



## USAID COUNTRY PROFILE

### PROPERTY RIGHTS AND RESOURCE GOVERNANCE

## CAMBODIA

### OVERVIEW

Cambodia is a largely agrarian country that emerged from a history of political strife and instability into a period of steady economic growth. However, the country started from such a low base that even after a decade of growth averaging 7% per annum, GDP is only \$650. Cambodia is ranked 176<sup>th</sup> out of 213 countries in terms of purchasing-power parity. Poverty rates have reduced somewhat, but they remain higher than in most countries in the region and are only slightly lower than in Laos. At the same time, inequality has increased in Cambodia, in part due to the growing concentration of productive assets, especially land. Inequality in landholdings is among the highest in the region. Furthermore, lack of transparency in many rural land transactions and extensive granting of concessions by the state for economic development have resulted in widespread disputes and conflict over land ownership and use. Unless there is a rapid increase in off-farm employment or other livelihood opportunities to absorb landless labor, the concentration of land in fewer hands will mean a growing gap in the opportunities available to different types of rural households. These factors could jeopardize the ability of Cambodia to continue its rapid economic and social progress. Improving land administration and enforcing established land laws will be critical to ensuring that Cambodia's progress benefits all its people.

Cambodia's abundant water resources, forestland, and the prospect of large oil and gas reserves create additional opportunities for economic growth and development. The government has been creating large-scale programs to increase the amount of irrigated land to support increased agricultural production and plans to construct new dams to harness the hydropower potential in the country's rivers. The first production from the offshore oil and gas reserves is expected in 2012 and concessions granted or in negotiation for five additional blocks. The Prime Minister's denouncement of illegal logging and corruption within forestry offices in 2010 is a recent reflection of growing political will for enforcement of existing laws protecting the country's natural resources and the rights of local communities to land and forest products. The challenge will be ensuring that those rights and interests continue to be recognized in the years ahead.

### KEY ISSUES AND INTERVENTION CONSTRAINTS

USAID and other donors might consider focusing on the following high-impact interventions that would help strengthen the implementation and reform of existing law and build corresponding institutional capacity:

- **Strengthen processes related to concessions.** Government land concessions grants have often lacked transparency, threatened environmental interests, and compromise the rights of poor landholders and local communities. In 2009, Cambodia's government initiated a process of reviewing the status of economic concessions and cancelling some concessions that did not meet the requirements of the law or terms of the concession. *Donors could assist the government in its efforts to address the challenges of supporting the development of agribusinesses and other commercial enterprises while recognizing the rights local communities and environmental interests. Donors could assist with an analysis of constraints to the implementation of existing laws and procedures and help refine processes for environmental and social assessments, land tenure analysis, and meaningful public comment. Donors can also work with the government to help identify areas for supporting regulatory and institutional reforms, such as improving the accessibility of the judicial system for landholders and claimants seeking compensation for land acquisitions.*

- **Improve national data on landholdings and landlessness.** The government does not have national data on the number of landless people in the country; 2009 estimates vary between 20% and 40% of rural households. This wide range of values on a key socioeconomic indicator impedes informed targeted decision-making on rural development. *Donors could help the government collect accurate data on landholdings and landlessness through a living standards survey, an agricultural census, or some other survey instrument.*
- **Improve land tenure security for indigenous communities.** The land rights of most indigenous communities are not currently registered or recognized, leaving them vulnerable to claims of external parties, including well-organized land grabs. Donors have been working with the government to develop processes and institutions to register indigenous communities and demarcate indigenous land. Experience in other countries such as Mozambique has shown that the formalization of local community land rights requires a significant long-term commitment of resources, with a particular need for NGOs and individuals working in communities to help build their capacity to assert and enforce their rights effectively. *Donors could help assess the progress on recognizing indigenous land rights to date, identify barriers and bottlenecks, and design a follow-on pilot project in one or two provinces to further refine processes for demarcation of land and formal recognition of communities and their land rights. Support can be given to develop the capacity of NGOs and local government officials in the technical tasks and processes required for registering community rights and to help communities develop the skills to negotiate with third parties and commercial interests for investment in and development of indigenous land.*
- **Increase access to land titling projects by vulnerable groups.** *Donors involved with Cambodia’s land titling projects may consider taking additional steps to ensure the rights of vulnerable groups. These could include: (1) funding NGOs to work with the most vulnerable populations to ensure that they are able to participate in the ongoing titling and registration process; (2) funding gender specialists to help ensure that the ongoing titling and registration processes support and improve women’s land rights; and (3) designing and implementing public education campaigns on landholder rights in areas targeted for land titling and registration and areas vulnerable to land takings.*
- **Improve land tenure security for women.** The land rights held by Cambodian women are often highly insecure. Cultural norms and practices often marginalize women within their marriages and households and many women lack awareness of their rights as joint owners of family land or family members with rights of inheritance. Rights held by the high percentage of women-headed households are vulnerable to loss to male family members, local elites, and commercial interests. *Donors could work with the government to protect and improve women’s land rights through educational programs and legal literacy campaigns focused on increasing women’s knowledge of land rights and land administration procedures. Support could also be provided for programs that assist women, their families, and their communities with training in communication and dispute resolution techniques. Donors could also support the efforts of legal aid organizations and NGOs to expand their services to include a focus on protecting and improving women’s land rights.*
- **Support pro-poor development of water resources and institutions of water governance.** The Cambodian government is increasing the amount of irrigated land to support growth in agricultural productivity (particularly rice production) and plans to build ten new dams to support irrigation and hydropower. These projects, which have the potential to increase household farm production and income, also have the potential for elite capture, the displacement of rural communities without adequate support for livelihoods, and environmental harm. *Donors can assist the government in its plans for the design and implementation of projects by helping draft procedures that reflect the comparative experience of other countries that have engaged in irrigation projects and dam construction. Donors can help fund appropriate environmental and socioeconomic studies at a stage and in a manner that can influence project design and help form the basis for meaningful programs for community engagement and support. Donors can also assist in the expansion of irrigation by assessing the performance of Farmer Water User Committees (FWUCs), collecting lessons learned, and drafting best practices to support the creation and strengthening of FWUCs.*

FOR MORE RECENT LITERATURE:

<http://usaidlandtenure.net/cambodia>

Keywords: Cambodia, tenure, agrarian, land law, land reform, property rights, land conflicts, water rights, mineral rights

## SUMMARY

Cambodia is a predominantly agrarian society dependent on the country's forests, agricultural land, and abundant water resources. Despite steady economic growth, about 58% of the population lives on less than US \$2 per day (2007), with 26% suffering from daily hunger. The relatively youthful population (half are less than 21 years old) struggles to obtain adequate education and productive skills, particularly in rural areas where infrastructure is limited. The tourism sector is an increasingly important contributor to the national economy and has significant potential for development.

Cambodia has undergone dramatic and often violent political changes throughout its history. Each new government has introduced its own system for the use and ownership of land, resulting in confusion and conflict. Significant

socioeconomic changes (refugee repatriation, urbanization, economic growth and population growth) have increased demands on land and landholdings in both rural and urban areas. Most farmers operate subsistence-level rainfed plots. The country has high numbers of landless people (20% - 40%).

Cambodia has a relatively advanced legal framework for land tenure and administration. Components of the framework relating to economic land concessions and the conversion of public land are controversial. Despite an on-going effort to title and register land, tenure insecurity is high, particularly among the poor, women and indigenous groups

Cambodia is rich in natural resources, including water, hydropower potential, forests, ecological biodiversity and minerals. With donor support, the government is driving initiatives to significantly expand the amount of irrigated land and develop the country's hydropower potential through the construction of dams. In the forest sector, efforts to develop community forest management have been progressing. Illegal logging has resulted in high levels of deforestation, and in 2010, the Prime Minister issued a strong public condemnation of illegal logging and replaced key officials. Offshore reserves of oil and gas have been discovered, although the extent of the reserves and the potential for commercially available extraction is still unknown. UNDP has begun programs to assist the government in developing its nascent extractive industries sector in a transparent fashion with accountability to local communities.

## I. LAND

### LAND USE

#### BOX 1. MACRO INDICATORS

|   | Year | Score                  |
|---|------|------------------------|
| Population, total   | 2008 | 14,699,885             |
| Population ages 0-14: 15-64: 65+ (% of total)   | 2008 | 34.1: 62.5: 3.4        |
| Population growth (annual %)  | 2008 | 1.7                    |
| Rural population (% of total population)  | 2008 | 78.4                   |
| Population density (people per sq. km)  | 2008 | 83.3                   |
| Literacy rate, adult total (% of people ages 15 and above)  | 2007 | 76.3                   |
| Land area: Surface area (sq. km)  | 2008 | 176,520: 181,040       |
| Arable land (% of land area)  | 2005 | 21.0                   |
| Agricultural land (% of land area)  | 2005 | 30.3                   |
| Permanent cropland (% of land area)   | 2005 | 0.9                    |
| Irrigated land (% of cropland)  | 2003 | 7.0                    |
| Forest area (% of land area)  | 2005 | 59.2                   |
| Nationally protected areas (% of total land area)   | 2006 | 23.5                   |
| Renewable internal freshwater resources per capita (cubic meters)                                 | 2007 | 8,346.2                |
| Annual freshwater withdrawals, agriculture: domestic: industry (% of total freshwater withdrawal) | 2007 | 98.0: 1.5: 0.5         |
| Crop production index (1999-2001 = 100)   | 2005 | 106.5                  |
| Livestock production index (1999-2001 = 100)  | 2005 | 115.6                  |
| GDP (current US\$)  | 2008 | 9,573,726,360          |
| GDP growth (annual %)   | 2008 | 5.2                    |
| Agriculture: industry: manufacturing: services, value added (% of GDP)                            | 2007 | 31.9: 26.8: 18.6: 41.3 |
| Ores and metals exports: imports (% of merchandise exports: imports)                              | 2004 | 0.0: 0.3               |
| Aid (% of GNI)  | 2007 | 8.4                    |

Source: World Bank, 2009

Cambodia has a total land area of 176,500 square kilometers. Most of the country is characterized by low, flat plains dominated by the Mekong River and Tonle Sap Lake in the central part of the country. The Dangrek Mountains form the northern border with Thailand and the Cardamon Mountains cross the southwestern part of the country. The country has a tropical monsoon climate with high levels of rainfall. About 30% of the country's land is agricultural and 7% of cropland is irrigated. Over half of the country's area (59%) is forested; deforestation is occurring at an annual rate of 1.3%. About one-quarter of all land in Cambodia is designated as protected areas (World Bank 2009a; USDOS 2011; FAO 2010).

Cambodia has a population of 14.7 million (2008). Ethnic Khmer comprise approximately 90% of the population. Other ethnic groups include Vietnamese (5%), Chinese (1%) and small numbers of hill tribes, Cham and Lao. Land is a crucial productive asset for the 70% of Cambodians who make their living from agriculture activities. At the same time, agriculture accounts for only 32% of GDP, which totaled US \$9.6 billion in 2008. The service sector accounts for 41% of GDP, followed by industry at 27% (LHWG-Cambodia 2009; IWGIA 2007; World Bank 2009a; USDOS 2011).

With 78% of the population living in rural areas, Cambodia is a predominantly agrarian society and most of the population depends on agriculture for their livelihoods. Most farming relies on low input, rainfed production systems and operates at subsistence levels. The main agricultural product is rice, which is grown for domestic consumption and export. Other products include rubber, corn, meat and dairy, vegetables, and sugarcane. Population pressures have caused an increasing demand for agricultural land and food production. To solve the problem, farmers have adopted improved agricultural techniques to increase agricultural productivity, but production inputs are frequently of poor quality or inappropriate for Cambodia's soils and do not contribute significantly to improving productivity. Many farmers seeking fertile land and landless farmers encroach on forestland or squat on public and private land (FAO 2010; USDOS 2011).

Cambodia has been experiencing a resurgence in rice production, with record harvests in the 2004 – 2009 period. Since 1998, rice production has increased 110%, with the growth attributed to a 26% increase in cropped area and 40% increase in crop yields. Rice cultivation accounts for 97% (300,000 hectares) of irrigated land, followed by sugarcane (8,000 hectares of irrigated land) and citrus (1,000 hectares of irrigated land). Eighty-two percent of total rice cropping area is rainfed lowland rice (FAO 2010).

Rice is also cultivated in the mountainous and hilly areas of the country. Indigenous communities in the northeastern part of the country generally practice shifting cultivation, which uses plots intensively for 1-5 years and allows the land to lie fallow for a period thereafter. Cambodia's once-remote highlands are increasingly exposed to market pressures and state regulation. Indigenous communities are highly dependent on the land and forest products for their livelihoods. Their land is increasingly subject to deforestation, land sales and expropriation for mining and agribusiness development (IWGIA 2007; Adler et al. 2010; FAO 2010).

Twenty percent of Cambodia's the population is urban. Urbanization is largely a result of rural-urban migration and the urban population is expected to rise to 35% (8 million people) by 2030. The expected growth of Cambodia's cities is the predicated result of continued migration of people from rural areas seeking economic opportunities in the cities (Khemro 2006).

In Phnom Penh, the private sector has largely been determining land use patterns in the absence of master plans and zoning regulations. Much of the pressure for urban development is occurring on the outskirts of Phnom Penh and increasingly in several border towns, often before infrastructure and services can be put in place. Consequently, the number of squatter settlements has increased. Seventy-two percent of the urban population lives in slums, and land disputes, overtaxed infrastructure and services, and degraded living conditions are increasingly common. The Government has been unable to minimize negative impacts of expansion because of limited human, technical and financial resources (Khemro 2006).

During the post-conflict era, weak governance has resulted in misuse and misappropriation of many of Cambodia's natural resources, including illegal logging. The government's failure to enforce the requirement of environmental impact assessments before granting concessions have allowed for the continuation of unsustainable natural resource exploitation (EC 2007).

## **LAND DISTRIBUTION**

Cambodia's changing political regimes have left their mark on the country's pattern of land distribution. In the period following independence from France in 1953, Cambodia's monarchy recognized private property rights. The monarchy was abolished in 1970 and the Khmer Republic established, only to be destroyed in 1975. The Khmer Rouge regime and the creation of Democratic Kampuchea (1975-1979) resulted in the abolishment of private property rights in favor of state ownership. Agriculture was collectivized and industry placed under state control. The regime forced urban dwellers into the rural areas to cultivate the land. Between 1.7 and 3 million people are estimated to have died from forced labor, starvation or execution during the Khmer Rouge years (USDOS 2011; Adler et al. 2006; GTZ 2009).

Beginning in 1979, the Vietnamese-backed government that replaced the Khmer Rouge initiated communal production schemes and solidarity groups on agricultural land. The Vietnamese withdrew in 1989 and with UN support, a multiparty democracy was developed within the framework of a constitutional monarchy. The government began shifting toward a market economy, initially recognized ownership rights in residential property, followed by a redistribution of collective farmland. In pursuit of equity, the government distributed agricultural land based on household composition, i.e., larger families would receive more land. Village chiefs were responsible land allocations, and in some areas the distribution served political rather than equitable interests. Countrywide, families received an average of 1.4 hectares, with their rights were conditioned upon the use of the land and the government holding a right to repossess land that lay idle (Adler et al. 2006; GTZ 2009; USDOS 2011).

Since the redistribution of collective farmland, Cambodia has seen significant socioeconomic changes, including refugee repatriation, urbanization, and economic and population growth, which have increased the pressure on land. The distribution of land has become increasingly inequitable; since the 1980s, 20–30% of the country's land has passed into the hands of less than 1% of the population. The average rural landholding is 1.3 hectares, and many rural households in Cambodia suffer either from landlessness or near landlessness. There are no reliable national data on the number of landless people in the country, but it is estimated that landlessness rose from 13% in the late 1990s to 20% in 2004, and 20% to 40% of the rural households were landless in 2009 (GTZ 2009; Sophal et al. 2001).

Involuntary landlessness and near landlessness are considered primary contributors to poverty and weak human development in Cambodia. Young families and women-headed households are most likely to be landless or near-landless. In an Oxfam's survey sample, one in eight families was landless while 21% or one in five women-headed households was landless (GTZ 2009; ADB 2004).

The causes of the increase in landlessness are varied. The increase in the population (from eight million in the late 1980s to 14 million today) has similarly increased the demand for land. Some households have taken advantage of the rising values and sold their land in order to invest their labor and capital in other income-producing activities. However, in many cases landlessness results from insecure tenure. Few poor households have completed the registration procedures, leaving them more vulnerable to land grabbing and forced evictions. In addition, in some areas land distribution programs have not been implemented. For example, many of the families of the demobilized soldiers and the returnees from the Cambodian-Thai border during 1992–93 still have not received land (LHWG-Cambodia 2009; GTZ 2009; Engvall and Kokko 2007; Calavan et al. 2004).

## **LEGAL FRAMEWORK**

The Cambodian Constitution stipulates that all persons, individually or collectively, have the right to land ownership, so long as it is not in conflict with public interests. All Khmer legal entities and citizens of Khmer nationality have the right to own land. Foreigners are not allowed to own land in Cambodia but may own a limited number of units in a co-owned building provided that the units are above the ground floor and the building is not within 30 kms of a border. Foreigners can hold up to a 49% interest in Cambodian corporations (RGC Constitution 1993; RGC Foreign Ownership Law 2010a; RGC Land Law 2001).

The 2001 Land Law extends private ownership rights to residential and agricultural land, establishes a system for the systematic titling of land and creates a comprehensive dispute-resolution system. The law also governs lease rights (RGC Land Law 2001a).

The 2001 Land Law recognizes the right of indigenous communities to collective ownership of their land and the right to assert and enforce their interests against third parties. Indigenous community land includes residential and agricultural land and encompasses land reserved for shifting cultivation. Under the law, indigenous communities may continue to manage their community land according to their traditional customs. The Sub-decree on Procedures for Registration of Land of Indigenous Communities (2009) requires communities to register as legal entities before registering their land rights (RGC Land Law 2001a; GTZ 2009; Adler et al. 2006; Grimsditch and Henderson 2009).

A sub-decree on Social Land Concessions (SLC) was established in 2003 to accompany the implementation of the World Bank-led Land Allocation for Social and Economic Development Project (LASED). Social Land Concessions are a mechanism to grant state private land to poor landless families for residential and farming purposes (Thiel 2009; UNHCR 2007; GTZ 2009).

Sub-decree No. 146 on Economic Land Concessions (2005) establishes the legal and regulatory framework for the grant and management of concessions of land for large-scale, market-oriented development, including requirements to conduct public consultations and environmental and social impact assessments (Grimsditch and Henderson 2009; RGC Sub-decree No. 146 2005b).

Sub-decree No. 118 on State Land Management (2005) restricts ELCs to state private land. If the land is classified as state public land, the state must re-classify it as state private land before granting a concession. Sub-decree No. 118 establishes: the specific authorities and institutions responsible for identifying, classifying, converting, and registering state lands; provides a basis for inter-ministerial collaboration on determining the use and management of state land; and includes some procedures for public comment (RGC Land Law 2001a; RGC Sub-decree No.118 2005a).

Regulation No. 42 on State Land Identification, Mapping and Classification (2006) provides detailed guidance for the process of state land identification, mapping and classification. To date, only partial efforts to enforce the law through mapping and classification and registration of state land have occurred (Thiel 2009; GTZ 2009).

Natural resources are governed by the Environmental Protection and Natural Resources Management Law (1996) and the Protected Area Law (2008) (GTZ 2009).

The 2008 Land Policy Declaration sets forth a vision of land policy in Cambodia, which includes administering, managing, utilizing and distributing land in an equitable, transparent, and sustainable manner in order to contribute to achieving the national goals of: poverty alleviation; food security; natural resources and environmental protection; and socioeconomic development oriented towards a market economy. As part of this policy, the Land Administration Policy recognizes the importance of developing an appropriate land administration system to support the post-conflict country's overall social and economic development. The goals of land administration are: to clearly register ownership and other rights over immovable properties (state and private); to conduct official transfer of those rights; to prevent and resolve land disputes in order to strengthen land-tenure security; and to ensure reliability and efficiency of the land market (RGC Land Policy Declaration 2009a).

## **TENURE TYPES**

Cambodian law recognizes five categories of land: private land; state public land; state private land; common property; and indigenous land. State land (both state public and state private) accounts for approximately 75-80% of Cambodia's total land area. Unregistered land held in collective land ownership by indigenous communities is considered to be collective property on state public land. Cambodia has a small amount of common property, which is primarily land held by monasteries (RGC Land Law 2001a; Thiel 2009; GTZ 2006).

Cambodia's law recognizes three forms of land ownership: private ownership, state ownership and collective ownership by indigenous communities. Land may be leased, granted by concession, and held in usufruct. Private ownership consists of individual ownership, undivided ownership, divisible co-ownership and joint ownership. Only natural persons or legal entities of Khmer nationality have the right to own land; foreigners may own above-ground floor units in co-owned buildings located more than 30 kms from the border (RGC Constitution 1993; RGC Foreign Ownership Law 2010a; RGC Land Law 2001a; Thiel 2009).

Leases of private land are available for either a definite or indefinite period of time. The law recognizes short-term leases (often with an option to renew) and long-term leases (15- 99 years). State private land can be sold to private entities or transferred through leases and land concessions. The government must convert state public land into state private land before rights to the land can be sold or transferred by lease or concession to private parties. Both long-term leases and land concessions can be mortgaged (GTZ 2009; GTZ 2006; WFP 2011; Thiel 2009; RGC Sub-decree No. 114 2007b).

Economic land concessions (ELCs) are controversial in Cambodia. Although a legal framework with defined steps to secure a concession exists, legislation has not been properly implemented and enforced. Some observers note that the tenure rights accompanying long-term land leases of 99 years and ELCs are comparable to the rights of a private owner. However, ELCs are subject to legal requirements, including the restriction of land uses to those contained in an approved land use plan and the exploitation of the land within 12 months of the receipt of

the concession. After a review of ELCs conducted in 2009, the Ministry of Agriculture, Forestry and Fisheries (MAFF) canceled the ELCs held by five companies because they did not meet the requirements of the concession granted (Engvall and Kokko 2007; Thiel 2009; RGC Land Law 2001a; RGC Sub-decree No. 146 2005b; RGC 2010b; Sophal et al. 2001).

## SECURING LAND RIGHTS

Land is accessed in Cambodia through sale, exchange, land distribution, succession, lease, gift, and concession. Under the Land Law, any person who had enjoyed peaceful, uncontested possession of land – excluding state public land – for at least five years prior to the law’s promulgation has the right to request a definitive title of ownership. Those who had enjoyed such possession for less than five years may obtain a definitive title of ownership after five years (RGC Land Law 2001a; UNHCR 2007).

Registered land rights are considered the most secure. Under the current Land Administration Sub-Sector Program (LASSP) 1.6 million parcels were registered as of 2009, with an equivalent of 1 million land titles issued. At least 9.5 million parcels remained unregistered. It is estimated that it will take approximately 30 years for the remaining parcels to be registered. In addition, the boundaries between state land and private

land, forest land, agricultural land and urban areas have not been demarcated, leaving these lands vulnerable to encroachments or takings (Thiel 2010; GTZ 2009).

Seven steps are recommended to transfer land that has a registered title certificate: (1) verify the title certificate with the Land Office to ensure the seller is the rightful owner and there are no undisclosed encumbrances; (2)

### BOX 2. LAND TENURE INDICATORS

|  | Score |
|--|-------|
| <u>Millennium Challenge Corporation Scorebook, 2009</u>  |       |
| – Land Rights and Access (Range 0–1; 1=best)   | 0.769 |
| <u>International Property Rights Index, 2009</u>   |       |
| – Physical Property Rights Score (Range: 0–10; 0=worst)  | ...   |
| <u>World Economic Forum’s Global Competitiveness Index, 2008-2009</u>                              |       |
| – Property Rights (Range: 1–7; 1=poorly defined/not protected by law)                              | 3.5   |
| <u>World Economic Forum’s Global Competitiveness Index</u>   |       |
| – Ease of Access to Loans (Range: 1–7; 1=impossible)   | 2.6   |
| <u>International Fund for Agricultural Development, Rural Poverty Report, 2001</u>                 |       |
| – Gini Concentration of Holdings, 1981-1990 (Range: 0–1; 0=equal distribution)                     | ...   |
| <u>International Fund for Agricultural Development, Rural Sector Performance Assessment, 2007</u>  |       |
| – Access to Land, 2007 (Range: 1-6; 1=unsatisfactory access)                                       | 4.2   |
| <u>Food and Agricultural Organization: Holdings by Tenure of Holdings</u>                          |       |
| – Total Number of all Agricultural Holdings, Year  | ...   |
| – Total Area (hectares) of all Agricultural Holdings, Year   | ...   |
| – Total Number of Holdings Owned by Holder; Year   | ...   |
| – Total Area (hectares) of Holdings Owned by Holder; Year  | ...   |
| – Total Number of Holdings Rented from Another; Year   | ...   |
| – Total Area (hectares) of Holdings Rented from Another; Year                                      | ...   |
| <u>World Bank Group, Doing Business Survey, 2009</u>   |       |
| – Registering Property-Overall World Ranking (Range: 1–181; 1=Best)                                | 135   |
| <u>World Bank Group, World Development Indicators, 2009</u>  |       |
| – Registering Property-Number of Procedures  | 7     |
| – Registering Property-Days Required   | 56    |
| <u>World Bank Group, World Development Indicators, 1998</u>  |       |
| – Percentage of Population with Secure Tenure  | ...   |
| <u>Heritage Foundation and Wall Street Journal, 2009</u>   |       |
| – Index of Economic Freedom-Property Rights (Range 0-100; 0=no private property)                   | 30    |
| <u>Economic Freedom of the World Index, 2008 (2006 data)</u>                                       |       |
| – Legal Structure and Security of Property Rights (Range 0-10;0=lowest degree of economic freedom) | ...   |
| – Protection of Property Rights (Range 0-10; 0=lowest degree of protection)                        | ...   |
| – Regulatory Restrictions of Sale of Real Property (Range 0-10;0=highest amount of restrictions)   | ...   |

contact the village chief or commune council official to obtain information about the land; (3) obtain relevant documents from the seller; (4) apply for registration at the Municipal Land Office; (5) pay transfer tax at the Tax Collection Office; (6) complete the registration process at the Municipal Land Office. When the parties have completed the process, the certificate of title can be obtained from the Municipal Land Office. The first three steps of the process are recommended as part of the buyer’s due diligence; steps 4 – 6 are required (World Bank 2011).

Rights to land that does not have a certificate of title are often evidenced by Letters of Possessory Right or other documentation, referred to as a “soft title.” District Chiefs issue the Letters of Possessory Right evidencing the interests held and the transfer of the interest. These informal transactions are not recorded at the Land Office. In some cases, however, holders of possessory rights can apply to have their interests converted into a certificates of title (Sophal and Acharya 2002; Global Property Guide 2007; LHWG 2009; Force 2011).

Indigenous communities that are registered as legal entities can register their communal landownership rights. Four communities have successfully registered as legal entities in Mondulkiri and Ratanikiri using an ad hoc administrative procedure, and there are currently plans to use the procedure developed in these cases to register more villages in the absence of a legal framework. As of 2010, no titles had been granted to indigenous communities (Grimsditch and Henderson 2009; RGC Land Law 2001a; GTZ 2009; Thiel 2009; IWGIA 2007).

Economic land concessions are restricted to a maximum size of 10,000 hectares and can only be granted over state private land for a maximum duration of 99 years. ELCs are subject to the following requirements: (1) a land use plan for the land has been adopted by the Provincial or Municipal State Land Management Committee, and the land use is consistent with the plan; (2) environmental and social impact assessments have been completed; (3) solutions for resettlement issues have been determined in accordance with the existing legal framework and procedures; and (4) public consultations have been conducted with territorial authorities and local residents. Annual fees for land concessions range from zero to US \$10 per hectare (GTZ 2009; RGC Sub-decree No. 146 2005b; RGC 2010b).

The implementation of Social Land Concessions has been weak due to high demand and increased prices for land, as well as competition for land by private developers seeking ELCs. As of 2007, the implementation of the program had provided over 12,000 hectares of land to over 20,000 families, mostly for residential purposes. As of 2009, an area of 4770 hectares had been registered as state private land available for Social Land Concessions (Thiel 2009; UNHCR 2007; GTZ 2009; Lim 2008).

Overall, weak enforcement of tenure rights has made it possible for influential individuals (often operating through legal entities) and groups to acquire large landholdings for speculative or unproductive purposes. The large number of illegal land-grabs weakens tenure security. In particular, customary rights held by indigenous people have been one of the easiest targets for land-grabbers. One common form of land-grabbing has been the acquisition of lands that were within the known domain of subsistence farming communities but lying fallow (and thus apparently unused). Because of their political marginalization and limited understanding of the law or their rights, indigenous groups are often unable to effectively defend against land-grabs, particularly in cases where they do not have local government supports (Calavan et al. 2004; Engvall and Kokko 2007; LICADHO 2006; LHWG 2009).

**INTRA-HOUSEHOLD RIGHTS TO LAND AND GENDER DIFFERENCES**

The legal framework for gender equality in land includes the 1993 Constitution, the Law on Marriage and Family (1989), the Land Law of 2001, and Sub-decrees. While the Constitution guarantees equal rights for women and men, including inheritance rights, and the existing legal framework supports this principle of equality, the ability of Cambodian women to claim these rights is constrained by prevailing social attitudes about gender roles and gender relations (USAID 2002; OECD 2009).

| <b>BOX 3. LAND AND GENDER INDICATORS</b>   |  | <b>Score</b> |
|--|--|--------------|
| <u>OECD: Measuring Gender In(Equality)—Ownership Rights, 2006</u>                    |  |              |
| — Women’s Access to Land (to acquire and own land) (Range: 0-1; 0=no discrimination) |  | ...          |
| — Women’s Access to Property other than Land (Range: 0-1; 0=no discrimination)       |  | ...          |
| — Women’s Access to Bank Loans (Range: 0-1; 0=no discrimination)                     |  | ...          |
| <u>FAO: Holders of Land Classified by Sex, 1993</u>                                  |  |              |
| — Percentage of Female Holders of Agricultural Land                                  |  | ...          |

The Law on Marriage and Family distinguishes between joint property (bought or acquired during the course of the marriage) and separate property (owned by one of the spouses prior to the marriage, or inherited by one of the spouses during the marriage). Decisions regarding the disposition of joint property require agreement by both husband and wife, while either spouse may manage his or her separate property independently. In practice, however, many women cede control over their property to their husbands (OECD 2009).

Women and men in Cambodia have equal legal rights to land and women often own land. The mass executions that characterized the Khmer Rouge regime created a high number of female-headed households in the 1970s, and women were allocated land during the 1980s PRK reforms. Land liberalization in 1989 and the ensuing confusion due to the unclear legislation resulted in negative impacts on women's land rights, especially for female heads of household. The land reform is often criticized for having an unintended adverse effect on women-headed households (which tend to have fewer adult laborers) because the distribution of agricultural land was based on family size. Women-headed households often received less land and land of inferior quality, handicapping their ability to provide for their families and generate income from the land. "War widows" own less land than the general population: of those that own land, 84% own less than 0.5 hectare and nearly half of all war widows do not have access to any land. An Oxfam land study found that landlessness was significantly higher for women-headed households. In Oxfam's survey sample, one in eight families was landless, but the figure for women-headed households was 21%, or one in five (ADB 2004; OECD 2009).

Women in male-headed households face a different set of constraints with respect to land. While the law provides for joint titling, customary practices and enforcement regimes frequently undermine joint titling rights. In many cases the land rights vest in the name of the male head of household only. One study found that women often needed their husbands' permission to include their names on land titles. Even where women have joint rights to land, gender-biased cultural and social factors often combine to limit their ability to exercise their rights. In principle, when land is jointly registered, both parties must sign to transfer land titles; in practice, however, this is not enforced. In cases of divorce, death or family breakup, women may lose their land rights, which generally leads to the impoverishment of women and children (ADB 2004).

Many women in Cambodia are unaware of their land rights and have no access to legal aid or any other form of support for their rights. The lack of knowledge and support often renders women more vulnerable to those pursuing claims against their land (OECD 2009).

#### **LAND ADMINISTRATION AND INSTITUTIONS**

The Ministry of Land Management, Urban Planning and Construction (MLMUPC) is the government agency with primary responsibility for land management, including: policy and coordination of land registration and administration; land use planning; geodetic and cadastral surveying, mapping; and property valuation. The Ministry is represented at the provincial level by the Department of Land Management, Urban Planning and Construction (LMUPC) (Phann 2006).

Land use planning lacks technical as well as methodological planning capacity at all administrative levels, although MLMUPC has made efforts to address these limitations. Cadastral procedures are not uniformly undertaken in all parts of the country, and professionalism and technical skills for measuring land and for mapping land are variable (World Bank 2002; Sokha et al. 2008).

Other ministries involved in land administration include the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of Environment (MoE). MAFF is responsible for agriculture development and for overseeing ELCs. The MoE is the lead agency responsible for environmental protection and natural resources conservation and is responsible for assessing and mitigating potential environmental impacts related to ELCs (Phann 2006; GTZ 2009).

The Council for Land Policy promotes and monitors implementation of the 2008 Land Policy Declaration and coordinates among the three land sub-sectors (land administration, land management, and land distribution) to strengthen implementation of the Land Law and other legislation related to the environment, forests, fisheries, water resources, and decentralization (RGC Land Policy Declaration 2009a).

The Cadastral Commission (CC), created in 2002, acts as an administrative adjudication body on land disputes. The CC operates at three levels: national, provincial and district. The National CC is chaired by the Minister of LMUPC. Other members are the Secretaries of State and the Interior, and the Council of Ministers. The Provincial Governor or one of the Deputy Governors chairs the Provincial CC. The CC also has a working group at district levels (DCC) (Sohka et al. 2008; Phann 2006; GTZ 2009; Grimsditch and Henderson 2009).

The Council for the Development of Cambodia (CDC) serves as the point of contact between the Royal Government and donor countries, international organizations and NGOs, and facilitates contact among ministries and other governmental institutions in the coordination of development assistance. The CDC is also responsible for all investment projects in Cambodia, including agriculture and agro-industries (CDC 2010; GTZ 2009).

## **LAND MARKETS AND INVESTMENTS**

Only a small proportion of land is titled in Cambodia and the formal land market remains limited to higher value urban properties and large agricultural holdings that have been registered. The informal land market developed as land was privatized and a market economy emerged in the 1990s. Cambodians and foreign investors (operating through Cambodian residents) acquired land for commercial farming, logging, non-agricultural activities, and speculation. Supply exceeds demand in areas like Phnom Penh and fertile agricultural areas and prices have risen dramatically. At the 2007 peak, land prices were eight times higher than in the previous three years. The price for one square meter in a prime location in Phnom Penh rose from US \$250 per square meter in 2004 to US \$2000 per square meter in 2007. The price of a hectare of agricultural land increased from US \$250 in 2004 to US\$2000 in 2007 (Boreak 2000; Sophal and Acharya 2002; RDE-Cambodia 2004; GTZ 2009).

As a result of the recent global economic downturn, prices in both rural and agricultural land have declined nearly 35–40%. The urban leasing market has not suffered to the extent of sales markets: prices for leasing land in prime urban locations are estimated to have declined 10–15%. No data are available for rural leasing markets. In spite of this decline, land markets are continuing to develop in commercialized areas, urban areas, and in regions with high populations (GTZ 2009).

Constraints to the development of the land market in Cambodia include: (1) lack of market regulations governing the land market; (2) lack of standardized data and information about land prices; (3) an undeveloped valuation system for land; (4) poor access to information by rural residents about how to undertake land transactions and obtain proper documentation about land; and (5) unharmonized cadastral procedures throughout the country. Formal registration of land transactions requires seven procedures, takes 56 days, and costs 4.4% of the property value (Grimsditch and Henderson 2009; GTZ 2009; World Bank 2011).

Younger families are often in a weak position in the land market; there is little unused land for sale or lease, land prices are high and land held by parents is often too small to provide for all their children. Poor households also lack the cash and access to credit necessary to purchase or lease land. Informal brokers and lenders may be used to facilitate land transactions, but interest rates can be extremely high. Banks may refuse to use land as collateral, and loans are often based on the physical condition of the structure, which places the poor at a disadvantage. Even those with formalized rights and adequate resources to transact land often proceed on the informal market because of the perception that formal transactions require excessive time and resources (Engvall and Kokko 2007; RDE-Cambodia 2004).

## **COMPULSORY ACQUISITION OF PRIVATE PROPERTY RIGHTS BY GOVERNMENT**

The Constitution of Cambodia states that all Cambodians have the right to own land. Land can only be confiscated if determined to be in the public interest, as provided for by law and with the payment of fair and just compensation. In 2010, the Law on Expropriation was enacted, which allows for the government to acquire land when necessary to the public interest. The law requires the government to pay the market value of the land in compensation and established an independent evaluation committee to address compensation issues (RGC Constitution 1993; RGC Expropriation Law 2010c).

Close to one million hectares of land in rural Cambodia (approximately 7% of all land outside of protected areas) have been granted to private companies as economic land concessions for the development of agro-industrial plantations. The process of granting many of these concessions has not complied with the requirements of the Land Law and Sub-decree on Economic Land Concessions. Essential preconditions to the grant of concessions,

such as the registration of land as state private land, public consultations, and environmental and social impact assessments, have not been met. In many cases restrictions on the size and ownership of economic land concessions have not been properly enforced. Individuals have used different companies to acquire interests in multiple concessions and to obtain adjacent concessions for the same purposes, circumventing the 10,000-hectare size limit. Concessions have been granted over forested areas and former forest concessions, contrary to the Forestry Law and forestry regulations. Under pressure from civil society members, the government undertook a review of ELCs in 2009 and has cancelled some concessions (UNHCR 2007; RGC Sub-decree No. 146 2005b; RGC 2010b).

Land-grabbing by elite interests and forced evictions have also escalated significantly over the last 10 years. Observers note that many vulnerable households and indigenous groups, particularly those living on land that has high value for future development, have been arbitrarily excluded from the government's titling efforts, rendering them more vulnerable to forced evictions and loss of compensation for expropriated land (LHWG 2009).

## **LAND DISPUTES AND CONFLICTS**

Land disputes are relatively common in Cambodia, resulting from the pressure on urban and productive agricultural land, lack of accurate land records and maps, and the absence of land use plans. There are three main types of conflict. The first type is between the state and ordinary citizens. These disputes are often due to land expropriation where existing occupants either refuse to give up their land to the state or because they are not satisfied with the compensation offered. The second type of conflict is between citizens and representatives of the state (acting either in their own personal interests or as intermediaries for the private sector). Many of the claims made to the National Assembly over land acquisitions by the military or other arms of the government forcibly appropriating land for personal benefit. The third type of conflict arises between private parties (Adler et al. 2006; CAS 2006).

Cadastral Commissions are the primary formal institutions addressing all types of land disputes. Cases travel through the system from districts to provincial and national levels. Officials at the district level conduct investigations and collect evidence. A case can then be referred to a higher commission if a high-ranking authority is involved. Vulnerable communities involved in disputes with powerful and well-connected individuals often find their complaints unresolved, rejected or simply ignored. According to the Commission, the majority of disputants are farmers, with indigenous people and refugees accounting for less than one-fifth of the cases. Almost 70% of the cases involved ownership disputes over farmland or plantation land, with land for construction accounting for most of the remaining cases. The opponents in the disputes were mainly local, provincial or national authorities (39% of cases), armed forces (30%) and wealthy elites (16%). The remaining disputes were between private parties (Sohka et al. 2008; Phann 2006; GTZ 2009; Grimsditch and Henderson 2009; CAS 2006).

If disputes are not resolved by the Cadastral Commission, they may proceed to the formal court. Nearly two-thirds of the cases are complaints about power violations or use of violence against the families using land. Typical conflicts involve land-grabbing and allocation of allegedly unused land for economic concessions and development projects. Not surprisingly most disputants (70%) have no formal documents to prove their claims to the land. At the same time, few opponents (less than 10%) could support their claims to the land with formal titles (CAS 2006; Engvall and Kokko 2007).

Many disputes never reach the courts, either because they are settled by local authorities or the Cadastral Commission, or because the families involved in the disputes lack the knowledge and resources to take their complaints to court. Of 797 cases documented by the Commission, 27% percent ended up in courts. Of these, less than 40% of the cases had been resolved by 2005, about 20% were still under investigation by the authorities, and the remaining 40% had dropped out of the dispute-resolution system without any conclusion. Many of these cases had been abandoned by the landholders who were forced to leave the land (CAS 2006; Engvall and Kokko 2007).

The National Authority on Land Dispute Resolution (NALDR) was created by the Government in March 2006 to complement the work of the courts and to resolve land disputes beyond the jurisdiction or capacity of the Cadastral Commission. Critics contend that NALDR creates another level of bureaucracy and a parallel agency that further confuses adjudication processes and undermines the prerogative of the Cambodian courts. Some

observers have noted with concern that the NALDR is composed of ruling-party powerbrokers with a history of land-grabbing (LICADHO 2006; LHWG 2009).

Poor families and indigenous groups are the most vulnerable in regard to land conflicts. With the private costs for a court case reaching several hundred dollars, poor families are often unable to afford the process even if they borrow money or sell assets. The courts have often frustrated indigenous peoples' attempts to tackle land-grabbing. A particularly notorious case occurred in Ratanakiri province in Aikapeap commune, where the court upheld a land-grab on land belonging to a Tampuen community, despite allegations that high-ranking government officials were involved in transferring the land in order to transform it into a rubber plantation (IWGIA 2007).

Due to uneven bargaining power that leaves most poor families and indigenous groups unable to defend their property rights on their own, a large number of NGOs (such as Legal Aid of Cambodia) have become engaged in land issues. By supporting the most vulnerable population groups involved in land disputes and by pressuring authorities to implement existing laws in a fair manner, the NGO community hopes to balance the strong bargaining position of more privileged population groups (Engvall and Kokko 2007).

### **KEY LAND ISSUES AND GOVERNMENT INTERVENTIONS**

Since 1985 the Government of Cambodia has sought to implement three key priority areas for land reform: land administration, land management and land distribution. In June 2002, the Cambodian Ministry of Land Management, Urban Planning and Construction (MLMUPC) established the Land Management and Administration Project (LMAP), now called Land Administration Sub-Sector Program (LASSP), with the goals of improving land tenure security and promoting the development of efficient land markets. Funded by a variety of donors, including the World Bank, the components of LMAP/LASSP's are: 1) development of land policy and legal framework; 2) development of land institutions; 3) establishment of land titling programs and development of a modern land registration system; 4) strengthening mechanisms for dispute resolution, and 5) development of land valuation systems and land markets (World Bank 2002; Adler et al. 2006).

LMAP has been responsible for: development of key parts of the legal framework for land administration; training ministry and technical staff; and registering and adjudicating land parcels. However, LMAP has been criticized for failing to improve tenure security for the segments of Cambodian society that are most vulnerable to displacement. Some observers have noted that vulnerable groups with legitimate claims to land have been denied access to land titling and dispute resolution mechanisms, undermining the project's aim of reducing poverty and promoting social stability (Grimsditch and Henderson 2009).

Rural development remains at the center of the current policy agenda. Given the large rural population and high potential for improvement, the government has highlighted promotion of agricultural development as the primary strategy for achieving higher growth and poverty reduction. In public statement, government officials have emphasized the increased production of rice and the goal to double production to 15 million tons by 2015 (FAO 2010; Lim 2008; GTZ 2009).

In urban areas, the Government has introduced decentralization policies that seek to give local authorities increased responsibility for managing urban growth and accommodating the growing demand for urban infrastructure and services from the population. Assistance and intervention from the central Government is minimal, with local authorities receiving only technical assistance to help formulate and implement their plans in an efficient and effective manner (GTZ 2009).

Government interventions to ensure gender equality in land matters are articulated in the Gender Mainstreaming Action Plan (GMAP) and provide for procedures for individual (systematic) registration for women and increased collaboration between the Ministry of Women's Affairs (MoWA) and the Ministry of Land Management, Urban Planning and Construction (MLMUPC) (Thiel 2010).

Finally, the government has included in its policy documents a commitment to the "interim protection" of indigenous lands prior to registration. However, progress in actively protecting these lands in regard to ELCs has been limited (Thiel 2010).

## **DONOR INTERVENTIONS**

USAID funded the Cambodian Program on Rights and Justice (PRAJ) from 2003 to 2008. The project included training of lawyers and judges, support of local NGOs, legal aid and education, and high-impact advocacy on land rights. USAID's follow-on program, the Cambodian Program on Rights and Justice II, is scheduled to run until 2013 (USAID 2008; East-West Management Institute 2009–2010).

The World Bank and other donors funded the Land Management and Administration Project (LMAP) from 2002 through 2008 for a total amount of US \$24.3 million. The World Bank is funding the Land Administration Sub Sector Program (LASSP)(2009 – 2012). The purpose of LASSP is to further the development and improvement of land-related policies, legal frameworks, and institutions, as well as further development of the land titling program and land registration system. LASSP also includes: the development of an official land-valuation system (One-Window Cadastral Service); a widened scope of public awareness and information dissemination on land registration; and further steps towards a modern digital multipurpose cadastral system and Land Information System (LIS) (World Bank 2008a; World Bank 2010a).

The World Bank's 2008–2013 Land Allocation for Social and Economic Development (LASED) Program complements efforts under the LMAP/LASSP programs. Through LASED, the World Bank aims to work with the Cambodian government to improve the process for identification and allocation of state lands transferred to the poor and landless. To this end, LASED will strengthen pilot-scale implementation of Social Land Concessions and will work to support complementary rural services and investments for land recipients. The project has a focus on transparency and will also provide institutional support for local level land management institutions in the context of decentralization and devolution. The project is expected to transfer land and support livelihood investments and services to 3,000 land recipient families through 20 commune-based social land concession sub-projects in three provinces (Kratie, Kampong Cham and Kampong Thom) (World Bank 2010b; World Bank 2008a; World Bank 2008b; Halabi 2005).

## **2. FRESHWATER (LAKES, RIVERS, GROUNDWATER)**

### **RESOURCE QUANTITY, QUALITY, USE AND DISTRIBUTION**

Cambodia has abundant water resources, and substantial part of Cambodia's economy and the majority of rural livelihoods are water dependent. Cambodian farmers rely on rain and floodwater for rice-production and fishing, as well as for a wide range of other products derived from flooded forests and wetland areas. Cambodia receives average annual rainfall of 1,400 mm, ranging from an average of 1,000 mm each year in the western provinces to 4,700 mm in the south. The Mekong River and the Tonle Sap Lake are the predominant sources of surface water, with the Mekong serving the east and the Great Lake serving the more westerly populations. The Mekong River is 4,909 kms in length and 86% of the country is within the Mekong River basin. On average, 471 cubic kilometers per year flow out of the country in the Mekong channels and tributaries to Viet Nam. The Tonle Sap Lake is the largest freshwater lake in Southeast Asia and an ecological hotspot. The lake's volume grows from 2,700 km<sup>2</sup> to 16,000 km<sup>2</sup> during the monsoon (FAO 1999; FAO 2010).

Although the total renewable water resources for Cambodia (combined surface and groundwater) are estimated at 476 cubic kilometers, most of these resources are not considered internal to Cambodia. The annual level of internal renewable surface water resources is approximately 120 cubic kilometers, most of which is derived from surface water. Ninety-eight percent of freshwater withdrawals in Cambodia are for agriculture uses; 1.5% domestic uses, and the balance industrial uses. Annual freshwater withdrawal per capita was estimated at 308.7 cubic meters in 2002. Despite its abundant water resources, Cambodia suffers from seasonal water shortages and constraints to domestic and agricultural supplies. Infrastructure for water access, distribution, irrigation, and storage is insufficient, old and poorly maintained (FAO 2010; FAO 1999; World Bank 2009a; Botkosal 2009; RGC n.d.).

Both surface and groundwater are used for drinking water. Groundwater is generally suitable for public supply after proper filtration and disinfection. Reliance on groundwater is high in many areas because of the shortage of surface water in the dry season. In 2008, 81% of the urban population and 56% of the rural population had access

to safe drinking water. Hand-dug or open wells are widely used throughout the country, but there is a trend towards drilled wells with hand pumps, particularly in rural areas (FAO 2010; GTZ 2009; Botkosal 2009).

Despite its abundant water resources, Cambodia suffers from seasonal water shortages and constraints to domestic and agricultural supplies. Infrastructure for water access, distribution, irrigation, and storage is insufficient, old and poorly maintained. In 2003, Cambodia had an estimated 285,000 hectares of irrigated land and about 160,000 hectares of land that regularly floods in the wet season. Total harvested area under full control irrigation schemes is estimated at 309,000 hectares. All irrigation is surface irrigation. Irrigable potential is estimated at 420,000 hectares in the wet season and 187,000 hectares in the dry season (FAO 2010; Botkosal 2009).

The country's demand for power is expected to increase significantly in the years ahead. The installed capacity of existing dams is low, and the government plans to build ten new hydroelectric and irrigation dams in the northwest region of the country. Civil society members have raised concerns about anticipated negative environmental and social impacts of the projects (FAO 2010).

Environmental problems along the Mekong River are worsening. Floods, drought and damage from brine in the delta, and large fluctuations in flow between wet and dry seasons are leading to large differences in water levels and a deterioration of water quality during parts of the year. In addition, actions by upstream countries that alter the hydrological cycle of the Mekong River and the annual flooding pattern are a potential threat to Cambodia's aquatic resources and habitats. Pollution of the Mekong River is also expected to worsen with advancing industrialization (EC 2007; RGC n.d.).

## **LEGAL FRAMEWORK**

The Constitution (1993) vests ownership of water with the state and obligates the state to establish a water management plan. The Law on Environmental Protection and Natural Resource Management (1996) defines water as being a natural resource to be conserved, developed, managed and used in a rational and sustainable manner. The 2007 Law on Water Resource Management (Water Law) encourages the application of Integrated Water Resources Management as the holistic approach for sustainable management and development of water and related resources in the country (RGC Constitution 1993; GTZ 2009; RGC Water Law 2007a).

A series of Sub-decrees are also included in the legal framework. The April 1999 sub-decree on water quality aims to minimize pollution in public water areas in order to sustain good water quality that is suitable for human usage by improving wastewater management. River basin management and water allocation and licensing are also guided by sub-decrees. Farmer Water User Committees (FWUCs) have also been established through sub-decree and provide for more localized management of irrigation schemes. The Farmer Water User Committees are in charge of everyday management of irrigation schemes, which includes regulating access to water, fee collection and monitoring, interdiction and prosecution of those who violate the FWUC sub-decree (RGC 2008).

The 2007 National Water Resources Policy provides a statement of policy related to all aspects of water resources management (RGC 2007c).

## **TENURE ISSUES**

The state owns all water and water resources in Cambodia. Every person has the right to use water resources for his/her vital human needs, including drinking, washing, bathing and other domestic purposes (such as watering for animal husbandry, fishing and the irrigation of domestic gardens and orchards) in a manner that will not affect the legal rights of others. All uses of water resources for any other purposes are subject to a license or permit. Farmers using water from the same irrigation system may form a Farmers' Water User Committee to implement policies and plans on water use and management (RGC Water Law 2007a).

Groundwater extraction is generally not monitored and no fees are collected. The lack of an enforceable regulatory framework for extraction creates a potential for over-extraction and conflict (FAO 2010).

## **GOVERNMENT ADMINISTRATION AND INSTITUTIONS**

The Ministry of Water Resources and Meteorology (MOWRAM) is responsible for the overall management of the nation's water resources and development of groundwater and surface water policies and has a particular focus on irrigation. The provision of drinking water falls within the responsibility of three key ministries and public

entities: the Ministry of Industry, Mines and Energy (MIME), the Ministry of Rural Development (MRD) and the Phnom Penh Water Supply Authority (PPWSA), which operates as an autonomous public entity. The PPWSA serves Phnom Penh, and is the largest provider in Cambodia (CDRI 2008).

The Department of Potable Water Supply (DPWS) under the MIME is responsible for the development of urban water supply systems outside Phnom Penh. The DPWS is in charge of the promotion of piped water supply systems, with monitoring of water quality and water tariffs, and with technical assistance to the public and private drinking water suppliers. Under the MRD, the Department of Rural Water Supply (DRWS) is responsible for community water supply in rural areas. The DRWS collaborates with International Organizations/NGOs and with private sector initiatives to guide development of the rural water supply sub-sector. The MRD issued the National Policy Framework for Rural Water Supply and Sanitation in 2002 (CDRI 2008).

The Ministry of the Environment (MoE) is responsible for the conservation of national biodiversity and the environmental aspects of water pollution relating to the protection of human health. The Ministry of Public Works and Transport is responsible for sanitation and land drainage in Phnom Penh and provincial towns (RGC 2007c).

Beginning in 1999, the government began shifting from centrally-managed irrigation schemes to smaller, locally-managed projects. Through the Asian Development Bank-funded Participatory Management and Development initiative, Cambodia began creating Farmer Water User Committees (FWUCs) to manage irrigation schemes, including regulating access to water and collecting fees (FAO 2010).

The Mekong River Commission (MRC) was established in 1995 by Cambodia, Laos, Viet Nam, and Thailand. China and Burma joined the commission as dialogue partners the following year. The MRC provides the institutional framework of regional cooperation in the management and use of Mekong River resources. The Cambodia National Mekong Committee coordinates with water-related ministries and the MRC (MRC 2011; FAO 2010).

## **GOVERNMENT REFORMS, INTERVENTIONS AND INVESTMENTS**

In 2007 the Ministry of Agriculture, Forestry and Fisheries and Ministry of Water Resources and Meteorology jointly issued a National Strategy for Agriculture and Water for 2006–2010. The Strategy identified five major programs for the country, including institutional capacity-building and a management support program for water resources as well as water resources and irrigation management. In 2009, the ministries adopted an updated Strategy for Agriculture and Water, 2010 – 2013. The updated strategy identifies six core areas for development and improvement: (1) a sound policy and legal framework; (2) a sound institutional, administrative, research, and education basis for effective work performance; (3) a comprehensive and coordinated capacity to assemble and utilize agricultural and water knowledge, information, and technology transfer; (4) agricultural systems and community arrangements that support access for poor and food insecure Cambodians; (5) sustainable and pro-poor management of water and land resources managed in a river basin context; and (6) agricultural and agri-business that make effective use of inputs and deliver benefits to farmer, communities, and stakeholders (RGC n.d; RGC 2007c; RGC 2009b).

The Government's Rectangular Strategy, 2006–2010, established a commitment by the government to extend water management in support of agricultural development, in particular in irrigation sector development. Water for agriculture is given high priority. Other recent and ongoing government interventions include: (1) the Northwest Irrigation Sector Project; (2) the Study on Comprehensive Agricultural Development of Prek Thnot River Basin; (3) the Basin-wide Basic Irrigation and Drainage Master Plan Study; (4) the Water Resources Management (Sector) Project; (5) Establishment of a Master Plan of Water Resources Development in Cambodia; and (6) the Krang Ponley River Basin Management and Development Plan (RGC 2007c; FAO 2010).

## **DONOR INTERVENTIONS AND INVESTMENTS**

The World Bank funds a Provincial and Peri-Urban Water and Sanitation Project (2003–2011), with a total investment of US \$16.9 million. The objective of the Provincial and Peri-Urban Water and Sanitation Project is to assist Cambodia in moving forward in fulfilling the Millennium Development Goals (MDGs) in water supply and sanitation by 2015 (World Bank 2008a).

USAID is providing US \$8.5 million for a USAID public-private partnership, Market-based Approaches to Scaling and Sustaining Water, Sanitation and Hygiene (MASSWaSH). The program distributes ceramic water purification filters and other household water, sanitation and hygiene technologies throughout Cambodia. MASSWaSH also will work to increase consumer demand for effective water and hygiene technologies, such as rainwater storage systems and latrines (Pontius 2008).

USAID is also providing an additional US \$3 million through their existing Micro, Small, & Medium Enterprise (MSME) program, 2008-2012. The program helps existing private water service providers (WSPs) to improve access to safe, piped water. The program began in 2008 and has resulted in the connection of over 11,320 rural and urban households to a piped, reliable and safety-tested source of drinking water in six main provinces where almost half of the nation's households live. In addition to new connections, an additional 13,600 households (68,000 people) with existing connections benefited from improved water quality through the construction of new treatment facilities and improved operations and management systems that meet national standards (USAID 2011; McCluskey 2010).

Since 1999, the Asian Development Bank (ADB) has provided loans for irrigation development and rehabilitation of irrigation and flood-control infrastructure. ADB has also facilitated in developing the legal and policy framework for the water resource and irrigation sector (ADB 2006).

### **3. TREES AND FORESTS**

#### **RESOURCE QUANTITY, QUALITY, USE AND DISTRIBUTION**

Fifty-nine percent of Cambodia is forested, and protected areas cover nearly 24% of the total land area. Forest cover includes evergreen, semi-evergreen, deciduous, swamp, mangrove and bamboo forest. Very little of the country's forestland is primary forest. The three major tree crops grown in Cambodia are not native to Asia: the para rubber tree is from South America; the eucalyptus comes from Australia; and the oil palm tree is from Africa. These trees are generally cultivated in large-scale monoculture plantations, resulting in significant disruption to the local ecosystem. (GTZ 2009; World Bank 2009a).

Non-timber forest products are of critical importance to rural residents. A study conducted in four provinces revealed that on average poor households gain 42% of their livelihood from the forests (GTZ 2009).

The protected areas of Cambodia are subject to numerous and diverse threats. Threats stem from overutilization of resources, habitat loss due to agricultural and infrastructure development, and hunting for the illegal wildlife trade (GTZ 2009).

Cambodia's forests are being deforested at an alarming rate. Since 1970, the average annual deforestation rate has been 2%. Cambodia's primary rainforest cover declined from over 70% in 1970 to 3% as of 2009. Causes of deforestation including widespread illegal logging and abuse of government concessions continue to result in rapid deforestation. As of 2009 roughly one million hectares of forest have been granted as concession forests to private companies. The World Bank has estimated that up to 94% of the total volume of logging is illegal. Apart from a loss of much-needed economic revenues, the wide-scale deforestation has led to loss of biodiversity and soil erosion and harmed freshwater fisheries (EC 2007; GTZ 2009).

#### **LEGAL FRAMEWORK**

Article 59 of the Constitution provides that the state will protect the environment, including forests and forest products. The 2002 Forestry Law defines the framework for management, harvesting, use, development and conservation of the forests in Cambodia. The objective of the Forestry Law is to ensure the sustainable management of these forests for their social, economic and environmental benefits, including conservation of biological diversity and cultural heritage. The Forest Law authorizes the granting of forest concessions. The Sub-decree on Community Forest Management (2003) sets rules for the establishment, management and use of community forests throughout the country (RGC Constitution 1993; RGC Forestry Law 2002).

Other sub-decrees related to the forestry sector include: On Management of Forest Concessions (2000); On the Establishment of the Protected Forest for Biodiversity Conservation, Elephant Corridor Protection, and Wildlife Rehabilitation Centre in Koh Kong Province (2004); On State Land Management (2005); On Timber and Non-

Timber Forest Products Allowed for Export and Import (2006); and On the Establishment of the National Committee to Manage and Execute Forest Management Policy (2007) (RGC Forest Law 2002; GTZ 2009; FAC n.d).

## **TENURE ISSUES**

The Forestry Law does not recognize private ownership of forests. Any individual, legal entity or community that intends to harvest forest products for commercial purposes must possess a harvest permit issued by the Forestry Administration (RGC Forestry Law 2002).

Although current forest law and forest management practices by the State do not recognize customary tenure with relation to forests, The state recognizes traditional user rights of local communities living near forest reserves. Traditional user rights are those necessary for preserving livelihoods and traditional customs and beliefs. Local communities can harvest forest products for customary subsistence use without a permit (RGC Forestry Law 2002).

Under the Forestry Law, usufruct rights to forest resources can be conveyed by the state to designated beneficiaries by means of forest concessions (limited usufruct rights) and community forest designations (limited usufruct rights). As of 2001 30 companies had received forest concessions covering an estimated 6.3 million hectares (Beang and Sethaphal 2004; GTZ 2009; Sophal et al. 2001).

A Community Forest can be initiated and established by local communities or the Forestry Administration. In order to establish a Community Forest, the local community must submit a written request to the Forestry Administration. The Forestry Administration assesses and analyzes the requirements and problems faced by the local communities with the involvement of local authorities or Commune Councils (RGC Forestry Law 2002).

Communes come into conflict with concessionaires for the following reasons: destruction of local livelihoods through unsustainable use of forests; overlapping resource uses; concessionaires' denial of customary user rights; reduction of income-generation possibilities (resin tapping); logging in spiritual forests; insufficient allocation of community forest areas for villages adjacent to concessions (typically 1–3 hectares per family; or insufficient avenues for communes to participate in management planning. Conflicts between communes and the military are often over illegal logging activities or instances of land-grabbing and occupation of commune land. Conflict between villages typically involve overlapping resource use, encroachments and unclear boundary demarcations (UNHCR 2007).

## **GOVERNMENT ADMINISTRATION AND INSTITUTIONS**

The management of forests is under the general jurisdiction of the Ministry of Agriculture, Forestry, and Fisheries (MAFF). The Forestry Administration, under MAFF, is responsible for review and evaluation of Forest Concession Management Plans, forest and wildlife conservation, development of law and regulations, and forest crime monitoring and reporting (RGC Forestry Law 2002).

The Ministry of Environment manages forests in protected areas, and the Department of Fisheries manages flooded forests (RGC Forestry Law 2002).

## **GOVERNMENT REFORMS, INTERVENTIONS AND INVESTMENTS**

The Forest Administration launched their National Forest Programme (2010–2030) in December 2010. The program includes: forest demarcation and classification; national forest management and conservation; decentralized forestry (including community forestry); forest law enforcement and governance; capacity-building and research, and sustainable financing of the forests. The new forest program strategy aims to ensure compatibility with overall socioeconomic and environmental goals as expressed in various government plans and international obligations (NORDECO 2008; RGC 2011).

The Prime Minister issued a strong public condemnation of illegal logging in January 2010, highlighting the failure of authorities at central and provincial levels to control such activities. In 2010, the government carried out

several high profile enforcement actions and changed the Director for the Forest Administration (World Bank 2010b).

#### **DONOR INTERVENTIONS AND INVESTMENTS**

The World Bank's US \$5.42 million Forest Concession Management and Control Pilot Project (2000 – 2005, extended with alternate funding) was responsible for assisting the government with: (1) preparation of community consultation guideline in the form of a manual on community participation in forest division planning, which was finalized in 2009; expansion of community forestry in 424 sites covering 400,000 hectares (177 Community Forest (CF) Areas have been officially mapped; 151 of these are formally approved CF sites; another 111 are currently under consideration; the Forest Administration is developing ambitious plans to expand Community Forestry to 1,000 sites (1 million ha) by 2029); strengthening indigenous peoples' communal land rights through assistance with the drafting of a sub-decree on Procedures for Registering Land of Indigenous Communities to guide implementation of the Land Law's provisions related to Indigenous Peoples' land rights; finalization of the National Forest Program Strategic Framework; and piloting forest boundary demarcation (World Bank 2010b; World Bank 2008a; World Bank 2006a).

The Japan Social Development Fund (JSDF) funds a Capacity Building for Sustainable Forest and Land Management project which began in 2007. The project helped build capacity of forest-dependent villages as they explore new partnerships with government and non-government partners and develop innovative approaches to forest stewardship and participatory monitoring of forest and land resources (World Bank 2008a; World Bank 2006b).

The EC supports the Cambodia Fuelwood Savings Project and the Integrated Biodiversity Conservation and Development of the Cardamon Mountains Project to promote the use of energy-saving wood-burning stoves and to build capacity in bioregional and land use planning through participatory processes (EC 2007; GERES 1997; EU 2003).

## **4. MINERALS**

### **RESOURCE QUANTITY, QUALITY, USE AND DISTRIBUTION**

Cambodia's mineral resources were relatively unexplored due to the periods of violent conflict the 1960s and 1980s and a lack of capital, specialists and technology in the 1990s. Beginning in 2003, investors from Australia, China, South Korea, Thailand and the US began to express their interest in Cambodia's potential for offshore oil and gas, as well as such land-based metallic minerals as bauxite, copper, gold, iron and gemstones. To date, however, Cambodia mineral production is primarily industrial minerals, including sand and gravel and crushed stone for domestic consumption by the construction industry, and limestone for cement production (Fong-Sam 2008; Anderson 2008; Wu 2006).

Cambodia's mining sector is composed of small-scale, artisanal mining and larger-scale operations at the exploration stage. Most mining companies are small-scale quarries that produce such construction materials as limestone, sand and gravel and other construction aggregates (Wu 2006).

Mining for gold and silica sand for glass material has recently started. Gold artisanal mines are located mainly north-east of Phnom Penh, but there are 19 known gold deposits in Cambodia. Gold mining is becoming an increasingly important occupation and it is conservatively estimated that the sector currently employs between 5000 and 6000 miners during the peak mining season (Wu 2006).

In 2005, Cambodia discovered large offshore oil and gas reserves. Reserves are estimated at least 700 million barrels of oil and 2-3 trillion cubic feet of natural gas. Large areas remain unexplored and actual reserves could far exceed estimates. Chevron Overseas Petroleum (Cambodia) Ltd. had drilled 24 wells as of 2011 and production is scheduled to begin in late 2012. The Cambodian National Petroleum Authority (CNPA) has leased five additional blocks to foreign and domestic interests for exploration (Fong-Sam 2008; CNPA 2011; Postlewaite 2008).

## LEGAL FRAMEWORK

To attract domestic and foreign mining companies to invest in mineral exploration and development, the government promulgated the Law of Minerals Resource Management and Exploitation in 2001 (Mining Law). This law, together with the 1996 Law on Environmental Protection and Natural Resources Management, governs mineral exploration and exploitation in Cambodia. The mining law defines the mineral resources management and mining, use of mine sites and all activities related to mineral operations in Cambodia, except for oil and natural gas operations (RGC Mining Law 2001b; Global Witness 2007).

The Cambodian Petroleum Regulations 1991 (as amended in 1998 and 1999) govern the oil and gas industry and management of the country's petroleum reserves. The Petroleum Regulations provide rules of the award of petroleum agreements, which are entered into by the Cambodian National Petroleum Authority (CNPA) and the relevant petroleum company and its partners. A Petroleum Agreement must be signed in substantially the form of the model agreement scheduled to the Petroleum Regulations, subject to any additions or deletions as may be approved by the Government (CNPA 2011).

## TENURE ISSUES

Under Cambodia's Constitution and Mining Law, all mineral resources are the property of the state. State-owned minerals include all mineral resources found in, on or under the ground, mountains, plateau, internal waters, territorial sea, islands, seabed and under the seabed (RGC Constitution 1993; RGC Mining Law 2001b).

The Mining Law has six categories of mining licenses: (1) artisanal licenses available to those of Khmer nationality who mine using commonly available instruments and their own labor; (2) pits and quarries licenses; (3) gem stone mining licenses; (4) mineral transforming licenses, which are required for processing gem stones; (5) exploration licenses; and (6) industrial mining licenses (RGC Mining Law 2001b).

Foreign companies can engage in all mining activities in Cambodia, with the exception of artisanal mining. A mining company wishing to operate in Cambodia must apply to the Council for Development of Cambodia (CDC) for a mining concession. The CDC grants exploration licenses to investors. If exploration is successful, investors are required to present a master project plan to the CDC before being granted a mining license. The amount of investment approved for mining projects by the CDC totaled US \$181 million in 2005 (RGC Mining Law 2001b; Global Witness 2007; Wu 2006).

Since 2005–06, a large number of exploration licenses have been granted to Australian, Korean, Vietnamese, Chinese and other companies. Nearly 100 exploration licenses have so far been granted, and it is likely that these licenses could cover half of the surface area of eastern Cambodia (World Bank 2009b).

Under the Petroleum Regulations, petroleum agreements grant companies 4-year periods for exploration, subject to renewal and with relinquishment of a percentage of the exploration area with each renewal. Production periods are set at 30 years, with a possible 5-year extension. The government receives a royalty of no less than 12.5% of the value of petroleum sold (CPNA 2011).

A central conflict related to the mining sector is the inadequate provision for those displaced by mining operations. The law states that before entering any privately owned land for exploration or mining, the concessionaire must compensate private landowners with titles for any inconvenience and damage to the land. The majority of Cambodian households, however, do not have legal title to the land on which they live, and therefore have little protection against the activities of mining companies who wish to explore or exploit mineral resources on the land they occupy (Global Witness 2007).

## GOVERNMENT ADMINISTRATION AND INSTITUTIONS

The Ministry of Industry, Mines and Energy (MIME) is the main government agency that implements the country's mineral law and policy. The MIME's Department of Geology and Mines and Department of Energy is responsible for developing the country's mineral resources, providing mining assistance to the private sector, and administering mining-related regulations and inspections (Global Witness 2007; World Bank 2009b).

The Cambodian Development Council (CDC) is responsible for granting exploration licenses to investors as well as reviewing investors' master project plans prior to issuance of a mining license (Global Witness 2007; World Bank 2009b).

The Cambodian National Petroleum Authority (the CNPA) was formed in 1998 as the governmental agency responsible for overseeing upstream and downstream petroleum activities in Cambodia (CPNA 2011).

## **GOVERNMENT REFORMS, INTERVENTIONS AND INVESTMENTS**

The Government of Cambodia recognizes that international mining firms look to Cambodia as a new frontier that has yet to be explored. Cambodia still has little experience with or history of mining, and there is no national mining policy. In 2006, the Strategy for the Mining Sector was launched to: enforce mining laws; strengthen agreements for exploration and development; improve assessments of exploration surveys conducted in concession areas; and attract private sector investment, among other purposes (World Bank 2009b).

## **DONOR INTERVENTIONS AND INVESTMENTS**

UNDP's US \$7.9 million (2010-2015) Development Policy Initiative (DPI) aims to assist the Government of Cambodia to generate and implement innovative policy options that promote good economic governance for a more equitable, sustainable, diversified and inclusive economy. DPI builds on the successes of the Insights for Action Initiative (2005-2010) and has two main objectives: (1) strengthened economic governance for a more equitable, sustainable, diversified and inclusive economy, and for gender equity and human development; and (2) Capacity development for economic policy analysis and dialogue, and implementation of policy decisions. One of the focus areas for the initiative is Cambodia's extractive industries. The initiative aims to provide knowledge and capacity development tools for the industry that emphasize effective stakeholder engagement, transparency and responsible development (UNDP 2010).

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