

Gender Equality And Land Law In Cambodia

Fabian THIEL, Cambodia

KEY WORDS: Gender equality, utilitarian justice, cadastre, gender legislation, security of tenure.

SUMMARY

The presentation will highlight the importance of establishing knowledge and understanding about “gender mainstreaming” strategies and gender equality within the Cambodian Land Administration Sub Sector Program (LA-SSP) and the land policy. Gender oriented objectives of the LA-SSP comprise of sustainable improvement of the living conditions of the urban and rural population of Cambodia, especially for women. The urban and rural population, in particular women, should make use of the improved infrastructure and the extended scope for action to participate in socio-economic land development to a greater extent. Socially balanced and gender-equitable secure access to land should be improved in rural as well as in urban areas, according to a well-ordered utilisation of land.

The legal framework for gender equality in land includes the Constitution from 1993, the Land Law from 2001, and Sub-decrees. 1 million land titles have been issued through systematic registration until 2009 to women and men – 20 % of these titles are done in the wife’s name, 70 % consist of joint titles. Lacking data and a missing “registration culture”, unregistered marriage, and intransparent subsequent land transactions prevent the monitoring and evaluation of gender equality in land administration. A huge gap can be observed between official law, plural legal regimes and general implementation practice. I will offer appropriate solutions for developing cadastral reforms that require an intimate knowledge of the existing conditions in the Cambodian land sector. Cadastral systems should serve all sectors of society and the majority of population. Hence, the State should act in utilitarian ways to give equal opportunities towards access to land via freehold, leasehold and family tenure that could be ensured by cooperatives and associations with optimized gender-oriented shareholder structure. Social land concessions should provide titles to landless and land poor female-headed households in an equitable selecting process for strengthened income generation and agricultural activities for women.

According to the concept of utilitarian justice registration, cadastral systems, and formal and informal property regimes serve all sectors of society, in particular women. This has not been the case in Cambodia so far. There is a general agreement on the importance of educating women on their land rights and on the procedures and institutions of land administration and dispute resolution between family members, relatives, siblings and non-married spouses. However, local community action as a cornerstone for land administration involving males and females is still nascent.

Gender Equality And Land Law In Cambodia

Fabian THIEL, Cambodia

1. INTRODUCTION: GENDER EQUALITY AND LAND IN CAMBODIA

The Royal Government of Cambodia (RGC) “*attaches priority to granting land ownership rights to poor households and vulnerable groups for housing, farming and small businesses*” and wants to “*ensure land use efficiency*”. Cambodia has a high rural poverty rate, high land concentration and “*anarchy in illegal land possession, illegal claim of state land and protected areas as privately owned and unlawful logging*” (RGC 2008). A national goal has been established in order to solve these problems, especially that of female rural poverty. This goal hopes to alleviate poverty by ensuring food security, equitable economic and social development, fair distribution of land and national resources, secure housing and environmental protection, in particular for women. German development cooperation has recently set up a Priority Strategy Paper for Rural Development underlining the following objectives:

- The living conditions of the poor rural population of Cambodia, especially for women, have been sustainably improved;
- The poor rural population, in particular women, makes use of the improved infrastructure and the extended scope for action to participate to a greater extent in sustainable economic development;
- The socially-balanced, gender-equitable and secure access to land is improved in rural as well as in urban areas, as is the well-ordered utilisation of land (GTZ/KfW 2009; GTZ 2010).

This multi-sector and multi-level approach towards rural development has thus in the future to be screened, monitored and evaluated under gender mainstreaming strategies. Cambodian land law, property and condominium law, family law and the Constitution are of crucial importance for the implementation of gender-equitable urban and rural development through land management and land administration. In many countries, legal plurality – common law and customary law – and legal regimes are functioning simultaneously. Women’s access to land can hardly be understood without the consideration of inheritance laws and (informal) family relations within the local communities, villages and *sangkats*. State laws, religious laws, customary laws, and the interaction between them – including the differences connected with the adaptation to change – cause sometimes extreme complexity, not only in Cambodia. In addition, a gap between official law and general implementation practice can often be diagnosed. Land law, family law, the Civil Code or the Constitution may simply be unknown by the majority of population, or the legal system can be de facto out of reach for many. Culturally, Cambodian women were referred to as “*me*” which means literally “*mothers*”. Traditionally, the Cambodian soil represents femininity while *Kanghing*, the Khmer mother of the earth, is interpreted as female.

From the women's perspective land – and any improvements – represents protection, shelter, bonding, love, home, and care. From the men's perspective land can be classified as influence, wealth, power, and the exclusivity of property rights. Land encloses everything; it is the source of status and fortune as well as of conflicts, evictions, expropriation, resettlement which to some extent abuses of human rights to which marginalized citizen are vulnerable. Moreover, inheritance and other disputes between family members are described as common. Disputes arise when land that is controlled by one relative is used by other relatives; land disputes between siblings and non-married spouses are also widely reported (Mehrak/Chhay/My 2008).

The Land Law of Cambodia from 2001 was expected to be implemented to ensure an equitable and efficient system of land management. This includes provisions for fair land distribution, land tenure security, eradication of illegal settlements and encroachment, land grabbing, and the control of ownership concentration for speculative purpose (RGC 2005a). At present, it is not clear if the Land Law or the planning instruments or other policy documents and regulations will be able to fulfil all of these expectations. Instead, increasing land values and concentration, ineffectiveness of law enforcement, lack of community knowledge regarding to legal and political aspects of land use, or unclear roles and responsibilities of key political authorities (weak governance) are in part driving forces of the land use “hot spots” in today's Cambodia. My presentation will highlight in particular the following questions:

- How far can gender and market failures be combated by generalizing and setting-up a regime of exclusive and tradable property rights for land?
- How can the increase in efficiency of the land use by creating private property help to strengthen women's positions on the land markets?
- Can women's access to land only be realized through private property and systematic registration (land titling)?
- How can transaction costs for the land access of women be sustainably reduced?

2. PROPERTY RIGHTS, INVENTORY AND GENDER EQUALITY

Under the current Land Administration Sub Sector Program (LA-SSP) 1,6 million parcels have been registered until 2009 with an equivalent of 1 million land titles. At present, at least 9,5 million parcels remain unregistered which means an ongoing land registration process for the next approximately 30 years (without subsequent registration necessities). Results from a basic survey by the registration project on systematic land registration show that female owners outnumbered male owners in overall figures. Due to this field survey, 20 % of the land titling was made in the wife's name, 5 % in the husband's name alone, and 70 % consist of joint ownership titles (Sar/Müller 2008). Field surveys also brought evidence about the lack of security in view of these “joint titles” in particular in the event of separation, divorce, abandonment, multiple marriage relationships (polygamy), or death of the husband:

“Mrs. Saro is 47 with 5 children. Her husband left her 15 years ago. She said her name was the sole name on the ownership title, however the examinations of the title showed

that the land had been registered jointly with her husband. She never read the title until now. 'I am shocked. What if he (the husband) comes back and claims the land?'" (Mehrak/Chhay/My 2008, 10).

According to Art. 15 (section 2) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (1979), State Parties shall give women equal rights to conclude contracts and to administer property. As Grover states out, this would imply equality in inheritance rights (Grover 2009). Women are to have the same rights in marriage as their spouses with respect to ownership, management, enjoyment and the disposal of property (Art. 16 CEDAW). Joint titling of land has generally increased in land distribution programs worldwide due to pressure from the women's movement and from international donors (Suárez/Osorio/Langford 2009). Although joint ownership – in the terminology of the Cambodian Land Law: undivided (indivisible) ownership according to Art. 168-174 Land Law – may be interpreted as an important strategy to ensure that the process of formalising land ownership does not unwittingly produce gender-discriminatory effects (Mehrak/Chhay/My 2008), it is highly questionable whether (joint-)land titling and the creation of exclusionary property rights will necessarily result in land tenure security. To the question: Which land registration – and thus land (re-)distribution as an instrument of reparations after the Khmer Rouge period – “is fair”, the answer must definitely be found beyond the “100%-private property” solution for the scarce natural resource land and other non-renewable natural commodities. Of course:

“Land is local and the final battle for the access to land takes place at local level. There is general agreement on the importance of education, in particular women, on their rights, and on the procedures and institutions of land administration and dispute resolution. The key is involving all males and females in community action” (Sar 2009).

Education, dispute resolution and access to land consist of countless instruments of taxation, valuation, land tenure models, property regimes, and government's commitment for a gender-friendly (land) policy (Giovarelli, in Bruce et al. 2006; FAO 2002). Instead, the majority of recommendations for an improved gender-equal land management and land administration in Cambodia aims at procedures for individual (systematic) registration and property creation in favour of women, monitoring and evaluation processes within “Gender Mainstreaming Action Plans” (GMAP), or an increased collaboration between the Ministry of Women's Affairs (MoWA) and the Ministry of Land Management, Urban Planning and Construction (MLMUPC) (Mehrak/Chhay/My 2008, 26-30).

As an innovative land use alternative, (agricultural) associations and service/producer cooperatives or group rights under control of women's groups on common property resources (land, forest, water) are additional instruments for secure, gender-equal land rights. They are based on key principles like strictly voluntary membership and exit options, autonomy and independence from government activities, self-organization, and governance, e.g. autonomous decisions about objectives, strategies, and management (Kirk 2004). Cooperatives may be suitable for

- landless and land poor female headed households (residential and rural/agricultural community building; self-help groups; house construction and business communities);
- Income generation for women;
- Agriculture food processing (agricultural extension services as the basis for food security and poverty reduction);
- Common use of machines, marketing etc. (production communities);
- Access to (micro-)credits (credit/loan/mortgage communities) and for
- Value chain approaches within business models.

The legal basis for the implementation of cooperatives in Cambodia exists already in view of the Royal Decree on the Establishment and Functioning of Agricultural Cooperative, Union of the Agricultural Cooperative and the Pre-Agricultural Cooperative (NS / RKT / 0701 / 234). In addition, a Law on Cooperatives is currently drafted by the Ministry of Agriculture, Forestry and Fisheries (MAFF). Moreover, field study in Cambodia produced at least two more inconsistencies: (i) Firstly, land that women inherited from their parents had been registered without their knowledge or consent jointly with the husband even if they had been separated from him long time ago. (ii) The second inconsistency comprises of separated, divorced or abandoned women who own multiple plots of land and have found that these plots had not been registered in a consistent manner – some plots were registered jointly as undivided property (Art. 168-174 Land Law 2001) together with the former husbands, while other plots had been registered as the wife’s individual property:

“Saru is a mother of two who runs a small shop. Her husband left her for another woman eight years ago. Her largest plot of land, which had been given to her by her brother, had been registered jointly with her former husband. ‘When I was given the land titles I asked them why his name was written in one of the titles. I questioned them many times, but they said no problem, trust us’” (Mehrak/Chhay/My 2008, 24).

Doubtlessly, proactive reforms for the registering of divorces, new marriages, or deaths of spouses within the LA-SSP program could be initiated. Generally spoken, land rights that are taken for granted by men often do not exist for women. Hence, women are vulnerable to lose land use and property rights or not gain land rights as a result of: (i) cultural or legal inability to acquire land rights through markets, inheritance, transfer or gift; (ii) barriers to rights created by marriage, divorce, bride price, dowry, or polygamy; (iii) privatization or individualization of land, or (iv) failure to formalize women’s rights in titling programs (Giovarelli 2006, 67-105). In particular, inheritance laws provide for testamentary freedom, which leaves the surviving spouse defenceless in a marriage with the separation of property regimes. When women move to their husband’s land they are usually no longer entitled to their own family’s inheritance (Suárez/Osorio/Langford 2009).

According to the concept of utilitarian justice, registration, cadastral systems, formal and informal property regimes serve all sectors of society, in particular women. (Legal) and gender equality is a cornerstone of utilitarian justice and thus part of Goal 3 of the Millennium Development Goals (MDG) – *“Promote gender equality and empower women”*. Utilitarian justice can be interpreted as a crucial aspect of distributing benefits and burdens. Equality

rights include the concept of societal commitment as an element of justice, fairness, and equity. Utilitarian concepts of justice reject inequality on the grounds of gender, birth, class, or race (Davy 1997). Utilitarian justice demands acts of the legislator, empowered by the police State in the view of the “*Leviathan*” (Thomas Hobbes) and in the “publique good” that serves “the most” of the population.

The question of how land and natural resources are managed and administered in a gender-equal way, by whom, and for whose benefits is of crucial importance because of their immediate development and livelihood impacts towards the rural and urban inhabitants. The rapidly increasing force of the market is widely acknowledged as a defining feature of Cambodia’s land policy past during Khmer Rouge (1975-1979) with its characteristic of tenure insecurity. As Bruce points out, even when governments are granting new property rights, they often fail their women citizens badly. Where whole new national property systems are created, men too often end up owning nearly all the land. In societies like the Cambodian where strong patriarchal values continue to dominate, legal instruments like land and property laws are far away of being gender-neutral on their face to be sufficient (Bruce et al. 2006).

Property related documents were destroyed during the Khmer Rouge period. From 1975 until the departure of the Vietnamese troops in 1989, private property was abolished. Instead, so called *krom samaki* (communal production units and community groups) were installed by the Vietnamese-backed regime after 1979. Private use of State land was only permitted through the allocation of plots to each family according to the household composition; bigger families were given a higher amount of land. The legally questionable executive regulation from 3 June 1989 (COM 1989a; COM 1989b) – which ended also the *krom samaki* land use organization units – may be interpreted as one of the main reasons for ongoing illegal encroachments, evictions, land disputes, boundary conflicts and “land grabbing” of State public and State private land in Cambodia.

In 1989, the Cambodian State

“invalidated ownership rights in force before 1975, but revived the concept of private rights (...). Although the 1992 Land Law extended private property rights, the majority of people did not receive any formal allocation of land or certificates of title. Despite several attempts to regulate land between 1884 and 1989, land registration and titling were never successfully implemented” (Leuprecht 2004, 12).

Land use models with the concept of Common Property Resources (CPR) or community-based natural resource management (CBNRM) with regulations, participation and decentralization strategies for avoiding of a (mostly male-dominated) land-free-for-all-mentality are underdeveloped in Cambodia (CBNRM 2009). Land management and socio-ecological land policies (RGC 2009) also need a sound gender-oriented land use planning system which is missing in Cambodia at present (Thiel 2009), apart from some pilot planning at regional and communal level. Although the Cambodian Constitution explains that “*the State shall protect the environment and the balance of natural resources and establish a*

precise plan for the management of land” (Art. 59 Constitutional Law), a coherent, hierarchic spatial/land use planning system is still in statu nascendi.

3. LAND USE PLANNING AND GENDER EQUALITY

By implementing of a land use planning system – the “*machine of planning*” – which serves men and women for the whole territory in the future, the Cambodian planning authorities may be able to guide and restrict the use of State public and private property in order to protect and promote public interest. The “*machine of planning*” compares alternative actions and identifies the best and highest use of the land, e.g. in economic respect like economic growth or “*job opportunities for single mothers*” (Davy 1997, 248). Land use plans designate the permissible use of each plot and promote a sustainable development, social justice in land use, and an appropriate and natural environment for the Cambodian people. Land use plans on national, provincial, district and communal level can achieve land use control because the plans include designated social and economic purposes. Suitable legal instruments can serve as safeguards when they prevent rent seeking for residential, agricultural and otherwise unused land. Planning and construction law safeguards are communal statutory rights to buy land via pre-emption rights. Planning purposes for the public interest help to conserve landscape for rural and urban biodiversity and protect open space in cities for agricultural uses, which promotes food security, income generation, poverty reduction, and gender equality.

4. STATE LAND MANAGEMENT AND GENDER EQUALITY

Public land management is the management of all State (public) land (RGC 2005b). Public land shall belong to men and women, represented by the government – “the most” of the population – with its visible hand (“regulation”) due to the concept of utilitarian justice (Davy 1997, 267). This seems to be trivial. But, in the case of the Kingdom of Cambodia, that statement is anything else but a truism. “*Unfortunately, there is no coordinated identification, mapping and registration of State land. As yet there is no clear delineation of what is State Public land*” (CHRAC 2009, 67). Implementing Public Land Management faces numerous problems like the often confusing difference between State public (Art. 17 Land Law) and State private land (Art. 14 and Art. 15 Land Law), unclear boundaries, a weak rule of law and the unfinished recovery of administrative documents for titling, mapping, properties, and taxation.

The State is always the main actor in the land sector and has to guarantee State public property which cannot be transformed into private property. State land management needs to be broadened within the Constitution, the Land Law, and Sub-decrees (RGC 2005b). One of the main purposes of gender-mainstreaming oriented and constitutionally justified land management is that it ensures private land access for all Cambodian people. Private land use under the conditions of tenure security is more efficient than State land use. But that does not per se require the designation of private property. State public property with a guarantee for private land use is absolutely sufficient, efficient, effective, and sustainable. State public or State private land cannot be owned by and registered for private people, except a legal

document, namely a Sub-decree or registration procedure statutes this. Article 43 of the Cambodian Land Law from 2001 points out: “*In no case can the public property of the State be the subject of acquisition of ownership*”. Consequence: The relocated – from political view: not necessarily be expropriated or evicted, but developed for the purpose of poverty reduction and economic growth – people would have to leave the land in case of “*‘development’ which harms rather than helps ordinary people*” (LICADHO 2009, 28). The ordinary people were legally forced to move from the land without compensation for any improvements they have made on these plots (Rendall 2003, 70). But are these plots their private property? How can the people prove their ownership? How can a society built upon life and liberty be developed in Cambodia and towards a socio-ecological land policy approach beyond the donor support (“ownership instead of donorship”)? Can the Land Law and the Constitution be empowering to all Cambodians, the (land) rich and the (land) poor? Who should own Cambodia’s land?

Land use regulations must satisfy the public interest. Art. 44 of the Cambodian Constitution says, “*Expropriation of ownership from any person shall be exercised only in the public interest as provided for by law*”. In addition, Art. 58 declares, “*State property comprises land (...)*”. The term “public interest” should be integrated into Art. 58 Constitutional Law in order to clarify that State public property is in the best interest of the public. The term “public interest” should be integrated into Art. 58 Cambodian Constitutional Law in order to clarify that State public property is of essential public interest. Avoiding land speculation and combating illegal claim of State land must be a constitutionally demanded public interest and hence a cornerstone of State land management. Social housing and any sustainable use of forest, fisheries, and other resources should also clearly be defined as public interest of the Cambodian State. The problem of (private) encroachment on State (public) land raises the question whether there is enough public – and political – awareness in particular for the need of a socially and gender well-balanced land distribution and thus State responsibility to provide “*secure land rights for all*” (UN-Habitat/GLTN 2008) and social citizenship in Cambodia.

Furthermore, the elimination of land speculation and illegal claims of State land must be a demanded goal within Art. 58 to guarantee a use of State public land that is in the public's best interest. Social housing and any sustainable use of forest, fishery, and other resources must also clearly be defined as land uses that are in the public interest of the Cambodian State. At present, public interest is not mentioned within Art. 58 of the Constitution. The Constitution and the Land Law shall empower the Government to guarantee a competitive market economy in a country composed of State public property that is not allowed to be sold to private citizens. In the future, public interest would be satisfied if the ground rent – or any economic gains from the land use – are pooled and redistributed to all Cambodians in equal shares.

State *private* land can be transferred to anyone private without conditions and is also subject to possession. Article 30 of the Land Law 2001 gives the right to request a definitive title of ownership if they, for no less than five years, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed. “Privately possessed”, however,

cannot be realized neither for State *public* property nor if the register prohibits the taking of possession in “good faith”. Good faith can hardly be proved by ordinary people, because

(...) “without any publicly available records of what is State public property, as required by the Sub-decree on State Land Management, it is almost impossible to dispute government statements that a community is living illegally on State land” (CHRAC 2009, 67).

Moreover,

(...) “The state does not know what land it has or wants and in some cases it is the State’s right which could be contested by occupiers (pre 2001). But this right is unlikely to be respected based on the State’s current approaches of not recognising and or compensating occupiers (fairly) for their land if used for a long time” (Tep/Khlok 2008, 40 (footnote 35)).

5. SOCIAL LAND CONCESSIONS AND GENDER EQUALITY

Concessions play a very dominant role in Cambodia for the social, agricultural and industrial use of State land. Social Land Concessions (SLC) – according to Art. 48-62 Land Law – are reserved for the landless and land poor citizens (RGC 2003). SLC can achieve better allocation, but not always (gender) equal distribution. In particular, SLC cannot automatically solve the problem of transaction costs for the access to land, in particular for women, unless the State authorities distribute the land for low cost or with subsidies towards the SLC applicants. SLC play a central role in projects for land allocation in Cambodian Kratie province in a development zone on former State public land. The LASED (Land Allocation for Social and Economic Development) project has started successfully in 2009 in the provinces Kratie and Kampong Cham, after some preparations to allocate State land. LASED comprises of land distribution for 800 households (in total 4.760 ha). The term “household” indicates that the individual concession is granted jointly to wife and husband. The distribution of land between 2-5 ha for each family for agricultural purposes is seen as an unprecedented plan to help Cambodia’s poor families which have to fulfil a criteria list: be a Cambodian nationality, be a head of a family with two or more individuals related by blood or marriage, residing in the same household and be ready, willing and able to participate in the SLC program (IP/GOPA 2009).

Pilot projects contain the reclassification of former State public land to be registered as State private land for SLC which will be transformed into private ownership of the individual beneficiaries after five years of latency. Because of this step-by-step-transformation of property towards the target land recipients, the term “concession” for SLCs is very delusive. SLC lead to private property with the right for the concessionaire to exclude others from the use of the concession land and therefore to the exact opposite intent of equal distribution and social purposes. Moreover, SLC lack effective implementation due to skyrocketing land prices until 2008 as a result of massive competition for land through private developers and “anarchy encroachers” who where one of the main obstacles for the LASED project.

Encroachers occupy land for often highly speculative purposes. Hence, the reasons for the deficits of the SLC can mainly be found within the theory of land economy: the fixed and inelastic supply of land. This economic diagnosis is valid all over the world, but is easily forgotten or even ignored in economic theory. Only the land prices and the ground rent rise which is the basis for land speculation, land hoarding and land grabbing with negative consequences for the availability of land for SLC. The main problem is: There are simply no areas as State public land left or identified for the implementation of SLCs due to a lack of survey for the re-classification of convertible forest land (as State public property), abandoned economic concession land, or other confiscated areas into State private land done by the Ministry of Agriculture, Forestry and Fisheries (MAFF), in collaboration with the Forest Administrations (FA).

6. LAND LEASING AND GENDER EQUALITY

Private land use (land rights; land tenure) for women does not automatically have to be linked with private property. Private property-oriented Western States have effectively created a situation in which private property rights have negative consequences for land use planning, land allocation, and land distribution because of the incremental economic value and rent of the land. Private property rights are to some degree obstacles for a sustainable land use planning policy and for a gender-neutral social land law. The “*control of ownership concentration for speculative purpose*” – as one of the clear political aims of the National Strategic Development Plan (NSDP) from 2006-2010 – would not be that necessary if there were no exclusive private property rights (use rights, control rights, transfer rights; see FAO 2002, 5) for non-renewable natural resources such as land, soils and other commodities.

The Royal Government of Cambodia should try to avoid the consequences of exclusivity of private property rights and should instead start a socially well-balanced land policy. Cambodia can achieve a land use system similar to the land leasehold tenure regulations in many modern States. In addition, they could be able to partly skim-off the economic ground rent through incremental land value taxation which has to be constitutional before implementation. In other words: Land use planning by the State would become neutral when private property on land would be totally replaced by public land leasing. The combination of public land leasing, but private land use rights and partly skimmed-off ground rents bases on a land reformer’s approach. Land reformers like Henry George, Adolf Damaschke, Franz Oppenheimer, Michael Flürsheim, but also economists like John Stuart Mill or Léon Walras and political philosophers like Immanuel Kant and Pierre Joseph Proudhon criticised private property for land and natural resources (Thiel 2002). “*No man made the land*”, diagnoses John Stuart Mill (Mill 1848). The main arguments (Löhr 2009a) for such a sceptical interpretation of private property for immovable, public and non-renewable goods like land are:

- If all property rights are left in the hand of private people, any land use plan is useless. Economic interests dictate, and the arrangement is not effective. Negotiations will often fail.

- Because of high opportunity costs, only a certain part of the possible investment can be executed.
- Land distribution is socially unequal between men and women. The access to land is not guaranteed for the majority of the population, especially not for women.
- The way of land use is determined by economic power. This fact is doubtlessly not a sound legitimating base for a sustainable land use management.

The property on land should belong to the municipality or commune. This strategy was the idea of Hans Bernoulli, a Swiss architect. Everybody should have the same chance to get access to land and its products via leasehold rights and auctions of the private land use rights. But such an innovative land allocation and distribution system causes higher rents, land values and thus higher leasehold fees, if an adjustment to ground rents is made. A revolving (local) land fund can solve this problem by pooling of the paid ground rents and by redistribution of these ground rents in equal shares to the people (Löhr 2009a; Löhr 2009b). A leasehold tenure can prevent against tenure insecurity for female headed households, indigenous land owners and for communes. Instead, the LA-SSP in Cambodia focuses on systematic land registration rather than registering time restricted land leasing rights in order to create private ownership and tenure security.

Doubtlessly, leasing rights cannot solve any specific marital problems that threaten land tenure security such as separation, divorce, abandonment, multiple marriage relationship, death of the husband, or unregistered co-ownership of the land as they occur in Cambodia (Mehrak/Chhay/My 2008). But leasehold tenure can reduce transaction costs for the access to agricultural and residential land since it is the market mechanism that offers the greatest near-term potential for increasing the access of the poor to land (Bruce et al. 2006). Leasehold tenure regulations that already exist in the Cambodian Land Law 2001 (Art. 106-113) are excellent land tenure alternatives to private property rights and absolutely equivalent to secure land tenure rights. The granted land use rights have to be paid by the users due to their economic capability. The lower the income per household, the lower the cost for the leaseholds and the transaction costs for this household. Hence, public land leasing is economically and legally “fair”; in a sound gender-neutral leasehold system land hoarding for speculative purposes and “rent seeking” would no longer exist.

7. CONCLUSION AND OUTLOOK

The Royal Government of Cambodia has a unique opportunity to elucidate and improve a socially well-balanced land policy in favour of women and men throughout the country. Hence, social land policy should include:

- Different property forms and tenure securities for land beyond the private property rights solution for the use of non-renewable natural resources and any immovable property, in particular by women;
- Effective and efficient State land management with non-transferable public property;
- Leasehold tenure contracts, eventually combined with innovative land taxation models (redistribution of the ground rent for the benefit of the people as an “add up”);

- Indigenous, customary and other informal land use rights, eventually combined with leasehold rights;
- Community and producer cooperatives and associations in rural and urban areas with gender-equal shareholders;
- Property steering function of the spatial/land use planning policy (property policy);
- Reduced transaction costs for the access to land, in particular for women.

Gender equality, social land policy, State land management and spatial/land use planning policy need framework arrangements guaranteed by the institutions responsible for land use development in Cambodia. The Council of Ministers of the Royal Government, national ministries (e.g. the Ministry of Women's Affairs in collaboration with the Ministry of Land Management, Urban Planning and Construction), the legislature (National Assembly and Senate), the Council for Land Policy, the institutions of the provinces, districts, municipalities and the civil sector must consider these planning and property issues for the Cambodian people. Different institutions for the management of the non-renewable resource land have to be built up in the future. In summary, this cross-cutting strategy comprises of numerous public and common property forms and tenure securities far beyond the private property rights creation.

REFERENCES

Bruce, J. W., Giovarelli, R., Rolfes, L. Jr., Bledsoe, D., Mitchell, R., 2006, Land Law Reform, Achieving Development Policy Objectives, Law, Justice, And Development Series, World Bank, Washington, D. C.

Cambodian Human Rights Action Committee (CHRAC), 2009, Losing Ground. Forced Evictions and Intimidation in Cambodia, Phnom Penh.

Community Based Natural Resource Management (CBNRM) in Cambodia/CBNRM Learning Institute (ed.), 2009, Emerging Trends, Challenges and Innovations. Learning Symposiums and the Development of Selected Papers, Volume II, Phnom Penh.

Council of Ministers (CoM), 1989a, Instruction No. 3 of the State of Cambodia, Enforcing Instruction on the Principles of Possession and Use of Land, Phnom Penh.

Council of Ministers (CoM), 1989b, Sub-decree No. 25 on Providing House Ownership to the Cambodian Population. Granting Ownership Rights over Houses to the People of the State of Cambodia, Phnom Penh.

Davy, B., 1997, Essential Injustice. When legal institutions cannot resolve environmental and land use disputes, Wien, New York.

Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), 2010, GTZ in Cambodia. Country brochure, Phnom Penh.

Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)/Kreditanstalt für Wiederaufbau (KfW), 2009, Priority Strategy Paper Rural Development, Phnom Penh.

Food And Agriculture Organization Of The United Nations (FAO), 2002, Gender and access to land, FAO Land Tenure Studies No. 4, Rome.

Giovarelli, R., 2006, Overcoming Gender Biases in Established and Transitional Property Rights Systems. In: Bruce, J. W., Giovarelli, R., Rolfes, L. Jr., Bledsoe, D., Mitchell, R., 2006, Land Law Reform, Achieving Development Policy Objectives, Law, Justice, And Development Series, World Bank, Washington, D. C., p. 67-105.

Grover, R., 2009, Voluntary Guidelines For Good Governance In Land And Natural Resource Tenure. Issues from an international institutional perspective, FAO Land Tenure Working Paper No. 9, Rome.

IP/GOPA, GTZ LASED Project, 2009, Implementing LASED, Lessons from Experience, Phnom Penh.

Kirk, M., 2004, State Land Economics in Cambodia. Land Policy Discussion Paper, Marburg/Phnom Penh.

Leuprecht, P., 2004, Land Concessions for Economic Purposes in Cambodia: a Human Rights Perspective. Cambodian Office of the United Nations High Commissioner for Human Rights, Phnom Penh.

LICADHO – Cambodian League for the Promotion and Defence of Human Rights, 2009, Land Grabbing & Poverty In Cambodia: The Myth Of Development. A LICADHO report from May 2009, Phnom Penh.

Löhr, D., 2009a, Public Land Leasehold Tenure Approaches – A Way towards an Efficient and Effective Land Use Management. In: UNESCO (ed.), ERSEC International Conference Proceeding Sustainable Land Use And Water Management, Beijing, p. 287-313.

Löhr, D., 2009b, Ein Bodenfonds für die Ausgabe von Erbbaurechten als Instrument der Bodenpolitik. Working Paper Nr. 6 des Zentrums für Bodenschutz und Flächenhaushaltspolitik am Umwelt-Campus Birkenfeld, Birkenfeld.

Mehrak, M., Chhay K. S., My, S., 2008, Women's Perspectives: A Case Study of Systematic Land Registration, Phnom Penh.

Mill, J. S., 1848, Principles of political economy and chapters on socialism. Reissued edition 2008, Oxford.

Rendall, M., 2003, Land Law of Cambodia. A Study and Research Manual, Phnom Penh.

Royal Government of Cambodia, 2003, Sub-decree No. 19 ANK/BK on Social Land Concessions, Phnom Penh.

Royal Government of Cambodia, 2005a, National Strategic Development Plan 2006-2010, Phnom Penh.

Royal Government of Cambodia, 2005b, Sub-decree No. 118 on State Land Management, Phnom Penh.

Royal Government of Cambodia, 2008, Rectangular Strategy, Phase II, Phnom Penh.

Royal Government of Cambodia, 2009, Declaration of the Royal Government of Cambodia on Land Policy from July 1, 2009, Phnom Penh.

Sar, S., 2009, Gender and Land Management. Paper presented at the Summer School of the Faculty of Land Management and Land Administration “Land Policy and Good Land Governance”, 6 October 2009, Phnom Penh.

Sar, S., Müller, F.-V., 2008, Contributions to the UN Millennium Development Goals through Land Management in Cambodia. Presentation at the conference „Policy meets Land Management”, 18 April 2008, Munich.

Suárez, S. M., Osorio, L. M., Langford, M., 2009, Voluntary Guidelines For Good Governance In Land And Natural Resource Tenure. Civil society perspectives, FAO Land Tenure Working Paper No. 8, Rome.

Tep, M., Khlok, S., 2008, A Rapid Assessment of Land Transactions, Prices & Land Concentration Across Three Districts in Siem Reap Province (Puok, Angkor Chum, and Varin Districts), Phnom Penh.

Thiel, F., 2002, Grundflächen und Rohstoffe im Spannungsfeld zwischen Privat- und Gemeineigentum. Eine interdisziplinäre Untersuchung, Hamburger Beiträge zur Geographischen Forschung, Band 2, Hamburg.

Thiel, F., 2009, Law for State Land Management in Cambodia. In: Rural21, International Journal for Rural Development, 43 (3), p. 34-36.

United Nations Human Settlements Programme (UN-Habitat)/Global Land Tool Network (GLTN) (eds.), 2008, Secure Land Rights for All, Nairobi.

BIOGRAPHICAL NOTES

Dr. Fabian Thiel, born on October 3, 1968, studied geography at the University of Hamburg and law at the University of Regensburg. From 2001 to 2008, he worked as academic staff for the Hochschul-Informationssystem (HIS, Hanover), for the Environmental Research Centre (UFZ, Leipzig-Halle) and as a freelance land policy advisor. Since September 2008, he serves as a faculty advisor and lecturer for the Faculty of Land Management and Land Administration at the Royal University of Agriculture (Phnom Penh, Cambodia). Dr. Fabian Thiel focuses on teaching and researching fields like land law, planning law, constitutional law, land policy, and land valuation. He is the author of several monographs, articles, research reports and papers about international land management, land policy, and property policy.

CONTACT

Dr. Fabian Thiel
Faculty of Land Management and Land Administration
Royal University of Agriculture
Centre for international Migration and Development (CIM)
Dangkor District
Phnom Penh
KINGDOM OF CAMBODIA
Tel. +855 012 – 214 290
Email: fabian.thiel@cimonline.de
Web site: www.fabian-thiel.de