

SYSTEMATIC REGISTRATION FOR CAMBODIA: WHY AND HOW?

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Key words :

ABSTRACT

Cambodia develops its infrastructure from scratches after decades of war and hardship. The new land administration authority struggles with enormous tasks of restoring the land register and the land management system. The present method of sporadic land registration has failed to register lands and to introduce a secure tenure. The land holdings of the majority of Cambodians are not titled and suffer from very insecure land tenure. In the light of complete absence of reliable documented data on legal rights or physical extends of the property, and in presence of poor enforcement of laws, only a registration method that ensures maximum transparency and publicity can meet the requirements of equality. The systematic registration method presented is built on the global knowledge on registration considering the conditions of Cambodia. It applies area by area, village by village and parcel by parcel approach with one visit per parcel principle stressing publicity and participation. The technology involved and the work stages developed are kept as simple as possible. The tested method has proved feasible.

INTRODUCTION

This article presents the background, the justification and the method for the systematic registration in Cambodia. The article is based on a development project financed by the governments of Finland and Cambodia and executed by the FINNMAP and the Cambodian Ministry of Land Management, Urban Planning and Construction.

Background

The recent history of Cambodia is dreadful. In 1975, the post-colonial society was reformed by the Khmer Rouge, which introduced an agrarian, totalitarian, communism with the volume that the world had yet to see. The individual ownership of land was banned, cities emptied and people forced to live in communes that worked in massive irrigation schemes. The infrastructure was destroyed, for example the land registration records were all lost. In 1979, the Khmer Rouge was overthrown and Cambodia experienced an era of communism of more traditional type. The land was cultivated in solidarity groups, but slowly people started to occupy their "own" parcels. In 1989, the government introduced private ownership to residential and business parcels and possession rights to the agricultural land. But there was no return to the past. The parcel structure was destroyed, people moved around, many had fled and nearly two millions had died. The guerrilla war still continued in remote areas. (Greve 1993)

Presently, cultivation lands are all privately held despite a few areas of hill-tribes where indigenous rights prevail. In 1993, the general elections facilitated by the United Nations started a long and painful democratisation process. After the second elections in 1998, the political situation has improved. The last relicts of war have ended. Being an agricultural society the issues of secure tenure and settled habitat are land have crucial effect on vast majority's life.

JUSTIFICATION

The justification for mass land registration may well be debated in the country among the poorest in the world. Seeking the justification, a research was carried out in the rural areas (Törhönen and Suon 1999). The idea was to review the performance of the land register and the situation on land in Cambodia. The following presents summary of the research findings.

Registration

The land register (General Department of Cadastre and Geography) has an office in every province and district. Their composition varies from a non-existent in remote rural areas to busy urban offices. The register's main task consists of first registration by claim (In 1992, due to a government campaign, 4,5 million first registration claims were recorded), sporadic registration and land management together with the local government. Still, only sporadic registration is executed. It is a bureaucratic procedure involving the local government and community, three levels of the register and containing handful of approving and checking manoeuvres. It takes place in an unofficial contract basis where the applicant finances all activities. In practise, there are only residential and business land titles issued estimated to account less than 15 % of all parcels in the country. Peasant, who typically occupy a small residential parcel and a couple of rice parcels do not have land titles. The human resource situation varies from desperate to barely adequate in the register offices. The town offices have the best educated people. Although the rules and regulations are formally obeyed, a lack of culture of quality is evident. The premises are often in a bad condition, technical equipment broken and archives non-existent. The survey plans attached to the title applications are poor in technical and legal terms. Cadastral maps do not exist. The shortcomings in the technical quality cause land surveys potentially to create more problems than solve. Apart from registration, the land register officials broke land transfers, which, however, are often not registered, or the price is forged, in order to avoid transfer taxes. In conclusion, the land registration system is not working effectively, it is extremely bureaucratic, not transparent and involves too many officials and corruption. Because of the price, the quality problems and the fear of taxation, the registration is unattractive in general.

Land Issue

The land tenure system is insecure. The register's influence is limited to the registered parcels. All other land is vested to the local government, which use the power with varying competence. There are many land disputes. They should be settled by a committee involving local government and register officials or by the court. The committees are

usually not functioning and the court cases concerning ownership of unregistered land are often dismissed and sent to the local government for settling. A typical case relates to the recent history. Most of the pre 1979 holders had had to abandon their land. Many have come back causing disputes with new occupants, but legislation does not recognise the pre-1979 rights. The army is still strongly present in many areas and violates land rights constantly. Returning landholders often find the land occupied by military or by people who have bought the land from the military. Source of another typical case is the 1992 government campaign of first registration where 4,5 million claims were received. Every landholder got a receipt as a proof of a fulfilled claim. People often treat the receipt as a land title. The receipts are frequently transferred and even used as collateral resulting numerous disputes. Overlapping land titles exist in areas where the demand and value of land is high causing boost in registration. Every landholder, with or without a land title, who does not occupy his/her parcel is in danger of losing it. There are cases where an absent titleholder had left his/her parcel to an overseer, which had applied the title under his name making sure that the official was not the same who had facilitated the previous one. As titles are not surveyed properly it is possible for the land officer to hand out a new title without understanding that there actually was a land title issued already. It is common that people occupy public reserve lands. This happens because the extents of the reserves are not demarcated or known. In addition, several government organisations declare new land rights and restrictions like natural reserves, watersheds and concessions without consulting the land register, local authorities or present land occupants. If a reserve area ever were defined, there would be no standard procedure to compensate the occupants.

Interpretation

Cambodia needs clarity and transparency in the land administration system meaning clear policies, legislation and institutional framework. The evidence shows that the present method of sporadic land registration has failed to complete its mission judging from the both public's and state's point of view. In the short run, the land register personnel desperately needs technical and legal training as well as equipment. In the long run, however, the improvement of technical performance will do little towards solving the basic problem: 85 % of land holdings in Cambodia, practically all properties of the poor, are held without the protection of law. The justification for covering land registration is strong. It would bring the poor under the rule and protection of law. It would stop the power of the strong over the weak and provide basis for investments, natural resource monitoring and public land protection.

Turning into the method, in the light of the absence of documented data on legal rights or physical extends of the property and in the presence of wide spread corruption and general poor enforcement of laws, only a method that can ensure maximum transparency and publicity can meet the requirements of equality. This rules out all alterations where field visits could be avoided. Finally, as the base map has to be made, the area wise approach saves money. If one pays any attention to feasibility, there are no other methods left to consider than the one that would conclude the whole process at one time for an area.

METHOD

The systematic parcel by parcel land registration is not a new invention. Its functions have been introduced long time ago by many (Simpson 1976, Dale & Binns 1995 ...). The method described here follows its predecessors, but seeks easy, cheap and democratic ways in order to meet the requirements of a developing country in the legal, the economical and the human rights point of views.

Principles

The following ideas guided the planning: all parcels were to be registered, field inspected and oral testimonies were to be used as evidence for adjudication. The system had to be cheap and effective and to cause minimum inconveniences to the people, who are busy enough struggling for their survival. Earlier experiences (Törhönen 1998a, 1998b) suggested that the biggest bottleneck for the land registration work is the mobilisation difficulties of the landholders. Therefore, the system had to go to the people instead of waiting for them to show up in an office. The holders should only be bothered once for the adjudication, the demarcation and the surveys. All this resulted into the application of the *area by area*, the *parcel by parcel* and the *one parcel - one visit* principles. The idea was to develop a system to be handled by a single officer utilising landholders as surveying assistants. The protection of people's rights was to be dealt in the public information that had to be accessible to every landholder. Equally, the adjudication and the demarcation had to be accessible to every landholder and in the end all landholders had to have a right to study all recorded information and appeal against it in an organised manner. It was recognised that an appropriate technical result in Cambodia would be flexible in terms of surveying accuracy and boundary marking. Boundary marks are not used in the rural Cambodia. A very modest surveying method would likely overcome the accuracy of defining the boundary corner locations as they were generally not considered as points but a kind of "corner area".

The Systematic Parcel by Parcel Land Registration

The developed system consists of six parts: the public information, the adjudication, the demarcation, the surveying, the documentation and the public display (later the appeal). In Cambodia, the long lasted instability sets great difficulties for a public information campaign. After the declaration of a new adjudication area, formal information is spread through official letters, radio spots and newspapers, but more importantly personal meetings are held with the local government and the village chiefs. Village meetings have been organised successfully reaching most of the village households. The trustworthy contact with the village chief has proved essential for the exercise. The adjudication was to be executed simultaneously with the demarcation. After the demarcation, the adjudication follows by checking the rare documentary evidence and listening the oral testimonies by the owner, villagers, elders etc. In case of disputes, a decision is made and remaining disagreements are directed to the appeal procedure. The boundary lines that can be considered fixed are narrow and defined though not very straight. Therefore the corners are demarcated relatively accurately, but flexibility is allowed for boundary lining. The marks are not inserted, but may be placed in the landholders' expense. As a potential bottleneck,

the surveying methods had to be effective and cheap. The GPS technology for ground control and photointerpretation for boundary surveying were inevitable solutions in Cambodia with large open areas. Conventional methods have only been used for the parcel corners invisible in the orthophotography. The documentation is based on a simple GIS and database software. All data, digitised boundary layers and numerical land register data, is integrated through the Unique Parcel Reference Number, which follows the administrative organisation. The records are accessed through a simple GIS interface. The outputs for the appeal and the title certificates are produced automatically. The public appeal is a very sensitive part of the registration. There may be weak groups (such as illiterate or disabled, both common in Cambodia) that may not be able to explore the records or to claim against a shortcoming. In the appeal, the records, both graphical and textual are taken to the village for display for thirty days and the land holders can claim for any technical or juridical problems that they think remain in the records. For the weak, an assistant is present explaining the records and helping to draft claims. After thirty days, the claims are handed over to an ad hoc administrative commission, which has the local government, the local community, the government and the land register represented. They have a duty to settle disputes with the disagreeing parties. The unsettled cases are handed to the court while others proceed to first registration and title issuance.

Team

There is a lack of professional personnel in the land register in Cambodia. This had an affect to the team and duty planning. The Field Manager leads the fieldwork, manages the resources, controls that the laws are obeyed, people treated equally and those in the need receive adequate counselling and help. The Public Information Officer carries out both formal and informal public information programs from provincial to village level. He organises the opening meetings, media releases and spots, informs the people on their rights and duties over the process. The Adjudication Officer, legally competent, adjudicates all rights on the land. The Demarcation Officer, who can also be the adjudication officer, demarcates and photointerprets the parcel boundaries. The Surveying Officer is responsible of ground control surveys, surveying of non-interpreted parcel corners and other geodetic work. The Recording Officer inputs the data and operates the GIS. The Quality Officer is responsible that all recorded land registration data meet the qualifications set for it and the register data is correctly prepared.

Legal provisions

In order to be feasible, the systematic registration had to bypass the present bureaucratic title issuance chain. The data concerning the adjudication area had to be handled and approved simultaneously; otherwise the incoming individual title claims would create a backlog. Therefore, new legal provisions were drafted (Tolvanen 1998) legalising the systematic procedure and creating an avenue for the first registration area-wise. Especially, the establishment of the administrative commission to approve the record and settle the disputes enabled all parcels of the area to be handled as one bunch.

LESSONS LEARNED

The procedure described in this paper was tested for two years and adopted in to use in early 2000. Some forty thousand parcels have been recorded and the results are encouraging. The procedure has worked well and problems have been rare. The main hindrance experienced is caused by the ambiguous legislation. For example, the limitations of public and private land are not clearly defined in the legislation making it difficult to define them on the ground. The procedure has proved effective. One rural parcel has consumed in average 0.4 man working days from the beginning to the title issuing. The present estimated cost of the first registration per parcel is about fifteen US-dollars provided that the work is done for a considerable area systematically (Törhönen, So and Suon 1999). The figure includes the aerial photography, the orthophoto production, the systematic registration, the development costs, the training costs, the headquarters costs and the title issuance. The developed procedure has been adopted as the method for the countrywide systematic registration expected to take fifteen years.

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