provinces	400,000 riels	60 days	A land area larger than one hectare has a charge of 60,000 riels for each additional hectare.
2.3 Rural areas or outside of cities	200,000 riels	60 days	A land area larger than one hectare has a charge of 30,000 riels for each additional hectare.

\* Note: US\$1 = 4,000 riels

According to Table 1, the service fees for the sporadic land registration process are cheap; in each case, the period for processing a title is up to 60 working days. The registration fee for agricultural or otherwise productive land varies depending on location. For instance, the registration fee for land in Phnom Penh capital and the cities in Kandal, Preah Sihanouk, and Siem Reap provinces is 400,000 riels for any land area that is up to one hectare in size. If the area is bigger than this, there is a charge of 40,000 riels for each additional hectare. The registration fee for agricultural or productive land in cities of all other provinces is 300,000 riels for any land area up to five hectares; there is a charge of 30,000 riels for each additional hectare. While the registration fee for agricultural land at rural areas

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or outside the cities will cost 200,000 riels for any land area up to five hectares, there is a charge of 20,000 riels for each additional hectare.

Likewise, the registration fee for residential/construction land is also cheap, varying with the location where the property is situated. For instance, in Phnom Penh and the cities of Kandal, Preah Sihanouk, and Siem Reap provinces, the registration fee is 600,000 riels per plot that is up to one hectare in size. If over this, there is a charge of 80,000 riels for each additional hectare. The residential/construction land in cities of other provinces will cost 400,000 riels per plot up to one hectare in size. If over this, there is a charge of 60,000 riels for each additional hectare. The residential/construction land in rural areas or outside cities costs 200,000 riels if it is up to one hectare in size. Over this, there is a charge of 30,000 riels for each additional hectare.

**Table 2** Cadastral services related to systematic land registration of one parcel or plot (source: Joint *Prakas* on Provision of Public Services at the Land Ministry on July 7, 2017).

	Service Price* per 1 m <sup>2</sup>	Period of Service (Working days)	Comments
<b><i>1. Productive or Agricultural Land</i></b>			
1.1 Phnom Penh	250 riels	100 days	
1.2 Outside Phnom Penh	1 riel	100 days	There is a minimum charge of 100 riels.
<b><i>2. Residential or Construction Land</i></b>			
2.1 Phnom Penh	500 riels	100 days	
2.2 Cities in other provinces	250 riels	100 days	
2.3 District towns	20 riels	100 days	
2.4 Rural areas	10 riels	100 days	

\* Note: US\$1 = 4,000 riels

The same joint by-law also states the fees for systematic land registration. According to the 2017 *Prakas* on Cadastral fees, the service price for systematic land registration is much cheaper than that of sporadic land registration. Table 2 shows the cadastral services related to systematic land registration. The price for the systematic land registration is very cheap; in each case, the period for processing a title is up to 100 working days. The registration of agricultural or productive land costs

one riel per square meter outside of Phnom Penh. If the land area is smaller than 100 square meters, there is a minimum charge of 100 riels. The fees for similar land in Phnom Penh are a bit higher, at 250 riels per square meter.

The registration fee of residential or construction land varies based on the location of this land. If the residential or construction land is located in a rural area, it will cost 10 riels per square meter. If the land is located in district towns or cities, the fee per square meter is 20 riels or 250 riels respectively. In Phnom Penh, the registration for residential land is 500 riels per square meter.

## **2. Achievements of Land Registration**

With the implementation of these systems, Cambodia has made remarkable achievements in land registration. The sporadic land register has 614,079 titles, while systematic land registration has reached 3,718,248 titles as of June 2018.<sup>120</sup>

In addition to this, Cambodia has also implemented various ad-hoc registrations of land as well. For example, the registration of land under the governmental Edict 01<sup>121</sup> has reached 642,531 titles.<sup>122</sup> The registration of indigenous land<sup>123</sup> has achieved 684 titles over 24 communities.<sup>124</sup>

In total, current land registration has reached 4,976,095 titles, of which 4,777,771 titles were issued to land owners, 68,25% of the estimated 7 million parcels that are eligible for registration as of June 2018.<sup>125</sup> This is regarded as a remarkable achievement since the introduction of land registration in the post-war period.

## **VI. Conclusion**

The present paper has given a comprehensive account of land registration procedures in Cambodia, the issuance of titles as a result, and the related fees. In effort to reconstruct the land records and titles, the government has endeavored to implement land registration through two main ways,

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<sup>120</sup> Ministry of Land Management, Urban Planning, and Construction, *Summary Report of Work as of June 2018 and Ongoing Work*, No. 041 DNS/ARB/NRB/RB, (July 5, 2018), pp.4-5.

<sup>121</sup> The governmental Edict 01 implemented the ‘Old Policy, New Action’ policy by the cut-off of affected land from economic land concession (ELC) has implemented since May 7, 2012,

<sup>122</sup> Ministry of Land Management, Urban Planning, and Construction, *Summary Report of Work as of June 2018 and Ongoing Work*, p. 4.

<sup>123</sup> The special registration of indigenous land (collective ownership) started in 2009.

<sup>124</sup> Ministry of Land Management, Urban Planning, and Construction, *Summary Report of Work as of June 2018 and Ongoing Work*, p. 5.

<sup>125</sup> *Ibid.* p. 4.

namely sporadic and systematic land registration. Sporadic land registration is a process where local land occupants submit their application forms by themselves to the state cadastral offices for registering their land; while systematic land registration is a state mechanism for registering their land at a specific location determined by the government.

The two systems proceed through different processes. The sporadic land registration system proceeds from the relevant local administrative offices through lower to higher levels of the authorities, while the systematic land registration has a capital or provincial ad-hoc administrative commission largely responsible for the entire process. The sporadic land registration goes through many offices and may spend much more or longer than the systematic land registration. As a result, the systematic land registration has achieved more titles than the sporadic land registration even though it started later.

The procedure of both systems seems complicated, and their limited knowledge of these and their related cadastral fees mean that local residents are reluctant to use the systems in place. This hinders the fast registration of land throughout the country. Thus, in order to boost participation in land registration, comprehensive dissemination of information on the systems, transparency in the process and the associated cadastral fees, and high responsibility of legal and administrative duties are necessary for speedy participation and complete registration of land in the future.

This paper acts as a contributing guide for increasing public awareness of the registration procedures, title issuance, and related cadastral fees. Someone who has read this paper will have knowledge of the registration processes and will know how to deal with them in practice.

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### Glossary

Key/English Term	Khmer Term (with Transliteration)	Comments
Village	ភូមិ ( <i>Phum</i> )	It is not stated in law as an administrative body of the ‘territorial administration’ in Cambodia. In practice, it is an administrative center for assisting the upper levels of the territorial administration (described below).
Commune	ឃុំ ( <i>Khum</i> )	Commune and upper levels of the territorial administration are stated as administrative bodies in law (see below). A commune is the lowest level in the territorial administration in the provinces, if we do not count villages.
<i>Sangkat</i>	សង្កាត់ ( <i>Sang-kat</i> )	<i>Sangkat</i> is the equivalent of a commune in a city.
District	ស្រុក ( <i>Srok</i> )	District is a higher level than a commune in the territorial administration of a province.
City/Municipality	ក្រុង ( <i>Krong</i> ), ទីក្រុង ( <i>Ti-krong</i> )	This is a town in the provinces, being equivalent to a district.
<i>Khan</i>	ខណ្ឌ ( <i>Khan</i> )	This is equivalent to a district, used in the capital.
Province	ខេត្ត ( <i>Khaet</i> )	This is the highest level of territorial administration at the provincial level outside the capital.

Capital	រាជធានី ( <i>Riech-tier-ni</i> )	It is the highest level of the territorial administration, used for only Phnom Penh.
Cadastral Administration	រដ្ឋបាលសុរិយោដី ( <i>Rotha-bal-so-ri-yau-dei</i> )	It is a unit of the territorial administration responsible for land registration and other cadastral works.
Cadastral Commission	គណៈកម្មការសុរិយោដី ( <i>Gak-nak-kam-ma-kar-so-ri-yau-dei</i> )	It is a component of the Cadastral Administration, being a ‘land tribunal’ in the territorial administration responsible for conciliating and resolving land disputes.
Administrative Commission	គណៈកម្មការរដ្ឋបាល ( <i>Gak-nak-kam-ma-kar-rotha-bal</i> )	It is an ad-hoc working group assigned for registering land during a systematic land registration exercise.
Screening document	ឯកសារវិនិច្ឆ័យ ( <i>Ek-ka-sa-vi-ni-chhai</i> )	This is a document consisting of parcel map, cadastral index map, and list of land owners for putting into public display. Note that the literal translation of the Khmer term is ‘adjudicated document’ (see text).
Determined area	តំបន់វិនិច្ឆ័យ ( <i>Dom-bon-vi-ni-chhai</i> )	It is an area that the government, especially the capital/provincial governor declares for the systematic land registration. The term can directly be translated into English as ‘adjudication area.’ However, as noted in the text, the author has not used this direct translation to avoid confusion.
Certificate recognizing possessory right of immovable property	ប័ណ្ណសម្គាល់សិទ្ធិកាន់កាប់អចលនវត្ថុ ( <i>Ban-sam-gal-sith-kan-kab-ak-chola-nak-vatho</i> )	It is a form of land title issued to an occupant who has possessed land less than five years. This is a proof of land tenure, but it is not uncontested and definitive.
Certificate recognizing ownership of immovable property	វិញ្ញាបនបត្រសម្គាល់ម្ចាស់អចលនវត្ថុ ( <i>Vi-nhier-ban-na-bat-sam-gal-ma-chas-ak-chola-nak-vatho</i> )	This is a form of land titles issued to an occupant who has possessed land longer than five years. This type of title is uncontested and definitive.
Possession certificate	ប័ណ្ណកាន់កាប់ ( <i>Ban-phou-gak</i> )	This recognizes the possessory right to immovable property.
Ownership certificate	ប័ណ្ណកម្មសិទ្ធិ ( <i>Ban-kama-sith</i> )	This recognizes the ownership of immovable property.
Title	ប័ណ្ណ ( <i>Ban</i> )	This is the common term for ‘land titles.’

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Land title	ប័ណ្ណដីធ្លី ( <i>Ban-dei-thli</i> ) or ប្លង់ដី ( <i>Plang-dei</i> )	This is a general term referring to possession and ownership certificates.
Soft title	ប្លង់ទន់ ( <i>Plang-tun</i> )	This is a general term often used by ordinary or business people referring to the possession certificate and other documents proving land tenure which is not strong or definitive yet. .
Hard title	ប្លង់រឹង ( <i>Plang-reung</i> )	This is a general term often used by ordinary or business people referring to the ownership title which proves the strongest tenure of land tenure, being uncontested and definitive.