

The accessibility of land titles in Cambodia

Themes:

Data driven land policy; innovations in use geospatial/ML/AI data

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Summary abstract:

The Khmer Rouge regime, in control of Cambodia 1975–1979, abolished private property and destroyed everything allowing the identification of private land ownership. Today, under a new regime, all land is state property until peaceful owners who have occupied a site since before 2001 can claim title to it. The process of granting titles is incomplete, however. The State can dispose of land, in particular by granting concessions for social or economic purposes.

There is today a predatory land market with numerous instances of land grabbing. Lack of access to information undermines the ability of Cambodians to assert their rights. Information technologies such as geospatial representation and the dissemination of digitized land ownership information, through open data standards, can help protect property rights of families and small communities. This paper details existing Cambodian innovations in this area to help preserve land rights.

Full abstract

In the Kingdom of Cambodia, by tradition all land belonged to the King. The subjects could freely exploit the soil in exchange for paying a Royal tax. During the period of French colonization from 1863 to 1953, in order to improve the extraction of raw materials and to create a market economy within the country, private land ownership was introduced, as well as a concessionary system mainly for forestry and fisheries.

In 1975, the Khmer Rouge marxist and nationalist regime abolished private property throughout Cambodia, leading to the disappearance of all means of identifying the land property, from the cadastral registers to all institutions related to land management in the maelstrom of collectivization and forced displacement of the population.

Following the 1991 Paris Peace Agreements, the United Nations Transitional Authority in Cambodia (UNTAC) ended instability and ensured the establishment of a new regime. The 1993 Constitution formalised Cambodia as a multi-party democratic system under a constitutional monarchy and with a market economy.

Starting again from scratch, a land law was enacted in 1992, declaring that all land belonged to the State, but allowing people to possess and use the land for farming and earning livelihoods. A programme of sporadic land titling on the basis of individual application was launched to incentivize land rights claiming. However, the registration process proved too complex and only ten percent of 4.2 million applications received resulted in land titles. At the same time, the State began to grant concessions over large parts of the territory for the exploitation of natural resources.

Very lucrative yet insufficiently transparent procedures have led to massive and dubious acquisitions of territories, resulting in the de facto privatization of Cambodia's natural resources, directly affecting the way of life of the inhabitants. It has led to the development of an uncontrolled land market, marked by the dispossession of small landowners and the creation of large concessions benefiting the economic, military and political elites.

At the turn of the 2000s, the Cambodian State, faced with major conflicts related to land control and acquisition, reformed the legal framework for land. The Land Act of August 2001, inspired by French law, redefined the different types of land ownership in the Kingdom in its entirety, dividing them into five categories: Private Land, Monastery Land, State Land (composed of the State Private Land and the State Public Land) and Indigenous/Communal Land. The land is owned by the State until private property rights are recognized. State Public Land, which is made up of public interest infrastructures (including roads, military bases, hospitals, etc.) cannot be sold to private interests, but State Private Land covers all the lands that can be privatized.

The law aimed to improve tenure security and access to land through market-based land distributive reform and also to update the concessional legal framework to support social and economic policies.

The 2001 Land Law extends private titled property to all land and places it at the heart of the land security system. Possession becomes acquisitive, i.e. possession allows the claiming of land title.

However, the law does not recognize any new possession after 2001, which means that a young household or a migrant who clears a plot after that date, for example, can no longer claim, through its use, any right to that plot. The 2001 law also provides the country with institutions to establish concessions on state land, which are defined by default as all inappropriate land (legal possession or ownership). There are two types of concessions. Small social concessions allow agricultural land to be allocated to poor households to compensate for the abolition of ownership. The much larger economic concessions are leased to domestic and foreign investors. Always temporary, they are allocated for very long periods (up to 99 years) and can reach 10,000 ha (or more on derogation). In contrast to social concessions, which have grown in number and area only slowly, these concessions have grown exponentially since the mid-2000s. In 2014, they reached an estimated area of nearly 2.1 million hectares, or nearly 12% of the territory and barely less than the total agricultural area occupied by households (3.2 million ha).

As economic concessions expanded at high speed, the allocation of property titles to individuals remains, despite significant international assistance, extremely problematic. Title efforts have

focused on the central rice growing areas, where land insecurity is the least problematic. This situation makes households even more vulnerable because, when they did not feel threatened, they did not always apply for the certificates of possession to which they were still entitled. They are then vulnerable to elites who "buy" property titles directly from the relevant services and to the State which holds ownership of all legally inappropriate land and can sell or grant it.

Faced with the abuses caused by the development of economic concessions outside the regulatory framework, in 2012, Prime Minister Hun Sen announced a moratorium on their granting, and launched a major campaign in all areas where there were conflicts between state property and individuals' territorial claims.

In a statement dated 2 May 2019, the Ministry of Land Management, Urban Planning and Construction stated that of the roughly 5.2 million land parcels registered nationwide, 4.6 million were registered in a systematic manner and around 600,000 in a sporadic manner, which constitutes about 73% of the total estimated number of land parcels to be titled. The government's plan is to have given title to all parcels by 2021.

For several years now, the development of economic land concessions and the extractive industry sector has been documented both by public institutions and civil society organisations. Initiatives such as those of the NGO Open Development Cambodia and others, which collect data and map these concessions and link them to a sector of activity as well as the owner and origin of the investments. It is difficult to access data relating to private land holdings.

The purpose of this paper is to explain that in the context of a country like Cambodia, where the State does not face effective counter-balancing powers, whether parliamentary, judicial or from civil society, it places itself in a situation of being both judge and participant, while being as well the only holder of crucial land information.

Land titling ensures the protection of the inhabitants of any given parcel, but it must also be recognized that there are risks in the process. At the same time that these parcels are identified and can therefore be included in the land market, it places all lands deemed unclaimable by a private person in the control of the State, which serves above all its own interests and those of a political and economic elite seeking to make the most of the country's natural resources.

It is important to support the opening up of land and extractive industry data. Cambodia is experiencing very rapid economic growth, which has enabled it to adopt the tools of new information technologies in very few years. Social networks and the Internet now play a central role in disseminating information for those engaging in Khmer civic life. The dissemination of land and extractive industry sector data (including environmental impact assessment and contract agreements) in an open data format is therefore an important step. It can be a solution for safeguarding the evidence needed to protect citizens from abuses by national or foreign investors seeking to seize land. Land valuable for natural resources or agricultural production is particularly at risk, for the development of activities that could lead to the destruction of the inhabitants' livelihoods. This information can be disseminated in the form of geospatial representation, easily understood, and whose initiatives are multiplying in order to provide information that can be used by the wider population.

