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# Everything Must Go — A Cambodia for Sale

*How the Cambodian Legal System is allowing  
Extralegal Land Acquisitions*

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## List of Abbreviations

ADB	Asian Development Bank
BABC	Bridges across Borders Cambodia
CPK	Communist Party of Kampuchea
CPP	Cambodian People's Party
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia
EIA	Environmental Impact Assessment
ELC	Economic Land Concession
FAO	Food and Agriculture Organization
HRW	Human Rights Watch
KR	Khmer Rouge
LDC	Least Developed Country
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
LMAP	Land Management and Administration Project
MAFF	Ministry of Agriculture, Forestry and Fisheries
NGO	Non-Governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
PRK	People's Republic of Kampuchea
RGC	Royal Government of Cambodia
SIA	Social Impact Assessment
SIDA	Swedish International Development Cooperation Agency
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNTAC	United Nations Transitional Authority in Cambodia
USD	United States Dollar
WB	World Bank

## Abstract

Cambodia's history of colonialism and an infamous communist regime has left the country with a legacy of corruption, weak rule of law and a lack of tenure security. The concept of land grabbing is becoming more and more frequent, while at the same time receiving a great deal of attention from NGOs and the international community. In a country where the idea of ownership is relatively new, most of the country is still untitled. With no land title, it is difficult to prove ownership of the property. This is taken advantage of by the government, who is selling, leasing and concessioning already occupied property to dubious corporations.

In 2001, a new land law was adopted that, in theory, offers protection not only to titleholders, but also to occupants of land. In practice however, this protection is very weak. Though the progressive law was drafted with the help of the international donor community, the implementation of this law has not been successful. The law is systematically circumvented by the government when divesting of land to companies, owned by influential businessmen with close ties to the ruling party. In order to avoid bad media coverage and pressure from NGOs, the companies hide behind several shell companies. This further clouds the already limited transparency process. There are appeal mechanisms set in place, but corruption and lack of an independent court system deny the individual of any real possibility of making his case heard. This is aggravated by the lack of knowledge and resources within the court system. As the court stands under the influence of the state, judges dare neither hear land grabbing cases nor rule in the favor of the complainant. As such, the cases are simply rejected.

The problem of land grabbing is exacerbated by the blurry line between state public property and state private property on one hand, and private property on the other. With the support of the World Bank, an ambitious land titling project was initiated. Because of differences between the Cambodian government and the WB, the project was later canceled. This has left the land titling process in the hands of the government and is now proceeding ahead very slowly. The first step towards strengthening tenure security is to resurrect the project of the WB, in order to accelerate the process of land titling and thus prevent future land grabbings.

## Preface

First, I would like to thank SIDA for providing me with both financial support and expertise. Without this, my field study would certainly not have been possible

I would also like to thank my advisor Per Cramér for his help, guidance and for always providing me with interesting viewpoints as well as being an inspiration in general.

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## 1. Introduction

Cambodia, a country with a dark history of civil war and the crimes of humanity that followed, inescapably evokes images of Pol Pot and the Khmer Rouge regime. More than 30 years later, the acts of the regime still echo into Cambodia's present, through the belated reconciliation process of the ECCC. However, the legacy of the Khmer Rouge far exceeds the pain of the genocide survivors. The regime's annihilation of private property rights and the legal system in its entirety, still affects Cambodia to this day. Lack of tenure security and a well-functioning legal system is one of Cambodia's greatest impediments to economic and social development. And though there are attempts being made by the international donor community to aid the government in strengthening the institutions in charge, from where the Cambodian people are standing today, the light at the end of the tunnel seems very, very far away.

In the past few years, land disputes have escalated in Cambodia. Most of the Swedish aid granted to Cambodia is directed towards preventing so-called "land grabbing," i.e. the acquisition of land, which is already occupied or owned by someone. As a result, the individuals occupying the land are evicted. As these practices are clouded in secrecy, statistics on how much land has been transferred to private interests through sales, leases and concessions, are difficult to find. However, the media and NGOs claim that forced evictions point to at least 45 per cent of the country's land being alienated<sup>1</sup> from the state over the past 15 years.<sup>2</sup> In Cambodia, this has had a vast impact on its population through forced evictions and slow development.

About 80 percent of Cambodia's population lives in rural areas. Most of them are self-sufficient and dependent on rice and livestock for their livelihood.<sup>3</sup> In these rural areas, concessions are being granted for agricultural purposes, e.g. for sugar or cassava plantations, logging or mining, while at the same removing the farmers from their means of support. In many cases, the communities do not find out that the land has been divested of until after the fact and their access to land has been cut off.

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<sup>1</sup> Through concessions (ELCs, but also logging and mining concessions), leases and sales.

<sup>2</sup> See for example Global Witness. *Country for Sale*, p.5 or Levy. A and Scott-Clark, C. *Country for Sale*

<sup>3</sup> World Bank. *Rural Development & Agriculture in Cambodia*.

In Cambodia at least, this is not only a rural problem. Land grabbing is also very common in the capital of Phnom Penh, where land is sold to private investors for so-called development projects. In reality, these development projects include everything from the erection of high-rise buildings to beautification projects<sup>4</sup>. In the past few years, there has also been a high frequency of speculation in urban property, causing prices to skyrocket.

An individual's access to property rights is considered an essential part of the fundamental rights, codified in various international agreements, notably in the Universal Declaration of Human Rights. The right to property is there listed as a basic human right, and it is further stated that no one shall be arbitrarily deprived of this property.<sup>5</sup> Moreover, it has been argued that through international treaties property rights of individuals have even been rendered more sacred than even the sovereign rights of states.<sup>6</sup> Nevertheless, land grabbing is just as frequent as ever.

## 1.1 Purpose of Study

The purpose of this thesis is to describe and analyze how the Cambodian legal system is allowing extralegal land acquisitions. The intention beforehand was to examine what national effects so-called land grabbing had on Cambodia as a whole, concerning rice production, food shortages and poverty. After spending a few weeks in Cambodia, it was clear however that the current debate on food shortages and rice production was quite oxymoronic. On one hand, there seemed to be a consensus among the NGOs that land grabbing indeed causes food shortages and reduces rice production; on the other hand, there seemed to be no real indicator of, or research on this.<sup>7</sup> Meanwhile, newspapers were reporting that prime minister Hun Sen

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<sup>4</sup> So called beatification projects is an umbrella word for example the creation of city parks or erection of monuments.

<sup>5</sup> UDHR, Art. 17

<sup>6</sup> De Soto, H. *The mystery of Capital – Why Capitalism Triumphs in the West and Fails Everywhere Else*, p. 166

<sup>7</sup> However, during the past few years rice prices in Cambodia have soared. Rice is the most common food in Cambodia where it amounts to 50 percent of the total food consumption in poor families. As such, increase of the price of rice will lead to increased poverty especially among the already poor. This is exacerbated by the fact that Cambodian farmers lack "proper milling infrastructure" as well as stocking facilities. For that reason the rice is exported to Thailand to be milled and stored and then imported back to a much higher price. See UN country team discussion paper on rising food prices, [http://www.un.org.kh/index.php?option=com\\_content&view=article&id=103:rising-food-prices-discussion-paper-&catid=46:rising-food-prices](http://www.un.org.kh/index.php?option=com_content&view=article&id=103:rising-food-prices-discussion-paper-&catid=46:rising-food-prices) and FAO Initiative on Soaring Food Prices – Cambodia, <http://www.fao.org/isfp/country-information/cambodia/en/>.



announced a goal of rising rice export levels to one million tons by 2015.<sup>8</sup> The foci of the NGO's work and research in Cambodia laid instead on the human rights violations that usually follow the land grabbings. As such, the focus of this paper quickly became another. This thesis will instead treat how the legal system allows these land grabbings, both through legislation, through its implementation and through process of appeal in the court systems. The thesis will attempt to answer the following questions:

- 1) How is the 2001 Land Law circumvented by the government when divesting of already occupied land?
- 2) What theoretical and real possibilities does an individual have of having his case heard and fairly tried in the Cambodian court system?
- 3) What should the international community do to aid in strengthening the rule of law and tenure security in Cambodia?

## **1.2 Method and Material**

This thesis is mainly based on material collected during the course of a Minor Field Study conducted in Cambodia between September 6 and November 8, 2010. The purpose of traveling to Cambodia was to gather information and material through interviews and observations.

The field study was composed of in-depth interviews with employees at both national and international NGOs, researchers, lawyers and law professors as well as informal conversations with various individuals. The interviews were semi-structured, allowing for flexibility, not knowing exactly where the interviews would lead and what information would surface, as the land issue is highly delicate. Moreover, in some cases, the interviews corrected some preconceived misconceptions, and it was thus necessary to be adaptable. Due to what, in some cases, may be considered sensitive information; all the interviewees have been anonymized.

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<sup>8</sup> See Bopha, P. & Vrieze, P. *Rice Export Goal Not Easy, Hun Sen Warns*.

These interviewees also provided additional written information, such as dissertations, publications, and reports. Newspaper articles were also valuable sources in following the day-to-day updates on recent land grabbing disputes as well as the development of Boeung Kak and Koh Pich. Apart from the material gathered in Cambodia, books on Cambodia's history as well as publications, reports and statistics from various NGOs have been used. It goes without saying that Cambodian laws and sub-decrees have been requisite for this thesis. In order to consult individuals who had been affected firsthand by land grabbings, a community meeting in Phnom Penh was also attended. The purpose of the community meeting was to agree on an alternative strategy to present to the Cambodian government, so that their land will be preserved. Observing this and speaking to these individuals in person was invaluable.

Spending roughly two months in Cambodia reading newspapers and having informal conversations with locals allowed me to get a sense of the general atmosphere in the country. Traveling around the countryside and down to the coastal towns, thus stepping out of the expat bubble in Phnom Penh, also helped in understanding how acute the land grabbing problem is. One need not travel far from the city center to experience the urban slums to which the evictees are forced.

In order to illustrate how acquisitions are made in reality, case studies have also been included. These case studies are all high-profile cases and in many ways, they follow the common recipe for extralegal land acquisition. Moreover, these places were visited firsthand during the field study, making the inclusion of them all the more relevant in the author's eyes.

### **1.3 Delimitations**

Human Rights violations are almost always mentioned in the wake of land grabbings. As countless sources and recollections of undisputed human rights violations already exist, this is only included as a parenthesis in certain sections.

Moreover, the concept of collective ownership is described, but not treated further in this thesis. Mainly because this area is so complex, that it would have to be dealt with separately.

## 1.4 Disposition

The introductory chapter introduces the reader to the current situation on property issues in Cambodia. To put individual ownership in a historical context, this is followed by a brief history of Cambodia with a primary focus on the evolution of property rights, from the Angkorean period up until today, including the Khmer Rouge's annihilation of the legal system. Chapter three describes the former land laws leading up to the current one. The articles governing possession and ownership, both private and state, are described, as well as the articles and sub-decrees governing the leasing out and sale of state property. To obtain a clearer picture of how land acquisitions are made in practice, several high profile cases studies are offered. As part of the problem of land grabbing has its root in people lacking titles of ownership for their property, the land titling system in Cambodia is explained in chapter four. To fully comprehend the corruption within the government and legal system, a brief history of Cambodia's patronage system, which permeates the society in its entirety, is also provided. It is true that corruption within the government structure has a high prevalence in many post-conflict countries. However, the patronage system of Cambodia is unique in many ways and it will be argued in this thesis that if perhaps not the current corruption per se is deeply rooted in its culture, the importance of doing the right person favors in order to gain protection very much is. An analysis of how this influences the court rulings and proper implementation of the 2001 Land Law is offered in chapter eight. Thereafter follows a chapter on possible future consequences of land grabbing. Lastly, a conclusion and analysis is provided in the final chapter.

## 2. A History of Cambodia

A large part of this thesis includes a history of Cambodia, with a focus on the establishment of property rights, the legal system, and patronage politics, as well as the subsequent destruction of the same property rights and legal system. This is of great significance as Cambodia's history very much echoes into the present day in the form of lack of ownership titles and lack of a functioning legal system. Therefore, the current events in Cambodia must be understood in light of its history and its peoples' relation to land.

### 2.1 Angkor - The Founding of Cambodian Agriculture

The kingdom of Cambodia evokes a sense of mystery. With ancient temples and Buddhist wats dispersed throughout the country, the mystery of the lost ages remains very much today. Driving through the Cambodian countryside, there is a certain sense of timelessness that strikes you, making you believe for a second that you have found yourself in 10<sup>th</sup> century Angkor or in 19<sup>th</sup> century Indochina. The farmers in the rice fields are wearing the same clothes and using the same farming tools that they have used for centuries. Some claim that there exists a certain conservatism and pride of heritage, remaining since the Angkorean period, in keeping the status quo.

There is some debate surrounding the timeline of the Angkorean period. As the years 802 and 1431 are commonly used and as Chandler that these dates mark Cambodia's period of greatness these dates will be used in this paper.<sup>9</sup>

The first step towards a Cambodian agricultural system arrived with king Indravarman. The king was the first to supply Angkor with an irrigation system in the form of a large reservoir to trap rainwater.<sup>10</sup> Following this, the succeeding kings of Angkor continued to develop the area by erecting temples and monuments as well as continuing to develop the reservoir system. In the beginning of the 11th century, King Suryavarman took over the monarchy and commissioned the Angkor Wat temple. At this time, the system of reservoirs and canals that had been built provided the basis for Angkor's agriculture, which consisted mainly of rice

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<sup>9</sup> Chandler, D. *History of Cambodia*, p. 35

<sup>10</sup> *Ibid.*, p. 42

farming. In this way, the state of Angkor could start to build the foundations of a functioning economy.<sup>11</sup>

This irrigation system spread to other newly established cities in the area. Rice had come to form the basis of the Angkorean economy and surpluses were collected for the benefit of the state. There was even a tax system, which taxed everything from rice, salt to wax and honey.<sup>12</sup> During the Angkorean period, all land belonged to the Cambodian king but was free to be cultivated by the people in whichever way they see fit.

Without trying to further fuel the myth about Cambodian rural conservatism, an interesting fact in understanding the inertia of the Cambodian agriculture is the following. An average size of a rice-growing village in 1960s amounted to about 200 people, which is the same as it was during Jayavarman VII's rule in the 12<sup>th</sup> century.<sup>13</sup> Eventually, the products mentioned above would come to form exports. These exports would remain the same well into the 20<sup>th</sup> century.<sup>14</sup> The inertia of Cambodia's rural society is also confirmed by Biddulph, noting however that the situation has been rapidly changing during the last two decades. Rural households and farmers are now quickly modernizing their ways of harvesting rice through milling machines and tractors wheels in place of wooden wheels for their oxcarts.<sup>15</sup>

By the 13<sup>th</sup> century, it was reported that as much as three or four harvests of rice a year were possible in the Angkor state thanks to the favorable conditions mentioned above as well as the close proximity to the Tonle Sap Lake. These statistics would later be used in propaganda by the Khmer Rouge.<sup>16</sup>

Without workers, the Angkorean kings would by no means have been able to develop the advanced society that they had. To obtain this manpower, a slave system developed. It is believed that slaves were taken from mountain tribes as captives and that the Cambodian society could only build itself up through socializing what they deemed were barbarians.<sup>17</sup> As

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<sup>11</sup> Ibid., p. 63

<sup>12</sup> Ibid., p. 64

<sup>13</sup> Ibid., p.76

<sup>14</sup> Ibid., p. 87

<sup>15</sup> Biddulph, R. *Geographies of Evasion – The Development Industry and Property Rights Interventions in Early 21<sup>st</sup> Century Cambodia*, p. 74

<sup>16</sup> Chandler, D. *A History of Cambodia*, p. 86

<sup>17</sup> Ibid., p. 85

a slave system was established, this naturally developed a Khmer elite, who were awarded certain privileges. Possibly, this was a first indication of the patronage system that would come to evolve.

In the 16<sup>th</sup> century, Angkor would slowly come to deteriorate and the nation's center would come to shift from Angkor to Cambodia's current capital Phnom Penh.<sup>18</sup> It is likely that Phnom Penh was chosen as the new capital to function as a trading center, much because of its geographical position. The foreign influences would come to grow through trade, especially those of the Vietnamese and Thai, and later even Europeans. Phnom Penh was now the home to many foreign traders working closely with Khmer officials. It is implied by Chandler that these foreign mercantiles somehow took the place of the slave-owning middleclass. Not much is mentioned about the rice farmers, but the previously mentioned elite would continue to flourish mainly thanks to the trade.<sup>19</sup> For an understanding of Cambodian ownership history, it is interesting to note that material inheritance at the time was nonexistent. When the owner of a house passed away, his possessions were returned to the king; this included land as well as ranks and positions in society.<sup>20</sup> In the 17<sup>th</sup> century, Cambodia was still a relatively independent society, which would come to change during the next two centuries.

## 2.2 The French Connection

The 19<sup>th</sup> century would be defined by the rivalry between the large kingdoms of Siam<sup>21</sup> and Vietnam and Cambodia was repeatedly occupied by the two countries' forces.<sup>22</sup> These invasions of Cambodia would come to weaken the country politically. The Cambodian elite persisted however, supported by rice farmers. This was a conservative and hierarchical society with a "*great emphasis on rank and privilege.*"<sup>23</sup>

In 1863, king Norodom concluded a treaty of provisions with France, accepting all "*administrative, judicial, financial, and commercial reforms which the French government*

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<sup>18</sup> Ibid., pp. 92-93

<sup>19</sup> Ibid., pp. 104-105

<sup>20</sup> Ibid., pp. 94-98

<sup>21</sup> What we today know as Thailand

<sup>22</sup> Chandler, op. cit., p 141

<sup>23</sup> Ibid., pp. 111-112

*shall judge, in future, useful to make their protectorate successful.*”<sup>24</sup> This would be the beginning of Cambodia as a French protectorate. Notably, the French would to some extent, i.e. in the rice growing areas that were more populated than others, introduce the system of formal private property rights. This treaty would place French residents in provincial cities, abolish slavery, and institutionalize the ownership of land, something that very much enraged the Cambodian elite. Abolishment of slavery would imply the end of the patronage system and cutting the ties between masters and servants. Rebellion broke out as “*the masters wanted to keep their slaves and the slaves their masters.*”<sup>25</sup> French control would come to grow even more and by 1892, they even managed the collection of direct taxation. In the meantime, royal decrees allowing French citizens to purchase land had produced a real estate boom in Phnom Penh.<sup>26</sup>

At this time, Cambodia was very much a rural society with only 2.5 percent of the people living in the capital.<sup>27</sup> The rice farmers were nearly all ethnic Khmer, while ethnic minorities, such as the Chinese, occupied themselves with trade. It should be said that Cambodia was very poor at this time and the rice surpluses that were present during the days of Angkor existed no more. People grew rice to sustain themselves and last them through the day, and most of their time was spent growing rice. As the landholdings were small and irrigation works almost nonexistent, yields were consequently low.<sup>28</sup> Government control lacked and instead the villages chose their own rulers, usually elderly men. The people’s relationship with the state was irregular and hostile; disputes were not settled by law but by conciliation.<sup>29</sup>

### 2.3 The End of the French Rule

The years following 1945 would be characterized by Cambodia’s fight for independence and the end of the French rule in Cambodia. In 1953, on a trip to Paris, Sihanouk was finally successful in negotiating a deal with France and was granted authority over Cambodia’s armed forces, judiciary, and foreign affairs. Now the money went directly into the pockets of a Cambodian elite, sitting in a government overseen by no one.

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<sup>24</sup> Ibid., p 176

<sup>25</sup> Ibid., p 177

<sup>26</sup> Ibid., p 181

<sup>27</sup> Ibid., p. 120

<sup>28</sup> Ibid., p. 121

<sup>29</sup> Ibid., p. 125

After the gaining of Independence in 1953, several political parties emerged on the scene attempting to take power from the king. To Sihanouk, who saw himself as the “*father of Cambodian independence*,”<sup>30</sup> and he himself wanting to lead the country into the future, this came as a surprise. This led to Sihanouk’s abdication from the throne, in favor of his father, and him starting his own political party so that to participate in the upcoming elections. With his party winning the elections, Sihanouk now monopolized political power in Cambodia up until the 70’s.<sup>31</sup> The Cambodian economy would begin to falter, as Sihanouk had continuously been ignoring Cambodia’s agricultural problems of low yields, poor irrigation, and huge interests on loans to farmers. These factors would come to weaken Sihanouk’s support and his interest in governing the country declined.

On March 17, 1970 the then prime minister of Cambodia, Lon Nol, was forced to sign a declaration, supporting a vote against Sihanouk in the National Assembly to remove him as chief of state.<sup>32</sup> After Sihanouk’s removal from office, Lon Nol remained Prime Minister. By this time, the Vietnam War was in full bloom and the unrest in neighboring country was continually flowing over into Cambodia, through the presence of North Vietnamese forces. In May 1970, the U.S., in alliance with South Vietnam, invaded Cambodia to drive the North Vietnamese forces out of the country. Lon Nol’s rule, supported by the U.S. Government, was already unstable and had been growing weaker during the years leading up to the revolution.<sup>33</sup> At the same time, the leftist movement in Cambodia was growing stronger; by 1970, the Communist Party of Kampuchea, through armed forces, occupied a fifth of Cambodia’s territory. In order to delay a Communist victory, the U.S. conducted a bombing campaign on the Cambodian countryside that reached its peak in 1973, bringing about a widespread loss of property and civilian casualties. The fact that Lon Nol’s air force was also dropping bombs would further weaken the support for his Government.<sup>34</sup> These bombings would come to enrage the Cambodian people and increase the support of the Khmer Rouge among the Khmer peasantry. This encouraged many to join the Khmer Rouge or to at least give support to the movement.<sup>35</sup> As Sihanouk had now allied with the revolutionary KR, it has been argued that

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<sup>30</sup> Ibid., p. 230

<sup>31</sup> For more on Cambodia gaining independence, see Chandler, pp. 211-232

<sup>32</sup> Chandler, op. cit., pp.249-250

<sup>33</sup> Ibid., pp. 251-252

<sup>34</sup> Vickery, M. *Kampuchea – Politics, Economics and Society*, p. 20

<sup>35</sup> Kiernan, B. *How Pol Pot Came to Power*, p. 351



perhaps many people in Cambodia saw this as a way of restoring Sihanouk's rule. Although communism had been considered foreign among the Khmer people,<sup>36</sup> the Khmer Rouge had now gained wide popular support.

## 2.4 The Khmer Rouge

On April 17, 1975, the Khmer Rouge, led by Pol Pot, took control over Phnom Penh. This would be a new beginning for Cambodia, or Year Zero as the KR would come to call it. The country was renamed Democratic Kampuchea and the new regime would, during the following three years, be completely isolated from the outside world.<sup>37</sup> This capture of Cambodia would come to last until January 7, 1979 when the CPK<sup>38</sup> sponsored revolution ended. The purpose of the revolution was to reinstate social justice in Cambodia, which they thought had been lacking since the Angkorean period. What the country needed was a transformation to put the citizens in control of their country. This could only be possible through the abolishment of money, free market, formal education, religion, books, freedom of expression and movement, and what is most relevant to this thesis; private property. All land was collectivized and land records destroyed, including cadastral maps and titles. The court system was completely abandoned. All of the above were viewed as impediments to the transformation of the state. Consequently, individual property was abolished and a collectivization of Cambodian property was introduced.

The first priority of the KR was to transform Cambodian agriculture and increase the national production of rice for exports. These earnings would then pay for any needed imports and eventually finance industrialization. To achieve this, approximately two million Cambodians were evacuated from Phnom Penh and sent to the countryside to work in the fields. This included the elderly, the sick and even small children. The conditions for the people sent out in to the fields were harsh. Many of the people sent out were not accustomed to the harsh form of physical labor that they were forced to undertake for long hours. The KR had a vision of ever-increasing levels of rice production, without any research into what levels of rice crops realistically could be expected.

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<sup>36</sup> Ibid., p. iii

<sup>37</sup> Shawcross, W. *Kissinger, Nixon and the Destruction of Cambodia*, p. 368

<sup>38</sup> The CPK did not reveal its official leadership of the KR until 1977.

The occupation of the KR also brought about the end of the Cambodian elite. During the four years of the KR's power, approximately two million people died in the pursuit of an egalitarian, agricultural society. The people were forced to work long hours and without enough food to satisfy their basic needs, people died simply of starvation and mistreatment. Rice surpluses were either exported or went to feed the army rather than the hungry workers. In order to achieve the surplus goal, it was necessary to feed the workers less and less.<sup>39</sup>

As Angkor once had been founded upon the control of water so would DK be. The KR had a vision of constructing a similar irrigation system to the one in Angkor, creating canals and dams in order to prevent flooding as well as allocating water during the year. This would increase rice production and produce rice on a year-round basis, which would provide DK with everything it needed from energy to steel.<sup>40</sup> So one might ask what the great reward for the hard workers in the field was. A better quality of life? A better Cambodia? No, there was a simple promise that by 1980 everyone would enjoy a daily dessert.<sup>41</sup>

People did not merely die of exhaustion in the fields. Ongoing crimes of humanity, in the form of torture and executions, were systematically carried out in the capital. The main targets of the KR were anyone with connections to the former government as well as professionals and intellectuals, i.e. everyone with an education or even people simply wearing eyeglasses, as this signified literacy. Needless to say lawyers, judges and jurists were a main target. Ethnic and religious minorities were also targeted, as well as Buddhist monks, seeing as religion had been abolished. Others were proclaimed enemies of the revolution and killed simply because of this, in many cases without any actual proof that this was de facto the case. This hostility was especially directed at the Cambodian elite and certain middle class working groups, such as teachers. As the Khmer Rouge regime began to falter, they became more and more desperate to eliminate any enemy of the revolution and anything that could hinder its progress. People suspected of opposing the revolution were taken to the Tuol Sleng prison, also known as S-21, and were there tortured and forced to mention other people they knew in opposition of the regime. To be considered a suspect you simply had to be mentioned in three other "*confessions*." Charges, that in a vast majority of cases were unfounded, were brought against people who had been mentioned in interrogations by at least three other people. Once

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<sup>39</sup> Shawcross, op. cit., p. 375

<sup>40</sup> Ibid., p. 376

<sup>41</sup> Chandler, op. cit., p. 263

questioned, you were considered guilty, and after the torture sessions brought to the Killing Fields to be executed. As such, the executions that took place were mainly political.

In order to create a strict egalitarian society, the KR was forced to break down the deeply rooted patronage system. This made urban and rural elites more susceptible to the resentment of the KR. The Khmer language had a system of defining people after their rank and social status in the community, as well as certain ways of greeting each other. For example, the higher status a person has, the higher a person folds his hands in salutation.<sup>42</sup> This was abolished all together and people were encouraged to call each other friend. It is perhaps therefore all the more remarkable, but not surprising perhaps, that the KR would follow in the steps of the old elite, by placing only their family and friends in high positions regardless of their actual competence within the area.<sup>43</sup>

## 2.5 The end of Democratic Kampuchea

When the DK regime ended in 1979, it was through a Vietnamese invasion. The Vietnamese would subsequently also help the country to establish the People's Republic of Kampuchea. Perhaps not a fairytale ending to the DK regime, but still the Vietnamese were welcomed as it implied a de facto end of the DK. The current prime minister of Cambodia, Hun Sen became prime minister as early as 1985.

On a positive note, many of the institutions shut down by the DK, such as religion, education, and family farming were now being revived.<sup>44</sup> With regards to society, while the cities were relatively untouched, the rural society was deeply damaged. The villages had either been abandoned or completely torn down and people were left with no tools or means to farm the land. To get the rice farming back on track, the Vietnamese created so called solidarity groups, consisting of several families, to cultivate the land. Private ownership however was still not recognized and all land belonged to the state.<sup>45</sup> At the time, land was in plenty and Cambodians took over property and houses “*on an ad hoc and unregulated basis.*” In the void of property rights, informal occupations rights evolved and became transferable.<sup>46</sup>

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<sup>42</sup> Author's own observation

<sup>43</sup> Ibid., pp. 255-276

<sup>44</sup> Ibid., p. 278

<sup>45</sup> Ibid., p. 279

<sup>46</sup> Amnesty. *Rights Razed – Forced Evictions in Cambodia*

The remaining elite, i.e. those who were not killed during the DK era, did not trust the PRK. The majority chose not to remain in Cambodia and instead fled to Thailand, meaning that Cambodia then and there lost the very last of its educated people.<sup>47</sup> When the DK fell in 1979, only ten qualified lawyers remained in Cambodia.<sup>48</sup>

At the end of the 1980s, the Cambodian government introduced several reforms that were welcomed. Notably, new laws were passed allowing farmers to pass land titles to their children, as well as allowing people to buy and sell real estate. Collectivism was now officially dead. This would lead to a real estate boom in Phnom Penh, with people making money off speculation and restoration of property. Unfortunately, this would come to produce yet another Cambodian elite, which remains very much today, driving expensive cars, owning enormous villas and displaying obnoxious behavior.<sup>49</sup>

## 2.6 After the Khmer Rouge

In October 1991, the Paris Peace agreements were signed to create the United Nations Transitional Authority in Cambodia (1992-1994). This was carried out in agreement with the current Cambodian government with the aim of restoring peace and civil government in the country. The purpose of the UNTAC was to end the foreign military assistance and oversee the withdrawal of foreign forces as well as disarm the armed forces of the Cambodian parties, perhaps more specifically the Khmer Rouge. The United Nations wanted to get Cambodia back on its feet without, as it now was, depending fully on outside control. The UNTAC would rebuild the government and ensure that human rights and fair and free elections were held. With a high voting participation, the elections that followed were declared fair and a new coalition government was inaugurated in 1993.<sup>50</sup> However, the elections were controversial as the CPP, with Hun Sen at the helm, did not want to accept that they had lost the vote and forced their way into the government.<sup>51</sup> What ensued was a partial peace resulting in an “intensification of forest exploitation” by the army and the political elite.<sup>52</sup> Cambodia was now working its way to a market economy, but there existed no transparency

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<sup>47</sup> Chandler, op. cit. p. 281

<sup>48</sup> Amnesty. *Kingdom of Cambodia: Urgent need for judicial reform*, p. 2

<sup>49</sup> For more on the so-called Khmer Riche, see Marshall, A. *The Khmer Riche: Making a killing in Cambodia*.

<sup>50</sup> Cambodia UNTAC background, <http://www.un.org/en/peacekeeping/missions/past/untacbackgr1.html>

<sup>51</sup> For a detailed account of the 1993 elections, see Roberts, D. Chapters 6-7

<sup>52</sup> Biddulph, op. cit. p. 78

and the gaps between the elite and the rest of the Cambodian people were further widened. In hindsight, the consensus is that the mission was unsuccessful, slow, and inefficient.

### 3. The Cambodian Land Laws

To fully understand the current 2001 Land Law, one must have an understanding of preceding legislation. Therefore, a brief description of previous property legislation follows below.

#### 3.1 The Reintroduction of Private Property

As previously stated, the Khmer Rouge had abolished private property in 1975. This ban lasted 14 years and was overturned as late as 1989. At that time, the land rights were based on post-1979 possession, so to avoid ownership claims from refugees and Cambodian expatriates.<sup>53</sup> As such, property rights existing before 1979 were not recognized.<sup>54</sup> In reality, it would also have been very difficult to prove land ownership stemming from before 1979, as all records of title had been destroyed during the DK era. However, this entailed that the 360 000 Cambodians living in exile since the occupation and beyond, lost all their rights to claiming property. According to Hun Sen, Cambodia should start again. Fortunately, for the Cambodian elite this included awarding prime real estate to his clique.<sup>55</sup> This was also the beginning of privatization of industries, which had previously been state enterprises. These companies were simply taken over by state representatives.<sup>56</sup>

#### 3.2 The 2001 Land Law

In 1993, a new coalition government was elected, which was succeeded by the drafting of a new constitution, giving full rights of ownership to Cambodian citizens. The new constitution codified rights that had previously been neglected during the era of the Khmer Rouge atrocities. After decades of instability, the new constitution now promised the Khmer citizens a comprehensive protection of fundamental human rights.<sup>57</sup> With the disintegration of the entire legal system, guaranteeing the rule of law and a fair judiciary in the constitution was essential in order to protect civil and political liberties that had previously been suppressed.<sup>58</sup>

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<sup>53</sup> Gottesman, E. *Cambodia After the Khmer Rouge*, p. 320

<sup>54</sup> Land Law 1992, Art. 1

<sup>55</sup> Levy, A and Scott-Clark, C. *Country for Sale*.

<sup>56</sup> Gottesman, op. cit., p 318-319

<sup>57</sup> Constitution of Cambodia, Arts. 31-50

<sup>58</sup> *Ibid.*, Arts. 109-116

Remarkably, the Cambodian constitution is viewed by some as being one of the most liberal in Asia.<sup>59</sup>

As a result, the current land law was created to fill the legal void and harmonize the law with the 1993 constitution. One could now register any land holding, regardless of type or size. The previous land laws had limited land *ownership* to 2000 square meters and *possession* to five hectares, restricted to agricultural land. At the time, possession and ownership differed in that to maintain possession over land the possessor must keep maintaining it. Land that was left vacant for more than three years reverted to state *ownership*.<sup>60</sup> The 2001 Land Law converts legal possession recognized by previous law to ownership rights, as the new law considers full ownership rights also for agricultural land.

The 2001 Land Law is considered a very thorough and progressive law, recognizing that people may be owners of a piece of property even though they lack the official papers to prove it. The problem is not with the law, but with its implementation or rather lack of it. The 2001 Land Law also introduced a cadastral system, a central system of land titles.<sup>61</sup>

### 3.2.1 Immovable Property

In the 2001 Land Law, land is referred to as immovable property, defined as follows:

- Immovable property by nature, e.g. forest land, cleared land, cultivated land and land submerged by waters
- Immovable property by purpose, e.g. items that are fixed to the ground and cannot be separated from it without damage
- Immovable property by law, i.e. what is defined as immovable property by law<sup>62</sup>

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<sup>59</sup> Öjendal, J. & Lilja, M. *Beyond Democracy in Cambodia, Political Reconstruction in a Post-Conflict Society*, p. 21

<sup>60</sup> Interviewee no. 2

<sup>61</sup> Ibid.

<sup>62</sup> 2001 Land Law, Art. 2

### 3.2.2 Possession

The purpose of the new law was to remedy the problems of the old one, and in particular to put an end to any new possession. In order to claim legal possession of property one now has to meet the following five conditions for the possession to be considered legal.

- 1) First, occupation of the property must be unambiguous, i.e. the person claiming ownership must be the exclusive possessor of the land and acting for himself.
- 2) Moreover, the occupation of the land must be non-violent and the acquisition of this land must have been peacefully acquired.
- 3) In addition, the individual seeking ownership must occupy the land notoriously to the public so that it is possible for others to contest his or her rights.
- 4) The possessor must thereto have occupied the land continuously, with only few interruptions for short periods of time allowed.
- 5) Last, the possessor must occupy the land in good faith.<sup>63</sup>

It should be made clear that legal possession is a right per se and does not constitute ownership of the land. Possession of property entails the right to *apply* for a legal title of ownership. However, nota bene it does not give the possessor right to receive the title.<sup>64</sup> A possessor of land does however have similar rights as a legal owner does. In the courtroom, the difference in leverage between a certificate of possession and one of ownership is virtually negligible.<sup>65</sup>

### 3.2.3 Ownership

According to the 2001 Land Law, ownership can be individual, collective, or state.

- Collective ownership

Collective ownership is reserved for two different categories of land. The first category includes land within the premises of Buddhist monasteries and is property that cannot be sold

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<sup>63</sup> Ibid., Art. 38

<sup>64</sup> Ibid., Art. 30

<sup>65</sup> Interviewee no. 4



or in other ways divested.<sup>66</sup> The second category refers to land on which indigenous communities are residing and where they carry out traditional agriculture. To be considered a member of this indigenous group, one must meet certain ethnic, cultural, and social criteria and cultivate the land according to customary rules of collective use.<sup>67</sup> This property cannot be acquired by anyone outside of this indigenous community.<sup>68</sup> Collective ownership will not be treated further in this thesis.

- *Individual ownership*

Individual ownership of land, also referred to as immovable property, is ownership by either a natural or a legal person.<sup>69</sup> This ownership entitles the owner to an exclusive and extensive use of the property unless elsewhere prohibited by law.<sup>70</sup>

- *State Ownership*

Land owned by the kingdom of Cambodia is referred to as state ownership. State land can be either public or private. State Public Land is defined as property that “*has a natural origin*” such as forests, rivers and lakes. Property developed for general or public use such as roads, railways, airports, public parks, as well as property that “*is allocated to render a public service*” such as public schools and hospitals.<sup>71</sup> State Private Land is land that is neither State Public Land nor privately, individually, or collectively, owned or possessed as explained above, i.e. the rest of the land in Cambodia.<sup>72</sup> In reality, the state rarely distinguishes between the two types of state property, which further complicates the problem of land grabbing.<sup>73</sup>

### **3.2.4 Turning State Public Property into State Private Property**

State Public Land is frequently made State Private Land through an infinite number sub-decrees, used as a veil to cover up extralegal government activities. A sub-decree is

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<sup>66</sup> 2001 Land Law, Arts. 20-21

<sup>67</sup> Ibid., Arts. 23-25

<sup>68</sup> Ibid., Art. 28

<sup>69</sup> For a definition on immovable property see Chapter 3.2.1

<sup>70</sup> 2001 Land Law, Art. 85

<sup>71</sup> Ibid., Art. 15

<sup>72</sup> Ibid., Art. 12

<sup>73</sup> Interviewee no. 5

legislation, adopted by the Council of Ministers and signed by the Prime Minister, which must be in strict conformity with both the Constitution and the Law to which it refers.<sup>74</sup> The purpose of a Sub-decree is often to elaborate on certain issues in an already implemented law. Sub-decrees are often created to allow subsequent development projects, as will be illustrated by the case studies below.

It is stated in Article 16 that State Public Property cannot be subject to commercial transactions. However, when State Public Property *loses its public interest* it can be transformed into State Private Property through sub-decrees.<sup>75</sup> Once the land is turned to State Private Property, it can thus be sold, concessioned and leased out accordingly.<sup>76</sup> The sale, lease, or concession of State Public Property before it has been made State Private Property is illegal.<sup>77</sup>

### 3.2.5 Expropriation

The matter of expropriation is treated briefly in article 5 stating, “*no person may be deprived of his ownership, unless it is in the public interest.*” The expropriation must be carried out in accordance with the law and only after the person deprived of his ownership has received “*fair and just compensation*” for his property.<sup>78</sup> What constitutes a public interest is not explained nor what constitutes fair and just compensation. Presumably, the compensation would refer to at least market value or replacement value for the property. According to the same article, the compensation should be made in advance, but there exist no guidelines on how to determine fair and just compensation. Neither are there any possibilities of appeal prescribed, nor any statutory penalties should compensation not be paid on time. Without this compensation, it is difficult for the individual to adjust properly to his new situation. This is however refuted by several interviewees, claiming that in many cases no compensation at all is offered for the expropriated land. In rural areas the inhabitants sometimes receive compensation in the form of other land that is not farmable.<sup>79</sup> In urban areas compensation the

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<sup>74</sup> OHCHR Cambodia – *A selection of laws currently in force in the kingdom of Cambodia*, [http://cambodia.ohchr.org/klc\\_pages/klc\\_english.htm](http://cambodia.ohchr.org/klc_pages/klc_english.htm)

<sup>75</sup> 2001 Land Law, Art. 16

<sup>76</sup> *Ibid.*, Art. 17

<sup>77</sup> *Ibid.*, Art. 18

<sup>78</sup> *Ibid.*, Art. 5

<sup>79</sup> Interviewee no. 1

occupants usually receive some form of smaller compensation. Likely this is because of the high frequency of NGOs in the urban areas, making these cases more visible. It has been reported that the evaluation process is arbitrary, granting higher compensation to those educated and well-off who are more influential in their community.<sup>80</sup>

What equals a public interest is determined by what benefits the Government. For the RGC development is a purported public interest. Development in this context should primarily be understood as construction of high-rise buildings in the capital and establishment of factories in rural areas, i.e. superficial development to create a façade of economic growth and progress. This “development” is claimed to benefit the public and stimulate economic growth.

However, the use of the expropriation article is not as common as merely taking land, for the simple reason being that few people actually have proof that they are owners of the land due to the slow land registration process discussed below. Taking land from people lacking titles is more common, and perhaps simpler. The line between expropriation and simple land grabbing is as such blurry, in large due to delays in the land titling process in Cambodia. This has also contributed to difficulty in defining who is entitled to compensation according to this article. In its current form, the expropriation article only governs legitimate landholders, i.e. owners with land titles and not those with legitimate possession rights without title. Therefore, the only individuals who are entitled to compensation are the ones that hold title of ownership or possession and is the proper possessor or owner in accordance with the requirement above. As only 10 percent of Cambodian land has been officially titled, this leaves 90 percent of land untitled.<sup>81</sup> In many land grabbing cases, it is uncertain who has the right of possession, or whether the property is state land, private or public. Many are as such precluded from the application of the expropriation article. Moreover, replacement value is determined by the government. In some cases, compensation has been based on market information from government land transaction records. This of course requires an actual active market and that the record information is reliable, which is often not the case, as land prices are understated in the records.<sup>82</sup>

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<sup>80</sup> ADB. *Expropriation Laws and Practices: Cambodia*, p. 54

<sup>81</sup> It should be noted that the sale, lease and concessioning of property does not involve titling of the land.

<sup>82</sup> ADB .op. cit., p. 54

In January 2010, a new expropriation law was approved by the Cambodian senate allowing authorities to “*withdraw legal ownership on land*” for public development purposes. The new legislation includes the establishment of an Independent Evaluation Commission for land with the purpose of ensuring that compensation is granted according to market prices.<sup>83</sup> It is difficult to imagine how a new commission will bring about change, as it most likely will consist of the same government officials as before. Moreover, the new expropriation law does not offer any further guidance on the definition of “public interest,” which allows continued arbitrary takeover of land by powerful players supported by the government. Nor has any progress been made to ensure transparency in the expropriation process. With that said, any positive effects of this new legislation remain to be seen.

### 3.2.6 Economic Land Concessions

Chapter 5 governs the rules on land concessions. A land concession is a legal right given to an individual or legal entity to occupy land and exercise his rights on this land.<sup>84</sup> This paper will only treat ELCs, which are land concessions responding to an economic development purpose<sup>85</sup> allowing the beneficiaries to clear the land for industrial agricultural exploitation<sup>86 87</sup>.

Economic Land Concessions are granted primarily for industrial agricultural purposes. Most commonly, foreign companies use the land for sugar, rubber, and cassava plantations. Recently, rich Middle Eastern countries such as Kuwait and Qatar have been purchasing land for investment purposes, possibly following recent trends, and purchasing the land to grow crops for to feed their own population.<sup>88</sup>

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<sup>83</sup> Tong, X. *Cambodian Senate Approves Expropriation Law*.

<sup>84</sup> 2001 Land Law, Art. 48

<sup>85</sup> Article 5 of the Sub-decree on ELCs states that ELCs should increase the “agricultural and industrial-agricultural production” and employment. Furthermore they should promote the “living standards of the people” and environmental protection while minimizing negative social and environmental impacts.

<sup>86</sup> In the Sub-decree on ELCs, Industrial-agricultural exploitation is defined as follows: “cultivation of food crops or industrial crops including tree planting to be tree plantation, raising of animals and aquaculture, construction such as a plant or factory and facilities for the processing of domestic agricultural raw materials, or a combination of some or all of the above activities.”

<sup>87</sup> 2001 Land Law, Art. 49

<sup>88</sup> Interviewee no. 1

An ELC may only be granted on State Private Property and may not exceed 10 000 hectares. Neither may one individual or legal entity be granted concessions that in total exceed 10 000 hectares<sup>89</sup>. Moreover, they may only be granted ELCs for a maximum of 99 years.<sup>90</sup> The granting of an ELC is conditional and may be revoked if it does not comply with the Land Law.<sup>91</sup> It is further stated that the concession holders may not alter the land in such a way that it damages “its natural structure” or so that it is destroyed.<sup>92</sup> It should be noted that although the law prohibits foreigners from owning property, the law does not restrict them from obtaining ELCs.

In 2005, the Sub-decree on Economic Land Concessions was signed with the objective of setting out general conditions that must be met in order for a concession to be granted. Before granting an ELC, the contracting authority shall conduct both an initial Environmental and Social Impact Assessment of the proposed project that will take place on the land.<sup>93</sup> If the EIA or SIA indicates that the concession at hand could have a negative effect, a full EIA or SIA should be conducted. For an ELC to at all be granted the land must be registered and classified as state private land in the land registered and EIAs and SIAs must have been completed.<sup>94</sup> In reality, EIAs are seldom conducted properly. More often than not, the state official does not even leave his office to visit the sights, in order to determine possible negative environmental effects of the prospective industry.<sup>95</sup>

The Ministry of Agriculture, Forestry and Fisheries reports that, as of April 2010, 85 ELCs with a total land area of 956 690 hectares have been granted.<sup>96</sup> This constitutes 5.3 percent of Cambodia’s total land area. The arable land in Cambodia however only amounts to 21.5 percent as of 2007.<sup>97</sup> It should however be noted that ELCs under 1000 hectares are not listed and there is as such no way to find information on these. Moreover, as most of Cambodia is untitled, the coordinates are not reliable and the information on the MAFF’s website should perhaps thus be read with certain skepticism. Nota bene, this does not include sales, leases or mining or logging concessions.

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<sup>89</sup> 2001 Land Law, Arts. 58-59

<sup>90</sup> Ibid., Art. 61

<sup>91</sup> Ibid., Art. 54

<sup>92</sup> Ibid., Art. 56

<sup>93</sup> Sub-decree on Economic Land Concessions, Arts. 7 & 20

<sup>94</sup> Ibid., Art. 4

<sup>95</sup> Interviewee no. 3

<sup>96</sup> See MAFF, <http://www.elc.maff.gov.kh/overview.html>

<sup>97</sup> World Bank Indicators, <http://data.worldbank.org/indicator/AG.LND.ARBL.ZS>

## 4. Land Titling

There are two ways in which land can be titled, through Systematic Land Registration and through Sporadic Land Registration. The Cadastral Administration is the authority with the primary duty of carrying out Systematic Land Registration, reinforcing the sporadic registration system as well as producing and maintaining the Land Register. As such, the issuance of certificates of ownership and possession is provided by the Cadastral Administration,<sup>98</sup> who also produces Cadastral Index Maps<sup>99</sup> and the Land Register<sup>100</sup>. The RGC have been dependent on international aid to finance the project, as it requires very technical equipment and staff to conduct the registration. These land certificates are then listed in the land register.<sup>101</sup> As registered land is protected by law, it is of course important that this procedure is carried out, even though as will be shown in this paper, a certificate of ownership is no guarantee that the land is de facto secure.

### 4.1 Sporadic Land Registration

Sporadic Land Registration offers the individual a Sporadic Registration Certificate. Sporadic land registration has been possible since the introduction of land privatization in 1989.<sup>102</sup> The sporadic land registration is carried out on a case-by-case basis by the provincial branches of Ministry of Land Management, Urban Planning, and Construction on the initiative of the individual who wishes to be granted a sporadic registration certificate of ownership. As such, they are voluntary. This is a very slow and bureaucratic process as the procedure travels through several different offices, each of them with different duties.<sup>103</sup> A sporadic registration certificate does not have accurate coordinates, which makes the sporadic registration title weaker than the systematic registration certificate.<sup>104</sup> One advantage with the sporadic land registration however, is that the certificate can be applied for at any time.

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<sup>98</sup> 2001 Land Law, Arts. 229 & 241

<sup>99</sup> Art. 238 of the 2001 Land Law states that “Cadastral index maps cover the zones that have been systematically registered and the boundaries of all public and private properties demarcated and the classification of the land, such as cultivation land, forest land, submerged land, lands for industrial construction, etc”

<sup>100</sup> Art. 238 of the 2001 Land Law states that “the Land Register shows, according to each parcel number of ownership, the name of owners and the means of identification of such land parcel..”

<sup>101</sup> Hap, P. *The Implementation of Cambodia's Laws on Land Tenure*, p 81

<sup>102</sup> *Ibid.*, pp. 78-79

<sup>103</sup> *Ibid.*, p. 10

<sup>104</sup> *Ibid.*, p. 2

## 4.2 Systematic Land Registration

Systematic Land Registration offers the individual a Systematic Registration Certificate. The Systematic Registration Certificate is realized using aerial photos and GPS-equipment, which offers exact and accurate coordinates for the boundaries of the property. The government selects which areas to title and sends out teams to measure the land holdings and subsequently issue titles.<sup>105</sup> The systematic land registration is conducted by the government agencies, previously through the Land Management and Administration Project.<sup>106</sup>

## 4.3 The Land Management and Administration Project

The Land Management and Administration Project was a multi-donor project primarily funded by the World Bank. The project first began in 2002 with the purpose of assisting the government of Cambodia to implement key provisions of the 2001 Land Law. More specifically the goal of the project was to, over a 15-year period, strengthen land tenure security and the institutions involved, including the cadastral commission, as well as promoting the development of efficient land markets. Under the LMAP nearly one million lots of land were registered and titled. In September 2009, however the WB decided to terminate the project. At the outset of the project, it was agreed that the project would not “*title lands in areas where disputes are likely until agreements are reached on the status of the Land.*”<sup>107</sup> This resulted in the LMAP being more successful in the rural areas than the urban areas where land disputes are more common. The WB also failed at negotiating with the government on whether the LMAP’s social and environmental protection should also be implemented in urban areas. For the WB, the implementation of these safeguard policies was critical. Therefore, the project was cancelled.<sup>108</sup>

In reality what instigated the reviewing process was a complaint by Cambodia based NGOs claiming that the WB had failed to supervise the LMAP. Just prior to the municipality of Phnom Penh granting the 99-year lease to Shukaku Inc.,<sup>109</sup> the LMAP had allegedly denied

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<sup>105</sup> Interviewee no. 2

<sup>106</sup> See chapter 4.3

<sup>107</sup> World Bank. *Cambodia Land Management and Administration Project – Enhanced Review Report*

<sup>108</sup> World Bank. *Statement from the World Bank on Termination by Royal Government of Cambodia of the Land Management and Administration Project.*

<sup>109</sup> For more on this see chapter 5.2.

land titles to the Boeung Kak residents and excluded them from the titling system when land registration was carried out in their area in 2006.<sup>110</sup> The Cambodian government was unwilling to discuss with the WB measures to bring the project back in compliance and stated that the WB's "*complicated conditions*" as a primary reason for ending the project.<sup>111</sup> The WB wanted the Cambodian government to explain and correct the fact that these areas had been excluded from land titling without justification. Apparently, the government had no desire to do so. What followed was a termination of the project as the partnership with the WB was stated by the Prime Minister to be "difficult and complicated" and having "too many conditions."<sup>112</sup>

With no more funding for systematic land titling projects, this will considerably slow down the land titling registration and it will be many years before all land in Cambodia is titled. One interviewee stated that without proper funding, this undertaking could take 100 years, meaning that there is no end in sight for land disputes.<sup>113</sup>

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<sup>110</sup> BIC. *World Bank investigates Cambodian land titling project*, <http://www.bicusa.org/en/Article.11897.aspx>

<sup>111</sup> *Ibid.*

<sup>112</sup> Colm. S. *Solve Cambodia's Land Crisis in Courts, Not with Bullets.*

<sup>113</sup> Interviewee no. 2



## 5. Land grabbing through lease and sale

Real estate prices in Phnom Penh have soared in the past few years and turned the capital into a city only for rich Cambodians. This is in large due to the problem of land grabbing and the forced evictions that inevitably follow.<sup>114</sup> These disenfranchised people are relocated to slum areas on the edge of town.<sup>115</sup> Perhaps the most tragic of this is that many companies purchase land in urban areas, predominantly for pure speculation purposes. Many view Cambodia as a potential gold mine, hoping for the same economic boost that Thailand has seen in the past years. If and when development comes and property prices rise even higher, they are hoping to sell the land for a substantial amount of money and make a large profit. Speculation in property has played a large role in the property prices in Phnom Penh sky rocketing.<sup>116</sup> According to one interviewee, only ten percent of all concessioned land was actually being used which further strengthens the theory that many investors are acquiring land for pure speculation purposes.<sup>117</sup> In the meantime, this land simply sits there, fenced off as a reminder of the waste and injustice of it all.

The manners in which land is acquired by the various corporations differ immensely. Two case studies will follow in the chapter below, to provide a clear understanding of how the government extralegally seizes and subsequently leases out or sells the land to the highest bidder. Some aspects of land grabbing remain consistent however. A third case study is also provided to offer yet an example of who the buyers of land often are and what the land is to be used for.

It is stated in the 2001 Land Law that only Cambodian individuals and companies can own private property in Cambodia.<sup>118</sup> A company that is registered in Cambodia and in which at least 51 percent of the shares are held by Cambodian persons, natural or legal, is considered a Cambodian company, and can as such be the owner of private property.<sup>119</sup> Claiming that malicious foreign companies come in, take over, and exploit Cambodian land for their own

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<sup>114</sup> For case studies on forced evictions, see Amnesty. *Rights Razed – Forced Evictions in Cambodia*

<sup>115</sup> Interviewee no. 1

<sup>116</sup> For more on the real estate boom in Phnom Penh, see Postlewaite. S. *Real Estate Boom in Cambodia's Capital*

<sup>117</sup> Interviewee no. 1

<sup>118</sup> 2001 Land Law, Art. 8

<sup>119</sup> *Ibid.*, Art. 9

gain would therefore be to oversimplify quite a bit. In reality, it is the Oknhas<sup>120</sup> who partner up with foreign companies to create joint ventures. The companies associate themselves with Cambodians who have already acquired land concessions.<sup>121</sup> Without the help of a local businessman to facilitate the process it is nearly impossible for a foreign company to do business in Cambodia. This is of course connected to the patronage system and knowing whom to bribe. Moreover, foreigners are not allowed to own real estate in Cambodia. However, sources say that if the prospective investment is large enough, it is possible to get around this legal hurdle by being granted citizenship as the investment is viewed as a contribution to Cambodia.<sup>122</sup> Needless to say there exists no open bidding for the land.

Many of the companies created are in fact shell corporations created to absorb the bad press that is the result of individuals being evicted from the grabbed land.<sup>123</sup> Typing the companies' names into search engines will only render results related to the land grabbing as the company is created solely for the aforementioned purpose. Some years later, the property will then be transferred to the real company.

## 5.1 The Concept of an Oknha

Oknhas are often mentioned in the forefront of land grabbing cases and the concept can be viewed as a further indication of the prominence of the Cambodian patronage system. Oknha is a prestigious title that was created in 1994, by Prime Minister Hun Sen. To be bestowed the title, which is awarded by the king, a person must have made charitable donations to the state serving the public such as basic infrastructures, schools or hospitals to a sum of at least 100 000 USD. To date around 220 Oknhas have been titled. Mainly businessmen have been awarded the title and the majority of members in the Chamber of Commerce are Oknhas and a part of the CPP. However, some simply bribe the Prime Minister to be granted the title.<sup>124</sup>

This title is a title that is a “first class ticket” to become one of the ruling elite. These Oknhas thereafter continue to grow richer and more powerful through abuse of Cambodia's natural

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<sup>120</sup> Oknha is a title given to a person who contributes 100,000 USD to the State. For more on this see chapter 5.1

<sup>121</sup> Interviewee no. 5

<sup>122</sup> Postlewaite, op. cit.

<sup>123</sup> Interviewee no. 5

<sup>124</sup> Duong S. *Le Prix à Payer pour Entrer dans la Caste des Oknhas*.

resources and suppressing the rights of anyone who stands in their way.<sup>125</sup> As the Oknhas are rich and powerful, they will use coercion and threats to deal with problems and circumventing the legal system. Being an Oknha or closely connected to an Oknha, brings a certain security implying that no one will dare to stand up to that person. Heng quotes the following Cambodian saying: “*before beating a dog, you should find out who the master is,*”<sup>126</sup> which accurately illustrates the power that an Oknha possesses. Even judges are unlikely to go against the wishes of these powerful individuals.<sup>127</sup> Those who take refuge under the umbrella of the Oknha are afforded protection, as no one would dare take action against these people.<sup>128</sup>

## 5.2 The Koh Pich Case

Koh Pich is a 100-hectare island in the Tonle Bassac River in Phnom Penh, which was at first leased to Canadia Bank. The municipality of Phnom Penh came to an agreement with Canadia Bank to start investments on the island. This business deal was clouded in secrecy and the transparency nonexistent. The identity of the corporation was kept secret from everybody except the Ministry of Commerce. Shortly after the evacuation of the families living on the island, the lease contract was turned into a contract of purchase and the corporation was granted a certificate of ownership. It is now known that the buyer of the land is Canadia Bank who is using the land for investment and speculation purposes.<sup>129</sup> Canadia Bank is a joint venture between Cambodian expatriates returning from Canada and the National Bank of Cambodia.<sup>130</sup>

The compensation issued to the families living on the island was very low and did not constitute fair and just compensation in accordance with the 2001 Land Law or the Constitution. Some however accepted this, while others, mainly those with proper documentation, i.e. land titles, chose to fight for their rights to fair and just compensation. Depending on the size of land, families were offered around 5000 USD in compensation for

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<sup>125</sup> Global Witness. *Country for Sale*, p.12

<sup>126</sup> Sreang, H. *Justice in Cambodia*, in Nias Nytt, no. 3, p. 20

<sup>127</sup> *Ibid.*, p. 20

<sup>128</sup> *Ibid.*, p. 21

<sup>129</sup> Interviewee no. 4

<sup>130</sup> Canadia Bank, <http://www.canadiabank.com/En/AboutCanadia.htm>

their land.<sup>131</sup> The cost of a proper house in the Phnom Penh area is approximately 300 000 USD.<sup>132</sup>

It is widely known that the same people who sit in the government as well as their family and friends, own the corporations that buy and lease the land. However, due to the lack of transparency and free press in Cambodia this is not publicly confirmed, as these commitments would be incompatible with their positions in the government.<sup>133</sup> Moreover, such information would not be made public for fear of accusations of corruption and as these companies are deeply involved in land grabbing cases. As late as last year, it was reported that Prime Minister Hun Sen's wife and children were large shareholders in Canadia bank.<sup>134</sup> Be this true or not, Prime Minister Hun Sen is very much engaged in the promotion of the new and "improved" Koh Pich.<sup>135</sup>

### 5.3 The Boueng Kak Case

The Boeung Kak is a lake located in central Phnom Penh. This case has and is still receiving a lot of public attention in the form of protests, very much because of its central location close to many NGOs. The dispute started in 2007 when the company Shukaku Inc. was granted a 99-year lease for the lake and its immediate surroundings by the Cambodian government with the purpose of developing a 133-hectare area of land. This area was inhabited by 4000 families who would naturally be affected by this agreement through eviction. This lease agreement is questionable in several ways. Market value for this property in the center of Phnom Penh has been estimated to be worth up to 3000 USD per square meter. Shukaku Inc. is currently leasing the property for 65 USD per square meter during the entirety of the lease, i.e. for 99 years to come.<sup>136</sup> Today, the process of filling the lake with cement in preparation for development projects, is now well on its way.

There is no information to be found about the company Shukaku Inc. The real company behind it is in fact Pheapimex who it shares the same address as Shukaku Inc. The director of

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<sup>131</sup> Interviewee no. 4

<sup>132</sup> Author's own observation

<sup>133</sup> Sreang, op. cit., p. 20

<sup>134</sup> Interviewee no. 4

<sup>135</sup> There are countless sources on this. See for example Kunmakara, M. *PM backs Koh Pich*.

<sup>136</sup> BabCambodia. *Challenging Forced Evictions in Cambodia: The Boeung Kak Case*.

both companies is Lao Meng Kim<sup>137</sup>, also a head senator of the Cambodian People's Party as well as the owner of the controversial company Wuzhishan LS Group. His wife, Choeung Sopheap<sup>138</sup>, is the owner of both these companies. She is also a leading member of the Cambodian Red Cross.<sup>139</sup> The first time Shukaku Inc. spoke publicly about the affair was in September 2010, three whole years after the lease was granted.

Pheapimex is a very controversial logging company that is often mentioned in the press, associated with land grabbing and deforestation.<sup>140</sup> As one of Cambodia's most powerful companies, it controls 7.4 percent of Cambodia's total land areas through concessions alone.<sup>141</sup> In various cases the concessions far exceed the legal limit of 10 000 hectares. For example, in January 2000 Pheapimex, who has a history of being granted illegally sized land concessions, was granted an economic land concession spanning over 300 000 hectares of land.<sup>142</sup> According to BABC, Pheapimex is also a major donor to the CPP.<sup>143</sup>

First, it should be understood that the Boeung Kak Lake at the time of the granting of the lease, constituted State Public Property as defined above.<sup>144</sup> Article 15 clearly states that lakes constitute State Public Property. Leasing State Public Property is legal if it follows the procedure set up in article 17, i.e. in accordance with the sub-decree. Only when State Public Property loses its public interest, can it be transformed into State Private Property in accordance with Article 16. According to the same article, in order for it to be considered legal, the lease must be "*temporary, precarious, and revocable.*" A 99-year lease contract on land already inhabited by 4000 families can hardly be considered temporary or precarious. It is further stated that this lease cannot be turned into an ownership right. As stated by the sub-decree, the lease may not exceed 15 years, in any way change the character of, or cause damage to the leased area regarding its public service use.<sup>145</sup> It would be hard to dispute that

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<sup>137</sup> Sometimes referred to as Lao Meng Khin

<sup>138</sup> Also referred to as Yeay Phu

<sup>139</sup> Global Witness. *Country for Sale*, p. 55

<sup>140</sup> For Pheapimex's plans to clear land to make way for cassava and acacia plantations, see for example Titthara, M. *Pursat Families Defy Pheapimex*.

<sup>141</sup> Global Witness has calculated that Pheapimex holds a total of 1,333,931 ha in logging and economic land concessions, see Global Witness. *Country for Sale*, p. 55

<sup>142</sup> Titthara, M. *Pursat Families Defy Pheapimex*.

<sup>143</sup> BabCambodia. *Challenging Forced Evictions in Cambodia: The Boeung Kak Case*.

<sup>144</sup> See Chapter 3.3.3

<sup>145</sup> Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities, No. 129 ANKr.BK 27/11/06

the filling of a lake with cement does not completely ruin the public service and use of the lake.

One may pose the question why the government did not first turn the lake and its surroundings from State Public Property to State Private Property before entering the lease agreements, making the 99-year lease legal. However, another problem would have quickly arisen had then chosen to do so. The settlers around the lake area would most likely have met the requirements to have the right to apply for title of possession or ownership as described above.<sup>146</sup>

All the above is presuming that the inhabitants of the land, did not have title of ownership, in which case the land would of course have constituted individual private property. Regardless of an actual title of ownership, the possessors of the land had the right to apply for possession as has been described previously.<sup>147</sup> This would have made the lease invalid according to Article 33. If the people actually already held title of ownership over the property, the lease would have been illegal as previously stated. The government cannot grant leases to property that it does not own.

If the individuals had held possessory rights over the property, the people would have had the right to apply for title of ownership, also making the lease invalid as a possession right constitutes a right in rem.<sup>148</sup> As such, the lease infringed the rights of the titleholders (both ownership and possession) possibly constituting a penal offense and damages should have been compensated accordingly.<sup>149</sup>

Providing the individuals held titles of ownership, the government could have used the expropriation article by showing that the development constituted public interest in accordance with Article 5. Nevertheless, this would have entailed that they provide just and fair compensation for the property in advance, i.e. before the lease, which of course is not a desirable outcome for the kleptocracy.

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<sup>146</sup> Land Law 2001, arts. 30, 32 and 38

<sup>147</sup> See Chapter 3.3.2

<sup>148</sup> Land Law 2001, Art. 39

<sup>149</sup> *Ibid.*, Arts. 247-248

By illegally granting the lease for state public property, the government avoided paying compensation. Moreover, they let Shukaku Inc. take the heat both in the press and from the affected lakeside residents as well as footing the bill. To date, Shukaku Inc. have still not divulged exactly what they plan to use the property for which further accentuates the lack of transparency in process from beginning to end.<sup>150</sup> The municipality on its end has stated that the development will provide “*pleasant, trade, and service places for domestic and international tourists.*”<sup>151</sup>

## 5.4 The Otres Beach Case

In some circumstances, people are shut off from their land simply to make way for so-called beautification projects. In 2010, Otres beach in Sihanoukville was shut down and 70 businesses on the public beach were evicted. As the beach constituted public property, the residents were not legally occupying the beach the authorities claimed. This piece of land is now shut off waiting to be turned into a public park.<sup>152</sup> Knowing that the beach would shortly be turned into a municipal garden, the authorities still accepted money to grant business licenses.<sup>153</sup>

Some weeks after the evictions, it was made public that the people evicted had accepted compensation, which amounted to 4000 USD for business owners and 1500 USD from landless vendors. This compensation is not nearly enough money to start a new business. The purpose of the park is allegedly that Otres beach will become more attractive for tourists.<sup>154</sup> In reality, the authorities are most likely holding out for the highest bidder. Tourism has grown in the coastal areas during the last 10 years or so and Sihanoukville has been deemed by many to become the new Phuket. Land grabbing for pure speculation purposes has thus become a lucrative business. The authorities of Sihanoukville are likely to receive a great deal of money from the next Oknha who has his sights set on building the next giant resort hotel. Already beaches have been shut off to make way for large hotel chains owned by Oknhas.<sup>155</sup>

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<sup>150</sup> See for example Sophakchakrya, K. *Shukaku Spouts off on Lake*.

<sup>151</sup> Global Witness. *Country for Sale*, p. 55

<sup>152</sup> Yuthana, K. *Otres businesses face eviction*.

<sup>153</sup> Yuthana, K and David, S. *Officials sat Otres businesses must move; owners indignant*.

<sup>154</sup> Yuthana, K. *Officials, businesses resolve Otres spat*.

<sup>155</sup> Referring to the Sokha Hotel in Ochheuteal Beach owned by the oknha Sok Kong. For more on this see Levy, A. and Scott-Clark, C. *Country for Sale*.

## 6. Land grabbing through Economic Land Concessions

Land grabbings in rural areas are often realized to establish agro-industries in the form of Economic Land Concessions. Land is deforested to make way for sugar, cassava, oil palm plantations etc. The high deforestation rate in Cambodia caused by these industries has decreased during the past years to a certain extent, but this remains a major problem. Moreover, the crops planted are not always suitable for the Cambodian vegetation. The cassava tree for example absorbs enormous amounts of water. In Thailand, it is even referred to the “tree of death,” as it will drain the soil beneath it, killing all other crops and vegetation in the immediate area.<sup>156</sup> Needless to say, this has dire consequences for the Cambodian biodiversity. Access to water in Cambodia is a major problem in general and the agricultural industries absorb a lot of water. Because of this, the concessions are often granted upstream so that they can block the water supply. There is no transparency in the process of granting concessions and as previously touched upon, they are often too large, exceeding the 10 000 hectare limit.

### 6.1 The Prey Lang Forest

As this paper is being written, the Prey Lang forest is under threat of being logged. The forest is home to self-sufficient families living off the forest. Deforestation of the Prey Land forest would have dire consequences for not only the forest, the families and its wild life but also for Cambodia as a whole. As is, the Prey Lang forest acts as a sponge, soaking up water during the rain seasons, preventing flooding while during the dry season allocating water. Deforestation of the Prey Lang equals loss of biodiversity in a country that already has a high deforestation rate in part due to ELCs.<sup>157</sup> Prey Lang is also home to wild life and many of Cambodia’s endangered species inhabit the forest.

The people of the Prey Lang forest first found out that they were losing their land and that it had been concessioned, when they were suddenly cut off from their land. Exactly whom the land has been commissioned to has not yet been made public. As one concession may not exceed 10 000 square meters, the land has been divided into four different concessions,

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<sup>156</sup> Interviewee no. 3

<sup>157</sup> World Bank. *The Little Green Data Book*, p. 49



10 000 square meters each. That it is illegal to grant more than 10 000 square meters of land to one person (be it an individual or a legal person) regardless of how many concessions the land has been split up into, seems to be ignored by the government.

The communities of the Prey Lang forest have now joined forces to try to reach an agreement with the government. The above arguments have proved less fertile in persuading the government not to concession the land and the community has now come up with the idea to use the forest to sell carbon credits. It has been estimated that this could generate 12-15 million USD per annum for the government.<sup>158</sup> This would provide the government with a monetary incentive to keep preserving the forest while at the same time reducing emissions of greenhouse gases.

## 6.2 Ly Yong Phat and the Sugar Plantations

The largest concessions in Cambodia are granted to sugar plantations. One of the central figures in Cambodia's sugar industry is the Oknha Ly Yong Phat who is also a senator member of the CPP and very close to Prime Minister Hun Sen. He is the owner of Phnom Penh Sugar Company and the L.Y.P group. Ly Yong Phat works with Thai sugar producers mainly KSL and Mitr Phol who are two of the largest sugar producers in Thailand. Phat also sits on the board of the Cambodian Red Cross.<sup>159</sup> KSL has several subsidiary companies, one of them being Khon Kaen Sugar Industry, which in turn owns 50 percent of Koh Kong Plantation, which is registered to Ly Yong Phat. Ly Yong Phat is also involved with Mitr Phol. All of these companies have several sugar concessions, registered separately to avoid laws capping economic land concessions at 10 000 hectares.<sup>160</sup>

There are two main reasons for why Thai companies are so eager to produce sugar in Cambodia. Firstly, Thai regulations demand that thirty percent of the sugar production remains within the local market so to prevent the price of sugar from sky rocketing. There is no such regulation in Cambodia, likely because the government simply does not care about this. Secondly, the Thai sugar companies are taking advantage of the European Union's

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<sup>158</sup> Interviews at Community meeting

<sup>159</sup> Red Cross Cambodia, [http://www.redcross.org.kh/news\\_events/2006/4thGA.html](http://www.redcross.org.kh/news_events/2006/4thGA.html).

<sup>160</sup> Interviewee no. 5

Everything But Arms Regulation<sup>161</sup>. Basically, the EBA regulation provides the least developed countries (LDCs) with duty-free and quota-free access to the European Union market on all imports except arms and ammunition.<sup>162</sup> Unlike Thailand, Cambodia is considered an LDC and companies based in the country can therefore benefit from the regulation.

### 6.3 Comments

The above cases are of course exacerbated by the fact that neither the government nor the inhabitants know what constitutes state public land, state private land, or individual land. A large problem contributing to this problem is the slow process of land registration. To date, only 10 percent of Cambodia's land has been registered.

The 2001 Land Law was drafted to fill the void of the old law so that it would be in accordance with the 1993 constitution. At the time, there was a lot of pressure from aid donors to draft a new progressive land law. Nevertheless, perhaps there was not enough pressure to ensure its proper implementation. For instance, when the current land law came into use, a sub-decree to protect and define land of indigenous groups was to be drafted. This sub-decree was not completed until 2007, after almost all this land had been sold or turned into concessions.<sup>163</sup>

Since the UNTAC period, donors have pumped in money to the Cambodian government for them to realize the judicial reform program. The progress in this area has however been very, very slow.<sup>164</sup> In reality, a judicial reform is not in the best interest of the Cambodian kleptocratic government and therefore is very unlikely to be realized. The Government can keep passing one progressive law after another, but this will have no effect if the same regulation is disregarded by a court acting as a puppet for the ruling party, primarily promoting the Government's financial and political interests. There remains a lack of commitment from the Government who instead of promoting the interests of the citizens of Cambodia, is protecting the economic interests of the rich and powerful, putting Cambodia's

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<sup>161</sup> Regulation (EC) 416/2001

<sup>162</sup> For more on the Everything But Arms regulation see European Commission, Everything but Arms, <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms/>

<sup>163</sup> Interviewee no. 5

<sup>164</sup> Licadho. *Human Rights in Cambodia: The Charade of Justice*, p. 1

land and natural resources on sale. Nevertheless, international donors continue to commit large sums of aid to legal and judicial reform.

Not only is the implementation of the land law systematically ignored by the authorities but the articles of the law are misused by the courts who manipulate the penal code to punish community leaders and thereby suppress community uprisings. An example of this is how the courts will use the trespassing article in the penal code. Even though the judge acknowledges that the owner of the property has not yet been identified, the judge will still find the community leader guilty of trespassing.<sup>165</sup> In another case, villagers attempting to harvest their rice crops on disputed land were convicted of robbery, sentenced to prison, and ordered to pay compensation.<sup>166</sup> Other ways that the state will abuse the land law is by simply not granting land titles to valuable property as was done in the Boeung Kak Case.<sup>167</sup>

Repeatedly, the government emphasizes that the selling of land and granting of concessions is necessary for development. However, sources say that it seems as though the bad publicity that these companies have received, may be scaring foreign investors off and perhaps instead impeding FDI in Cambodia. Newspapers reported protests outside the embassies of the countries whose corporations had been cited in the land grabbing context.<sup>168</sup> During the past 10 years Cambodia has suffered a declining FDI due in large to the widespread corruption and weak governance.<sup>169</sup> However, it is difficult to avoid corruption when doing business in Cambodia. A foreign company attempting to play fair will soon learn that this is impossible without an Oknha to guide through the jungle of kleptocracy.<sup>170</sup>

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<sup>165</sup> Interviewee no. 5

<sup>166</sup> Amnesty. *Cambodia: Ongoing serious Human Rights violations must be addressed*, p. 6

<sup>167</sup> See chapter 5.3

<sup>168</sup> See for example *Two Foreign Companies Planning to Develop the Boeng Kak Lake Area Withdraw*, <http://www.cambodiamirror.org/2010/03/18/two-foreign-companies-planning-to-develop-the-boeng-kak-lake-area-withdraw-thursday-18-3-2010/>

<sup>169</sup> United Nations Development Assistance Framework 2006-2010, [http://www.undg.org/archive\\_docs/5726-Cambodia\\_UNDAF\\_\\_2006-2010\\_.pdf](http://www.undg.org/archive_docs/5726-Cambodia_UNDAF__2006-2010_.pdf)

<sup>170</sup> Interviewee no. 5

## 7. The Cambodian Legal system

A modern Cambodian legal system was first introduced by the French at the beginning of the 19<sup>th</sup> century, during the colonial rule. This lasted until the KR seize of Cambodia, which completely put an end to the rule of law. Under this time however, not many Cambodians came into contact with the court system.<sup>171</sup> Not only were almost all jurists killed, but also schools, books, court buildings, and legal texts were destroyed. When the DK regime ended in 1979, the PRK attempted to reestablish a legal system. However, as there were no jurists to fill the void, the PRK gave short legal training courses to “*former school teachers and literate Cambodians*” with no connection to the previous regime.<sup>172</sup> Since then a distrust of the court and an idea that the government needs to monitor the court has remained and up until the 1993 constitution there remained an “*overlapping relationship between the judicial and executive branches.*”<sup>173</sup>

The 1993 Constitution states, “*The judicial power shall be an independent power*”<sup>174</sup> and further that “*judicial power shall not be granted to the legislative or executive branches.*”<sup>175</sup> This of course does not guarantee a de facto compliance with the above articles. In reality, the Cambodian judicial system is suffering from corruption, patronage politics, and impunity. There is no system of checks and balances in place, and the separation of powers codified in the Cambodian constitution, is in practice nonexistent.<sup>176</sup>

### 7.2. The Cambodian Courts and the Cadastral Commission

The advent of UNTAC brought about fundamental changes to the Cambodian court system by creating an Appellate court. The Cambodian court system consists of three levels; the Municipal and Provincial Courts, which are both courts of first instance, the Appellate Court and the Supreme Court. Undisputed land, i.e. land that is registered is treated in this system.

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<sup>171</sup> Amnesty. *Kingdom of Cambodia: Urgent need for judicial reform* p.2

<sup>172</sup> Un, K. in Öjendal, J. & Lilja, M. *Beyond Democracy in Cambodia, Political Reconstruction in a Post-Conflict Society*, p. 74

<sup>173</sup> *Ibid.*, p. 75

<sup>174</sup> 1993 Constitution of Cambodia, Art. 109

<sup>175</sup> *Ibid.*, 111

<sup>176</sup> *Ibid.*, Art. 51

Cases dealing with unregistered land are heard in the Special Cadastral Commission, which like the court system consists of three tiers: Local Cadastral Commission, Provincial/Municipal Cadastral Commission, and finally the National Cadastral Commission.<sup>177</sup> The Cadastral Commission is commissioned to resolve conflicts between possessors over unregistered land subject to possession rights and to decide recognition of the lawful possessor.<sup>178</sup> After a case has been heard in the National Cadastral Commission, a review of the decision is still possible. Appeals are filed with the Court of Appeal, who will revert the cases back to the Cadastral Commission if it sees fit.<sup>179</sup>

In theory, having a special commission specialized in resolving complicated land disputes is an admirable attempt to grant special concern to a notoriously challenging impediment to Cambodian development. In practice, the system of two different dispute resolutions mechanisms is abused and the complainants are placed in a perhaps even worse position than before. Cases non gratae, i.e. most cases, are sent back and forth from the Cadastral Commission to the Municipal and Provincial Courts claiming that they do not possess proper jurisdiction. This can be done indefinitely and eventually cases are simply lost.<sup>180</sup>

In 2008, the Boeung Kak case the court rejected the case with the justification that it lacked jurisdiction to hear it and claimed that should be handled by the Cadastral Commission. On appeal, the court claimed that Shukaku Inc. was not the right party to complain against and kept finding different reasons for not hearing the case. Allegedly, the court clerks were demanding large amounts of money simply to file the complaints.<sup>181</sup>

### 7.3 Cambodians and the Courts

Cambodia has a history of traditionally solving disputes through “peaceful compromise” instead of going to the courts. As such, Cambodians prefer reaching mutual agreements to problems. Of course, the widespread corruption in Cambodia inevitably contributes to the distrust of state institutions including the court. More often than not, the poor are the primary

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<sup>177</sup> Sub Decree on Organization and Functioning of the Cadastral Commission, Article 4

<sup>178</sup> *Ibid.*, Article 2

<sup>179</sup> *Ibid.*, Article 23

<sup>180</sup> Interviewee no. 2

<sup>181</sup> BabCambodia. *Challenging Forced Evictions in Cambodia: The Boeung Kak Case.*

victims of the corruption.<sup>182</sup> Furthermore, there is a certain resistance among Cambodians to actually take a case to court. It lies within the Cambodian culture to attempt to negotiate and reconcile when conflicts or disputes arise. The modern court system is a quite new concept to Cambodians. Even when cases are taken to court the court will first attempt to reconcile the parties before going to trial. Moreover, there is a notion that avoiding a problem is “*the socially appropriate response when one finds oneself in conflict with a more powerful person.*”<sup>183</sup> A study by the WB also found that the legal institutions above were “*perceived as costly, time consuming and biased toward the rich*” by the villagers included in the study. It seems as though they would rather take the disputes directly to the state representatives such as the Prime Minister, as they were seen as the ones having the real power to solve a dispute. Even officials stated that they found solutions by the above institutions to be “*time consuming and unreliable.*”<sup>184</sup> In addition, to be able to solve a dispute it is vital to have the right connections, the Cambodian concept of having *kse*<sup>185</sup>. A person that has strong *kse* can easily solve his disputes through “direct compensation to a plaintiff” or “securing” the innocence of the prosecuted.<sup>186</sup>

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<sup>182</sup> Sreang, op. cit., p. 21

<sup>183</sup> WB, Phnom Penh. *Justice for the poor? An exploratory study of Collective Grievances over land and local Governance in Cambodia*, p.13

<sup>184</sup> Ibid., pp. 37-38

<sup>185</sup> *Kse* literally means a pipeline through which power flows.

<sup>186</sup> Sreang, op. cit., p. 20

## 8. The Patronage System

Cambodian patronage is omnipresent and plays a great deal in Cambodian society today, especially in the legal and political world. Therefore, a short history of the Cambodian patronage system is required. According to Chandler, Cambodians have always identified themselves in terms of their relationship to others. A relationship with someone of a certain status reflected upon and defined one's self. To protect themselves they would seek out a person within the group that had a secure position and offer homage to this person. These people in secure positions were older or more fortunate members of the group, perhaps even government officials. The society was fueled by the exchange of protection and service implied in these lopsided friendships.<sup>187</sup>

Patronage would become even more vital in non-rice growing villages as having a patron was necessary even to survive. A man without a patron was considered fair game and would have a hard time defending himself and his interests. People in powerful positions would take on slaves that would contract debt to their patrons, in exchange for protection. They would spend a lifetime working these debts off.<sup>188</sup>

### 8.1 Patronage within the court system

The old Cambodian patronage system permeates every part of Cambodian society, not least the court system. Powerful people have more influence in society, as in the court system. It benefits to get in good with influential people, as they will then protect you and maintain loyalty to you. People return favors, as there is a desire to maintain a personal relationship and maintain backing from higher authorities as well as a fear of retribution if they do not do as the high-ranking government officials and Oknhas wish. As such, the corruption does not necessarily amount only to financial corruption.<sup>189</sup> In order to acquire and retain their jobs within the court system, the employees must bribe the people above them. This includes maintaining regular payments to their superior or patrons and even buying gifts or paying for meals. Needless to say, this is costly as they will have to earn the money back.<sup>190</sup> This is why

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<sup>187</sup> Chandler, *op. cit.*, p. 126

<sup>188</sup> *Ibid.*, p. 127

<sup>189</sup> Un, *op. cit.*, p. 85

<sup>190</sup> *Ibid.*, pp. 83-84

court clerks often take a fee to administer a case.<sup>191</sup> It is also common that an Oknha will go to a minister, asking him to intervene in the case. Un describes a saying among the Cambodians that expresses the sentiment of the Cambodian people regarding the legal system: *”the court in Cambodia uses the scale to weigh money but not to seek justice.”*<sup>192</sup>

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<sup>191</sup> Interviewee no. 5

<sup>192</sup> Un, op. cit., p. 90



## 9. Corruption in the Court System

### 9.1. The Recruitment of Judges and Prosecutors

It costs approximately 75 000 USD to pass an exam to become a judge or prosecutor in Cambodia. The prosecutors and judges take the same classes and must pass the same exam. For comparison purposes it could again be worth mentioning that a standard house in Phnom Penh costs around 300 000 USD. This is not money that most Khmer, or even the elite, have access to. This money is usually borrowed from wealthy connections with a promise of repayment and most likely judicial favors. In office, a judge or prosecutor will make about 400-500 USD a month depending on their positions,<sup>193</sup> which stands well above the average income level in the Phnom Penh area of about 200-300 USD. The low salaries in relation to the real cost of becoming a judge makes them susceptible to bribery and inevitably encourages corruption. Paying 75 000 USD to qualify for a job that will earn you 500 USD a month does not add up. In reality the judges make those 75 000 USD back in one month with the help of bribes and are thus able to repay their charitable benefactors. Of course, the possibility of becoming a judge is reserved for the already wealthy. Someone who is not a member of the Khmer elite would not have the connections and possibility of being granted a loan and thus being reserved a seat as a judge.<sup>194</sup>

This debauched manner of recruiting judges and prosecutors will inevitably lead to an imbalance of knowledge within the judicial system. A disparity exacerbated by the fact that as a result of the many jurists executed during the Khmer Rouge regime, unqualified people with no legal background were placed in high positions within the court system. Furthermore, there has been a lack of proper legal education in Cambodia. The lack of legal knowledge is evident in the court proceeding with lawyers not knowing how to properly present evidence or hold cross-examinations.<sup>195</sup> In 2004, only one in six of Cambodia's 117 judges held a law degree while only 10 percent of public prosecutors held one.<sup>196</sup> In 2007, there were only 300 lawyers in Cambodia and no more than 225 judges, which is 17 per one million citizens. The court

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<sup>193</sup> According to Amnesty. *Kingdom of Cambodia: Urgent need for judicial reform*, the average salary for judges in 2002 was 20 USD per month, which was insufficient to support even one person making them dependent on bribes. The salaries were raised to a decent level as part of the judicial reform process in an attempt to make it appear as though the government was fighting court corruption.

<sup>194</sup> Interviewee no. 2

<sup>195</sup> For a more detailed description of the imbalance of knowledge in the Cambodian court system, see Un, K in Öjendal & Lilja. *Beyond Democracy in Cambodia, Political Reconstruction in a Post-Conflict Society*, p. 79

<sup>196</sup> World Bank. *Cambodia at the Crossroads - Strengthening Accountability to Reduce Poverty*, p.5

judgments are not documented transparently by the judges who seldom justify their rulings even though this is required by law.<sup>197</sup>

Notwithstanding the lack of human resources, there is also a great deal lacking in material resources. Courthouses are deteriorating, there is no material, and the personnel are expected to contribute with office supplies including bringing their own computers.<sup>198</sup> This is a clear indicator of the lack of status that the judicial system is granted by the Cambodian government. Licadho states that the few initiatives to punish corruption within the legal system have been “*cosmetic and temporary*.”<sup>199</sup> Meanwhile, the Prime Minister and the Ministry of Land Management, Urban Planning and Construction sit in gaudy, colossal buildings with exteriors that could easiest be described as a hybrid between a Las Vegas Casino and the Los Angeles Church of Scientology.

## 9.2. The Court as a Government puppet

The Cambodian court system cannot be said to be either independent or impartial. In reality, the court is under government control. The government and the courts are closely interconnected and a judge will often also act as an advisor to a minister.<sup>200</sup> Needless to say, a judge will not rule to the detriment of their bosses, as a ruling unfavorable to the government can be the end of a judge’s career. Naturally, this fear undermines judicial independence. In some cases, government officials themselves will even contact the judges or prosecutors to ask them to “*resolve the case according to the law*,” with the result that they often submit to the requests out of pure and simple fear.<sup>201</sup> Prospective cases are also categorized as being more or less important depending on how much money can be made from them as well as who the cases involve. If a case is considered unimportant, the documents relating to this case will quickly be lost by the court staff.<sup>202</sup>

Corruption is common in post-conflict and developing countries, Cambodia being no exception. Cambodia has a CPI score of 2.0 on the TI Corruption Perceptions Index, meaning

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<sup>197</sup> Transparency International. *Global Corruption Report 2007, Regional Highlights*.

<sup>198</sup> Un, op. cit., p. 76

<sup>199</sup> Licadho. *Human Rights in Cambodia: The Charade of Justice*, p. 22

<sup>200</sup> Interviewee no. 2

<sup>201</sup> Un, op. cit., pp. 84-85

<sup>202</sup> Un, op. cit., p. 76

that the public sector is highly corrupt.<sup>203</sup> In post-conflict countries custom to war and uncertainties, a government will perhaps think short-term, attempting to maximize their own personal profits, knowing that stability is fleeting. However, the corruption in Cambodia is not solely a byproduct of bad governance. Corruption is in fact the foundation on which the CPP rules the country. The higher up the ladder you want to get, the more you pay to get and stay there, putting you in the position of having to take bribes to pay the people above you. One of the NGO workers interviewed even described Cambodia as being a Mafia State, which unfortunately rings very true.<sup>204</sup> The CPP controls all government sectors of the country, including the legal system.

### 9.3 The Execution of Court Rulings

The police who should in fact be implementing the court rulings or warrants, in turn act almost as an appellate court, not executing court orders that they disagree with and deciding whether the ruling is fair. As it is the Ministry of Interior that controls salaries, promotions and demotions of the police force, the police will not do anything to jeopardize their bosses and thereby their jobs.<sup>205</sup> A fair trial and ruling in one's favor will as such not guarantee that the ruling is de facto executed. A source at Licadho recollects one case in which the community actually won. Later, the military police came and evicted them anyway.<sup>206</sup> These police evictions are often very violent and have in some cases even led to fatalities.<sup>207</sup> In several cases, villagers protesting the evictions have even faced defamation charges after filing complaints about the incidents where they have been shot.<sup>208</sup>

### 9.4 Land Grabbing in the Media

The ruling party has created a façade of democracy to be granted international donors money and aid. Freedom of expression and free press do exist to a certain extent and land grabbings are reported somewhat in English speaking newspapers.

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<sup>203</sup> Transparency International. *Corruption Perceptions Index 2009*

<sup>204</sup> Interviewee no. 5

<sup>205</sup> Un, op. cit., p. 79-80

<sup>206</sup> Interviewee no. 5

<sup>207</sup> For more on police brutality while carrying out evictions see Amnesty. *Rights Razed – Forced Evictions in Cambodia*

<sup>208</sup> Colm, op. cit.

In 1995, a Law on Press Regime was enacted to guarantee free press and prohibit censorship. However, publications that “*harm national security or political stability or humiliate national organs*” are restricted by law.<sup>209</sup> Television and radio stations nevertheless remain under government control and journalists that criticize the ruling party can be subjected to imprisonment or attacks, in some cases even death.<sup>210</sup> Journalists who write articles critical of the ruling party are at risk of being prosecuted for crimes such as defamation or disinformation. Naturally, this increases the risk of self-censorship. Moreover, these papers are, as mentioned above, in English. In a country where 25 percent of the population is illiterate and where English speakers are scarce, free press means nothing.<sup>211</sup> It is all about creating a cozy bubble for the diplomats and UN workers so to keep extracting aid. One does not have to travel far outside of Phnom Penh to experience extreme poverty, but evidently, there is no need to do so when the capital offers expatriates everything they could possibly need. There are French restaurants, American bars, Thai Spas, and supermarkets à la Walmart, creating a comfortable illusion of ongoing development and progress.

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<sup>209</sup> World Bank. *Cambodia at the Crossroads - Strengthening Accountability to Reduce Poverty*.

<sup>210</sup> Human Rights Watch. *Country Summary Cambodia*.

<sup>211</sup> For statistics on Adult Literacy Rates in Cambodia see *ADB & Cambodia – Fact Sheet*, [http://www.adb.org/Documents/Fact\\_Sheets/CAM.pdf](http://www.adb.org/Documents/Fact_Sheets/CAM.pdf)

## 10. Land grabbings and the Future

### 10.1 Creating a Recipe for Social Unrest

In 2009, Amnesty reports that at least 26 forced evictions displaced approximately 27 000 people.<sup>212</sup> These people are relocated to remote places, without access to electricity or clean water where they live in dire and inhumane situations, far from their original homes and jobs. Others are simply left homeless.<sup>213</sup> People with diseases such as HIV are often even more marginalized and put in special colored huts without basic sanitation or any form of health care.<sup>214</sup> This increases the stigmatization even more.

The jobs that are offered by the agroindustries, being granted ELCs, are seasonal, low paid jobs without any employment security. Furthermore, these jobs are not offered to the locals who lost their land and livelihood but to outsiders who are taken in. One explanation for this is the great indignation among the locals against the company who has cleared their land through violence and threats. Even if jobs were offered to the local communities, these would hardly be sufficient in filling the void of all the community's lost livelihoods. The foreign companies use foreign machinery and foreign seasonal work force. Thereafter the produce is exported. As the Cambodian tax system is close to nonexistent, no money enters the pockets of the Cambodian people. The only Cambodians benefiting from the so-called development projects are the Khmer elite shareholders. Meanwhile the already disenfranchised occupiers of the grabbed land are even more immiserated<sup>215</sup>.

Agriculture constitutes a vital part of Cambodia's economy. For the farmers who rely on agriculture for their livelihood, land is necessary for survival. An interviewee expressed that if 800 families are attached to one piece of land on which their livelihoods depend though self-sufficient farming, perhaps the company will offer 300 seasonal jobs on the same piece of land.<sup>216</sup> The rest of the people cannot simply cross over from one sector to another. These are very poor people, living in rural Cambodia without any form of education. There are no

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<sup>212</sup> Amnesty. *Cambodia: Ongoing serious Human Rights violations must be addressed*, p.5

<sup>213</sup> *Ibid.*, p.6

<sup>214</sup> Interview no. 6

<sup>215</sup> Immiseration was a concept heard frequently during the field study, used by NGO workers to describe the dire and hopeless situation of impoverished people evicted.

<sup>216</sup> Interviewee no. 5

sectors to take these people in. The two largest industries in Cambodia open to people without education, the garment sector and the tourist industries, are already saturated.<sup>217</sup> Regardless, these sectors are urban-based meaning that the rural communities would have to move their entire families.

It is evident of course that this situation is not sustainable. These people are left with nothing left to lose, no property, no money, no jobs, and no food. In Cambodia, these disenfranchised people are referred to as “*living ghosts*.”<sup>218</sup> This in turn is leading to more and more clashes with the government. The frequency of communities pushing the military away with sticks and stones to defend their land is becoming much higher. The Cambodian government is in fact creating a recipe for social unrest.

## 10.2 Land Grabbing – the New Neo-Colonialism?

In the years to come, we will most likely see a surge in land grabbing. Natural resources and access to land and water are quickly becoming scarce as the world population continues to grow. With global warming flooding and natural disasters are likely to make arable land even scarcer. The latest trend and new form of neo-colonialism is richer countries are securing land in agroindustries.<sup>219</sup> Rich governments and corporations are leasing farmland in South-East Asia and Sub-Saharan Africa in order to grow food and biofuel, as their climate does not allow them to guarantee food security at home.<sup>220</sup> This trend is expected to accelerate as world food and water shortages grow. In addition, the acquisition of land to grow plant-based biofuels is expected to grow. This inevitably means that farmers will be losing even more land, especially those without title. Well in accordance with the Prime Minister’s plans of exporting rice, he stated in 2008 that the Gulf might become Cambodia’s next market for rice.<sup>221</sup> Paradoxically, the Cambodian government, which cannot even offer food security to its own people, is offering land to rich countries to produce food for their populations.

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<sup>217</sup> ADB. *ADB & Cambodia – Fact Sheet*

<sup>218</sup> Interviewee no. 6

<sup>219</sup> See for example Borger, J. *Rich countries launch great land grab to safeguard food supply* or Vidal, J. *How Food and Water are Driving a 21st-century African Land Grab*.

<sup>220</sup> For more information on these trends, see for example: Guardian Environment Network. *Big Cities and global farming now driving deforestation* or Montero, D. *Insecurity drives farm purchases abroad*.

<sup>221</sup> Montero, D. *Insecurity drives farm purchases abroad*.

## 11. Conclusion

Land disputes should be settled in independent courts and the outcome not dependent on influential wealthy connections. Instead of meeting the population's basic needs such as food security, health and education the kleptocratic RGC are attempting to make the highest profit in the shortest amount of time. The fear that their land will be taken discourages farmers from investing in the land, which in turn does not promote development, but inhibits it. The conclusions of the thesis will follow below.

### 11.1 How is the land law circumvented by the government when divesting of already occupied land?

The 2001 Land Law is a thorough, progressive law that if implemented correctly, could provide a strong tenure security for the Cambodian people. However, the law is not applied. Shamelessly, the government disregards the law by selling, leasing out, and concessioning property, regardless of who the rightful owner of the property is. Neither does the RGC in reality make any distinction between state public property and state private property. As the land registration process is proceeding very slowly, most of the land in Cambodia has not yet been titled and it is unclear what land constitutes individual property on one hand, and state public and private property on the other. This uncertainty is repeatedly exploited by the government when divesting of the land.

Where the land law does not permit certain transactions, the RGC make certain that sub-decrees are created to justify their doings. Regarding ELCs, these are granted without any regard to the environmental and social conditions that are lined up in the sub-decree. Moreover, the limit of 10,000 hectares is more often than not exceeded.

From the beginning to the end, the government is not only a passive bystander to the violations of law. It is the de facto culprit. As has been described above, not only senators, but also their family and friends are large shareholders in the corporations obtaining land. In other cases, the shareholders are Oknhas who, because of their large party donations, expect to be granted certain benefits and are in addition involved in aid organizations. These join forces with national or foreign companies to hide behind shell corporations in order to extralegally

purchase or lease already occupied land. Throughout the process, transparency is nonexistent. In other words, the government authorities are selling and leasing state land for a bargain price, to companies in which they themselves sit as shareholders.

### **11.2 What possibilities does an individual have of having his case heard and fairly tried in the Cambodian court system?**

In reality, an individual who has his land taken from him has no fair possibility of having his case heard. The holding of the certificate of ownership or possession will strengthen the individual's leverage somewhat in the court room. Nevertheless, the advantage that a certificate of ownership offers, acts as more of a deterrent than anything else. However influential and powerful a company is, the fact remains that land grabbings are not going unnoticed by the NGOs, the Cambodian press, or by the international community. It is difficult to argue that a person holding a certificate of ownership and that is occupying the property, is not the proper owner. Bad media coverage exerts pressure on the government and potentially, in the end, even affects donor aid.

For expressed public interest purposes, the possibility remains to use the expropriation article and thus offer proper compensation to the individual. However, most occupiers of land do not hold certificates of ownership, making them prime targets for land grabbings. As long as the confusion between what constitutes individual property on one hand, and state private and public property on the other hand exists, this will function as a loophole for the RGC.

Moreover, an individual with a certificate of ownership or possession will have a stronger case in court than an individual without. In reality though, as this thesis has shown, the probability that the case will even be heard in court is very small. More often than not, cases are rejected, or simply sent back and forth between the courts and the cadastral committee, each one claiming lack of jurisdiction. In addition, there is a notable absence of resources within the legal system, both with regards to personnel and material. As lawyers and judges pay bribes to receive their diplomas, there is a great lack of legal knowledge among these professions, which in turn has a negative effect on the rule of law in Cambodia. Consequently, the likelihood of receiving a court ruling in one's favor is minimal. Moreover, this does not in



any way guarantee that the ruling will be executed by the police, as they answer directly to the government.

The power that the government and Oknhas exert over the judicial system far exceeds any sense of duty and justice that the court might possess. The judicial system is plagued by corruption and is in no way, shape, or form independent from the executive branch. Ruling against a company associated with a government official or an Oknha would be the end of a judge's career and perhaps even more.

Nevertheless, in their defense, culturally, ruling in favor of one party, is not how Cambodians view justice. Justice in the Cambodian sense is to reach an agreement and compromise. Had these evictions really been necessary for development, the individuals affected would most likely have been content with finding solutions that included being offered other property, suitable for their needs, or at least being granted fair compensation so that they could find and buy new land. However, these land grabbings that may be conducted in the name of development, have only one primary purpose: to make the rich richer.

### **11.3 What should the international community do to aid in strengthening the rule of law and tenure security in Cambodia?**

The most thorough, well-written legislation in a country in which laws are not abided with is pointless. Perhaps it is even worse adopting progressive laws that are not correctly implemented, than simply upholding poor laws. As is, the ruling party is keeping the aid donors content by drafting and adopting perfectly sound legislation. By focusing on the drafting of the law, instead of ensuring the rule of law and actual implementation of this legislation, the international donors are doing the Cambodian people a disservice. The international donors continue to give large amounts of aid to Cambodia, without using it as leverage. They are ignoring the fact that the money does not contribute to the well-being of the Cambodian population and that the corrupt government is systematically exploiting the international aid.

Unfortunately, there is no interest from the international community to exert pressure on Cambodia. Its lack of good governance does not constitute a threat to the outside world, as is

the case with Iran or North Korea. Nor are there any economic incentives in compelling Cambodia to enforce the rule of law, as there are hardly any investments made in the country outside of the speculation market. Resolving the issue of land disputes could possibly encourage foreign investment, as this seems to act as a deterrent in the establishment of international corporations. Moreover, perhaps there is a fear that connecting conditions to the aid will push Cambodia into the arms of China. Already the Chinese and Korean (both North and South) influences are strong in Cambodia. While the EU discusses the importance of good governance, these Asian countries are building infrastructure in the form of schools, hospitals, and government buildings. However, I believe this to be an unfounded fear. The RGC and Hun Sen especially, crave respect and attention from the western world and allying with China only would not help them achieve this.

The international donor community must keep providing aid to Cambodia but with conditions attached to it. There must be a proper evaluation of the de facto results of the projects compared to the situation prior to their initiation and not compared to a utopian goal. For instance, the LMAP was indeed moving forward and making progress, even though it was plagued by corruption. The evaluation should not be made according to how we perceive good governance to be carried out in the western world, but adjusted to the current situation in Cambodia. With that said, the process of systematic land registration must continue and the LMAP must be resurrected. The monetary aid and expertise of the WB and the international community are indispensable in working towards the goal of titling the country.

The pressure that the WB attempted to exert on the RGC is noble, especially considering the lack of pressure from the rest of the international donor community, who keeps pumping in aid. However, one must present the question. Is not a faulty land titling process better than none? After all, progress was being made, albeit at a slow pace and at the benevolence of the Cambodian government. The land registration process is still proceeding ahead, but now at a snail pace. Without the money from the WB, the process will drag on indefinitely, and be overseen by no one, permitting the government to proceed in the same manner in which they have for years. The thesis has shown that an individual with a title of ownership is more protected than one without. Taking land from individuals holding ownership titles registered in a central register will attract attention from both the media and NGOs, making land grabbing a lot less lucrative affair. Today, 90 per cent of Cambodia is untitled. This leaves a countless number of people unprotected and prime targets of land grabbing. Only time will

tell how many individuals that will keep losing their land. Meanwhile, the government will be making enormous profits off the sale of the century.

## Supplement A



The Prime Minister's office building in Phnom Penh



Ministry of Land Management, Urban Planning and Construction in Phnom Penh



The Anti-Corruption Institution in Phnom Penh



The Anti-Corruption Institution's Box of Complaints



Construction of high-rise buildings in central Phnom Penh



Community Meeting to save the Prey Land Forest at the Cambodian Red Cross, Phnom Penh



A Cambodian rice farmer just outside of Siem Reap in September, 2010



Torture Chamber in Tuol Sleng Prison, Phnom Penh



Little boy playing at the Cambodian Genocide Museum in Siem Reap



Curious children in the Cambodian countryside



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## Interviews and Meetings

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Interview no.3, 2010, October 5

Interview no. 4, 2010, October 14

Interview no. 5, 2010, October 19

Interview no. 6, October 22

Community Meeting, 2010 October 28